

**REPLY BRIEF OF THE APPELLANT**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Judge

Appellate Case No. 2017-001330

Kenji Kilgore,

v.

Appellant,

Estate of Samuel Joe Dixon, Samuel Joe Dixon,  
and Fredda Dixon

Appellee.

**REPLY BRIEF OF THE APPELLANT**

Anderson, South Carolina  
October 20, 2017

  
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Attorney for Appellant

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SC Court of Appeals

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**TABLE OF AUTHORITIES**

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## STATEMENT OF THE ISSUES ON APPEAL

- I. WHETHER THE LOWER COURT WAS IN ERROR IN DISMISSING THE CASE FOR FAILURE TO STATE CAUSE OF ACTION
- II. WHETHER APPELLANT WAS DEPRIVED OF HIS RIGHT TO PURSUE DISCOVERY PROCEEDINGS

### ARGUMENTS

#### **I. THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT FOR FAILURE TO STATE SUFFICIENT FACTS TO CONSTITUTE CAUSE OF ACTION.**

Respondents in their Initial Brief argue that the lower court was justified in dismissing Appellant's complaint for failure to allege sufficient facts in his Complaint to constitute a cause of action. Appellant insists that he was able to mention facts sufficient to establish Respondents' legal duty to warn Appellant.

The Complaint stated that deceased Joe Dixon was Respondents' son and that he was living and/or staying in a property owned by Respondents. The said property was located at the back of Respondent's house. (Complaint, 6, July 1, 2015).

Appellant contends that the parental relationship between the Respondents and deceased Joe Dixon, the injurer, charges the former Respondents with the ability to control and supervise their son. Appellants believe that Respondents need only have the ability, the means to control or supervise their son. Respondents, with due diligence, could have or should have easily walked over to their son's trailer/house to check on, monitor or supervise their son. This is particularly important considering that they knew, or should have known, that Joe was a danger to himself and to others after exhibiting violent tendencies.

That the Respondents were aware of their son's health problems was apparent with their previous conversation with the Appellant. Respondents told Appellant that their son "was doing

better” since they became roommates. Appellant asserts that the specific threat of harm in this case is the erratic and violent behavior of the deceased, as evidenced by his shooting of the Appellant and his subsequent suicide. The specific person to be harmed was Appellant since he was the deceased’s roommate.

Respondents argued that their son had not made specific threats against Plaintiff, and therefore does not fall under the “special relationship exception”. But the rationale behind this line of cases is an individual does not have a duty to protect the public from speculative harm from a dangerous individual within his control. However, where the custodian knows of a specific, credible threat from a person in their care, the injury is no longer speculative in nature.

A complaint need not be drafted in order to adequately allege that Respondents had a duty to warn Appellant. Here, the Complaint stated that the Respondents were the parents of the deceased. The deceased, who had erratic and violent behavior, was still living within the vicinity of Respondents’ house. Respondents knew or should have known of their son’s violent disposition, and yet allowed Appellant to room with him, without advising Appellant of the threat to his life. Respondents knew that their son’s mental faculties had diminished, in particular, with the failure of his marriage.

## **II. THE APPELLANT WAS DEPRIVED OF HIS RIGHT TO PURSUE ANY DISCOVERY PROCEEDINGS.**

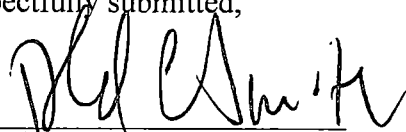
The undersigned counsel substituted the previous counsel for the Appellant a month before the January 24, 2017 hearing. In that hearing, the lower court dismissed the case. Appellant’s counsel did not have enough time to engage in discovery proceedings. Appellant believes that discovery will provide court with the necessary evidence to allow him to have his day in Court. In this regard, it is akin to the *Batson I* case, where the Court declined to impose

summary judgment before sufficient discovery could be completed. Whether the Respondents had a duty to Appellant will be ferreted out with the completion of the aforementioned discovery.

**CONCLUSION**

For these reasons, as well as those addressed in the his Initial Brief to this Court, Appellant respectfully requests that lower court's judgment or orders be reversed and the case be remanded for trial.

Respectfully submitted,



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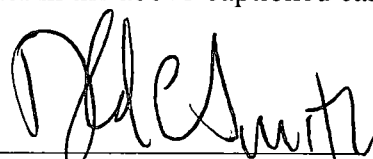
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**CERTIFICATE OF COUNSEL FOR REPLY BRIEF**

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I HEREBY CERTIFY that Appellant's Reply Brief in the above-captioned case complies with Rule 211 (b) SCACR.

October 20, 2017



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Attorney for Appellant

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SC Court of Appeals

**FORM 7  
PROOF OF SERVICE  
FILING INITIAL BRIEF OF APPELLANT AND  
DESIGNATION OF MATTERS TO BE INCLUDED IN RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY  
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R. Lawton McIntosh, Judge

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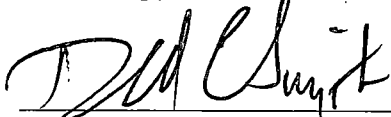
Estate of Samuel Joe Dixon, Samuel Joe Dixon,  
and Fredda Dixon

Appellee.

**PROOF OF SERVICE**

I certify that I have served a copy of the Reply Brief of the Appellant to the Appellate Clerk of Court and Proof of Service for same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, and Respondents, by and through their counsel of record, Robert E. Davis, Esquire at Ward Law Firm, PA, 233 S. Pine St., Spartanburg, SC 29301, by depositing a copy of it in the United States Mail, postage prepaid, on October 20, 2017.

Anderson, South Carolina  
October 20, 2017

  
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**FORM 8**  
**LETTER TO APPELLATE CLERK OF COURT**  
**FILING OF REPLY BRIEF OF THE APPELLANT**

October 20, 2017

The Honorable Jenny Abbott Kitchings  
Clerk of Court South Carolina Court of Appeals  
Post Office Box 11629  
Columbia SC 29211

**RE: Kenji Kilgore v. Estate of Samuel Joe Dixon, Samuel E. Dixon and  
Fredda Dixon  
Appellate Case No. 2017-001330**

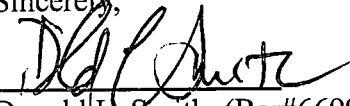
Dear Honorable Kitchings:

Enclosed for filing are an original and a copy of :

1. Reply Brief of the Appellant; and,
2. Proof of Service for same.

Please return a time-stamped copy of each document in the enclosed self-addressed, stamped envelope.

Sincerely,

  
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Robert E. Davis, Esquire

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