AMENDED FINAL 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 C. Kilgore, Appellant,

v.

Estate of Samuel Joe Dixon, Samuel E. Dixon, and Fredda L. Dixon Respondents.

AMENDED FINAL REPLY BRIEF OF THE APPELLANT

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December 6, 2017

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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 SUFFICENT 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 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. (R. 54).

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.

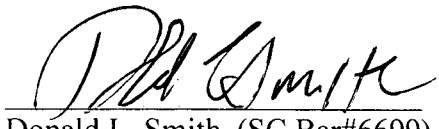
The undersigned counsel substituted the previous counsel for the Appellant a month before the January 24, 2017 hearing. In that hearing, the lower court dismissed the case. Appellant's counsel did not have enough time to engage in discovery proceedings. Appellant believes that discovery will provide 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 afore-mentioned discovery.

CONCLUSION

For these reasons, as well as those addressed in his Final 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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CERTIFICATE OF COUNSEL
IN AMENDED FINAL REPLY BRIEF

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

December 6, 2017

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