

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Judith H. Sapp and James R. Sapp )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
The South Carolina Department of Parks, )  
Recreation, and Tourism )  
 )  
Defendant. )

THIRTEENTH JUDICIAL CIRCUIT  
IN THE COURT OF COMMON PLEAS  
C.A. 2016-CP-23-03162

**ORDER FOR DEFENSE VERDICT**

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DEC 13 2017

SC Court of Appeals

This matter came before the Court for a non-jury trial on Friday October 6, 2017. Based upon the testimony of the Plaintiff Judith H. Sapp, on or about September 23, 2012, Mrs. Sapp, her husband and other family members visited the Paris Mountain State Park, one of the parks maintained by Defendant, The South Carolina Department of Parks, Recreation and Tourism. Mrs. Sapp presented evidence that after carrying a load of picnic items from her car to a picnic table located within Paris Mountain State Park, her husband called her name at which time she took a step or two backwards, began to turn, and tripped over a tree stump located near the picnic table where she and her family were gathering. Mrs. Sapp sustained, as a result of the accident, a broken hip and underwent surgical repair and rehabilitation, including physical therapy. On or about February 28, 2014 Mrs. Sapp instituted an action against Defendant The South Carolina Department of Parks, Recreation and Tourism asserting a cause of action for negligence and gross negligence. Mr. Sapp asserted a claim for loss of consortium.

By way of answer, the Defendant raised a number of affirmative defenses, including immunity under the South Carolina Tort Claims Act, specifically S.C. Code Ann. §15-78-60(16). Defendant also asserts that the South Carolina Recreational Use Statute found at S.C. Code Ann.

§27-3-10 et seq., applies to this action and under the statute, the Plaintiff would be required to establish a recklessness standard for the establishment of a breach of a duty. Defendant also asserts that even if it was negligent, which it denies, the Plaintiff's negligence was greater than 50% of the proximate cause of her injury and as such, she may not recover damages from this defendant.

After considering the testimony of the Plaintiff Judith H. Sapp as well as the Plaintiff James R. Sapp, the testimony of Paris Mountain State Park Manager, Jason Hege, and considering the evidence introduced during the case, the Court finds a verdict should be returned in favor of the Defendant.

Under the applicable law as applied to the facts presented to the Court, the Defendant did not breach a duty in failing to remove the stumps at issue. First, The Recreational Use Statute establishes a recklessness standard for establishing a breach of duty. I find Defendant's conduct did not rise to the level of recklessness. Furthermore, even analyzing the duty owed under a standard negligence analysis, the Court finds that the Defendant's conduct was not negligent. The South Carolina Department of Parks, Recreation and Tourism's conduct with respect to the stumps was reasonable and appropriate in the maintenance and stewardship of Paris Mountain State Park. The stumps at issue in this case are unconcealed, open and conspicuous to visitors. In fact, the evidence adduced at trial reveals Mrs. Sapp literally walked within close proximity of the stump minutes before her injury.

By virtue of the open and conspicuous nature of the stump at issue and considering all of the evidence before the court, I further find that the plaintiff's negligence was greater than 50% of the proximate cause of her injuries and thus, she is barred from any recovery from defendant. Of course, any claims asserted by her husband, James R. Sapp, must rise and fall with the claims of Mrs. Sapp, and thus, he is entitled to no recovery as well.

Based on the foregoing, the Court finds that a judgment should be rendered in favor of the Defendant and therefore,

**IT IS SO ORDERED.**

\_\_\_\_\_  
Robin B. Stilwell  
Presiding Judge

Greenville, South Carolina  
October \_\_\_\_\_, 2017



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December 11, 2017

The South Carolina Court of Appeals  
PO Box 11639  
Columbia SC 29211

Re: Judith H. Sapp and James R. Sapp v. The South Carolina  
Department of Parks, Recreation and Transportation  
Appellate Case #2017-002486

Dear Sirs:

Please find enclosed for filing a copy of the Order for Defense Verdict in the above referenced case, which is the Order Appellants challenge on appeal.

Sincerely,

David F. Stoddard

DFS/

cc: Knox Haynesworth

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