

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2017-001563

Cynthia Wright and Richard Wright, Appellants

v.

South Carolina Department of,
Transportation, Pilot Travel Centers,
LLC, Speedway, LLC, Ashley Land
Surveying, Inc. f/k/a Ashley
Engineering and Consulting, Inc.,
and Munlake Contractors, Inc.

Of Whom

South Carolina Department of,
Transportation, Pilot Travel Centers,
LLC, Speedway, LLC, Ashley Land
Surveying, Inc. f/k/a Ashley
Engineering and Consulting, Inc.,

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Respondents.

**INITIAL REPLY BRIEF (AS TO RESPONDENT ASHLEY LAND SURVEYING,
INC. F/K/A ASHLEY ENGINEERING AND CONSULTING, INC.)**

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REPLY ARGUMENT

1. Ashley Breached a Legal Duty by Pursuing an Encroachment Permit for Dangerous Driveways Connecting Pilot Travel Center to the Highway.

Ashley Land Surveying, Inc. f/k/a Ashley Engineering and Consulting, Inc.'s ("Ashley")¹ brief contains many of the flawed duty arguments advanced by Respondents Pilot Travel Centers, LLC ("Pilot") and Speedway, LLC ("Speedway") including the contention that Pilot Travel Center's owners and their agents bear no responsibility for highway dangers because the highway is controlled and maintained by Respondent South Carolina Department of Transportation ("SCDOT"). Accordingly, the Wrights reaffirm and incorporate by reference Argument No. 2 of their reply brief to Pilot, Speedway, and SCDOT (Reply Br. to Pilot et al. at 7-9) citing South Carolina and Fourth Circuit precedent establishing SCDOT's duty for highway maintenance does not immunize abutting property owners for highway dangers they helped create.

Ashley also asserts the Wrights' duty claim is based on (1) the median selection process; and (2) the mere fact an encroachment permit was mailed to Pilot via Ashley. (Ashley's Br. at 6). However, Ashley misconstrues the scope of the Wrights' claim and undersells its role in the process leading to hazardous highway conditions. The Wrights' claim against Ashley focuses not on the median selection process but rather on Ashley's role in pursuing the plan for Pilot Travel Center's dangerous driveways. (Dorchester Cnty. Compl. ¶¶ 13-14). Ashley now argues it had no involvement with the driveways (Ashley's Br. at 17-18) but has offered no evidence to support

¹ The Wrights hereby withdraw footnote 1 to their Reply Brief filed in response to Pilot, Speedway, and SCDOT in light of the Court's February 28, 2018 order granting Ashley leave to file its response brief which was entered while the Wright's reply was in transit. Footnote 1 will be omitted from the Wrights' final briefs.

this conclusion. In contrast, the Wrights presented evidence Ashley was a prime factor in the driveway plan and in pursuing it to fruition through the encroachment permit process.

For example, Ashley was identified along with Pilot as applicants for the encroachment permit submitted to SCDOT. (Pla. Mem. in Opp. to Pilot's Mot. for Summ. J., Exh. 5). The address for Ashley's principal place of business in Summerville, South Carolina was the only point of contact provided for the applicants. Id.; Dorchester Cnty. Compl. ¶ 10. Moreover, the application was supported by sketches Ashley created of the proposed driveways. (Pla. Mem. in Opp. to Pilot's Mot. for Summ. J., Exh. 5). Pilot executive William Mulligan also described the clear division of labor when Pilot built or redesigned a new Pilot Travel Center. Pilot took on the responsibility for designing the building, gas pump locations, and parking lot. W. Mulligan Dep. 79:6-23. Pilot then hired local firms to perform traffic management planning, storm water engineering, and regulatory compliance services. W. Mulligan Dep. 80:7-10. Local engineering firms like Ashley were retained by Pilot to hope design the plan and determine the plan's "compliance" with industry standards and state law. W. Mulligan Dep. 79:24 – 80:3.

The Wrights also showed Ashley negligently failed to conform the proposed driveway plan to regulatory requirements and instead pursued a plan it knew or should have known to contain driveways dangerously close to one another and a busy intersection. See Reply Br. to Pilot et al. at 14-16. In other words, Ashley negligently pursued a driveway plan in violation of SCDOT's Access and Roadside Management Standards Manual, federal requirements, and industry standards. Id. Since Ashley was acting as Pilot's agent during the encroachment permit process, Pilot bears responsibility for Ashley's conduct. However, Ashley is also liable to the Wrights for its negligent conduct. See Thomas v. Delta Enters., Inc., 302 S.C. 351, 396 S.E.2d 122 (Ct. App. 1990) (quoting Lawlor v. Scheper, 232 S.C. 94, 101 S.E.2d 269, 271 (1957) ("An

agent's liability for his own tortious acts is unaffected by the fact that he acted in his representative capacity").

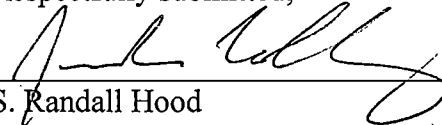
2. The Wrights' Injuries were a Foreseeable Consequence of Ashley's Conduct.

Like Pilot, Speedway, and SCDOT, Ashley argue they were entitled to judgment as a matter of law on proximate cause because the Wrights' collision involved the intervening criminal act of a third party (Daniel Sena). However, Mr. Sena's negligence is not a superseding act so long as the ultimate result—i.e. an auto accident involving a left-turn to Pilot Travel Center—was a foreseeable harm at the time Respondents acted. Roddey v. Wal-Mart Stores E., L.P., 415 S.C. 580, 590-91, 784 S.E.2d 670, 676 (2016). These issues are discussed in detail in the Wrights' Reply Brief to Pilot, Speedway, and SCDOT, which the Wrights incorporate by reference here. (Reply Br. as to Pilot, Speedway, and SCDOT at 18-21). Along with the evidence of foreseeability outlined in the earlier brief, Respondents' proximate cause argument should be rejected because the foreseeable harm of their misconduct is evident on the face of the encroachment permit application. By submitting the application, Ashley was acknowledging "accidents, or injuries to persons, or damage to property . . . may be caused by the construction, maintenance, use, moving or removing, of the" driveways Ashley and Pilot were proposing. (Pla. Mem. in Opp. to Pilot's Mot. for Summ. J., Exh. 5). Therefore, none of the Respondents can feign surprise over liability for a motor vehicle collision involving a vehicle accessing Pilot Travel Center's driveways because the legal and industry standards Respondents ignored were in place for the specific purpose of preventing incidents like the one at issue in this case.

CONCLUSION

For these reasons and those stated in earlier briefing, the Wrights respectfully request the Court reverse the circuit court's summary judgment order.

Respectfully submitted,



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March 19, 2018
Rock Hill, SC

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Roger M. Young, Sr. Circuit Court Judge
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South Carolina Department of
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Of Whom

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and Consulting, Inc.

..... Respondents.

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PROOF OF SERVICE

The undersigned hereby certifies that on this 19th day of March, 2018, she served counsel for the Defendants with a copy of the Appellants' Initial Reply Brief as to Respondent Ashley Land Surveying, Inc. f/k/a Ashley Engineering and Consulting, Inc. in this matter by mailing a

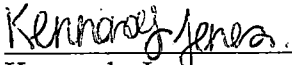
copy of the same by United States Mail with first class postage prepaid to the following addresses:

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March 19, 2018

Honorable Jenny Abbott Kitchings
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Re: Cynthia Wright and Richard Wright v. S.C. Dep't of Transp. et al.
Civil Action No. 2016-CP-08-334
Appellate Case No. 2017-001563

Dear Mrs. Kitchings:

Please find enclosed for filing one (1) original and one (1) copy of Appellants' Initial Reply Brief and Appellants' Designation of Matter To Be Included In The Record on Appeal as to Respondent Ashley Land Surveying, Inc. f/k/a Ashley Engineering and Consulting, Inc. in the above-referenced matter. Return the filed copies in the enclosed envelope.

If you have any questions, feel free to contact our office.

Sincerely,

A handwritten signature in cursive script that reads 'Jordan C. Calloway'.

Jordan C. Calloway

JCC/ksj

cc: Roy Maybank, Esquire
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