

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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SC Court of Appeals

Respondents.

**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") 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. (R. p. 55-56 ¶¶ 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 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. (R. p. 651). The address for Ashley's principal place of business in Summerville, South Carolina was the only point of contact provided for the applicants. *Id.*; R. p.

55. Moreover, the application was supported by sketches Ashley created of the proposed driveways. (R. p. 651). 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.

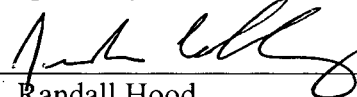
Like Pilot, Speedway, and SCDOT, Ashley argue they were entitled to judgment as a matter of law on proximate cause because the Wrights' collision involved the intervening criminal act of a third party (Daniel Sena). However, Mr. Sena's negligence is not a superseding act so long as the ultimate result—i.e. 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. (R. p. 651). 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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