

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge  
Common Pleas Case No. 2012-CP-07-03782

---

Appellate Case No.: 2015-002466

---

**RECEIVED**  
JUN 25 2018  
SC Court of Appeals

Rebecca Delaney, as Personal Representative of  
The Estate of Justin Nicholas Miller, .....Appellant,

v.

CasePro, Inc., .....Respondent.

---

**RESPONDENT'S RETURN TO APPELLANT'S  
PETITION FOR REHEARING**

---

Respectfully,

D. Gary Lovell, Jr.  
Douglas W. MacKelcan  
William J. Farley  
CARLOCK COPELAND & STAIR, LLP  
40 Calhoun Street, Suite 400  
Charleston, SC 29401  
Phone: (843) 727-0307  
**Attorneys for Respondent CasePro, Inc.**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge  
Common Pleas Case No. 2012-CP-07-03782

---

Appellate Case No.: 2015-002466

---

Rebecca Delaney, as Personal Representative of  
The Estate of Justin Nicholas Miller, .....Appellant,

v.

CasePro, Inc., .....Respondent.

---

**RESPONDENT'S RETURN TO APPELLANT'S  
PETITION FOR REHEARING**

---

RESPONDENT CasePro, Inc., by and through its undersigned counsel, respectfully submits this Return to Appellant's Petition for Rehearing pursuant to Rule 240, SCACR. To prevail, Appellant must demonstrate the Court overlooked or misapprehended the Appellant's argument. Rule 221, SCACR. The purpose for a petition for rehearing is not to have the case tried in the Appellate Court a second time. Kennedy v. S.C. Ret. Sys., 349 S.C. 531, 564 S.E. 2d, 322 (2001).

In her Petition, Appellant begins by citing Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002) to identify five exceptions to the general rule in South Carolina that there is no general duty to control the conduct of another or to warn a third person or potential victim of danger. However, Appellant fails to state with any particularity how the Court of Appeals overlooked or misapprehended Faile or its predecessor Bishop S.C. Dep't of Mental Health, 331 S.C. 79, 502 S.E.2d 78, (1998). To the contrary, it is clear from the Opinion that this Court specifically considered Faile and Bishop in finding that the evidence produced at trial did not warrant expanding CasePro's duty to Miller beyond the duty to warn. The Opinion correctly states the evidence indicated CasePro's employees could only physically restrain Hunt if he was violent or uncooperative at the time of their interaction, neither of which was not present in the record. Further, this Court appropriately noted that the evidence did not show Hunt had a specific plan to harm himself or others. These two criteria specifically address the

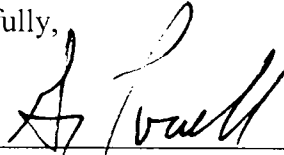
exceptions Appellant raises for the first time in the Petition. The language cited from Faile noted that, in that case, the Department of Juvenile Justice had custody of a known, dangerous individual. Those facts were not present in this case. CasePro did not have custody of Calvin Hunt, and Mr. Hunt had not made a specific threat of harm to any specific individual. Thus, the Court of Appeals correctly determined the criteria for a general duty to control had not been met in this case.

Appellant's discussion of Hardee v. Bio-Med Applications of S.C., Inc., 370 S.C. 511, 636 S.E.2d 629 (2006) also does not provide support that this Court overlooked or misapprehended points related to its analysis of Hardee. Appellant discussed the duty owed to the patient being identical to that owed to third parties within the general field of danger, and that is exactly what Judge Goodstein charged the jury as the law of South Carolina. As discussed thoroughly in the Brief of Respondent, the broad expansion of the very narrow exception from Hardee is not warranted under the facts of this case.

Finally, Appellant references Bramlette v. Charter Medical-Columbia, 302 S.C. 68, 73, 393, S.E.2d 914, 917 (1990) in support of her Petition. However, Bramlette has been discussed in prior briefs and can be distinguished from this case in that it was not a third party duty case, it was a medical malpractice case, and the patient was suicidal, none of which were true for Calvin Hunt in this case.

Accordingly, the Court should deny Appellant's Petition for Rehearing.

Respectfully,



---

D. Gary Lovell, Jr.  
Douglas W. MacKelcan  
William J. Farley  
CARLOCK COPELAND & STAIR, LLP  
40 Calhoun Street, Suite 400  
Charleston, SC 29401  
Phone: (843) 727-0307  
**Attorneys for Respondent CasePro, Inc.**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge  
Common Pleas Case No. 2012-CP-07-03782

RECEIVED

JUN 25 2018

SC Court of Appeals

Appellate Case No.: 2015-002466

Rebecca Delaney, as Personal Representative of  
The Estate of Justin Nicholas Miller, .....Appellant,

v.

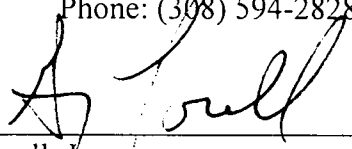
CasePro, Inc., .....Respondent.

**PROOF OF SERVICE**

I certify that I have served *Respondent's Return to Appellant's Petition for Rehearing*,  
upon the parties below by depositing a copy of it in the United States Mail, postage prepaid, on  
June 22<sup>nd</sup>, 2018, addressed as follows:

Anne McGinness Kearse, Esq.  
T. David Hoyle, Esq.  
W. Christopher Swett, Esq.  
28 Bridgeside Boulevard  
Mount Pleasant, SC 29464  
Phone: (843) 216-9000

Crystal Lynn Castleberry  
Castleberry Law Offices  
3712 Swallowtail Drive  
Morgantown, WV 26508  
Phone: (308) 594-2828



\_\_\_\_\_  
D. Gary Lovell, Jr.  
Douglas W. MacKelcan  
CARLOCK COPELAND & STAIR, LLP  
40 Calhoun Street, Suite 400  
Charleston, SC 29401  
Phone: (843) 727-0307  
**Attorneys for Respondent CasePro, Inc.**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge  
Common Pleas Case No. 2012-CP-07-03782

---

Appellate Case No.: 2015-002466

---

**RECEIVED**

JUN 25 2018

SC Court of Appeals

Rebecca Delaney, as Personal Representative of  
The Estate of Justin Nicholas Miller, .....Appellant,

v.

CasePro, Inc., .....Respondent.

D. Gary Lovell, Jr.  
S.C. Bar No.: 69293  
Douglas W. MacKelcan  
S.C. Bar No.: 76332  
William J. Farley, III  
S.C. Bar No.: 101033  
CARLOCK COPELAND & STAIR, LLP  
40 Calhoun Street, Suite 400  
Charleston, SC 29401  
Phone: (843) 727-0307  
**Attorneys for Respondent**

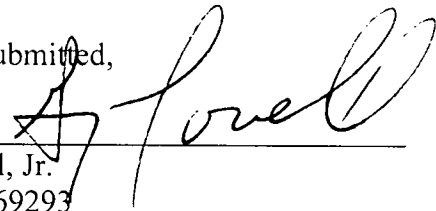
---

**CERTIFICATE OF COUNSEL**

---

The undersigned hereby certifies that the following Respondent's Return to Appellant's Petition for Rehearing complies with Rule 240 of the South Carolina Appellate Court Rules.

Respectfully submitted,



---

D. Gary Lovell, Jr.  
S.C. Bar No.: 69293  
Douglas W. MacKelcan  
S.C. Bar No.: 76332  
William J. Farley, III  
S.C. Bar No.: 101033  
CARLOCK COPELAND & STAIR, LLP  
40 Calhoun Street, Suite 400  
Charleston, SC 29401  
Phone: (843) 727-0307  
**Attorneys for Respondent**

LAW OFFICES

# CARLOCK, COPELAND & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

D. GARY LOVELL, JR.

DIRECT DIAL NUMBER  
(843) 266-8213

E-MAIL ADDRESS  
[glovell@carlockcopeland.com](mailto:glovell@carlockcopeland.com)

40 Calhoun Street, Suite 400  
CHARLESTON, SC 29401

TELEPHONE (843) 727-0307

FAX (843) 727-2995

[www.carlockcopeland.com](http://www.carlockcopeland.com)

ATLANTA OFFICE

191 Peachtree Street, N.E.  
Suite 3600  
Atlanta, Georgia 30303-1740  
(404) 522-8220

REPLY TO SC OFFICE

June 22, 2018

**RECEIVED**

JUN 25 2018

SC Court of Appeals

VIA FEDERAL EXPRESS

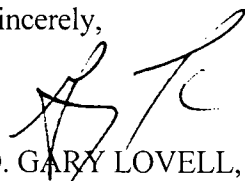
Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Rebecca Delaney, as Personal Representative of the Estate Justin Nicholas Miller v. CasePro, Inc.  
Beaufort County Case No.: 2012-CP-07-03782  
Appellate Court Case No.: 2015-002466  
CCS File No.: 549-46690

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies (all unbound) of Respondent's Return to Appellant's Petition for Rehearing, Proof of Service, and Certificate of Counsel (Compliance with Rule 240) in this case. Please provide me with a clocked copy in the enclosed, self-addressed, stamped envelope. By copy of this letter, I am serving the same upon all counsel of record. If you have any questions, please feel free to contact me

Sincerely,



D. GARY LOVELL, JR.

DGL:tjr  
Enclosures

cc: T. David Hoyle, Esq. (w/encls via mail)  
Crystal L. Castleberry, Esq. (w/encls via mail)