THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. THOMAS COOPER, JR., Circuit Court Judge

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SC Court of Appeals

Case No. 2016-CP-40-05001

Appellate Case No.: 2017-002181

Tina Bessinger ....Appellant,

v.

LongCreek Plantation Property Owners Association, Inc., LongCreek Development, LLC, Fairways Development, LLC, Advantage Services, Inc., and Halcyon Real Estate Services, LLC, ...Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

I. The Circuit Court properly granted Respondents' motions for summary judgment because the Appellant failed to raise a genuine issue of material fact on the duty element of her negligence claim.

II. The Circuit Court properly granted the summary judgment motion of Respondents' because the Appellant has failed to provide a genuine issue of material fact on the causation element of her negligence claim.

STATEMENT OF THE CASE

This appeal follows an Order of the Circuit Court granting Respondents LongCreek Plantation Property Owners Association, Inc. and Halcyon Real Estate Services, LLC summary judgment on Appellant's negligence claim against them. This case arises out of a car accident that occurred on November 1, 2013 between the Appellant Tina Bessinger and a non-named party to this lawsuit, Ms. Amber Edwards. (R. p. 59, ¶ 9). The Appellant then initiated this premises liability and negligence action by filing a summons and complaint on August 18, 2016 against LongCreek Plantation Property Owners Association, Inc. (LongCreek POA), LongCreek Development, LLC, and Fairways Development, LLC. (R. pp. 40-45). Ms. Bessinger then filed an amended complaint on October 10, 2016 that named Advantage Services, Inc. and Halcyon Real Estate Services, LLC ("Halcyon") as additional Defendants to this lawsuit. (R. pp. 57-64).

Respondents Halcyon and LongCreek POA filed their Answer to the Appellant's Amended Complaint on October 28, 2016 and asserted the defenses of general denial, failure to state a cause of action, acts or omissions of others, comparative negligence, and the constitutionality of punitive damages. (R. pp. 65-69, 80-84).

On June 1, 2017, Respondents Halcyon and LongCreek POA filed a joint motion for summary judgment. (R. pp. 468-69). On July 27, 2017, Respondents Halcyon and LongCreek POA filed a joint memorandum in support of their motion for summary judgment. (R. p. 165).

On September 9, 2017, the Honorable G. Thomas Cooper, Jr., heard the arguments in support of summary judgment of all Respondents in this action. (R. p. 313). Subsequently, on September 22, 2017, the Honorable G. Thomas Cooper, Jr., filed an order granting the summary judgment motion of Respondents Halcyon and LongCreek POA. (R. pp. 15-22). In the order, the Circuit Court held that Respondents Halcyon and LongCreek POA were entitled to summary judgment because the Respondents owed no duty to the Appellant, and the Appellant failed to provide any evidence to show that the alleged breach of the duty owed by the Respondents was the actual and proximate cause of the accident. (R. pp. 15-22).

The Appellant filed her Notice of Appeal on October 19, 2017. This Court then dismissed the appeal for the Appellant's failure to provide the proof of filing of the Notice of Appeal with the Circuit Court by an Order dated November 9, 2017. The appeal was then reinstated by Order on December 8, 2017.

FACTS

The Appellant, Tina Bessinger, filed suit against the Respondents LongCreek Plantation Property Owners Association (LongCreek POA), Halcyon Real Estate Services, LLC (Halcyon), Advantage Services, and Fairways Development, LLC in the Court of Common Pleas for the County of Richland, alleging a cause of action of negligence for the personal injury resulting from an automobile accident on November 1, 2013. (R. p. 59, ¶ 9). Respondents filed an Answer denying liability and asserting affirmative defenses. (R. pp. 65-69, 80-84).

Respondent LongCreek POA is the property owners' association for the neighborhoods at LongCreek Plantation. (R. pp. 282-86). Respondent Halcyon, is the property management company for the LongCreek Plantation Property Owners Association. (R. pp. 237-44). Further, as part of the agreement between Halcyon and LongCreek POA, Halcyon agreed to maintain the common areas of LongCreek Plantation. (R. p. 245).

Specifically, Appellant alleges that she was traveling northbound on Longtown Road when another driver, Amber Edwards, attempted to cross through the intersection and pulled out directly in front of Appellant. (R. p. 59, ¶ 9). Subsequently, the two-vehicle collision between Appellant and Amber Edwards occurred. (R. p. 59, ¶ 9). Appellant further alleges that the immediate cause of the accident was Ms. Edwards' failure to yield the right of way because the stop sign at the intersection was obstructed from Ms. Edwards' view by overgrown trees or shrubbery. (R. p. 59, ¶ 11). Appellant alleges that Respondents LongCreek POA and Halcyon planted and maintained trees or shrubbery on the property which obstructed Ms. Edwards' view. (R. p. 60, ¶ 18).

In addition, Appellant alleges that Respondents, including LongCreek POA and Halcyon, owed and breached a duty to Appellant to keep the property in a reasonably safe condition. (R. p. 62, ¶ 25). However, the property where the alleged overgrown trees and shrubbery are located is

controlled by Richland County because it was deeded to the county as part of the Streets and Roadways Easement. (R. pp. 287-89). The deed and property map of the easement show the existence of the fifty (50) foot roadway easement granted to Richland County that runs along Longtown Road and Hunting Path Road, including the intersection at which the accident occurred. (R. p. 425).

Further, Appellant testified in her deposition that she does not know whether the limbs had anything to do with the accident, and she cannot say why Ms. Edwards' car pulled out in front of her that day. (R. p. 377, lines 1-15). Ms. Edwards has no recollection of the accident and testified that she does not recall whether she saw the school bus Appellant was driving, she does not recall how fast she was going prior to the accident, and she does not recall whether she saw a stop sign. (R. p. 362, lines 3-7; p. 363, lines 4-6; p. 363, lines 20-23; p. 364, lines 4-15; p.366, lines 8-12). Additionally, Ms. Edwards had never driven through the intersection or the area around the intersection before the accident occurred. (R. p. 361, lines 14-22). Ms. Edwards only states that she values her life and her vehicle far too much to not stop at a stop sign. (R. p. 363, lines 11-18; p. 365, lines 7-16). However, Ms. Edwards was involved in two accidents prior to the one that is the subject of this action and in each of the two prior accidents she was the at fault driver by rear-ending the vehicle that was in front of her. (R. p. 367, line 1-p. 368, line 10; p. 369 line 2-p. 370, line 20).

The only evidence that the Appellant has provided that suggests that the tree limbs were overgrown and obstructing the view of the stop sign was in the deposition of Tina Bessinger's fellow co-worker and bus driver, Jeanie Sharpe. (R. p. 381, line 2). Mrs. Sharpe testified that the limbs of the tree obstructed the view of the stop sign on the day in question, but she never saw the accident between Ms. Edwards and Mrs. Bessinger occur; she only saw the aftermath of the

accident between Ms. Edwards and Mrs. Bessinger. (R. p. 385, line 2- p. 386, line 18). Further, a resident of the LongCreek Plantation, Melissa Crook, testified that she never noticed that the stop sign was obstructed or covered by the tree prior to the accident, but she did know that the trees were overgrown at that intersection. (R. p. 418, line 22- p. 419, line 13). However, Melissa Crook did not see the accident between Ms. Edwards and Mrs. Bessinger occur. (R. p. 419, lines 18-25).

STANDARD OF REVIEW

On appeal, this Court applies the same standard as the trial court for summary judgment under S.C.R.P. Rule 56(C) and must view the evidence and all inferences in the light most favorable to the non-moving party. *See Fleming v. Rose*, 567 S.E.2d 857, 350 S.C. 488, 493 (S.C. 2002). A court must grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits" show that there is no genuine issue of material fact, and, therefore, the moving party is entitled to judgment as a matter of law. *See* S.C.R.P. Rule 56(C). To survive a summary judgment motion by the defendant, the plaintiff must offer some evidence that a genuine issue of material fact exists for each element of the claim at issue except for those elements that are either uncontested or agreed to by stipulation. *See Kase v. Ebert*, 392 S.C. 57, 61, 707 S.E.2d 456, 458 (S.C. Ct. App. 2011). Further, in making the determination of whether a triable issue of fact exists, the evidence and all reasonable inferences that can be drawn from the evidence must viewed in the light most favorable to the nonmoving party. *See Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 619, 602 S.E.2d 747, 749 (S.C. 2004).

ARGUMENT

The Circuit Court properly granted the Respondents' motion for summary judgment because the Appellant failed to raise a genuine issue of material fact that the Respondents owed a duty to the Appellant to trim the tree that the Appellant has alleged obscured the stop sign on the day of the accident. Further, the Circuit Court properly granted the Respondents' motion for summary judgment because the Appellant failed to raise a genuine issue of material fact that the tree that allegedly obscured the stop sign on the day of the accident was the actual and proximate cause of the accident. As a result, the ruling of the Circuit Court should be affirmed.

I. The Circuit Court properly granted Respondents' motions for summary judgment because the Appellant failed to raise a genuine issue of material fact on the duty element of her negligence claim.

For a plaintiff to establish a cause of action based on negligence, he or she must prove the following: (1) The defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty of care; (3) the breach of the duty by the defendant caused the plaintiff's injury through proximate and actual causation; and (4) the plaintiff suffered damages as a result of the defendant's breach. *See Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (S.C. 2002). "The duty of care is that standard of conduct that law requires of an actor in order to protect others against the risk of harm from his actions." *Snow v. City of Columbia*, 305 S.C. 544, 555, 409 S.E.2d 797, 803 (S.C. Ct. App. 1991). The court must determine, as a matter of law, whether the law recognizes a particular duty, and if there is no duty, then the defendant in a negligence action is entitled to judgment as a matter of law. *See Simmons v. Tuomey Reg'l Med. Ctr.*, 341 S.C. 32, 39, 533 S.E.2d 312, 316 (S.C. 2000).

In the present case, the Appellant has failed to provide evidence that shows the Respondents owed a duty of care to the Appellant. First, South Carolina case law provides that no

duty is owed by the Respondent to an Appellant in a situation such as this. Second, the intersection where the accident occurred is owned and controlled by Richland County through the Deed to Streets and Roadways Easements. (R. p. 287-89). This easement granted Richland County a right of way that included the responsibility on the part of Richland County to "maintain and repair said streets or roads in a reasonably good and workmanlike manner." (R. p. 287-89). As a result, the duty owed to the Appellant, if any, is not from the named Respondents in this action; instead, the duty is owed by the State of South Carolina.

A. The Respondents owe no duty to the Appellant for trees that obscure stop signs.

In South Carolina, an urban landowner has the duty of reasonable care to inspect their property for defective trees that are at the risk of falling into a roadway or onto adjacent property. *See Staples v. Duell*, 329 S.C. 503, 503, 494 S.E.2d 639, 640 (S.C. Ct. App. 1997); *Israel v. Carolina Bar-B-Que, Inc.*, 292 S.C. 282, 288, 356 S.E.2d 123, 127 (S.C. Ct. App. 1986).[1] Further, the "urban landowner" rule of *Israel* and *Staples* does not stretch to accidents that occur from an overgrown tree or underbrush that only blocks a traffic signal or sign. *See Underwood v. Coponen*, 367 S.C. 214, 215, 625 S.E.2d 236, 238 (S.C. Ct. App. 2006).

In *Underwood*, the plaintiff was in a car accident when the defendant failed to stop at a stop sign. *See Underwood*, 367 S.C. at 214, 625 S.E.2d at 237. The defendant claimed that she could not see the stop sign because the limbs of a tree were blocking the stop sign from view. *See*

[1] In *Staples*, the plaintiff ran her car into a dead pine tree that had fallen from the defendant's rural property and into the middle of the road, and she brought suit against the defendant for the injuries she sustained. *See Staples*, 329 S.C. at 503, 494 S.E.2d at 640. This Court explained that in urban areas, a landowner does have a duty of reasonable care to ensure that trees do not fall into roadways and hurt a driver or pedestrian. *See Staples*, 329 S.C. at 504, 494 S.E.2d at 642. Further, this Court held in *Israel* that a landowner in an urban area has a duty of reasonable care to inspect trees that may fall into a city street or adjoining land. *See Israel*, 292 S.C. at 288, 356 S.E.2d at 127.

id. at 214, 625 S.E.2d at 237. However, the defendant testified that she mistakenly thought she was on another road and was not looking for stop signs at the time the accident occurred. *See id.* On appeal from the grant of summary judgment in favor of the Defendant at trial, this Court explained that the rule of *Staples* did not apply because no defective tree fell to cause the accident, and the only effect that the tree had was obscuring the stop sign, which defendant testified she was not looking for. *See id.* at 215, 625 S.E.2d at 238.

In addition, in *Underwood*, this Court cited the Restatement (Second) of Torts, which states that a duty does exist for someone who undertakes an act which he or she recognizes as necessary for the protection of harm of others, and the person who undertakes the act will be liable if his or her failure to exercise reasonable care to undertake the act increases the risk of harm, or the harm is suffered because of another's reliance upon the undertaking. *See id.* at 214, 625 S.E.2d at 238. In citing this rule, this Court rejected the Appellant's argument that the landowner owed a duty to the Appellant to keep the tree in question from obscuring the stop sign at the scene of the accident because he occasionally trimmed trees on his property. *See id.* at 218, 625 S.E.2d at 238. The Court explained that even if there was a duty owed to the Appellant, the lower court was correct in granting Summary Judgment to the Respondent because there was no evidence that the Appellant relied on the Respondent to trim the tree, and there was no evidence that the Respondent's failure to trim the tree increased the risk of harm on the Appellant. *See id.* at 219, 625 S.E.2d at 238.

The facts of this case are very similar to those of *Underwood*. Here, the plaintiff was in a car accident with Ms. Edwards when Ms. Edwards allegedly ran the stop sign that was partially obscured by an overhanging tree limb. (R. p. 59, ¶ 9). Much like the plaintiff in *Underwood*, Ms. Edwards has no knowledge of whether she saw the stop sign or if she was even looking for a stop sign at the time of the accident because she had never traveled through the intersection before the

time of the accident. (R. p. 362, lines 3-7; p. 363, lines 4-6; p. 363, lines 20-23; p. 364, lines 4-15; p. 366, lines 8-12). Further, the Appellant testified that she does not know why Ms. Edwards pulled her car out in front of the Appellant's bus at the intersection on that day. (R. p. 377, lines 1-15).

As a result, the Respondents owed no duty to the Appellant. Therefore, the Circuit Court properly granted the Respondents' motion for summary judgment.

B. The Respondents owe no duty of care to the Appellant because Richland County was responsible for maintaining the intersection in question under the Streets and Roadways Easement.

The Supreme Court of South Carolina has addressed the duty owed by the Highway Department to potential injured motorists in situations where the county or the State has control over the roadway:

> The liability for injury to a motorist from a defect in the highway has been construed to impose a duty on the Highway Department to guard against defects outside the traveled or improved portion of the roadway, ***including objects overhanging in the right of way***, if their proximity to the improved portion of the roadway renders it probable such defects will result in injury to users thereof, exercising due care.

Stanley v. South Carolina State Highway Department, 249 S.C. 230, 235, 153 S.E.2d 687, 689 (S.C. 1967) (emphasis added).

In *Stanley*, the plaintiff alleged that the accident occurred because the overgrowth of underbrush at the intersection obstructed the plaintiff's view of the intersection and filed suit against the South Carolina Highway Department for the injuries he sustained. *See Stanley*, 249 S.C. at 231, 153 S.E.2d at 688. However, the plaintiff in *Stanley* failed to properly allege that the defect of the highway affected the normal use of the highway because the plaintiff admitted that he still stopped at the stop sign even though it was covered by the underbrush. *See Stanley*, 249 S.C. at 235, 153 S.E.2d at 689. As a result, the court held that the overhanging underbrush did not constitute a defect in the State highway. *See Stanley*, 249 S.C. at 235, 153 S.E.2d at 689.

Here, Richland County took control of the intersection in question through the Deeds to Streets and Roadways Easement. (R. p. 287-89). Further, the Appellant has alleged that the overhanging tree limb at the intersection where the accident occurred was the cause of the accident, but she has failed to provide evidence to support this assertion. (R. p. 59, ¶ 11). The Appellant and Ms. Edwards are the only two witnesses to the accident. Ms. Edwards has no recollection of the accident due to the memory loss she sustained during the accident, and the Appellant has no evidence that the overgrown tree limb caused Ms. Edwards to run the stop sign and cause the accident. (R. p. 377, lines 1-15) (R. p. 362, lines 3-7; p. 363, lines 4-6; p. 363, lines 20-23; 364, lines 4-15; 366, lines 8-12). In addition, the Appellant has failed to name the South Carolina State Highway Department as a defendant. (R. p. 58, ¶¶ 1-18). Therefore, the Respondents' still owe no duty to the Appellant because the South Carolina High Department is the entity responsible for the maintenance and upkeep of the intersection where the accident occurred.

As a result, the Circuit Court properly granted the motion for summary judgment of the Respondents.

II. The Circuit Court properly granted the summary judgment motion of Respondents because the Appellant has failed to provide any evidence to show that the Respondents were the cause of the wreck.

Proximate cause requires proof of causation-in-fact and legal cause. *See Bramlette v. Charter-Medical-Columbia*, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (S.C. 1990). Causation in fact is proven by establishing injury would not have occurred "but for" the defendant's negligence, and legal cause is proven by establishing foreseeability. *See id.* Generally, the question of proximate cause is one for the jury, but it may be decided as a matter of law if the evidence provides only one inference that reasonable persons could not disagree with. *See Burnett v. Family Kingdom,*

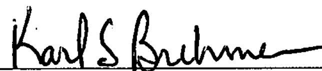
Inc., 387 S.C. 183, 691 S.E.2d 170 (S.C. Ct. App. 2010). The issue must be submitted to a jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror, but this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury. *See Small v. Pioneer Machinery, Inc.*, 329 S.C. 448, 461, 494 S.E.2d 835, 842 (S.C. App. 1997). Further, proximate cause exists when without such negligence the injury would not have occurred or could have been avoided. *See Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 447, 494 S.E.2d 827, 834 (S.C. Ct. App. 1998).

In this case, the Appellant has alleged that the wreck occurred because Ms. Edwards ran a stop sign that Ms. Edwards could not see due to overgrown tree branches. (R. p. 59, ¶ 11). However, the Appellant has failed to bring evidence that the wreck on November 1, 2013 was proximately caused by the overgrown tree branches. The Appellant and Ms. Edwards are the only two witnesses to the accident. The Appellant testified during her deposition that she does not know if the overgrown tree limbs had anything to do with the accident, and she does not know why Ms. Edwards pulled out in front of her. (R. p. 377, lines 1-15). In addition, Ms. Edwards suffered memory loss as a result of the accident and has no recollection of the accident whatsoever; Ms. Edwards only speculates that she values her car and her life too much to fail to stop at stop signs. (R. p. 362, lines 3-7; p. 363, lines 4-6; p. 363, lines 20-23; 364, lines 4-15; 366, lines 8-12). While the Appellant does have testimony from a fellow bus driver that there were limbs hanging into the roadway in front of the stop sign on the day of the accident, the Appellant has no evidence that the limbs hanging into the roadway were the cause of the accident. (R. p. 385, line 16- p. 386, line 18).

As a result, the Circuit Court properly granted Respondents' Motion for Summary Judgment.

CONCLUSION

For the reasons stated above, the Appellant cannot establish that Respondents LongCreek POA or Halcyon owed a duty to the Appellant under Common Law. Further, the Appellant has failed to provide evidence that the injuries that the Appellant sustained as a result of this action were proximately caused by the Respondents. Respondents LongCreek POA and Halcyon respectfully request that this Court affirm the Circuit Court's grant of summary judgment in LongCreek POA and Halcyon's favor.



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CERTIFICATE OF COUNSEL

I, Karl S. Brehmer, Esquire, attorney for Respondents LongCreek Plantation Property Owners Association, Inc., and Halcyon Real Estate Services, LLC, certify that this Final Brief complies with the South Carolina Supreme Court order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.

(signature page to follow)

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