

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM FAIRFIELD COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2015-001178

**RECEIVED**

JUL 27 2018

SC Court of Appeals

Corey Ross,.....Appellant,

v.

Carolina Adventure World, LLC, .....Respondent.

**PETITION FOR REHEARING AND REHEARING *EN BANC***

Pursuant to Rules 219 and 221(a) of the South Carolina Appellate Court Rules, Appellant Corey Ross hereby files this Petition for Rehearing and Rehearing *En Banc*. Appellant respectfully submits that rehearing and/or issuance of a new opinion reversing the Circuit Court’s decision is warranted on the grounds that the Court of Appeals’ opinion overlooked or misapprehended matters of law and fact in affirming the decision of the Circuit Court Judge.

**INTRODUCTION**

In Opinion No. 2018-UP-274, filed June 27, 2018, a Panel of this Court affirmed the Order of the Circuit Court granting Respondent’s motion for directed verdict on Appellant’s negligence claim. Appellant respectfully submits the Panel overlooked or

misapprehended matters of law and fact in rendering this Opinion. Further, in reaching its decision, the Panel misconstrued and misapplied well settled South Carolina Law. As a result this Court should grant rehearing and/or rehearing *en banc* in this matter as to the Panel's opinion.

## ARGUMENT

### **I. The Panel's Opinion Disregards, Misapprehends and Misapplies South Carolina Law and the Facts of the Case Regarding Applicable Standards of Duty of Care.**

The Panel's decision affirming the decision of the Circuit Court Judge is based on a misinterpretation and misapplication of the applicable South Carolina Law. The Panel based its decision on Appellant's apparent failure to prove the boulder he struck was an unreasonably dangerous condition on Respondent's land. Appellant contends the Panel's reasoning is flawed.

Appellant is a clear Business invitee under settled South Carolina law, as he entered Respondent's property for the benefit of Respondent and with permission. *Parker v. Stevenson Oil Co.*, 245 S.C. 275, 280, 140 S.E.2d 177, 179 (1965). As an invitee in South Carolina, Appellant is afforded the highest level of duty of care. Under South Carolina law, Respondent is charged with "...the affirmative duty to use reasonable care to discover unreasonably dangerous conditions of the premises **and** either put the premises in a reasonably safe condition for use in a manner consistent with the purpose of invitation or warn of the danger." *Hughes v. Children's Clinic*, 269 S.C. 389, 400, 237 S.E.2d 753, 759 (1977) (emphasis added).

The Panel's decision centers on the boulder Appellant struck and whether it classifies as unreasonably dangerous. Appellant respectfully contends this determination

to be the second portion of a two-part test. The Panel should have examined whether or not Respondent fulfilled its affirmative duty to use reasonable care first. If Respondent failed in this affirmative duty, the issues the Panel examined are moot.

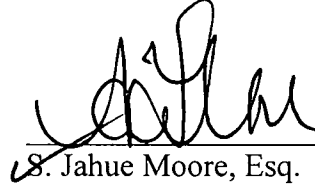
Evidence presented at trial clearly supports the conclusion Respondent failed in its affirmative duty. Respondent's officer testified at trial no one trained or skilled in maintenance and operation of an off-road facility was kept employed at the facility. (Transcript of Hearing, pg. 100-1; R. p. 108-9). The officer offered additional testimony no regular inspections or overviews of the trails were made by Respondent's employees. (Transcript of Hearing, pg. 109-10; R. p. 117-18).

The record shows Respondent failed to perform any sort of act that would fulfill its affirmative duty to Appellant. By skipping over this analysis, the Panel's decision misconstrues well-settled South Carolina law and the facts of the case. As the decision stands, the Panel allows Respondent to fulfill its duty by doing nothing at all. Under the *Hughes* decision, Respondent must use reasonable care to discover unreasonable dangerous conditions on its premises. Based upon evidence presented at trial, it is evident Respondent failed to do so. Respondent could not warn of dangers it was unaware of. Respondent could not fix unreasonably dangerous conditions if it did not know they existed.

The Trial Court misconstrued and misapplied existing South Carolina law and applied the incorrect standard in this case and its Order granting Respondent's Motion for Directed Verdict should be reversed by this Court. Further, the Panel misconstrued and misapplied well-settled South Carolina law in its review of the Trial Court's decision. As a result this Court should grant rehearing and/or rehearing *en banc* in this matter as to the Panel's opinion affirming the grant of Directed Verdict.

CONCLUSION

Based on the foregoing, Appellant Corey Ross respectfully requests that this Court grant rehearing or rehearing *en banc* as to the Court's opinion in this matter.



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Attorneys for Appellant

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July 25, 2018

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**PROOF OF SERVICE**

I, Diane M. L. Corley, an employee of Moore Taylor Law Firm, PA certify that I have served the Appellant's Petition for Rehearing and Rehearing *En Banc* on the following parties in this action by depositing a copy of same in the US Mail, postage prepaid, on July 26, 2018 to:

Christian Stegmaier, Esquire  
Kelsey Jan Brudvig, Esquire  
P.O. Box 12487  
Columbia, SC 29211

Kenneth Ray Raynor  
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1822 Cleveland Avenue  
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Diane M. L. Corley

West Columbia, South Carolina  
July 26, 2018

S. Jahue Moore<sup>†</sup>  
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Ralph Nichols Riley, Jr.  
Amber Cary Fulmer  
Justin Thomas Williams  
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Robert D. Hazel  
RETIRED  
Billy C. Coleman  
RETIRED

July 26, 2018

**VIA U.S. MAIL**

Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RE: Corey Ross v. Carolina Adventure World, LLC  
Appellate Case No.: 2015-001178

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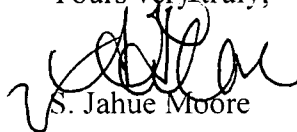
Dear Ms. Kitchings:

You will please find enclosed the original and ten (10) copies each of the Appellant's Petition for Rehearing and Rehearing *En Banc* with regard to the above matter. Also enclosed in our firm check in the amount of \$25.00 for the filing fee. I would appreciate your filing the original in your office and returning the filed copies to me in the envelope provided for your convenience.

By copy of this letter, we are serving opposing counsel with notice of this petition.

Thank you for your assistance with this matter.

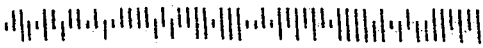
Yours very truly,

  
S. Jahue Moore

SJM:dc

Enclosures

cc: Kenneth Ray Raynor, Esquire  
Christian Stegmaier, Esquire  
Kelsey Jan Brudvig, Esquire



**MTI** MOORE | TAYLOR  
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