IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master in Equity
The Honorable Mikell R. Scarborough

Case No. 2013-CP-10-3901

Appellate Case No. 2016-001842

Charleston Electrical Services, Inc., and Selective Insurance Company of South Carolina, as subrogee of Charleston Electrical Services, Inc.....Appellants,

v.

Wanda G. Rahall, ...Respondent.

FINAL BRIEF OF RESPONDENT

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August 31, 2017
Charleston, South Carolina

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STATEMENT OF THE CASE

This is an action for contribution brought pursuant to Sections 15-38-10 through 70, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended. (*R.* pp. 31 – 34). This matter arises out of an August 20, 2010, incident in which a dog, owned, possessed and controlled by and in the care and keeping of Appellant, Charleston Electrical Services, Inc., (hereinafter referred to as "CES") jumped up on Elsie Mae Rabon (hereinafter referred to as "Rabon")[1] knocking her to the ground and injuring her. (*R.* p. 125).

Rabon sued CES on December 31, 2010, in the Charleston County Court of Common Pleas alleging negligence and strict liability (hereinafter referred to as the "Underlying Action")[2]. (*R.* p. 122). CES in turn brought a third-party indemnification action against Rabon's daughter, Respondent, Wanda Rahall (hereinafter referred to as "Rahall") and George Kornahrens (hereinafter referred to as "Kornahrens"). (*R.* p. 120). CES settled the Underlying Action for $200,000.00 in exchange for which Rabon released CES, Rahall and Kornahrens (hereinafter referred to as the "Settlement"). (*R.* p. 122). The Underlying Action was thereafter dismissed with prejudice as to Rabon's claim and without prejudice as to CES's claims against Rahall and Kornahrens. (*R.* p. 122).

CES, and its liability insurance carrier, Selective Insurance Company of South Carolina (hereinafter collectively referred to as "Appellants"), initiated this action on July 3, 2013, by filing a Summons and Complaint with the Office of the Charleston County Clerk of Common Pleas. (*R.* pp. 20 – 24). In this action, Appellants seek to recover from

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1 Rabon died in 2015. (*R.* p. 125, FN1).

2 The Underlying Action was captioned *Elsie Mae Rabon v. Charleston Electrical Services, Inc.*, and assigned Civil Action No. 2010-CP-10-10666. (*R.* p. 121).

Rahall[3] half of the Settlement proceeds. Rahall timely answered denying the material allegations of the Complaint and asserting affirmative defenses not germane to this appeal. (*R.* pp. 26 – 30). Appellants amended their Complaint on January 12, 2015, to include additional factual allegations and to include a request for prejudgment interest. (*R.* pp. 31 – 35). Rahall timely answered the Amended Complaint on February 5, 2015, and subsequently amended her answer on February 11, 2015, each time denying the material allegations of the Amended Complaint and asserting affirmative defenses not germane to this appeal. (*R.* pp. 36 – 41; pp. 42 – 47).

This action was referred to the Charleston County Master-in-Equity for a trial on the merits with direct appeal to this Court by consent of the parties. (*R.* pp. 1 – 2). A non-jury trial was held before The Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, on June 17, 2016[4], in which no live testimony was proffered by either Rahall or Appellants. (*R.* pp. 48 – 115). Rather, all evidence was presented by way of stipulated facts, the transcript of the deposition of John M. Oakley given November 16, 2011, in the Underlying Action together with exhibits thereto, the transcript of the deposition of Kornahrens given November 16, 2011, in the Underlying Action together with exhibits thereto, the transcript of the deposition of Rahall given November 16, 2011, in the Underlying Action and the transcript of the deposition of Rahall given May 26, 2016, in this action. (*R.* pp. 48 – 115).

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[3] CES declined to seek contribution against Kornahrens supposedly on the basis that he was an employee of CES.

[4] Appellants withdrew their equitable indemnity claim before the trial began, and the trial proceeded solely on their contribution claim. (*R.* pp. 50 – 51).

On August 2, 2016, the Charleston County Master-in-Equity entered judgment in favor of Rahall. *R.* p. 3. This appeal followed. *Notice of Appeal,* dated September 7, 2016, filed September 12, 2016.

FACTS

On August 20, 2010, Rahall and Rabon went to visit Kornahrens, who at the time was Rahall's boyfriend and employed by CES. (*R.* p. 288, lines 10 – p. 289, line14.) While they were visiting Kornahrens, CES's German shepherd guard dog, Gunner, jumped on Rabon, knocking her to the ground which resulted in Rabon fracturing her left hip (hereinafter referred to as the "Incident"). (*R.* p. 289, lines 24 – p. 290, line 11). The Incident occurred at CES's offices located at 60 Romney Street, Charleston, South Carolina (hereinafter referred to as the "Property"). (*R.* p. 125).

The Property is comprised of a large yard and two buildings. (*R.* p. 153, lines 6-20). At the time of the Incident, Kornahrens owned the Property and lived on the second floor of the main building (hereinafter referred to as the "Apartment"). (*R.* p. 153, lines 6-20). Kornahrens leased the remainder of the Property to CES. (*R.* p. 153, lines 9-18). CES uses the yard to store its equipment such as its trucks, ladders, and supplies. (*R.* p. 322, lines 4-15). The yard is essentially used by CES as a parking lot for its trucks and storage area for its materials; no other vehicles are or were permitted in the yard. (*R.* p. 332, lines 4-15; p. 243, lines14-25). The office and Apartment each had their own separate designated parking spaces none of which were located in the yard. (*R.* p. 136). Kornahrens was the original owner of CES. (*R.* p. 149, line 22 – p.150, line 6). Approximately 20 years ago[5] Kornahrens's stepson, John Oakley (hereinafter referred to as "Oakley"), assumed control of CES. (*R.* p. 149, line 22 – p.150, line 6). After Oakley took over ownership of CES, Kornahrens retained no ownership interest in CES, though he remained its business manager. (*R.* p. 152, lines 1-5). At all times relevant hereto, Kornahrens was a full-time salaried employee of CES, and

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[5] As of the time of Kornahrens' deposition on November 16, 2011. (*R.* p. 149, line 22 – p.150, line 6).

he typically worked ten (10) hours a day. (*R.* p. 152, lines 19-25).

The Property is in an industrial area on the Charleston peninsula, and a number of years before the Incident, there were issues with burglars trespassing at night. (*R.* p. 161, lines 4-5). Thus, to alleviate the theft of its equipment stored in the yard, CES acquired a guard dog. (*R.* p. 161, lines 15-18; p. 247, lines 9-17). During the twenty-year period preceding the Incident, CES has kept a series of guard dogs on the Property though never more than one at a time. (*R.* p. 161, line 17 – p.162, line 3).

On January 30, 2010, Kornahrens, acting on behalf of CES, purchased Gunner, a full-blooded German shepherd, from Tarrah J. Andre for $200.00. (*R.* p. 162, lines 4-23; p. 223, lines 2-9). At all times relevant hereto, CES owned Gunner. (*R.* p. 162, lines 4-23; p. 223, lines 2-9). Shortly after Gunner was acquired, Rahall told Rabon about CES's acquisition of Gunner. (*R.* p. 287, lines 9-25).

Neither Gunner nor any of the previous guard dogs were ever in the Apartment or in the CES's office area of the main building, but rather spent all of his time in the yard. (*R.* p. 167, lines 12-17). At no time did CES have any issues with Gunner attacking or biting anyone. *R.* p. 163, lines 22-25).

Every morning Gunner was chained up prior to the arrival of CES's employees so he would not escape through the open gate. (*R.* p. 228, line 15 – p.229, line 24). Once the gates were closed, typically around 8:30 am, Gunner was released. (*R.* p. 228, line 15 – p.229, line 24). Gunner was, likewise, chained up between 3:30 and 5:30 each day when CES's employees returned. (*R.* p. 228, line 15 – p.229, line 24). Gunner was generally playful and friendly. (*R.* p. 230, lines 9-10; p. 163, lines9-15; p. 285, line 17 – p.286, line 4).

Rahall was never an agent or employee of CES, never had any ownership interest in

CES and never had any ownership or leasehold interest in the Property. (*R.* p. 333, lines 18-23). At the time of the Incident, Rahall owned a home in Myrtle Beach, which was her primary residence. (*R.* p. 317, lines 19-22). Rabon, too, lived in Myrtle Beach, in a senior living apartment complex, separate from Rahall, where Rabon lived alone. (*R.* p. 297, line 24 – p.298, line 13). At the time of the Incident, Rabon was not in the custody or care of a guardian or conservator, and legally competent. *(R.* p. 336, lines 8-25).

At the time of the Incident, Rahall and Kornahrens had been involved in a romantic relationship for five years. (*R.* p. 281, lines 3-18). Rahall, at the implied invitation of Kornahrens, stayed in the Apartment when she was in Charleston, and Kornahrens, at the implied invitation of Rahall, stayed at Rahall's home when he was in Myrtle Beach. (*R.* p.155, line 8 – p.156, line 9; p.297, lines 4-19; p.317, line 21 – p.318, line 4). Kornahrens also periodically invited Rabon to stay at the Apartment. (*R.* p. 336, lines 1-7).

Rahall and Rabon traveled to Charleston on August 19, 2010, to stay with Kornahrens. (*R.* p. 288, lines 17-25). On August 20, 2010, Rahall attended a doctor's appointment in Charleston, and Rabon accompanied her. (*R.* p. 288, lines 3-6). After Rahall's appointment, she and Rabon decided to invite Kornahrens to lunch. (*R.* p. 289, lines 13-23). When they arrived at the Property, Rahall walked through CES's front office and into the yard to speak with Kornahrens who was working in the back, while Rabon waited in the front office. (*R.* p. 289, lines 15-23). A few minutes later, Rabon exited the office and walked out in to the yard, presumably to join Rahall and Kornahrens. (*R.* p. 289, line 24 – p.290, line 7). While Rabon was in the yard, Gunner jumped on her and knocked her to the ground. (*R.* p. 289, line 24 – p.290, line 7). Though Kornahrens and Rahall observed the Incident, neither were able to prevent it from happening as they were too far away. (*R.* p. 330, lines 9-13). Rabon was

immediately transported from CES to Roper St. Francis Hospital by EMS where she was diagnosed with a broken hip. (*R.* p. 295, lines 14-18).

Rahall and Kornahrens, while engaged at one time, never married, and are no longer in a relationship. (*R.* p. 313, lines 5-11). While Rahall and Kornahrens were in their relationship, Rahall rarely interacted with Gunner (*R.* p. 337, lines 1-9). It is undisputed that CES was the owner of Gunner, and at the time of the Incident, Gunner was under the care and keeping of CES. (*R.* p. 223, lines 2-9).

STANDARD OF REVIEW

"In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them." *Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.,* 395 S.C. 40, 46–47, 717 S.E.2d 589, 592 (2011) (citation omitted); *accord Townes Assocs. v. City of Greenville,* 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). "However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard." *S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012). "When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts." *WDW Props. v. City of Sumter,* 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000).

ARGUMENT

I. THE TRIAL COURT CORRECTLY ENTERED JUDGMENT IN FAVOR OF RESPONDENT, WANDA RAHALL, AS SHE OWED NO DUTY TO ELSIE MAE RABON AND, THEREFORE, WAS NOT NEGLIGENT, AS A MATTER OF LAW, AND, THEREFORE, APPELLANTS ARE PRECLUDED FROM RECOVERING CONTRIBUTION FROM RESPONDENT.

To recover contribution from Rahall, Appellants must establish that Rahall shares "common liability" for the damages suffered by Rabon. *See* Section 15-38-40(D), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended. Because Rahall owed Rabon no duty of care, there is no liability arising from negligence and thus, Appellants' claim for contribution fails.

In order to establish negligence, a plaintiff must show: (1) the defendant owed a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages. *Steinke v. S.C. Dep't of Labor, Licensing & Regulation,* 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999) ("The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a directed verdict."). An essential element in a cause of action for negligence is the existence of a legal duty owed by the defendant to the plaintiff; in the absence of a duty, there can be no negligence. *Huggins v. Citibank, N.A.,* 355 S.C. 329, 332, 585 S.E.2d 275, 276 (2003). "A legal duty is that which the law requires to be done or forborne with respect to a particular individual or the public at large. Without a violation of such a legal duty, there is no negligence." *Byerly v. Conner*, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992)(citation omitted).

a. Premises Liability.

Appellants seek to impose liability on Rahall for premises liability. The trial court

correctly found that no such liability exists as Rahall owed Rabon no duty to warn her of or protect her from Gunner.

A premises liability action is one sounding in tort. *See Shipes v. Piggly-Wiggly St. Andrews, Inc.*, 269 S.C. 479, 238 S.E.2d 167 (1977). As in any other tort action, in order to prevail, a plaintiff in a premises liability case must establish by a preponderance of the evidence that: (1) the defendant owed the a plaintiff a duty, (2) the defendant breached such duty and (3) the defendant's breach of such duty proximately caused the plaintiff damages. *Id.*

As a threshold matter, an injury caused by a dog is not actionable under premises liability at common law as the dog is not a defective condition upon the land. Although Appellants reference South Carolina case law in support of their position that dogs are a defective condition, none of the authority cited makes any such contention. In *Neil v. Byrum,* 288 S.C. 472, 474, 343 S.E. 2d 615, 616 (1986), the South Carolina Supreme Court ruled that steps and their location on the land were neither latent nor concealed to trigger a duty of care between a landowner and a licensee. There is no mention of animals in the opinion.

Appellants erroneously argue that prior to the enactment of Section 47-3-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, there were cases involving dog-related injuries that were tried under a premises liability theory, but the case cited does not support this assertion. In *Hossenlopp v. Cannon*, 285 S.C. 367, 370, 329 S.E. 2d 438, 440 (1985), the South Carolina Supreme Court was tasked with deciding whether the owners of a dog could be found negligent if they lacked knowledge that their dog had dangerous propensities. In affirming the trial court's decision, the Supreme Court noted that the owners' duty arose from statute while also rejecting the "one free bite rule." *Hossenlopp, supra*; *see also*,

Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 360, 673 S.E. 2d 423, 424 (2009)("In *Hossenlopp*, under our policy-making role in the common law, we rejected the "one free bite rule' and imposed quasi-strict liability on dog owners by adopting the "California Rule" for dog bite liability... *Hossenlopp* represents the last time the Court addressed a dog bite case in a purely common law setting."). There is no mention or analysis by the Court discussing dog owners' liability under a premises liability theory. The Court in no way suggests that the strict liability rule adopted in *Hossenlopp v. Cannon*, *supra*, is in any way restricted to bites occurring on the dog's owner's premises.

Appellants incorrectly maintain that this Court's decision in *Roe v. Bibby*, 410 S.C. 287, 298, 763 S.E. 2d 645, 651 (Ct. App. 2014), *cert. dismissed as improvidently granted*, 417 S.C. 117, 789 S.E.2d 752 (2016), "suggested that criminal acts may also give rise to premises liability claims." *App. Initial Brief*, p. 12, FN 1[6]. A closer reading of *Roe v. Bibby*, *supra*, expressly rejects that the Court of Appeals would endorse any such claims, stating:

> "We find Respondent did not owe Appellants a duty to warn under a premises liability theory. We note no South Carolina cases recognize a duty to warn a licensee with regard to prior criminal acts committed by a third party residing on the premises. ... [A] finding that Respondent had a duty to warn under a premises theory liability in this case could potentially subject homeowners to liability for failure to warn licensees of prior bad conduct, including conduct of a criminal nature, of any persons on the premises."

Id. at 298, 763 S.E. at, 651. Further, *Roe v. Bibby*, *supra*, involved sexual assault; no animal, dog or otherwise, was involved.

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[6] Appellants reliance on *Burns v. South Carolina Comm'n for the Blind*, 323 S.C. 77, 448 S.E. 2d 589 (Ct. App. 1994), in support of its premises liability argument is also misplaced, as that case involved a duty owed to an invitee as well as a duty arising from a "special relationship" exception, neither of which are applicable in the instant action. *Burns v. South Carolina Comm'n for the Blind, supra*, involved sexual assault; no animal, dog or otherwise, was involved.

Under Section 47-3-110(A), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, the party liable for a dog "attack" must be either the dog's owner or a person having the dog in his care or keeping, regardless of where the attack occurs. It is undisputed that at all times relevant hereto, CES was the owner and custodian of Gunner at the time of the Incident, that Gunner was in CES's care and keeping when the Incident occurred, and that the Incident occurred on the portion of the Property leased to CES, which was under its possession and control.

CES and Kornahrens maintained possession and control of their respective portions of the Property at the time of the Incident[7]; Rahall never had a right to possess or control

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[7]

Q. As I understand it, you own the building that the business is in?

A. I do.

Q. How long have you owned that building?

A. I guess about 30 some years.

Q. And you rent the first floor to Charleston Electric?

A. Yes, sir, first floor and everything in the yard. We got a building in our back also, a building in the back, supplies in and things like that

Q. And that's rented to the company as well?

A. Yeah, that's rented to the company. Everything on the ground is rented to the company.

Q. What does the company pay you for rent?

A. 3,000 -- I think it's 3,000, 3500 a month. I really don't know.

Q. Is there any type of lease agreement or written agreement?

A. No lease agreement.

Q. And then you live in the second floor apartment?

A. Yes, sir.

R. p.153 – p.154 (emphasis added).

any portion of the Property. As an invited guest in the Apartment, Rahall had no legal right to possess or control the Property, especially the portion leased to CES. Rahall paid no rent, utilities or taxes related to the Apartment. In fact, Rahall continuously maintained a separate residence in Myrtle Beach. Though Rahall was allowed to visit the Apartment at the pleasure of Kornahrens, she had no recognized legal right in and to the Property. She had no legal right to remain there if asked to leave by Kornahrens. She had no right to have another removed from the Property. As Rahall neither owned the Property nor possessed a leasehold interest, she was at most a guest of Kornahrens. *See, Vogt v. Murraywood Swim & Racquet Club,* 357 S.C. 506, 511, 593 S.E.2d 617, 620 (Ct. App. 2004)(holding plaintiff was a licensee on grounds that he was a guest of a dues-paying member, who entered the swim club not by right, but by the permission of the member ... that it is undisputed that he visited the pool only because members invited him and his presence at the pool was entirely permissive). As a mere guest herself, Rahall owed Rabon, another guest, no duty as a matter of law.

Furthermore, even though Kornahrens occupied the Apartment, the remaining portions – the two buildings and the yard – were leased to CES, and, thus were in its exclusive possession and control. Where injury is caused by a dangerous or defective condition on the premises of real estate, the decision of whether a person has an affirmative duty to keep the premises in a safe condition or warn of dangers on the premises "depends in general upon his having control of the property." *Dunbar v. Charleston & W.C. Ry. Co.*,

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Kornahrens and CES clearly had a tenancy at will, as defined by Section 27-33-10(3), CODE OF LAWS OF SOUTH CAROLINA, 1976, and thus an enforceable lease agreement existed. *See generally, Bruce v. Durney*, 341 S.C. 563, 569-70, 534 S.E.2d 720, 724 (Ct. App. 2000) (An express agreement is not necessary to create the relation of landlord and tenant, but such relation may arise from the implied agreement of the parties, and may be established by proof of circumstances authorizing the inference that the parties intended to assume such relation toward each other).

211 S.C. at 216, 44 S.E.2d at 317 (1947). Consequently, "[o]ne who controls the use of property has a duty of care not to harm others by its use." *Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997) (*citing Dunbar*, 211 S.C. at 216, 44 S.E.2d at 317; *Peden v. Furman Univ.*, 155 S.C. 1, 19, 151 S.E. 907, 913 (1930)). "Conversely, one who has no control owes no duty." *Id.* (*citing Clark v. Greenville County*, 313 S.C. 205, 210, 437 S.E.2d 117, 119 (1993)). Neither Rahall nor Kornahrens possessed or controlled the portion of the Property leased to CES, so with regard to the portion of the Property leased to CES, no duty attached to either. *See Bruce v. Durney*, 341 S.C. 563, 571, 534 S.E.2d 720, 725 (Ct. App. 2000) (holding a landlord is not liable for injuries caused by an animal kept by a tenant on leased property). As the Incident occurred in the yard, assuming a premises liability claim is even actionable under the facts presented, CES, as tenant, possessor, controller and occupier the yard, was the one who owed Rabon a duty to protect or warn of dangerous conditions.

b. "Special Relationship" Exception.

In the alternative, Appellants argue that Rahall owed Rabon, as her mother, a duty to warn and/or protect on the basis that their relationship as adult child and elderly parent created a legally recognized special relationship. Again, the trial court correctly held this argument was meritless.

In the absence of a relationship recognized by law which supports duty to prevent an injury, no such duty is owed. *McCullough v. Goodrich & Pennington Mortg. Fund, Inc.*, 373 S.C. 43, 644 S.E.2d 43 (2007). "An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003). If there is no

duty, the defendant is entitled to a judgment as a matter of law. *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007).

In *Faile v. South Carolina Dep't of Juvenile Justice,* 350 S.C. 315, 566 S.E.2d 536 (2002), the Court recognized the following five exceptions to the general rule that there is no general duty to control the conduct of another or to warn a third person or potential victim of danger:

(1) where the defendant has a special relationship to the victim;

(2) where the defendant has a special relationship to the injurer;

(3) where the defendant voluntarily undertakes a duty;

(4) where the defendant negligently or intentionally creates the risk; and

(5) where a statute imposes a duty on the defendant.

Appellants have failed to present any case from any jurisdiction holding that a child has a general duty to protect his or her parent from harm presented by the conduct of a third party or an instrumentality not within the custody and control of the child. A review of South Carolina case law reveals that South Carolina courts have recognized a special relationship sufficient to give rise to an affirmative duty to protect or warn another from danger related to the conduct of a third party or an instrumentality not within the custody and control of the person upon whom the duty is imposed in only five limited and narrow circumstances: (1) a group home has a duty to supervise a minor child in its care, *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003); (2) a psychiatrist has a duty to warn her patient of specific known threat of harm from another patient, *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007); (3) the South Carolina Department of Juvenile Justice has a duty to supervise and control a dangerous juvenile in its custody, *Faile v. S.C. Dep't of*

Juvenile Justice, *supra*; (4) the South Carolina Department of Mental Health has a duty to supervise and control an involuntarily-committed patient in its custody, *Bishop v. S.C. Dep't Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998); and (5) the South Carolina Department of Parole and Community Corrections has a duty to warn one to whom a specific threat of harm has been directed by a person being released from custody, *Rogers v. S.C. Dep't of Parole & Cmty. Corr.*, 320 S.C. 253, 464 S.E.2d 330 (1995)(no finding of specific threat).

The Court of Appeals decision in *Roe v. Bibby*, *supra*, is the most recent appellate court pronouncement on special relationships under South Carolina law. In *Roe v. Bibby, supra*, the Court declined the invitation to impose upon a wife a duty to warn minor children living in the neighborhood that her husband had a predilection for sexual molestation, holding that there is no general special relationship between a husband and wife or between the wife of a sexual predator and neighboring children which is sufficient to give rise to such a duty. *Id.* at 293, 763 S.E. 2d at 649. The Court of Appeals based its ruling, in part, on the fact that the wife had no ability to monitor and control her husband. As to the children, the Court of Appeals restated its holding on the fact that the children were not entrusted to the wife's care, and that the wife had no knowledge of a specific threat to the minor children. *Id.* at 296, 763 S.E. 2d at 650.

In each case in which a court found that there was a special relationship sufficient to give rise to an affirmative duty to protect or warn another from danger related to the conduct of a third party or an instrumentality not within the custody and control of the person upon whom the duty is imposed, the case turned on a finding that the person upon whom such duty was imposed either had a responsibility to supervise or an ability to monitor and control either the victim or the perpetrator or instrumentality of the act which gave rise to the injury. *E.g.,*

Cunningham ex rel. Grice v. Helping Hands, Inc., supra; *Roe v. Bibby, supra.*

Rabon and Rahall were mother and adult daughter, respectively. Both were mentally and physically competent at the time of the Incident. Appellants have produced no evidence that Rabon was entrusted to Rahall's care or that Rahall had any knowledge of a specific threat to Rabon. The adult child/parent relationship between Rahall and Rabon does not fall under any of the five exceptions listed above nor has the parent-child relationship standing alone ever been recognized in any other jurisdiction as imposing a legal duty[8]. The cases, both within and outside of South Carolina, reflect a reluctance to impose a duty to protect, warn and supervise an adult unless there is a clear indication of some incapacitation of normal faculties, a well-established authority relationship and/or a substantial risk of serious harm. *Id*; *Robinson v. Vivirito,* 217 N.J. 199, 86 A.3d 119 (2014)(school principal owes no duty of care to a third party who decides to use school property after hours for personal purposes and is injured by a stray animal that is neither owned nor controlled by school personnel); *Knight v. Merhige,* 133 So.3d 1140 (Fla. Dist. Ct. App.), *reh'g denied* (Mar. 26, 2014), *review dismissed*, 143 So.3d 919 (Fla. 2014), *and review denied*, 157 So.3d 1045 (Fla. 2014), *and review denied sub nom. Sitton v. Merhige*, 157 So. 3d 1048 (Fla. 2014)(Parents owe no legal duty to protect extended family members from the conduct of adult son, who shot and killed several family members at a holiday dinner as no special relationship existed that required parents to protect other adult family members from adult son's conduct); *Millea v. Erickson*, 849 N.W.2d 272 (S.D. 2014)(Babysitter's mother's boyfriend's adult son, who stopped by mother's and boyfriend's apartment, did not have a

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[8] The case law cited by Appellants does nothing to support their claim that a duty is owed by an adult child to his or her parent, but rather support the position that parents owe a duty to their *minor* children.

special relationship with child who died from positional asphyxiation so as to give rise to a duty to provide care or aid, despite contention that babysitter deferred to mother's boyfriend's son because of his age and quasi-stepbrother-like role to her); *Toribio v. Pine Haven, LLC*, 2014 WL 3865845 (D.N.J. Aug. 5, 2014)(no special relationship between decedent and decedent's friend's parents when decedent drowned while vacationing at a public lake with decedent's friend's parents); *Bridges v. Parrish*, 366 N.C. 539, 742 S.E.2d 794 (2013)(Parents were not liable for the criminal actions of their 52–year–old son who took gun from their home and used the gun to shoot his girlfriend); *Estate of Cilley v. Lane*, 2009 ME 133, 985 A.2d 481 (2009)(no special relationship between girlfriend and boyfriend where boyfriend accidentally shot himself and girlfriend failed to get timely medical assistance); *Ventura v. Picicci*, 227 Ill.App.3d 865, 592 N.E.2d 368 (1992)(defendant not liable for adult son who shot plaintiff in defendant's house because no duty to control adult son); *Kosrow v. Smith* 162 Ill.App.3d 120, 113 Ill.Dec. 104, 514 N.E.2d 1016 (1987)(no negligence in failing to control the actions of a houseguest who drove a car while intoxicated); *Villacana v. Campbell*, 929 S.W.2d 69 (Tex. App. 1996), *writ denied* (Feb. 21, 1997)(finding no liability as to parents whose adult child murdered two people on the basis that parents had no special relationship with adult son or duty to control adult son); *Theobald v. Dolcimascola*, 299 N.J.Super. 299 (App. Div. 1997)(As a matter of law, friendship—standing alone—is an insufficient basis for imposing a special relationship upon two parties).

Gunner was owned by CES. Rahall did not own, possess or control Gunner and Gunner was not in Rahall's care or keeping. In fact, Rahall had little to no interaction with Gunner. Gunner posed no specific threat to Rabon. Rahall did not own or possess or reside

on the Property; she was merely an invited guest on the Property at the invitation and pleasure of CES and/or Kornahrens. Rahall undertook no duty to protect her mother nor did she negligently or intentionally create the risk of Gunner jumping on Rabon. Rahall left Rabon in the office, a place Gunner never entered, to speak to Kornahrens in the yard which was irrefutably under the possession and control of CES. Rabon, of her own volition exited the office into the yard, where she encountered Gunner who jumped and knocked her down. Rabon was aware of Gunner's presence on the Property. Rahall had no notice that Gunner was a dangerous animal as the general sentiment was that Gunner was "overly friendly." There is no evidence Gunner was a dangerous animal or had any malicious intent when he jumped on Rabon. Neither Kornahrens nor anyone on behalf of CES warned Rahall to be cautious of Gunner or that non-employees of CES were prohibited in the yard. Rahall could not warn her mother of a danger that she (or anyone else for that matter) did not know existed.

Nevertheless, Appellants urge this Court to go where no court before has gone and ask it to recognize a child-parent relationship as a special relationship sufficient to support a duty on the part of the child to protect his or her parent from harm presented by the conduct of a third party or an instrumentality not within the custody and control of the child. Appellants also urge this court to impose a duty on one to protect another from a dog owned by a third-party if it is foreseeable that the dog might injure the other person. This court should decline both invitations as in neither situation is there a responsibility to supervise or an ability to monitor and control either the parent or the dog, nor is there any indication of incapacitation of normal faculties, or a well-established authority relationship and/or a substantial risk of serious harm. To find either duty exists under the facts or circumstances of this case would expand the concept of duty in tort liability well beyond all reasonable limits.

CONCLUSION

The trial court properly entered judgment in favor of Rahall. Rahall owed no duty to warn or protect Rabon from a dog she did not own or control, on premises neither owned, possessed nor occupied by Rahall. South Carolina law does not recognize a special relationship between an adult child and their parent sufficient to impose a duty on Rahall to protect or warn Rabon. Absent any liability on the part of Rahall, Appellants' action for contribution fails. Accordingly, the Order of the trial court must be affirmed.

Respectfully Submitted,
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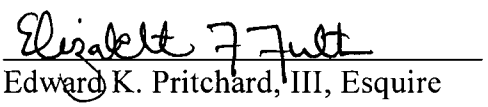

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August 31, 2017
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master in Equity
The Honorable Mikell R. Scarborough

Case No. 2013-CP-10-3901

Appellate Case No. 2016-001842

Charleston Electrical Services, Inc., and Selective Insurance Company of South Carolina, as subrogee of Charleston Electrical Services, Inc. ..... Appellants,

v.

Wanda G. Rahall, ... Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondent, Wanda G. Rahall complies with Rule 211(b), SCACR

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