

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

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Op. No. 2018-UP-242 (S.C. Ct. App. filed June 13, 2018)  
Appellate Case No. 2018-001652

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Linda Estrada, George Estrada, Tyrone Ruff,  
Khalilah Smith, Carletta Williams and Cristian Reyes ..... Respondents,

v.

Andrew Marshall and Linda Marshall, ..... Petitioners.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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S.C. SUPREME COURT

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    Did the trial record contain any evidence that the owners of a rental home  
    knew or should have known that the deck at the home was deteriorating and  
    unsafe?

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## **QUESTION PRESENTED**

This case poses a single question:

Did the trial record contain any evidence that the owners of a rental home knew or should have known that the deck at the home was deteriorating and unsafe?

## **COUNTER-STATEMENT OF THE CASE**

The respondents' briefs to the Court of Appeals explain this case's basic facts. This lawsuit concerns personal injuries from the collapse of a deck at a rental house. The rental house is owned by Petitioners. Respondents were injured when the deck fell.

The case was tried to a verdict in April of 2016. (App.pp.19-20). This appeal is about whether there was any evidence from which a jury could determine Petitioners knew or should have known the deck was deteriorating and unsafe.

The Court of Appeals affirmed the judgment against Petitioners in a unanimous, unpublished opinion. Petitioners seek a writ of certiorari to review that opinion.

## **ARGUMENTS**

The parties presented the jury with opposing theories of the case. Petitioners' theory, which they repeat on appeal, is that the deck "felt safe" up until the point it collapsed. Petitioners further say the actual cause of the collapse was wood rot that was concealed from view and that could only have been discovered by undertaking an investigation that would be beyond the scope of the obligation the law imposes on a homeowner to protect a licensee.

Respondents' theory was that Petitioner Andrew Marshall, a licensed residential homebuilder, should have recognized signs that the deck was deteriorating. They supported

this theory with testimony from a professional engineer who opined that a visual inspection of the deck's steps and railing should have provided notice the deck was degrading and that there were obvious deficiencies with the deck's construction like a lack of proper flashing, which leads to wood rot. (App.p.370, line 21 - p.371, line 23; p.376, line 22 - p.378, line 22). This expert explained the method by which the deck was fastened to the wall had been out of compliance with the building code for a substantial length of time. (App.p.370, lines 4-12). This expert said that although invasive testing would have been required to find deterioration if deterioration was not apparent from looking at the deck, a visual inspection of the deck boards, steps, railing, and other areas should have alerted Mr. Marshall that the deck was degrading. (App.p.378, lines 7-22).

Petitioners were entitled to present their theory of the case to the jury, but the jury was not obligated to adopt it. The circuit court correctly declined to usurp the jury's role and remove the case from the jury's consideration given that there was some evidence supporting each side's theory of the case. As this Court is aware, the circuit court may not resolve credibility disputes or conflicts in the evidence when reviewing a directed verdict motion. Instead, the circuit court considers all of the evidence in the light most favorable to the non-moving party and asks whether a verdict for that party "would be reasonably possible under the facts as liberally construed in [the non-moving party's] favor." *Harvey v. Strickland*, 350 S.C. 303, 309, 566 S.E.2d 529, 532 (2002) (other citations omitted).

The trial court charged the jury that a social guest is an invitee, that Petitioners had a duty to warn a licensee of any concealed dangers of which Petitioners were aware, and that Petitioners did not have a duty to search out and discover dangers or defects. (App.p.510,

lines 2-22). Petitioners did not lodge any objection to the jury charges, (App.p.518, lines 21-23), and the law presumes jurors follow their instructions. *Conner v. City of Forest Acres*, 363 S.C. 460, 471, 611 S.E.2d 905, 910 (2005). Thus, by entering a verdict against Petitioners, the jury necessarily found the deck's improper construction and unsafe condition were obvious or should have been obvious to Petitioners. There was some evidence supporting that determination.

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Petitioners attempt to re-brand this case as posing a legal question about the scope of a landowner's duty to inspect his or her premises, but in reality, the case presents nothing more than a factual dispute about whether this deck's condition was such that a visual inspection should have led Petitioners to know that it was deteriorating and unsafe.


### CONCLUSION

For the foregoing reasons this Court should deny the petition.

Respectfully submitted,

October 17, 2018

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**PROOF OF SERVICE**

The undersigned hereby certifies that on the date indicated below she served counsel with a copy of the *Return to Petition for Writ of Certiorari* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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