THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2010-CP-24-01236

Jennifer Harmon Scott .....Appellant,

v.

Allen L. Fortner and Jason C. Griffin,.....Respondents.

FINAL REPLY BRIEF OF APPELLANT

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REPLY ARGUMENT

I. Denial of Appellant's Motion for Directed Verdict on Liability.

Respondents argue the Court's denial of Appellant's Motion for Directed Verdict on Liability was proper because there was "some evidence Appellant contributed to the ladder falling." This argument is untenable.

Respondents attempt to relieve themselves of negligence and some liability simply by representing that Appellant's placement of the ladder in the laundry room creates a duty and the manner in which it was placed breached a duty and proximately caused Appellant's injuries. Further, Respondents claim they are not liable for some immediate and admitted injury to Appellant by representing that there was disputed evidence *all* of Appellant's claimed injuries were related to the incident.

As Respondents' make numerous collective admissions at trial that the ladder fell because Respondent Griffin knocked it over and while Respondents already made numerous admissions about seeing immediate injury to Appellant's face, Respondents never address the core issue that these admissions amount to duty, breach of duty and *some* proximate cause of injury.

A. "Our case lacks admitted negligence."

Contrary to Respondents' recollection of their own testimony, Respondents admitted to negligent acts on a number of occasions, even if their attorney did not formally admit negligence on their behalf. (R.p. 102, ll. 22-24) (R.p. 105, ll. 3-7) (R.p. 121, line 25) (R.p. 122, line 1) (R.p. 124, ll. 16-18).

B. "Precarious position of the ladder."

Nowhere in the trial of this case did *anyone* testify the ladder was precariously placed. To the contrary, Respondents testified the ladder was not precariously placed. (R.p. 101, ll. 23-25) (R.p. 102, ll. 1-4) (R.p. 105, ll. 8-25). Specifically, Respondent Griffin testified the ladder was not precariously positioned nor dangerous nor informed Appellant of the same. (R.p. 120, ll. 9-25) (R.p. 121, ll. 1-4).

C. "Set up the ladder so that it blocked the circuit breaker panel."

Respondents claim the ladder "blocked" the circuit panel as if to say that Respondents had no judgment and no other means to safely access the circuit breaker panel. There is no part of Respondents' testimony in the Record at page 99, at lines 16-22 or page 119, at lines 16-19 or page 64, at lines 18-22 that states the ladder blocked the circuit breaker panel. The word "blocked" does not even appear anywhere in anyone's testimony. Quite to the contrary, Respondent Griffin had already turned the circuit breaker off one time early in the repair process without incident to enable Respondent Fortner to work on the water heater. (R.p. 111, ll. 20-25) (R.p. 112, ll. 1-2). After Respondents had fixed the water heater, Respondent Griffin went to turn the circuit breaker back on and knocked the ladder over. (R.p. 112, ll. 1-3) (R.p. 119, ll. 8-10) (R.p. 129, ll. 3-10).

Therefore, Respondent Griffin had already turned the circuit breaker off without incident and admitted the ladder was not a solid wall, yet he tried to argue the ladder's steps restricted his access to the circuit breaker panel. (R.p. 121, ll. 5-22). Now, Respondents erroneously argue the ladder "blocked" the circuit breaker panel.

D. "Caught the ladder."

Respondents assert Respondent Griffin caught the ladder as if to suggest the ladder's force was arrested and Appellant was not hit in the face. To the contrary, Respondent Griffin actually testified he "got [his] hands on the ladder ***about the time*** it hit her," not before it hit her. (R.p. 122, ll. 4-5). He then testified he "knew it hit her around the head." (R.p. 122, ll. 8-9) (R.p. 133, ll. 14-20). Both Respondents testified they witnessed some injury to Appellant's face within minutes of the incident. (R.p. 104, ll. 11-19) (R.p. 114, line 25) (R.p. 115, ll. 1-14) (R.p. 123, ll. 12-14) (R.p. 133, line 25) (R.p. 134, ll. 1-13).

Dr. Slimmer testified that, given the manner of the incident, the amount of force exerted on Appellant's body was between 25.6 pounds and 31.9 pounds, (R.p. 252, ll. 7-10).

E. "Respondents' conduct was not the sole cause of Appellant's injuries."

Respondents ignore their own admission Respondent Griffin in fact and proximately caused the ladder to fall and further cause an immediate, admitted injury at the time of the incident. This immediate and admitted injury proximately caused by Respondents' is not negated by disputed evidence of injuries claimed in the weeks and months after the incident. By way of Respondents' testimony and Dr. Graham's testimony, there was some injury immediately and proximately caused by Respondents' negligence. To that extent, Appellant was entitled to some damages even if all of her damages were in dispute.

F. "Black v. Hodge."

Respondents cite this case to support the Court's decision. However, in Black v. Hodge, there was not an admission of objective signs of injury within seconds or minutes of the accident. In this case, there was.

G. "Never submitted medical bills related to scratch on her nose."

This is an absolute misstatement of the evidence. Appellant submitted testimony by the emergency room doctor, Dr. Graham, who made objective clinical findings of a laceration, not a "scratch," to her nose. (R.p. 270, ll. 12-19). As part of her claim, Appellant submitted medical bills into evidence including this emergency room visit. (R.pp. 342-343.

II. Denial of Appellant's Motion for Directed Verdict on Comparative Fault.

Respondents argue the Court's denial of Appellant's Motion for Directed Verdict on Comparative Fault was proper despite the nonexistence of any evidence to support their argument. Respondents cannot present any evidence that Appellant owed Respondents any duty under the circumstances. Respondents cannot present any evidence that Appellant breached a duty, even if it existed. Further, Respondents cannot present any evidence that any action or inaction by the Appellant was the legal and proximate cause of the incident.

A. "Positioning of ladder."

Respondents argue that Appellant was at fault because she placed the ladder against the wall in the laundry room. If this were true, motorists who park a car along the street could be deemed negligent when their car was hit by another motorist passing by. Negligence by presence alone, a notion defies logic and legal authority.

Respondents' own testimony establish the ladder was not precariously perched or dangerously placed. Further, Respondents' own testimony shows that Respondent Griffin had already reached to turn off the circuit breaker without incident. Further, Respondents own testimony establishes that they did not recognize the placement of the ladder as a danger because they did not even notify Appellant that a dangerous condition even existed.

The testimony established that the ladder, no matter how it was placed, had safely rested against the wall for days without incident. It took a positive, negligent force by Respondent Griffin to put the ladder in motion.

B. "Appellant negligent because she was in the path of the falling ladder."

Respondent argues that Appellant freely exposed herself to the risk. Based on the evidence in this case, there was no actual or implied assumption of the risk by the Appellant. She had placed a ladder against a wall that was not precariously or dangerously placed. She was not assisting the Respondents in any way. She did not know what they were going to do. She had her back turned to the ladder when Respondent Griffin knocked it over. It is ludicrous to suggest that the Appellant appreciated Respondents' activities or any danger that was nonexistent until Respondent Griffin created the danger to her back.

C. "Harmless error."

There is nothing harmless about a denial of Appellant's motions. The jury should not have considered Respondents' fault and should have only considered Appellant's damages. Because the jury was allowed to consider Respondents' duty and breach of duty late in the afternoon when, apparently, they did not want to spend responsible time considering this case, the jury decided the case on an issue that was for the Court. By way of argument and without admitting the same, even if there was some scintilla of comparative fault on the part of the Appellant, they Court should have granted a directed verdict on Respondents' liability and let the jury decide the issue of comparative fault and damages. Even that did not happen.

III. Denial of Appellant's Motion for a New Trial under the 13th Juror Doctrine.

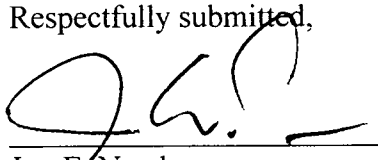
It is clear from the evidence at trial that the evidence did not justify the verdict. The

jury verdict is not supported by the overwhelming evidence and it was error to submit the issues of Respondents' liability (negligence and proximate cause) and Appellant's alleged comparative fault to the jury.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Court.

Respectfully submitted,



July 11, 2013

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PROOF OF SERVICE

I certify that I have served the Final Reply Brief of Appellant on Jack D. Griffeth and Ross B. Plyler by depositing a copy of the same in the United State Mail, postage prepaid, on July 11, 2013, addressed to each attorney of record at the addresses indicated below:

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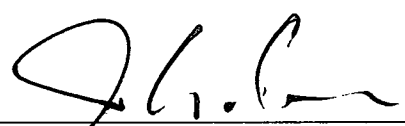
July 11, 2013



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