

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Appellate Case No. 2017-001330

Kenji Kilgore,

Appellant,

v.

Estate of Samuel Joe Dixon, Samuel E. Dixon,
and Fredda L. Dixon

Respondents.

**REPLY ON RESPONDENTS' RETURN TO APPELLANT'S
PETITION FOR REHEARING**

Pursuant to SCACR Rule 221(a) and SCACR Rule 240(f) Appellant Kenji Kilgore respectfully submits this Reply to Respondents' Return to Appellant's Petition for Rehearing, which was received by Appellant on April 12, 2019.

Contrary to Respondents contention in their Return to Appellant's Petition for Rehearing, Appellant did not fail to allege "special relationship" in his Complaint. "Special relationship" was established in the Complaint when Appellant stated that the "Respondents owned the real estate that Plaintiff rented to live in". (Summons and Complaint, R. p.1). Implied in this landlord-tenant relationship is the duty of the landlord to provide security for his tenant while in

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his property¹, which includes the duty to warn or inform his tenant of danger in his property. Appellant believes that this duty is subsumed under “the general duty to exercise a degree of care which a reasonable and prudent person would have exercised under the same and similar circumstances”. (Appellant’s Complaint, R. p.6). Respondents’ failure to inform or warn Appellant of their son’s mental condition and aggressive behavior. The mere fact that they allowed Appellant to rent their property and placed him in the same room where their son stayed, knowing the latter’s unstable mental condition, is negligence/gross negligence itself.

The special relationship between the Respondents and the injurer. In his Complaint, Appellant alleged that Samuel Joe Dixon was Respondents’ son who lived in their property. (R. p. 4), and was the person who shot herein Appellant (R. p. 2). Appellant avers that Respondents knew or should have known of their son’s mental health issues when they had him stay on their premises. (R. p.4). Respondents had easy access to their son, and with due diligence they could have easily walked over to the trailer to check and/or visit him. They had the ability to monitor, supervise and control his conduct, which they failed to do. (R. p.4). By placing their son as Appellant’s roommate, Respondents increased the risk of the latter getting harmed.

That Respondents awareness of their son’s mental health problems was apparent with a conversation they had with the Appellant. Respondents told Appellant that their son “was doing better”. Undoubtedly, Respondents had notice and/or knowledge of his mental issues, as well as volatile behavior.

Appellant did not limit his case against Respondents on negligence based on duty to warn. Appellant believed that they also failed to take measures to prevent their son from having

¹ It is well-established that a landlord generally owes no affirmative duty to a tenant to provide security from criminal activities of third persons. Wright v. PRG Real Estate Management, Inc., et al., Op. No. 27868 (SCt., March 20, 2019). In this case, Samuel Joe is not a third person, and this case falls under the exception.

access to a gun considering his mental health issues. Any rational person would know that a person with aggressive behavior and mental health illness should not have access to guns, or any dangerous weapon.


Respondents further contend that Appellant failed to allege in the Complaint that they had prior knowledge of their son's mental health illness. Appellant believes that he satisfied the elements of negligence in this case: (a) Respondents' duty to exercise a degree of care which a reasonable and prudent person would have exercised under the same and similar circumstances, which includes the duty to provide security and warn or informed their tenant of dangers in their property; (b) Respondent failed to warn and/or informed Appellant of their son's mental health illness prior to renting their property to the latter; and, (c) Appellant was shot and sustained severe injuries due to Respondents' negligent acts. Appellant adequately pled a claim for negligence.

Regarding the issue of Respondents' duty to provide security and duty based on undertaking as being raised only during this Petition, Appellant argued in Final Brief that as his landlord, Respondents had a duty to reasonably maintain safe conditions on their property. (Final Brief of the Appellant, p. 4). Under the special circumstances of this case, Appellant argues that a part of the safe conditions required the disclosure of Respondents' son's mental illness. (Id., P. 5). Appellant has been consistent in his argument that Respondents, by knowingly keeping their son on their premises, had the responsibility to control and monitor his actions. Thus, Appellant's discussion of the duty to provide security and duty based on undertaking simply expounded on what Appellant has propounded in his Final Appellant's Brief and Final Reply Brief.

CONCLUSION

For all of the foregoing reasons, Appellant prays that this Honorable Court denies Respondents' Return and grant Appellant's petition for rehearing.

April 16, 2019



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**FORM 7
PROOF OF SERVICE
FILING PETITION FOR REHEARING**

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PROOF OF SERVICE

I certify that I have served an original and six (6) copies of Appellant's Reply to Respondents' Return to Petition for Rehearing to the Appellate Clerk of Court and Proof of Service for same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, and a copy of the same upon Respondents, by and through their counsel of record, Robert E. Davis, Esquire at Ward Law Firm, PA, 233 S. Pine St., Spartanburg, SC 29301, by depositing a copy of it in the United States Mail, postage prepaid, on April 16, 2019.

Anderson, South Carolina
April 16, 2019


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FORM 8
LETTER TO APPELLATE CLERK OF COURT
FILING PETITION FOR REHEARING

April 16, 2019

The Honorable Jenny Abbott Kitchings
Clerk of Court South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

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SC Court of Appeals

**RE: Kenji Kilgore v. Estate of Samuel Joe Dixon, Samuel E. Dixon and
Fredda Dixon**
Appellate Case No. 2017-001330
Case No.: 2015-CP-04-1605

Dear Honorable Kitchings:

Please find enclosed the following materials for filing:

- 1) Appellant's Reply to Respondents' Return to Petition for Rehearing; and,
- 2) Proof of Service for the same.

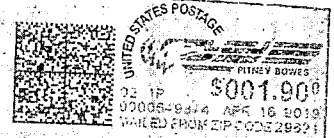
Sincerely,



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Attorney for Appellant

cc:

Mr. Robert E. Davis, Esquire



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