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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari
To the Supreme Court of South Carolina

Appellate Case No. 2017-001330
Unpublished Opinion No. 2019-UP-110
(Rehearing denied June 5, 2019)

Kenji Kilgore,

Petitioner,

v.

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

Respondents.

**PETITIONER'S REPLY TO RESPONDENTS' RETURN
TO PETITION FOR CERTIORARI**

Anderson, South Carolina
July 23, 2019



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PRELIMINARY STATEMENT

Petitioner makes the instant submission in response to Respondents' Return to Petition for Certiorari. Petitioner adopts and incorporates by reference the Statement of Case and Facts presented in his Petition for Certiorari.

I.

PETITIONER DID NOT PRAY FOR A REVIEW OF ESTABLISHED LAW.

In his Petition for Certiorari, Petitioner prayed for this Court, not to review the established law or doctrine but to challenge the Court of Appeal's application to this case. Petitioner posits that the facts and circumstances of this case are not on all fours with the cases cited by the Court of Appeals in upholding the trial court's decision

Petitioner argues that the uniqueness of the facts and circumstances of this case, i.e. the concurrence of two special relationships to invoke the exception to the general rule that there is no duty to warn. Petitioner avers that the issue of liability of a landowner to its tenant for a crime committed by their own child within their premises, has not been explored in previous cases of negligence. Petitioner advances that Supreme Court has the power to consider whether this set of facts requires a different doctrine.

By its very nature, a Petition for Certiorari may be filed where there are novel questions of law. (Rule 242(b)(1) SCACR. Petitioner believes that his issue may be raised to the Supreme Court only after the Court of Appeals applied the established doctrines to this case.

Thus, Respondents' contention that Petitioner did not reserve the issue for the appellate review is not in order.

II.

PETITIONER HAS ALLEGED THE REQUIRED ELEMENTS TO ESTABLISH A LEGAL DUTY.

Respondents insist that Petitioner failed to plead the elements of negligence based on duty to warn. Respondents state that Petitioner failed to establish Respondent's duty to Petitioner.

First, petitioner in its Petition for certiorari, specifically cited the pages in his Complaint where the special relationships between Respondents and Petitioner (lessor-tenant relationship, App., p.4), and between Respondent and Samuel Joe Dixon (defendant-injurer, App., p. 5) have been alleged.

Second, Petitioner also alleged that Respondents' housed him with their son in a trailer behind their house. (App., p. 5). While Petitioner did not use the phrase "have the ability to control, monitor and supervise the son", Petitioner alleged facts that showed Respondents' ability to do such.

Third, Petitioner has also alleged that Respondents were aware of their son's volatile and dangerous behavior through their own statement, expressing gratitude for Petitioner's effect on their son. Respondents' acknowledged that their son was "getting better" since Petitioner became his roommate.

Fourth, as expressly ruled by the Court, there is no case limiting the liability by requiring the threat to be made while under the control of or in custody of the defendant. *Rogers, as cited in Bishop*. What the Court requires is that defendant be aware or should have been aware of the specific threat made by the patient to harm a specific person. *Jablonski v. United States*, 712 F.2d 391 (9th Cir, 1983) as cited in *Bishop*.

A complaint need not be drafted in order to adequately allege that Respondents had a duty to warn Petitioner. Here, the Complaint stated that the Respondents were the parents of the individual who injured Petitioner. Petitioner is Respondents' tenant. Respondents knew their son's mental faculties had diminished with the failure of his marriage that is why they convinced him to stay with them. He still had the marital home but was convinced to move into the trailer on his parent's property. This is supported by the statement of the parents to Petitioner. Respondents knew or should have known of their son's violent disposition, and yet allowed Petitioner to room with him. They did not advise Petitioner of their son's condition and/or the potential threat to his life. Respondents' son shot Petitioner several times. Petitioner sustained injuries, suffered both physically and mentally. He incurred numerous medical expenses, which could have been avoided had it not been for Respondents' failure to use care by informing or warning him of their son's condition and aggressive behavior.

Lastly, Petitioner believes that the Court of Appeals primarily focused on the issue of duty to warn that it overlooked Petitioner's allegation of Respondents' negligence in failure to exercise the degree of care which a reasonable and prudent person would have exercised under the same and similar circumstances. (App., p.8). Petitioner is entitled to a ruling on this matter.

III.

PETITIONER WAS DENIED HIS RIGHT TO DISCOVERY.

Petitioner engaged his present counsel of record on December 9, 2016, after Respondents' filed their Motion to Dismiss on February 29, 2016, and their Motion to Compel Settlement on November 7, 2016. Despite Petitioner's counsel's plea for an opportunity to conduct discovery proceedings, the aforementioned motions were heard on January 30, 2017. The trial judge dismissed the case without allowing herein Petitioner to conduct discovery. The

failure of his previous counsel to engage in discovery proceedings should not be visited upon Petitioner and his present counsel. Petitioner believes that since the Complaint should not have been dismissed for lack of cause of action, having sufficiently argued the presence of all the required elements in the Complaint. In the interest of justice, Petitioner, who has been scarred for life by the unprovoked shooting by Respondents' son, should be given a chance to be heard by his peers.

CONCLUSION

Based upon the foregoing, Petitioner has properly raised the aforementioned issues for review by this Honorable Court. Petitioner respectfully requests this Honorable Court to grant his petition for certiorari.

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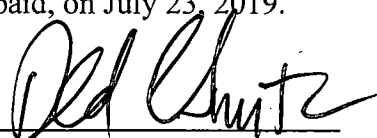
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PROOF OF SERVICE

I certify that I have served an original and six (6) copies of Petitioner's Reply to Respondents' Return to Petition for Certiorari and Proof of Service for same upon The Honorable Daniel Shearouse, Clerk of Court South Carolina Supreme Court, at Post Office Box 11330, 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 copies of same in the United States Mail, postage prepaid, on July 23, 2019.

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