

STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

NOV 01 2019

Edgar W. Dickson, Circuit Court Judge

SC Court of Appeals

Appellate Case No.: 2019-000998

Cecil Rowe,.....Appellant,

v.

Family Health Centers, Inc.,.....Respondent.

AND

Rebecca Rowe,.....Appellant,

v.

Family Health Centers, Inc.,.....Respondent.

REPLY BRIEF OF APPELLANTS

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November 1, 2019

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ARGUMENT

A. THE PLEADINGS RESPONDENT RELIES ON THROUGHOUT ITS BRIEF ARE EVIDENCE OF NOTHING.

The recurring theme throughout Respondent's argument is that the Appellants are bound by assertions in the pleadings which Respondent argues create a common issue of law or fact. In support, Appellant relies on *Elrod v. All*, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964) and its progeny, which hold that a party is conclusively bound by the allegations in its pleadings. This general rule comes with a significant caveat which was recently reinforced by this Court: "Allegations in a [c]omplaint denied in [an] answer are evidence of nothing." *Curry v. Carolina Ins. Grp. of SC, Inc.*, 428 S.C. 60, 71, 832 S.E.2d 760, 765 (Ct. App. 2019) (citing *Griffin v. Van Norman*, 302 S.C. 520, 522, 397 S.E.2d 378, 379 (Ct. App. 1990)).

Just as in *Curry*, each of the paragraphs relied upon by Respondent in this case were denied in its Answers¹. (Answers of Family Health Centers to Complaints of Cecil and Rebecca Rowe, R.p. ____). In fact, only jurisdictional and venue allegations were admitted by the Respondent in both cases; every other allegation including each paragraph of the Complaint cited in Respondent's brief was denied. Therefore, the allegations relied on by Respondent for support throughout each argument set forth in its brief are "evidence of nothing" because they were all denied by Respondent. *Curry*, 428 S.C. at 71-72, 832 S.E.2d 760, 765-66.

Even if this Court were to examine the pleadings, both cases set forth different factual allegations. To that end, Respondent's brief raises an important distinction at Note 7, page 13, where Respondent urges that the "Appellants are bound by the *factual allegations* in their respective pleadings." (emphasis added). The differences in those factual allegations are plain from

¹ Respondent never moved to amend its Answers to admit any of these allegations.

a review of the Complaints. (R.p. ____.) Moreover, the different questions of fact presented by these two cases were discussed at length at the hearing on consolidation and are therefore properly before this Court for consideration of whether the cases presented a such a common question that consolidation was appropriate under Rule 42, SCRCF.

It is worth noting that most of the similarities pointed out by the Respondent about the pleadings are contained within the causes of action pled by both Appellants. When pleading negligence/gross negligence, etc., there is of course a well-defined body of caselaw through which a premises owner may be held liable for damages, and thus the elements of negligence are similar across many different cases despite the different factual scenarios which may be pled and developed through discovery in each one. Pleading in the alternative is also permitted. *See* Rule 8(e)(2), SCRCF. The key difference between the two short complaints underlying this appeal and hundreds of other pleadings filed in our state is the factual scenario presented in each case, the importance of which is implicitly acknowledged by the Respondent in Footnote 7. The two incidents underlying this appeal occurred months apart and involved different factual circumstances and questions of law as set forth at length in Appellants Initial Brief such that trying the cases together was manifestly unfair to Mr. and Mrs. Rowe.

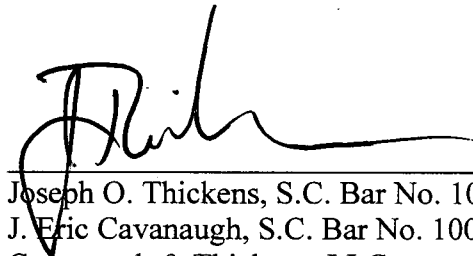
B. RESPONDENT'S CITATION TO THE APPELLANT'S PRE-TRIAL BRIEF MISCHARACTERIZES THE BASIS FOR THE TRIAL COURT'S DECISION.

Respondent observes that the Appellant's Pre-Trial Brief indicates that it was believed the same chairs were involved in the underlying incident. This brief was submitted after the hearing on consolidation, so it was not presented to the trial court nor did it form part of the basis for the court's decision at the consolidation hearing. Rule 210(c), SCACR. In addition, the Pre-Trial Brief was submitted following argument at the hearing which appeared to be adopted by the court. (Transcript 5:17-21; 15:22-23). The assertion that the chairs are one and the same was contradicted

by the 30(b)(6) deposition testimony of Respondent's corporate representative. (FHC 30(b)(6) Depo. R.p. __, ll __). Notably, it appears that this confusion stems from the fact that the chair or chairs at issue were lost or destroyed by Respondent prior to trial, as a result of which a spoliation of evidence charge was submitted to the jury.

CONCLUSION

The Appellants are not bound by allegations in their Complaints that were denied by Respondent. However, Respondent's argument inextricably relies on the pleadings by utilizing allegations the Respondent denied to support the contention that these cases involved common questions of law and fact. Appellants respectfully submit that this Court should reverse the circuit court's grant of Respondent's Motion to Consolidate.



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PROOF OF SERVICE

I certify that I have caused the service of Appellant's Reply Brief on Respondent by U.S. Mail on November 1, 2019 to the attorneys of record at the following addresses:

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SIGNATURE PAGE FOLLOWS



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Columbia, South Carolina
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VIA HAND DELIVERY

Honorable Jenny Abbott Kitchings
Clerk of Court
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals

RE: **Appellate Case No.: 2019-000998**

Cecil Rowe vs. Family Health Centers, Inc. and Carolina Kwik Dry, LLC
Civil Action No.: 2017-CP-38-01232
Our File: 1724

Rebecca Rowe vs. Family Health Centers, Inc. and Carolina Kwik Dry, LLC
Civil Action No.: 2017-CP-38-01233
Our File: 1725

Dear Ms. Kitchings:

Please find enclosed the original and one (1) copy of the following:

1. Appellants' Reply Brief;
2. Appellants' Designation of Matter to be Included in the Record on Appeal (additional items in bold).

I would appreciate if you would file the originals and return the remaining clocked copies to me in the enclosed envelope. By copy to this letter, counsel for Respondent is also hereby served with a copy of these documents.

Yours truly,

CAVANAUGH & THICKENS, LLC



Joseph O. Thickens

JOT/

cc: John M. Grantland and Phillip Florence (via U.S. Mail)
Clyde C. Dean, Jr. (via email only)