THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2018-002270
Case No. 2014-CP-26-07790

Richard Ciampanella,.....Respondent,

v.

City of Myrtle Beach, ...Appellant.

APPELLANT'S INITIAL REPLY BRIEF

COLLINS & LACY, P.C.

Amy L. Neuschafer, Esquire
SC Bar No.: 73922
aneuschafer@collinsandlacy.com
Fred H. Oliver, Esquire
SC Bar No.: 100969
foliver@collinsandlacy.com
11945 Grandhaven Drive, Suite D
Murrells Inlet, SC 29576
843.353.2350 (p)
843.353.2351 (f)

ATTORNEYS FOR APPELLANT
CITY OF MYRTLE BEACH

Murrells Inlet, South Carolina
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ARGUMENT IN REPLY

Introduction

As discussed more fully in Appellant's brief, Respondent brought the underlying negligence action against the City of Myrtle Beach ("the City") seeking to recover for personal injuries he sustained when he leaned against a railing and fell from a dune walkover on August 19, 2014.

At the close of the City's case, the trial judge granted its motion for directed verdict on several grounds, including a lack of evidence establishing liability under section 15-78-60(16)[1] of the South Carolina Tort Claims Act and under the South Carolina Recreational Use Statute ("RUS"). (Trial Tr. p. 362, ll. 22-25; p. 366, l. 6 – p. 368, l. 22; Trial Tr. p. 371, ll. 15-17; p. 372, l. 8 – p. 373, l. 16; p. 375, l. 19 – p. 376, l. 6; p. 379, ll. 10-14).

Respondent subsequently filed a Motion for New Trial and to Alter or Amend Judgment. (R.*, Motion for New Trial). The trial court granted Respondent's motion in part, granting a new trial only on the causes of action related to negligent design and/or construction. The trial court specifically denied Respondent's motion for a new trial as to any causes of action related to maintenance, security, or supervision of the walkover and reaffirmed its prior ruling that such claims are precluded by §15-78-60(16) due to lack of evidence of actual notice. The trial court further reaffirmed its prior ruling finding the RUS applies and granting a directed verdict on Respondent's simple negligence cause of action pursuant to the RUS, leaving only Respondent's claim for gross negligence to survive. (R.*, New Trial Order).

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[1] S.C. Code Ann. §15-78-60(16) provides that a governmental entity is not liable for loss resulting from "maintenance, security, or supervision of any public property, intended or permitted to be used as a park, playground, or open area for recreational purposes, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for maintenance, security, or supervision within a reasonable time after actual notice of the defect or condition."

The City has appealed the trial court's partial grant of a new trial on the issues of grossly negligent construction and design. No cross-appeal was filed by Respondent, thus the other unappealed rulings of the trial court are the law of the case. Town of Mt. Pleasant v. Jones, 335 S.C. 295, 298-99, 516 S.E.2d 468, 470 (Ct.App. 1999) (a lower court's unappealed ruling becomes the law of the case, and the appellate court must assume the ruling was correct). Accordingly, the narrow issue before this Court is whether the trial judge properly granted a new trial on Respondent's claims for grossly negligent construction and/or design of the walkover, *i.e.* whether there was evidence presented at trial that the City constructed or designed the walkover in a grossly negligent manner. See Norton v. Norfolk S. Ry., 350 S.C. 473, 567 S.E.2d 851 (2002) ("Upon review, a trial judge's order granting or denying a new trial will be upheld unless the order is 'wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law.'"). Simply stated, assuming *arguendo* that Respondent's expert established a standard of care, which Appellant denies, his opinion that the dune walkover could have been "better" designed and constructed does not constitute evidence of gross negligence to justify the grant of a new trial in this matter.

Discussion

I. THERE IS NO EVIDENCE TO SUPPORT THE TRIAL JUDGE'S PARTIAL GRANT OF NEW TRIAL WHERE RESPONDENT DID NOT PRESENT EVIDENCE TO ESTABLISH GROSS NEGLIGENCE IN THE DESIGN AND CONSTRUCTION OF THE DUNE WALKOVER.

A. *Creech* is Distinguishable Because It Involved a Total Absence of Care

The trial court's partial grant of a new trial was narrowly related to negligent design and/or construction. In support of its ruling, the trial court cited Creech v. S.C. Wildlife & Marine Resources Dept., 328 S.C. 24, 491 S.E.2d 571 (1997), which allowed a claim against the S.C. Wildlife & Marine Resources Department for negligent design and construction of a public

dock/fishing pier to survive directed verdict where enough evidence was presented for a jury to infer negligence. Notably, the landing from which Creech fell had a railing on only one side. 328 S.C. at 27, 491 S.E.2d at 572. In affirming the denial of directed verdict, the Creech Court noted that the Department's argument that safety rails were unnecessary was premised on the assumption that the landing was designed as a boating dock. Id. at 34, 491 S.E.2d at 576. However, there was conflicting evidence presented that the landing was designed as a fishing pier, for which safety rails were necessary. Id. Thus, the jury could reasonably infer that the Department was negligent in its design and construction of the landing. Id.

There was no discussion in Creech of whether a simple or gross negligence standard applied. "Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000). "It is the failure to exercise slight care." Id. Thus, the complete absence of the railing in Creech could have satisfied even the higher gross negligence standard.

Unlike the total absence of a railing alleged in Creech, the present case involves allegations of negligent design and construction related to the type of fasteners used and the amount of concentrated force that the walkover railing could withstand. Specially, Respondent advanced two theories at trial regarding the existence of evidence concerning negligent construction and/or design of the walkover: 1) that the walkover was constructed with screws rather than lag bolts and 2) that the walkover could not withstand the allegedly required 200 lbs. of concentrated force. (See Br. of Appellant, pp. 7-10; Am. Br. of Resp't, pp. 17-20). Ultimately, however, Respondent was unable to establish either an applicable standard of care or that the construction method employed breached the standard asserted.

B. Respondent's Expert Admitted That the Design Used by Appellant Was A Sufficient Alternate Design, Precluding a Finding of Gross Negligence

Respondent distinguishes Griffin Plumbing[2] and Gilliland[3] by the sheer fact that Respondent presented an expert witness at trial. (See Am. Br. of Resp't, p. 8). However, Nelson v. Piggly Wiggly Cent., Inc., 390 S.C. 382, 389, 701 S.E.2d 776, 780 (Ct. App. 2010), makes clear that it is not just the retention of an expert that is necessary. Rather, it is the content of the expert witness' testimony that is important.

Similar to the present case, the plaintiffs in Nelson failed to present evidence that the construction of the parking lot violated any code or building standard in effect at that time. 390 S.C. at 389-90, 701 S.E.2d at 780. Additionally, their expert could not state that current building or safety standards for parking lots applied to the lot in question. Id. at 390, 701 S.E.2d at 780. The expert's testimony that "raised sidewalks are preferred over wheel stops" was equally unavailing. Id. Nonetheless, the Nelson plaintiffs' principal proof of negligence rested upon their expert's testimony that the design of the parking lot created an unreasonable risk of harm because the wheel stops were improperly constructed and installed and/or the defendants should have installed curbing. Id. at 392-93, 701 S.E.2d at 781. The Nelson Court affirmed the trial court's finding that the plaintiffs' expert's assertion of alternate parking lot designs was insufficient to create a question of fact as to the defendants' duty to conform to any of those designs. Id. at 393, 701 S.E.2d at 781. Rather, the expert attested only to his own preferences rather than to the

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[2] Tommy L. Griffin Plumbing & Heating v. Jordan, Jones & Goulding, Inc., 351 S.C. 459, 570 S.E.2d 197 (Ct. App. 2002).

[3] Gilliland v. Elmwood Properties, 301 S.C. 295, 391 S.E.2d 577 (1990).

requirements of any law, ordinance, or recognized industry safety standard, which did not, as a matter of law, establish the defendants' duty. Id.

As discussed in Appellant's Brief, Respondent's expert, Alan Campbell, ultimately acknowledged the City's use of screws rather than lag bolts was appropriate:

> Q. ...But the use of 10 or 12 wood screws, that's an appropriate application; do you agree or not?
>
> A. In some circumstances, it could be.
>
> Q. I'm talking about 77th Avenue North. If the City used size #10 – number 9, 10, or 12 screws, is that an appropriate size screw for that application?
>
> A. As long as – yes, as long as they inspect and maintain it properly, which they absolutely did not.

(Trial Tr. p. 322, ll. 9-16).[4] Likewise, upon review of the actual numbers of screws and nails used to construct the walkover railing, Mr. Campbell conceded the original construction would satisfy the 200-pound concentrated force requirement he testified was applicable. (Trial Tr. p. 328, ll. 3-25; p. 329, l. 9 – p. 330, l. 7).

Upon *in camera* questioning by the trial court, Mr. Campbell admitted that in addition to the construction methods he referenced in his testimony, "truthfully, you can build it differently, there are alternative methods of construction." (Trial Tr. p. 241, ll. 1-21). He conceded that a dune walkover could be designed "without going as heavy," though use of such a design would necessitate more maintenance. (Trial Tr. p. 241, l. 22 – p. 242, l. 12).

Similarly, in front of the jury, Mr. Campbell said that a smaller diameter screw "could have worked" but would create a high maintenance schedule because of the fast rate of corrosion, such

[4] Mr. Campbell's critique of the City's inspection routine is irrelevant here as the trial court's order expressly limits the new trial to design and construction issues. (R.*, New Trial Order).

that the City would "either need to maintain it on a regular basis or construct it in a much stronger manner using bolts instead of screws." (Trial Tr. p. 264, l. 14 – p. 265, l. 2; see also Trial Tr. p. 266, l. 14 – p. 267, l. 5). He explained that with galvanized coating "you're pretty well protected" for approximately seven years, after which time the corrosion process accelerates. (Trial Tr. p. 276, l. 13 – p. 278, l. 5; Trial Tr. p. 287, l. 22 – p. 288, l. 1). Mr. Campbell said that the use of lag bolts instead of screws "probably would greatly have extended that maintenance schedule to make everything last a lot longer" and would have made the end of the fastener visible for monitoring corrosion. (Trial Tr. p. 289, l. 10 – p. 290, l. 3). Nonetheless, he agreed that there are varying levels of acceptable construction practices – good practices and best practices – and that the quality and durability of materials used impact the life of the project. (Trial Tr. p. 300, ll. 4-23). With respect to the dune walkover at issue, Mr. Campbell further agreed that, as constructed, on "day one, it's good." (Trial Tr. p. 331, ll. 8-11; see also Trial Tr. p. 330, ll. 16-20).

"While gross negligence ordinarily is a mixed question of law and fact, when the evidence supports but one reasonable inference, the question becomes a matter of law for the court." Id. Our courts have found summary judgment and directed verdict proper in the face of allegations of gross negligence in a variety of circumstances. See, e.g., Clyburn v. Sumter County District Seventeen, 317 S.C. 50, 451 S.E.2d 885 (1994) (holding evidence of exercise of at least "slight care" precluded liability for gross negligence); Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000) (same); Pack v. Associated Marine Institutes, Inc., 362 S.C. 239, 246, 608 S.E.2d 134, 138 (Ct. App. 2004) (same); Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety, 337 S.C. 133, 140, 522 S.E.2d 605, 609 (Ct. App. 1999) (holding gross negligence claim barred where officer made physical investigation of wrecking company's former storage location and hand delivered notice to company, indicating at least a slight degree of care). The courts have

also made clear that the fact that more might have been done does not negate a finding that a defendant exercised at least slight care. See Etheredge, 341 S.C. at 312, 534 S.E.2d at 278 ("[T]he fact that the School District might have done more does not negate the fact that it exercised 'slight care.'"); Pack, 362 S.C. at 246, 608 S.E.2d at 138 ("The fact that more might have been done does not negate a finding that RMI employees exercised at least slight care.").

Here, like in Nelson, Mr. Campbell's testimony did not establish a duty for the City to conform to the design he suggested was "best" and would require the least amount of care and maintenance. Rather, Mr. Campbell's testimony established that the dune walkover was designed and constructed in an acceptable manner that may require more frequent maintenance. The crux of Mr. Campbell's opinion continually came back to maintenance. Mr. Campbell couched all of his concessions regarding adequate alternate methods of construction of a walkover, and the construction of the 77th Avenue walkover in particular, in the fact that subsequent inspection and maintenance would be necessary. (Trial Tr. p. 300, ll. 4-23; Trial Tr. p. 322, ll. 6-21; Trial Tr. p. 330, ll. 8-15). As noted *supra*, however, the trial court did not grant a new trial on the causes of action related to maintenance, security, or supervision of the walkover and reaffirmed its prior ruling that such claims are precluded by §15-78-60(16) due to lack of evidence of actual notice. Thus, looking strictly at the evidence related to the design and construction of the dune walkover, Mr. Campbell's testimony establishes only that the City could have constructed the dune walkover in a manner that would have required less subsequent maintenance, but not that the dune walkover as designed and constructed reflects a failure to exercise slight care. Consequently, the trial court's grant of a new trial as to the design and construction of the dune walkover was in error because there was no evidence to support a finding of gross negligence in the original design and construction of the dune walkover.

II. MUCH OF RESPONDENT'S ARGUMENT AND DESIGNATIONS OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL ARE IRRELEVANT TO THE NARROW ISSUE ON APPEAL OR UNSUPPORTED BY THE RECORD.

A. Respondent's Argument and References to Proffered or Admitted Evidence Related to Inspection and Maintenance of the Beach Walkover is Irrelevant Because Respondent Did Not File a Cross-Appeal.

Though Respondent initially seems to acknowledge the limited scope of the partial grant of new trial and gross negligence standard he must meet, other portions of Respondent's argument and references to exhibits go well beyond those parameters. See Town of Mt. Pleasant v. Jones, 335 S.C. 295, 298-99, 516 S.E.2d 468, 470 (Ct. App. 1999) (a lower court's unappealed ruling becomes the law of the case, and the appellate court must assume the ruling was correct). Respondent's brief contains an entire section on notice, which has no relation to whether there was evidence to support a finding of gross negligence in the design and construction of the dune walkover. (See Am. Br. of Resp't, pp. 9-11). Then, in Respondent's discussion of the standard of care, numerous of the bulleted items refer to the maintenance of the walkover or the City's alleged subsequent notice of a defect in the condition of the walkover. (See Am. Br. of Resp't, pp. 12-15). Further, while Respondent cites a myriad of unadmitted and unreferenced "standards" and "guidelines," many of them are related only to maintenance and none provide affirmative minimum requirements for building a dune walkover. (See Am. Br. of Resp't, pp. 12-15). When Respondent's irrelevant and extraneous arguments are removed, and the narrow issue before this Court focused upon, it becomes apparent that the testimony provided by Plaintiff's expert testimony at trial does not support a finding of gross negligence in the design or construction of the dune walkover in this matter.

B. Respondent's Designations of Evidence Not Considered by the Trial Court During the Original Directed Verdict Hearing or Hearing on the Motion for Reconsideration are Irrelevant to this Appeal.

Appellant previously filed a motion to strike portions of Respondent's designation of matter to be included in the record on appeal. A portion of the motion was resolved by consent of Respondent and the Court granted the motion with respect to one item.[5] The remaining disputed items irrelevant to this appeal include: Court's Exhibits 1, 2, and 3, and Plaintiff's Exhibits 1, 15, 25, 27, 31, and 33 (R.*).

The trial transcript reflects no discussion or direction from the trial judge to mark any Court's Exhibits. The trial judge had ruled on the directed verdict motion, called the jury back into the courtroom to thank them for their service, excused the jury, and without any explanation or discussion, the transcript states: "WHEREUPON Court's Exhibit Nos. 1 and 3 were marked for identification only." (Trial Tr. p. 384, ll. 15-16). Court's Exhibit 1 was Alan Campbell's deposition transcript, to which Alan Campbell's affidavit was coincidentally attached. Notably, the trial court did not consider this affidavit in ruling on the motion for directed verdict or motion for a new trial. Thus, despite their inclusion in the Record on Appeal, neither the Campbell deposition nor the affidavit were considered by the trial court.

Moreover, the portion of Mr. Campbell's affidavit to which Respondent cites in his brief is an opinion on the ultimate issue of whether the City acted with gross negligence in the construction of the walkover. (Am. Br. of Resp't, pp. 17-19). "Expert testimony on issues of law is inadmissible." Dawkins v. Fields, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) (holding

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[5] Specifically, Respondent agreed to strike from his designation of matter Plaintiff's Exhibits 16, 20, 21, 22 and 23, as well as Defendant's Exhibits 1 and 2. (Resp't Return to Mot. to Strike, p. 7). Additionally, the Court granted Appellant's motion to strike the "Myrtle Beach Walkover Inspection Report." (Order Granting Mot. to Strike In Part, Aug. 30, 2019).

Professor Freeman's expert affidavit was properly excluded by the trial court where the majority of it was simply legal argument as to why summary judgment should bd denied); see also O'Quinn v. Beach Assocs., 272 S.C. 95, 106-07, 249 S.E.2d 734, 739-40 (1978) (where expert testimony was offered to establish a conclusion of law, the court held that the trial court properly excluded the testimony because that was within the exclusive province of the trial court). Accordingly, this Court should not consider the deposition transcript or the affidavit in deciding this appeal.

Respondent similarly does not cite or reference Court's Exhibits 2 (exemplar of railing) or 3 (Plaintiff's deposition transcript) or Exhibits 1 (EMS report), 15 (loss report), 25 (DHEC plan), 27 (Coastal Dunes Improvement Manual for the Texas Gulf Coast), 31 (Steven Poletti, MD, deposition), and 33 (screw) in his brief, leaving little question that these exhibits are not relevant to the appeal. None of these exhibits were referenced during the trial court's consideration of the motion for directed verdict or new trial.

Court's Exhibit 2 is the exemplar of a wooden railing built by Alan Campbell, which the trial court refused to admit into evidence, sustaining the City's objection that it did not accurately depict the construction of the walkover. (Trial Tr. p. 267, l. 12 – p. 270, l. 8). Court's Exhibit 3 is the deposition transcript of the Respondent, which was admitted for identification at the end of the trial. (Trial Tr. p. 384, lll. 15-16).

Plaintiff's Exhibit 1 is the EMS report from the response to Respondent in his hotel room hours after the incident. (R.*, EMS Report). Plaintiff's Exhibit 15 is the loss report completed by Respondent, containing a narrative of the incident. (R.*, Loss Report). Respondent's own expert testified that Plaintiff's Exhibit 25, the DHEC's manual on "How to Build a Dune," would not be helpful to the jury in the case, which was the basis for the trial court's exclusion of it. (Trial Tr. p. 221, l. 20 – p. 222, l. 8; Trial Tr. p. 242, ll. 16-23). Plaintiff's Exhibit 27 was excluded, without

objection, because it was a publication related to the Texas coastline. (Trial Tr. p. 242, l. 23 – p. 243, l. 14). Plaintiff's Exhibit 31 is the video deposition of Dr. Poletti, which relates to Plaintiff's injuries and treatment, neither of which concern this appeal. (Pltf's Ex. 31). Lastly, Plaintiff's Exhibit 33 is a screw like those used in the construction of the dune walkover. (Trial Tr. p. 273, ll. 14-25; Pltf's Ex. 33). In light of their lack of relevance to the issue whether there was evidence in the record , to establish gross negligence in the design or construction of the dune walkover and the absence of any argument relating to them in Respondent's brief, these exhibits do nothing to advance Respondent's arguments on appeal an should not be considered by the Court.

C. There is No Evidence to Support Respondent's Assertion that No Nails Were Used in the Original Construction of the Dune Walkover.

In an attempt to undermine his own expert's trial testimony that the railing was appropriately designed and constructed, Respondent now argues that the nails in the railing were not installed during the original construction of the walkover, such that it could not withstand the alleged 200-pound concentrated force requirement upon construction. (See Amd. Brief of Resp't, p. 20). In essence, Respondent argues Mr. Campbell did not mean what he said at trial. Respondent contends that "the railings at 77th Avenue North were repaired again on two other occasions" and that "the work reports show that in only two years, the rails of the walkover were refastened with the improper screws or nails several times." (Id.). He further contends: "The City did not use the additional fasteners in the original construction of the walkover." (Id.).

In support of this argument, Respondent appears to rely on the "Work Order 77th Ave. Walkover," which was admitted as Plaintiff's Exhibit 19 at trial.[6] However, it does not support the averments of Plaintiff's brief that "in only two years, the rails of the walkover were refastened

[6] Referred to as "Culture and Leisure Work Orders" in Respondent's brief. (Resp. Br. p. 20).

with improper screws or nails several times." (Resp. Br. p. 20). The "Work Order 77th Ave. Walkover" is the City of Myrtle Beach work order dated August 20, 2014, the day after Plaintiff's accident. (R.*, Pltf's Ex. 19). The work order provides that "new screws" were used "all the way down board to the side rail" to reattach the boards to posts. (Id.). The work order makes no reference to prior repairs or to the use of nails. (Id.). As such, it does not support Respondent's contentions that no nails or additional fasteners were used at the time of the original construction of the dune walkover. It tells us nothing about the condition of the railing as originally constructed. Notably, Respondent could have attempted to rehabilitate or clarify Mr. Campbell's testimony regarding the condition of the railing as originally constructed through re-direct examination at trial, but did not do so. (Trial Tr. p. 331, ll. 18-22; Trial Tr. p. 339, l. 10 – p. 342, l. 7). Thus, the evidence before the trial court and the jury was that nails were used in the construction of the walkover, providing additional strength in excess in of the purported 200-pound threshold. (Trial Tr. p. 329, l. 9 – p. 330, l. 20).

III. RESPONDENT HAS CONCEDED THE APPEAL IS NOT INTERLOCUTORY.

Though Respondent's brief fails to state it so plainly, the content of Respondent's argument on its third issue makes clear his abandonment of his previous argument that the order partially granting a new trial was not immediately appealable. (See Respondent's Motion to Dismiss, on file with this Court; Am. Br. of Resp't, p. 21). Respondent admits that "an appeal of the trial court's Order is permitted." (Am. Br. of Resp't, p. 21). However, he argues that reversal should only be permitted if there was no evidence from which a jury might have reasonably inferred that Appellant was negligent in the design and construction of the dune walkover. (Am. Br. of Resp't, p. 21).

Respondent's articulation of the standard is *almost* correct. The trial court's ruling that the City could not be found liable under a simple negligence standard is the law of the case. Thus, in order to uphold the trial court's grant of a new trial there must be evidence **in the record** to support a finding of **gross negligence** in the design and construction of the dune walkover. This requires a ruling on the merits of the appeal; dismissal of the appeal would be improper. See S.C. State Highway Dep't v. Clarkson, 267 S.C. 121, 126-27, 226 S.E.2d 696, 697 (1976) ("While the statement in our decisions, that an order granting a new trial upon the facts is not appealable, is not correct in the sense that the appeal will not lie, it is correct in the sense that such an order based upon conflicting testimony will not be disturbed on appeal."); Rule 220(b), SCACR ("In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case.").

As discussed *supra* and in Appellant's brief, the evidence at trial was not sufficient for a jury to reasonably determine the City was grossly negligent in the design and/or construction of the dune walkover. Therefore, the trial court's order granting a new trial should be reversed.

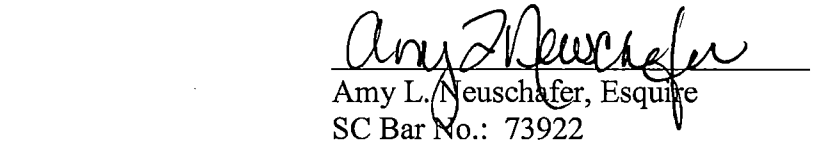
CONCLUSION

For the reasons stated here and in Appellant's brief, this Court should reverse the trial court's order granting new trial.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted,

COLLINS & LACY, P.C.



Amy L. Neuschafer, Esquire
SC Bar No.: 73922
aneuschafer@collinsandlacy.com
Fred H. Oliver, Esquire
SC Bar No.: 100969
foliver@collinsandlacy.com
11945 Grandhaven Drive, Suite D
Murrells Inlet, SC 29576
843.353.2350 (p)
843.353.2351 (f)

ATTORNEYS FOR APPELLANT

Murrells Inlet, South Carolina
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APPEAL FROM HORRY COUNTY
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Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2018-002270
Case No. 2014-CP-26-07790

Richard Ciampanella, ...Respondent,

v.

City of Myrtle Beach, ...Appellant.

PROOF OF SERVICE

I certify that I have served Appellant's Initial Reply Brief by mailing a copy of same to Respondent's attorneys of record in the United States mail, with sufficient postage affixed thereto on the date indicated below.

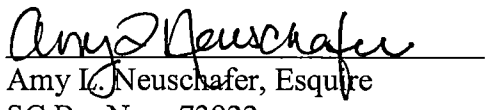
COUNSEL SERVED:

Gene M. Connell, Jr., Esquire
Kelaher, Connell & Connor, P.C.
Post Office Drawer 14547
Surfside Beach, SC 29587

Julian Z. Hanna, Esquire
Julian Z. Hanna and Associates, P.A.
14323 Ocean Highway, Suite 4105
Pawleys Island, SC 29585

[SIGNATURE PAGE TO FOLLOW]

COLLINS & LACY, P.C.

By: 

Amy L. Neuschafer, Esquire
SC Bar No.: 73922
aneuschafer@collinsandlacy.com
Fred H. Oliver, Esquire
SC Bar No.: 100969
foliver@collinsandlacy.com
11945 Grandhaven Drive, Suite D
Murrells Inlet, SC 29576
843.353.2350 (p)
843.353.2351 (f)

ATTORNEYS FOR APPELLANT
CITY OF MYRTLE BEACH

PROOF OF SERVICE

Murrells Inlet, South Carolina
October 22, 2019

Collins Lacy
ATTORNEYS AT LAW

Amy L. Neuschafer | D: 843.353.2331 | E: aneuschafer@collinsandlacy.com

October 22, 2019

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

Re: Richard Ciampanella v. City of Myrtle Beach
Appellate Case No. 2018-002270
C&L File No. 000456-01017

Dear Ms. Kitchings:

Please find enclosed the original and one copy of Appellant's Initial Reply Brief together with Proof of Service for filing. Please file the originals and return the clocked copies in the self-addressed stamped envelope provided.

By copy of this letter, I am serving same on opposing counsel.

With kind regards,

Sincerely,

Amy L. Neuschafer

/aga
Enclosures

pc: Gene M. Connell, Jr., Esquire
Julian Z. Hanna, Esquire

Collins & Lacy
ATTORNEYS AT LAW
11945 Grandhaven Drive, Suite D | Murrells Inlet, SC 29576

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

456-1017