IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
NOV 18 2019
S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Mikell R. Scarborough, Master-in-Equity

Opinion No. 5614
(Court of Appeals filed January 16, 2019)

Charleston Electrical Services, Inc., and Selective Insurance Company of South Carolina, as Subrogee of Charleston Electrical Services, Inc. . ..... Petitioners,

v.

Wanda G. Rahall, ... Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

PRITCHARD LAW GROUP, LLC
Edward K. Pritchard, III, Esquire
South Carolina Bar No. 9710
8 Cumberland Street, Suite 200 (29401)
Post Office Box 620
Charleston, South Carolina 29402
Phone: (843) 722-3300
Fax: (843) 722-3379
epritchard@pritchardlawgroup.com
ATTORNEYS FOR RESPONDENT

November 15, 2019
Charleston, South Carolina

TABLE OF CONTENTS

STATEMENT OF THE CASE

This is an action for contribution brought pursuant to Sections 15-38-10 through 70, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended. (*R.* pp. 31 – 34). This matter arises out of an August 20, 2010, incident in which a dog, owned, possessed and controlled by and in the care and keeping of Petitioner, Charleston Electrical Services, Inc., (hereinafter referred to as "CES") jumped up on Elsie Mae Rabon (hereinafter referred to as "Rabon")[1] knocking her to the ground and injuring her. (*R.* p. 125).

Rabon sued CES on December 31, 2010, in the Charleston County Court of Common Pleas alleging negligence and strict liability (hereinafter referred to as the "Underlying Action")[2]. (*R.* p. 122). CES in turn brought a third-party indemnification action against Rabon's daughter, Respondent, Wanda Rahall (hereinafter referred to as "Rahall") and George Kornahrens (hereinafter referred to as "Kornahrens"). (*R.* p. 120). CES settled the Underlying Action for $200,000.00 in exchange for which Rabon released CES, Rahall and Kornahrens (hereinafter referred to as the "Settlement"). (*R.* p. 122). The Underlying Action was thereafter dismissed with prejudice as to Rabon's claim and without prejudice as to CES's claims against Rahall and Kornahrens. (*R.* p. 122).

CES, and its liability insurance carrier, Selective Insurance Company of South Carolina (hereinafter collectively referred to as "Petitioners"), initiated this action on July 3, 2013, by filing a Summons and Complaint with the Office of the Charleston County Clerk of Common Pleas. (*R.* pp. 20 – 24). In this action, Petitioners seek to recover from Rahall[3] half of the Settlement proceeds.

---

1 Rabon died in 2015. (*R.* p. 125, FN1).

2 The Underlying Action was captioned *Elsie Mae Rabon v. Charleston Electrical Services, Inc.*, and assigned Civil Action No. 2010-CP-10-10666. (*R.* p. 121).

3 CES declined to seek contribution against Kornahrens supposedly on the basis that he was an employee of CES.

This action was referred to the Charleston County Master-in-Equity for a trial on the merits with direct appeal to the South Carolina Court of Appeals by consent of the parties. *R.* pp. 1 – 2. A non-jury trial was held before The Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, on June 17, 2016, in which no live testimony was proffered by either Rahall or Petitioners. (*R.* pp. 48 – 115). Rather, all evidence was presented by way of stipulated facts, the transcript of the deposition of John M. Oakley given November 16, 2011, in the Underlying Action together with exhibits thereto, the transcript of the deposition of Kornahrens given November 16, 2011, in the Underlying Action together with exhibits thereto, the transcript of the deposition of Rahall given November 16, 2011, in the Underlying Action and the transcript of the deposition of Rahall given May 26, 2016, in this action. *R.* pp. 48 – 115. On August 2, 2016, judgment was entered in favor of Rahall. *R.* p. 3.

Petitioners thereafter appealed this matter to the South Carolina Court of Appeals. *Notice of Appeal,* dated September 7, 2016, filed September 12, 2016. The Court of Appeals affirmed the judgment on January 16, 2019. This matter is now before this Court on Petitioners' petition for writ of certiorari to review the Court of Appeals' January 16, 2019, decision in this matter. For the reasons stated herein, Petitioners' petition for writ of certiorari should be denied.

FACTS

On August 20, 2010, Rahall and Rabon went to visit Kornahrens, who at the time was Rahall's boyfriend and employed by CES. *R.* p. 288, l. 10 – p. 289, l. 14. While they were visiting Kornahrens, CES's guard dog, Gunner, jumped on Rabon, knocking her to the ground which resulted in Rabon fracturing her left hip (hereinafter referred to as the "Incident"). *R.* p. 289, l. 24 – p. 290, l. 11. The Incident occurred at CES's offices located at 60 Romney Street, Charleston, South Carolina (hereinafter referred to as the "Property"). *R.* p. 125.

The Property is comprised of a large yard and two buildings. *R.* p. 53, l. 6-20. At the time of the Incident, Kornahrens owned the Property and lived on the second floor of the main building (hereinafter referred to as the "Apartment"). *R.* p. 153, l. 6-20. Kornahrens leased the remainder of the Property to CES. *R.* p. 153, l. 9-18. CES uses the yard to store equipment such as its trucks, ladders, and supplies. *R.* p. 322, l. 4-15. The yard is primarily used by CES as a parking lot for trucks and storage area for materials; no vehicles not owned by CES are or were permitted in the yard. *R.* p. 332, l. 4-15; p. 243, l. 14-25. The office and Apartment each had their own separate designated parking spaces none of which were located in the yard. *R.* p. 136.

Kornahrens was the original owner of CES. *R.* p. 149, l. 22 – p. 150, l. 6. Approximately nineteen years prior to the Incident, Kornahrens' stepson, John Oakley (hereinafter referred to as "Oakley"), assumed control of CES. *R.* p. 149, l. 22 – p. 150, l. 6. After Oakley took ownership of CES, Kornahrens retained no ownership interest in CES, though he remained its business manager. *R.* p. 152, l 1-5. Thereafter, Kornahrens was a full-time salaried employee of CES, and he typically worked ten hours a day. *R.* p. 152, l. 19-25.

The Property is in an industrial area on the Charleston peninsula, and a number of years before the Incident, there were issues with burglars trespassing at night. *R.* p. 161, l. 4-5. To reduce the theft of its equipment stored in the yard, CES acquired a guard dog. *R.* p. 161, l. 15-18; p. 247, l. 9-17. During the twenty-year period preceding the Incident, CES had kept a series of guard dogs on the Property. *R.* p. 161, l. 17 – p. 162, l. 3.

On January 30, 2010, Kornahrens, acting on behalf of CES, purchased Gunner, a full-blooded German shepherd, from Tarrah J. Andre for $200.00. *R.* p. 62, l. 4-23; p. 223, l. 2-9. At all times relevant hereto, CES owned Gunner. *R.* p. 162, l. 4-23; p. 223, l. 2-9. Shortly after Gunner was acquired, Rahall told Rabon about CES's acquisition of Gunner. *R.* p. 287, l. 9-25.

Neither Gunner nor any of the previous guard dogs were ever in the Apartment or in the CES's office area of the main building, but rather spent all of its time in the yard. *R.* p. 167, l. 12-17. At no time did CES have any issues with Gunner attacking or biting anyone. *R.* p. 163, l. 22-25.

Every morning Gunner was chained up prior to the arrival of CES's employees to prevent him from escaping through the open gate. *R.* p. 228, l. 15 – p. 229, l. 24. Once the gates were closed, typically around 8:30 am, Gunner was released. *R.* p. 228, l. 15 – p. 229, l. 24. Gunner was, likewise, chained up between 3:30 and 5:30 each day when CES's employees returned. *R.* p. 228, l. 15 – p. 229, l. 24. Gunner was generally playful and friendly. *R.* p. 230, l. 9-10; p. 163, l. 9-15; p. 285, l. 17 – p. 286, l. 4.

Rahall was never an agent or employee of CES, never had any ownership interest in CES and never had any ownership or leasehold interest in the Property. *R.* p. 333, l. 18-23. At the time of the Incident, Rahall owned a home in Myrtle Beach, which was her primary residence. *R.* p. 317, l. 19 - 22. Rabon, too, lived in Myrtle Beach, in a senior living apartment complex, separate from Rahall, where Rabon lived alone. *R.* p. 297, l. 24 – p. 298, line 13. At the time of the Incident, Rabon was not in the custody or care of a guardian or conservator, and legally competent. *R.* p. 336, l. 8-25.

At the time of the Incident, Rahall and Kornahrens had been involved in a romantic relationship for five years. *R.* p. 281, l. 3-18). Rahall, at the implied invitation of Kornahrens, stayed in the Apartment when she was in Charleston, and Kornahrens, at the implied invitation of Rahall, stayed at Rahall's home when he was in Myrtle Beach. *R.* p. 155, l. 8 – p. 156, l. 9; p. 297, l. 4 - 19; p. 317, l. 21 – p. 318, l. 4. Kornahrens also periodically invited Rabon to stay at the Apartment. *R.* p. 336, l. 1-7.

Rahall and Rabon traveled to Charleston on August 19, 2010, to stay with Kornahrens. *R.* p. 288, l. 17 - 25. On August 20, 2010, Rahall attended a doctor's appointment in Charleston, and

Rabon accompanied her. *R.* p. 288, l. 3-6. After Rahall's appointment, she and Rabon decided to invite Kornahrens to lunch. *R.* p. 289, l. 13-23. When they arrived at the Property, Rahall walked through CES's front office and into the yard to speak with Kornahrens who was working in the back, while Rabon waited in the front office. *R.* p. 289, l. 15 - 23. A few minutes later, Rabon exited the office and walked out in to the yard, presumably to join Rahall and Kornahrens. *R.* p. 289, l. 24 – p. 290, l. 7. While Rabon was in the yard, Gunner jumped on her and knocked her to the ground. *R.* p. 289, l. 24 – p. 290, l. 7. Though Kornahrens and Rahall observed the Incident, both were too far away to prevent it from happening. *R.* p. 330, l. 9-13. Rabon was immediately transported to Roper St. Francis Hospital by EMS where she was diagnosed with a broken hip. *R.* p. 295, l. 14-18.

Rahall and Kornahrens, though engaged at one time, never married and are no longer in a relationship. *R.* p. 313, l. 5-11. During the time Rahall and Kornahrens were in a relationship, Rahall rarely interacted with Gunner *R.* p. 337, l. 1-9. It is undisputed that CES was the owner of Gunner, and at the time of the Incident, Gunner was under the care and keeping of CES. *R.* p. 223, l. 2-9).

STANDARD OF REVIEW

Rule 242(b), S.C.R.A.P., provides:

> **Considerations Governing Review.** A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:
>
> **(1)** Where there are novel questions of law.
>
> **(2)** Where there is a dissent in the decision of the Court of Appeals.
>
> **(3)** Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
>
> **(4)** Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

"An issue not raised to or addressed by the trial court or the Court of Appeals is not properly preserved for review by the Supreme Court on certiorari." *Kleckley v. Northwestern Nat. Cas. Co.*, 338 S.C. 131, 138, 526 S.E.2d 218, 221 (2000).

ARGUMENTS

THE COURT OF APPEALS CORRECTLY AFFIRMED THE MASTER'S THAT THE RESPONDENT WAS A "SOCIAL GUEST" AT THE PREMISES AND. THUS, DID NOT OWE A DUTY TO WARN OR PROTECT HER MOTHER UNDER THE FACTS OF THIS CASE.

Petitioners claim that the Court of Appeals erred in holding that Rahall was "'a social guest in the Apartment' because she 'did not possess or control any portion of the Property' and because she 'did not pay rent, taxes, or utilities related to the Apartment and maintained a separate residence in Myrtle Beach.'" Petitioners' continuous use of the use of the term "social guest" throughout its Petition is a mere subterfuge to mask the Court of Appeals' actual holding: that Rahall was a "licensee."

Though admittedly the Court of Appeals used the term "social guest" in its opinion, which is exactly what Rahall was, from a legal perspective Rahall's status upon the premises at the time of the Incident, whether it be the Apartment or the Yard, was that of a licensee, the same as Rabon was at the time. What Petitioners really seek in their Petition if for this Court to radically alter well established law and impose an affirmative premises liability duty on the part of one whose relationship to a premises is that of a licensee to take reasonable steps to protect and/or warn another licensee of hazardous conditions upon the premises.

Despite Petitioners' erroneous claim that Rahall "admittedly" lived in the Apartment[4], Rahall's status on the premises at the time of the incident was that of a licensee. Completely ignoring the fact that Rahall paid no rent, utilities or taxes related to the Apartment and that she continuously maintained a separate residence in Myrtle Beach - which is and was Rahall's primary and legal place of residence and where Kornahrens stayed by implied invitation when in the Myrtle Beach area – Petitioner's attempt to convert Rahall into a possessor of the premises based on nothing more than the fact that she spent time there. Not only is there no support in the law for this position, it is bad policy.

Where injury is caused by a dangerous or defective condition on the premises of real estate, the decision of whether a person has an affirmative duty to keep the premises in a safe condition or warn of dangers on the premises "depends in general upon his having control of the property." *Dunbar v. Charleston & W.C. Ry. Co.*, 211 S.C. at 216, 44 S.E.2d at 317 (1947). Consequently, "[o]ne who controls the use of property has a duty of care not to harm others by its use." *Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997). "Conversely, one who has no control owes no duty." *Id.* "Possession" and "control" in the context of a premises liability refers to a legally recognized right to possess or control the premises in question. Rahall had neither as it relates to either the Apartment and the Yard.

It is undisputed that Rahall had neither an ownership or leasehold interest in the Apartment or the Yard. Instead, Petitioners focus on the fact that Rahall spent time in the Apartment, which they mischaracterize as her "living there," and argue that her spending time there somehow converts her from a licensee to a "possessor" of the Yard. This is patently without merit as there is nothing in the law which supports the position that mere physical presence on a premises –

---

[4] Petitioners' statement in this regard is not supported by any citation to the record. This is so for the obvious reason that there is no such admission in the record.

irrespective of how long the presence may be – is sufficient to convert one from a licensee to a possessor of a premises for premises liability purposes[5].

Clearly Rahall as an invited guest in the Apartment, Rahall had no legal right to possess or control either the Apartment or the Yard. Though Rahall was allowed to visit the Apartment at the pleasure of Kornahrens, she had no recognized legal right in and to the Property. She had no legal right to remain there if asked to leave by Kornahrens. She had no right to have another removed from the Property. As Rahall neither owned the Property nor possessed a leasehold interest, she was at most a guest of Kornahrens. See, *Vogt v. Murraywood Swim & Racquet Club*, 357 S.C. 506, 511, 593 S.E.2d 617, 620 (Ct. App. 2004)(holding plaintiff was a licensee on grounds that he was a guest of a dues-paying member, who entered the swim club not by right, but by the permission of the member ... that it is undisputed that he visited the pool only because members invited him and his presence at the pool was entirely permissive). As a mere guest herself, Rahall owed Rabon, another guest, no duty as a matter of law[6].

Apparently failing to understand or appreciate the terrible precedence it seeks to create, Petitioners argue that "'the test employed by the Court of Appeals" - which itself is a mischaracterization of what the Court of Appeals did as it in fact employed no test, but rather applied well settled existing law - "fosters bad public policy" because "[t]he Court of Appeals places a duty to protect or warn only on the owner (or formal lessee) of property and upon no other

---

5 In fact, physical presence on a premises has never been a basis for imposition of premises liability on one who possesses or controls a premises. Certainly, one who owns or leases a piece of real property owes an affirmative duty to keep the premises in a safe condition or warn of dangers on the premises irrespective of whether he, she or it has ever stepped foot on the property. *Dunbar v. Charleston & W.C. Ry. Co.*, *supra*; *Id.*

6 Petitioners fail to appreciate the irony in their complaint that "[t]here is no authority that holds that a person who is a permanent (or non-transitory) possessor of property must have an ownership interest or formal relationship as a lessee in order to owe a duty of care related to the very property where she admittedly lives" in that they cite no authority for the position that permanent (or non-transitory) possessor of property need not have an ownership interest or formal relationship to the premises in order to owe a duty of care related to the premises.

resident or possessor" as [t]here should be no correlation between ownership and the duty to warn or protect." The Court of Appeals in no way suggested that only one who is an owner or lessee owes an affirmative premises liability duty. Rather, the Court of Appeals in essence held that mere physical presence on a premises is insufficient to convert one from a licensee to a possessor of the premises sufficient to impose an affirmative premises liability duty. Nothing in the Court of Appeals opinion can in any way be construed to limit liability to an owner or lessee[7]. Should Petitioner's position be adopted it would open up a pandora's box of a licensee who is injured on a premises recovering from another licensee on the basis that the uninjured licensee had physically occupied the premises in the past for a period of time longer than the injured licensee had or on the basis that the uninjured licensee had or has a closer relationship to the owner or possessor of the premises than the injured licensee had or has.

Petitioners admit that Rahall owed no affirmative premises liability duty to Rabon stating:

> the Petitioners do not assert that Rahall owed a duty to correct or control any condition on the property. That duty would fall on the owner or lessee. Rather, the Petitioners contend that Rahall owed a duty to protect and warn her elderly mother --her guest on the premises where she resided --and that duty is not contingent on having a financial interest in the property.

Furthermore, even if Rahall did have an affirmative premises liability duty arising from her physical presence in the Apartment, that duty would not extend to the Yard. Neither Rahall

---

7 For instance, nothing in the Court of Appeals could be read to construe that a spouse who is not a title holder to the marital residence may not have an affirmative premises liability duty as to the marital residence. While there has been no reported South Carolina case holding that a non-titleholding spouse owes an affirmative premises liability duty, the Court of Appeals opinion certainly leaves open that possibility. Obviously, a spouse has an interest in the property superior to one who is simply occupying the same as an invited guest, whether by implication or otherwise, though it may not be sufficiently superior for purposes of an affirmative premises liability duty. *Cf. Sugarman v. Malone*, 48 A.D.3d 281, 853 N.Y.S.2d 21 (2008)(plaintiff's possession of the premises by virtue of her relationship by marriage sufficient to rebut any presumption of hostility for purposes of adverse possession). In any event, that is a question for another day, as everyone concedes that Rahall and Kornahrens were never married. South Carolina law has never recognized any possessory or ownership interest in property arising from a mere engagement or any other non-blood relationship other than marriage, nor should it.

nor Kornahrens possessed or controlled the portion of the Property leased to CES, so with regard to the portion of the Property leased to CES, no duty attached to either. *See Byerly v. Conner,* 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992)("[W]hen land is occupied by a lessee . . . the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee. After the premises are surrendered in good condition, the lessor typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee."); *Bruce v. Durney*, 341 S.C. 563, 571, 534 S.E.2d 720, 725 (Ct. App. 2000) (holding a landlord is not liable for injuries caused by an animal kept by a tenant on leased property). As the Incident occurred in the Yard, assuming a premises liability claim is even actionable under the facts presented, CES, as tenant, possessor, controller and occupier the yard, was the one who owed Rabon a duty to protect or warn of dangerous conditions. Petitioners admit this in footnote 4 of their Petition.

Petitioners argue that the Master erred in finding that Gunner was not a dangerous condition on the land arguing that "prior to the enactment of Section 47-3-110 as a strict liability statute, there were cases involving dog-related injuries that were tried and won under a premises liability or negligence theory" citing *Hossenlopp v. Cannon*, 285 S.C. 367, 370, 329 S.E. 2d 438, 440 (1985), in support of this position. *Hossenlopp v. Cannon, supra,* in no way support Petitioners' claim.

In *Hossenlopp v. Cannon, supra,* the South Carolina Supreme Court was tasked with deciding whether the owners of a dog could be found negligent if they lacked knowledge that their dog had dangerous propensities. In affirming the trial court's decision, the Supreme Court noted that the owners' duty arose from statute while also rejecting the "one free bite rule." *Hossenlopp*

v. Cannon, supra; *see also*, *Harris v. Anderson County Sheriff's Office*, 381 S.C. 357, 360, 673 S.E. 2d 423, 424 (2009)("In *Hossenlopp*, under our policy-making role in the common law, we rejected the "one free bite rule' and imposed quasi-strict liability on dog owners by adopting the "California Rule" for dog bite liability... *Hossenlopp* represents the last time the Court addressed a dog bite case in a purely common law setting."). There is no mention or analysis by the Court discussing dog owners' liability under a premises liability theory. The Court in no way suggests that the strict liability rule adopted in *Hossenlopp v. Cannon, supra*, is in any way restricted to bites occurring on the dog's owner's premises.

Simply stated, there is no support for imposing an affirmative premises liability duty on Rahall under the facts presented which Petitioners admit in footnote 4. Accordingly, the Court of appeals committed no error in holding that Rahall as a social guest/licensee owed Rabon no affirmative premises liability duty.

RHALL OWED NO AFFIRMATIVE DUTY TO RABON BY VIRTUE OF A SPECIAL RELATIONSHIP

Petitioners argue that Rahall owed Rabon, as her mother, a duty to warn and/or protect on the basis that their relationship as adult child and elderly parent created a legally recognized special relationship. This position is meritless.

In the absence of a relationship recognized by law which supports duty to prevent an injury, no such duty is owed. *McCullough v. Goodrich & Pennington Mortg. Fund, Inc.*, 373 S.C. 43, 644 S.E.2d 43 (2007). "An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003). If there is no duty, the defendant is entitled to a judgment as a matter of law. *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007).

In *Faile v. South Carolina Dep't of Juvenile Justice,*350 S.C. 315, 566 S.E.2d 536 (2002), the Court recognized the following five exceptions to the general rule that there is no general duty to control the conduct of another or to warn a third person or potential victim of danger:

(1) where the defendant has a special relationship to the victim;

(2) where the defendant has a special relationship to the injurer;

(3) where the defendant voluntarily undertakes a duty;

(4) where the defendant negligently or intentionally creates the risk; and

(5) where a statute imposes a duty on the defendant.

Petitioners have failed to present any case from any jurisdiction holding that a child has a general duty to protect his or her parent from harm presented by the conduct of a third party or an instrumentality not within the custody and control of the child. A review of South Carolina case law reveals that South Carolina courts have recognized a special relationship sufficient to give rise to an affirmative duty to protect or warn another from danger related to the conduct of a third party or an instrumentality not within the custody and control of the person upon whom the duty is imposed in only five limited and narrow circumstances: (1) a group home has a duty to supervise a minor child in its care, *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003); (2) a psychiatrist has a duty to warn her patient of specific known threat of harm from another patient, *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007); (3) the South Carolina Department of Juvenile Justice has a duty to supervise and control a dangerous juvenile in its custody, *Faile v. S.C. Dep't of Juvenile Justice*, *supra*; (4) the South Carolina Department of Mental Health has a duty to supervise and control an involuntarily-committed patient in its custody, *Bishop v. S.C. Dep't Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998); and (5) the South Carolina Department of Parole and Community Corrections has a duty to warn one to whom a specific threat of harm has been directed by a person

being released from custody, *Rogers v. S.C. Dep't of Parole & Cmty. Corr.*, 320 S.C. 253, 464 S.E.2d 330 (1995)(no finding of specific threat).

The Court of Appeals decision in *Roe v. Bibby*, *supra*, is the most recent appellate court pronouncement on special relationships under South Carolina law. In *Roe v. Bibby, supra*, the Court declined the invitation to impose upon a wife a duty to warn minor children living in the neighborhood that her husband had a predilection for sexual molestation, holding that there is no general special relationship between a husband and wife or between the wife of a sexual predator and neighboring children which is sufficient to give rise to such a duty. *Id.* at 293, 763 S.E. 2d at 649. The Court of Appeals based its ruling, in part, on the fact that the wife had no ability to monitor and control her husband. As to the children, the Court of Appeals restated its holding on the fact that the children were not entrusted to the wife's care, and that the wife had no knowledge of a specific threat to the minor children. *Id.* at 296, 763 S.E. 2d at 650.

In each case in which a court found that there was a special relationship sufficient to give rise to an affirmative duty to protect or warn another from danger related to the conduct of a third party or an instrumentality not within the custody and control of the person upon whom the duty is imposed, the case turned on a finding that the person upon whom such duty was imposed either had a responsibility to supervise or an ability to monitor and control either the victim or the perpetrator or instrumentality of the act which gave rise to the injury. *E.g., Cunningham ex rel. Grice v. Helping Hands, Inc., supra*; *Roe v. Bibby, supra.*

Rabon and Rahall were mother and adult daughter, respectively. Both were mentally and physically competent at the time of the Incident. Petitioners have produced no evidence that Rabon was entrusted to Rahall's care or that Rahall had any knowledge of a specific threat to Rabon. The adult child/parent relationship between Rahall and Rabon does not fall under any of the five

exceptions listed above nor has the parent-child relationship standing alone ever been recognized in any other jurisdiction as imposing a legal duty[8]. The cases, both within and outside of South Carolina, reflect a reluctance to impose a duty to protect, warn and supervise an adult unless there is a clear indication of some incapacitation of normal faculties, a well-established authority relationship and/or a substantial risk of serious harm. *Id*; *Robinson v. Vivirito,* 217 N.J. 199, 86 A.3d 119 (2014)(school principal owes no duty of care to a third party who decides to use school property after hours for personal purposes and is injured by a stray animal that is neither owned nor controlled by school personnel); *Knight v. Merhige,* 133 So.3d 1140 (Fla. Dist. Ct. App.), *reh'g denied* (Mar. 26, 2014), *review dismissed*, 143 So.3d 919 (Fla. 2014), *and review denied*, 157 So.3d 1045 (Fla. 2014), *and review denied sub nom. Sitton v. Merhige*, 157 So. 3d 1048 (Fla. 2014)(Parents owe no legal duty to protect extended family members from the conduct of adult son, who shot and killed several family members at a holiday dinner as no special relationship existed that required parents to protect other adult family members from adult son's conduct); *Millea v. Erickson*, 849 N.W.2d 272 (S.D. 2014)(Babysitter's mother's boyfriend's adult son, who stopped by mother's and boyfriend's apartment, did not have a special relationship with child who died from positional asphyxiation so as to give rise to a duty to provide care or aid, despite contention that babysitter deferred to mother's boyfriend's son because of his age and quasi-stepbrother-like role to her); *Toribio v. Pine Haven, LLC*, 2014 WL 3865845 (D.N.J. Aug. 5, 2014)(no special relationship between decedent and decedent's friend's parents when decedent drowned while vacationing at a public lake with decedent's friend's parents); *Bridges v. Parrish*, 366 N.C. 539, 742 S.E.2d 794 (2013)(Parents were not liable for the criminal actions of their 52–year–old son who took gun from their home and used the gun to shoot his girlfriend); *Estate of Cilley v. Lane*, 2009 ME 133, 985 A.2d 481

---

[8] The case law cited by Petitioners does nothing to support their claim that a duty is owed by an adult child to his or her parent, but rather support the position that parents owe a duty to their *minor* children.

(2009)(no special relationship between girlfriend and boyfriend where boyfriend accidentally shot himself and girlfriend failed to get timely medical assistance); *Ventura v. Picicci*, 227 Ill.App.3d 865, 592 N.E.2d 368 (1992)(defendant not liable for adult son who shot plaintiff in defendant's house because no duty to control adult son); *Kosrow v. Smith* 162 Ill.App.3d 120, 113 Ill.Dec. 104, 514 N.E.2d 1016 (1987)(no negligence in failing to control the actions of a houseguest who drove a car while intoxicated); *Villacana v. Campbell*, 929 S.W.2d 69 (Tex. App. 1996), *writ denied* (Feb. 21, 1997)(finding no liability as to parents whose adult child murdered two people on the basis that parents had no special relationship with adult son or duty to control adult son); *Theobald v. Dolcimascola*, 299 N.J.Super. 299 (App. Div. 1997)(As a matter of law, friendship—standing alone—is an insufficient basis for imposing a special relationship upon two parties).

Gunner was owned by CES. Rahall did not own, possess or control Gunner and Gunner was not in Rahall's care or keeping. In fact, Rahall had little to no interaction with Gunner. Gunner posed no specific threat to Rabon. Rahall did not own or possess or reside on the Property; she was merely an invited guest on the Property at the invitation and pleasure of CES and/or Kornahrens. Rahall undertook no duty to protect her mother nor did she negligently or intentionally create the risk of Gunner jumping on Rabon. Rahall left Rabon in the office, a place Gunner never entered, to speak to Kornahrens in the yard which was irrefutably under the possession and control of CES. Rabon, of her own volition exited the office into the yard, where she encountered Gunner who jumped and knocked her down. Rabon was aware of Gunner's presence on the Property. Rahall had no notice that Gunner was a dangerous animal as the general sentiment was that Gunner was "overly friendly." There is no evidence Gunner was a dangerous animal or had any malicious intent when he jumped on Rabon. Neither Kornahrens nor anyone on behalf of CES warned Rahall to be cautious of Gunner or that non-employees of CES were prohibited in the yard. Rahall could not warn her mother of a

danger that she (or anyone else for that matter) did not know existed.

Nevertheless, Petitioners urge this Court to go where no court before has gone and ask it to recognize a child-parent relationship as a special relationship sufficient to support a duty on the part of the child to protect his or her parent from harm presented by the conduct of a third party or an instrumentality not within the custody and control of the child. Petitioners also urge this court to impose a duty on one to protect another from a dog owned by a third-party if it is foreseeable that the dog might injure the other person. This court should decline both invitations as in neither situation is there a responsibility to supervise or an ability to monitor and control either the parent or the dog, nor is there any indication of incapacitation of normal faculties, or a well-established authority relationship and/or a substantial risk of serious harm. To find either duty exists under the facts or circumstances of this case would expand the concept of duty in tort liability well beyond all reasonable limits.

CONCLUSION

Petitioners have in no way established a sufficient basis for this Court to grant a petition for writ of certiorari in this case. None of the factors set forth in Rule 242(b), S.C.R.A.P. are present. The Court of Appeals did nothing more than correctly apply well settled and established law to the facts of the case. There, is, therefore, no basis upon which to grant Petitioners' request for a writ of certiorari, and, therefore, Petitioners' Petition should be denied.

Respectfully Submitted,

PRITCHARD LAW GROUP, LLC

Edward K. Pritchard, III, Esquire
Bar No. 9710
8 Cumberland Street, Suite 200 (29401)
Post Office Box 620
Charleston, South Carolina 29402
Phone: (843) 722-3300
Fax: (843) 722-3379
epritchard@pritchardlawgroup.com
ATTORNEYS FOR RESPONDENT

November 15, 2019
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Mikell R. Scarborough, Master-in-Equity

Opinion No. 5614
(Court of Appeals filed January 16, 2019)

Charleston Electrical Services, Inc., and Selective Insurance Company of South Carolina, as Subrogee of Charleston Electrical Services, Inc. . ..... Petitioners,

v.

Wanda G. Rahall, ... Respondent.

PROOF OF SERVICE

I certify that I have served the *Return to the Petition for Writ of Certiorari* on Petitioners Charleston Electrical Services, Inc. and Selective Insurance Company of South Carolina as Subrogee of Charleston Electrical Services, Inc., by depositing a copy of it in the United States Mail, postage prepaid, to their attorney of record, Andrew F. Lindemann, Esquire, at his office at 1611 Devonshire Drive, Post Office Box 8568, Columbia, South Carolina 29202 on November 15, 2019.

PRITCHARD LAW GROUP, LLC

Edward K. Pritchard, III, Esquire
8 Cumberland Street, Suite 200 (29401)
Post Office Box 620
Charleston, South Carolina 29402
Phone: (843) 722-3300
epritchard@pritchardlawgroup.com
ATTORNEY FOR RESPONDENT