

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Appellate Case No. 2019-001602
Case No. 2013-CP-10-3901

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

v.

Wanda G. Rahall Respondent.

**PETITIONERS' REPLY TO RESPONDENT'S RETURN
TO PETITION FOR WRIT OF CERTIORARI**

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ARGUMENTS

- I. The Court of Appeals erred in applying an erroneous test to rule that the Respondent was herself a “social guest” at the premises where she admittedly lived and thus did not owe a duty to warn or protect her elderly mother under the facts of this case.**

In its published opinion, the Court of Appeals ruled that the Respondent Wanda 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.” (App. 4). The Petitioners contend that this was error in that Rahall *admitted* that she actually lived in the apartment.

Remarkably, in her return, Rahall claims that there is no such “admission” in the record. In fact, she argues that there is *no evidence* to support the Petitioners’ claim that Rahall lived at the premises and that Petitioners failed to support its position by any citations to the record. That is absolutely not true. The record is replete with such evidence, and the Petitioners cited to that evidence, including actual quotes from the deposition testimony. In particular, the Petitioners pointed to Rahall’s deposition testimony that she and her fiancé, George Kornahrens, had been “together” since May 2005, and that they had been engaged to marry for the previous four years. (R. 281). Rahall testified that during 2010, she resided at 60 Romney Street -- which Kornahrens owned -- “all the time” and later explained that she had “really been staying here I would say 70 percent of the time since 2008.” (R. 282). Rahall also described 60 Romney Street as “where we live, me and George.” (R. 304). The following is that passage from her deposition -- which was cited in the Petition for Writ of Certiorari with a cite to the Record on Appeal:

- Q. So on August 20th, 2010, [Rabon] would have been a social guest?

A. Yes.

Q. She was staying as a guest with you and George at –

A. Yeah, she always stays with us at 60 Romney Street. That's where we live, me and George.

Q. So when she came to visit, she'd stay with you?

A. Yes. Always.

(R. 304). In addition, the Petitioners referenced Rahall's deposition testimony that she had her *own key to the apartment* and was able to come and go as she pleased. (R. 317, 340). She also permanently kept clothes and other personal effects at the apartment. (R. 319). That is not conduct associated with a social guest. Importantly, Rahall never described herself in her deposition as a social guest or someone who only occasionally was on the premises or as a licensee. Rahall now claims to have been "a mere guest herself," but that is just not fair or accurate. Rahall was undoubtedly a non-transitory resident and thus a "possessor" of the premises, that is, applying the term this Court utilized in *Neil v. Byrum*, 288 S.C. 472, 343 S.E.2d 615, 616 (1986).

In addition, in addressing the Petitioners' first issue, Rahall not surprisingly makes the same error as the Court of Appeals by focusing *on the wrong duty of care*. Rahall, like the Court of Appeals, addressed only a duty to correct or control a dangerous condition on the property, which arguably falls only on the owner or lessee of the property. Rahall, however, ignores the actual duty of care alleged -- a duty to protect and/or duty to warn Rahall's elderly mother (her guest) of dangerous conditions known to be on the property -- in this case the known propensity of the German Shephard named Gunner to jump up on people. The evidence shows that Rahall knew or should have known that the dog presented a risk of harm to her elderly mother (Elsie Rabon) who was visiting her at the premises. Rahall should have taken steps to warn Rabon

and/or prevent her from coming outside where the dog was located. Rahall also should have made certain that Gunner was chained or otherwise restrained before allowing her mother to walk outside. That is the duty of care at issue -- not a duty to correct or control a dangerous condition on the property.¹

In sum, the Petitioners have shown that the issuance of a writ of certiorari is warranted to address whether duty of care was owed by Rahall to her mother under these facts. To contest that, Rahall only relies on misstatements of the facts and applicable law.

II. The Court of Appeals erred in failing to consider whether the Respondent owed a duty to protect and warn her elderly parent of a dangerous condition under a “special relationship” theory because the issue was “novel” and lacked existing precedent.

South Carolina law recognizes that there is a duty to warn or otherwise protect "where the defendant has a special relationship *to the victim.*" *Faile v. South Carolina Dept. of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). (Emphasis added). In the case at bar, the Petitioners contend that the relationship between Rahall and her elderly mother, Elsie Rabon, who had come to the premises for a visit, is specifically the type of special relationship that gives rise to a duty to warn and/or protect under the factual circumstances of this case.

In her return, Rahall makes several erroneous arguments of law and fact. First, Rahall, like the trial judge, errs in relying on the Court of Appeals' decision in *Roe v. Bibby*, 410 S.C. 287, 763 S.E.2d 645 (Ct. App. 2014). Interestingly, the Court of Appeals did not cite to *Roe* in its decision in this case. At any rate, *Roe* is not instructive. In *Roe*, the plaintiff was attempting

¹ In her return, Rahall makes several references to “admissions” made in a “footnote 4” in the Petition for Writ of Certiorari. The Petitioners have no idea to what Rahall is referring. The Court should note that the Petition does not include a “footnote 4.”

to argue that the defendant wife owed a duty to her neighbors and their children to warn about her husband who was allegedly a sexual predator. The Court of Appeals ultimately found no special relationship because there was no evidence that the wife had knowledge of a specific threat of harm posed by her husband and because there was no evidence that the wife had the ability to monitor, supervise or control *her husband*. Thus, a proper reading of *Roe* shows that the Court of Appeals addressed the "special relationship" exception from the perspective of the defendant wife's ability to monitor, supervise or control the conduct of the *perpetrator* rather than the *victims*. There is no question in *Roe* that the defendant wife did not have a special relationship with the neighborhood children who were victimized. She clearly had no ability to monitor, supervise or control them.

In contrast, in the present case, the Petitioners are asserting that there is a special relationship between Rahall and the *victim*, who was her elderly mother visiting from out of town. Moreover, contrary to Rahall's bald and unsupported assertions in her return, there is substantial evidence presented that Rahall did have knowledge of a substantial risk of harm posed to her mother by Gunner. In addition, Rahall had the ability to monitor, supervise, and control her mother's actions on the premises to keep her from coming into contact with the dog, but she did not do so. As a result, a duty of care was owed by Rahall to her mother.

In her return, Rahall claims that she "had little to no interaction with Gunner." See, Return, p. 15. That is clearly false. Rahall was with her fiancé George Kornahrens when he bought the dog. (R. 283-285). Moreover, Rahall testified that she was well aware that Gunner was "overfriendly" and that he would routinely jump on people – with that occurring even daily. Rahall explained that the dog had done the same to her several times and that she had frequently seen the dog jump up on other people before the August 20, 2010 incident. (R. 285-286). In

fact, the dog had jumped up on her "a couple times the week before." (R. 326). Thus, the evidence shows that Rahall knew or should have known that an "overfriendly" dog posed a danger to her elderly mother if he jumped on her as the dog was prone to do. Moreover, contrary to Rahall's reasoning, there was no need for the dog to have "malicious intent" to be recognized as posing a risk of harm. Clearly, knowledge by Rahall of the dog's repeated tendency to jump up on people even in an "overfriendly" manner (her exact word) is sufficient information to know that a dog of its size (i.e., a German Shepherd) posed a substantial risk of harm to her elderly mother should the dog come into contact with her. That is precisely what occurred, and Rahall failed to take any action to warn her mother to stay out of the yard or to prevent her mother from entering the yard without first ensuring that Gunner was restrained.

Finally, it is worth noting that Rahall once again includes a string citation of a number of cases from other jurisdictions, but none of those cases are on point or are even closely analogous. Quite frankly, it is a meaningless string citation that adds absolutely nothing to the analysis. None of those cases address *whether the relationship of an adult child and elderly parent* creates a special relationship under facts similar to those in this case. None of those cases even address whether a parent-child relationship creates a duty to protect. Likewise, none of those cases address whether a special relationship exists between the defendant and the victim based upon the ability to control the victim as opposed to the ability to control the perpetrator of the harm.

CONCLUSION

Based on the foregoing discussion, the Petitioners respectfully renew their request that this Court grant their Petition for a Writ of Certiorari.

Respectfully submitted,

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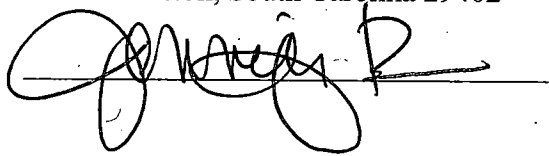
Counsel for Petitioners

December 10, 2019

CERTIFICATE OF SERVICE

The undersigned employee of Lindemann, Davis & Hughes, P.A., attorneys for the Petitioners, does hereby certify that service of **Petitioners' Reply to Respondent's Return to Petition for Writ of Certiorari** was made upon all counsel of record by placing a copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 10th day of December 2019:

Edward K. Pritchard, III, Esquire
Pritchard Law Group, LLC
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A handwritten signature in black ink, appearing to read "Edward K. Pritchard, III", is written over a horizontal line.

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