THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2018-002166
Trial Court Case No. 2016-CP-39-01223

Kevin M. Granatino.....Appellant

v.

Calvin Williams, Clemson University, South Carolina Department of Transportation, and Thrift Development Corporation.....Defendants

Of Which:

South Carolina Department of Transportation and Thrift Development Corporation.....Respondents.

FINAL BRIEF OF RESPONDENTS

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I. Did the circuit court err in granting summary judgment where Appellant stipulated expert testimony was necessary to establish his claims against Respondents, but failed to designate any expert witnesses within the time limits imposed by a consent scheduling order?

II. Did the circuit court err when it determined as a matter of law that Appellant was greater than 50% responsible for his injuries where, at the time of the collision, Appellant was attempting to cross a multi-lane highway at night when carrying someone on his back, while legally intoxicated?

III. Did the circuit court err in granting summary judgment, where it analyzed the two competing factual scenarios presented by Appellant and determined that neither scenario would result in liability being imposed on Respondents?

STATEMENT OF THE CASE

This appeal arises out of the circuit court's granting of summary judgment in favor of Respondents, Thrift Development Corp. ("Thrift") and the South Carolina Department of Transportation ("SCDOT). (R. pp. 11-34). The action arises out of an October 23, 2014, pedestrian-vehicle collision at an intersection which had been under construction. (R. pp. 35-47). Appellant filed his initial Summons and Complaint on October 21, 2016, in which he named as defendants Calvin Williams (the driver of the vehicle involved in the accident), Clemson University, SCDOT, and "ABC Corporation" (identified as "an unidentified corporation conducting business in Pickens County, South Carolina"), the company performing construction at the intersection. Appellant subsequently amended his Complaint on February 15, 2017, identifying Thrift as that entity and removing "ABC Corporation." (R. pp. 35-47). On October

25, 2017, a "Consent Scheduling Order" was entered into by all parties which, in part, required Appellant to "file and serve a document identifying by full name, address, and telephone number each person whom Plaintiff expects to call as an expert at trial by January 1, 2018." (R. pp. 1-3).

Appellant failed to identify any expert witnesses by the deadline imposed by the scheduling order, and did not seek to expand the time to identify any experts. (R. pp. 66-126). Appellant's attorneys filed a motion to be relieved as counsel on January 12, 2018. (R. pp. 127-128). That request was granted on January 25, 2018. (R. pp. 4-6). On January 19, 2018, Respondents filed motions for summary judgment premised upon 1) the lack of expert testimony and 2) Appellant was greater than 50% liable for his injuries. (R. pp. 129-131). Clemson also filed a motion for summary judgment[1].

These motions were heard on June 1, 2018, and the circuit court entered an order granting summary judgment in favor of Respondents and Clemson University on July 19, 2018. (R. pp. 11-25). On July 27, 2018, Appellant filed a motion to alter or amend pursuant to Rule 59(e), SCRCP, as to the summary judgment in favor of Respondents, but not as to Clemson. (R. pp. 263-268). That motion was heard on October 25, 2018, and in an order filed November 20, 2018, the circuit court denied Appellant's 59(e) motion. (R. pp. 26-34). Appellant filed his Notice of Intent to Appeal on December 7, 2018. (R. pp. 274-275).

STATEMENT OF THE FACTS

On October 23, 2014, Appellant, a student at Clemson University, was attempting to cross Highway 123 at College Avenue in Clemson at approximately 9:56 pm when a car being driven by Calvin Williams struck Appellant. (R. p. 36; R. p. 232). The impact occurred in the middle eastbound lane of Highway 123, after Appellant had successfully crossed the westbound

[1] Mr. Williams has settled with Appellant.

lanes of traffic. (R. p. 233). At the time of the accident, Appellant was carrying a friend on his back. (R. pp. 204-205). A blood test taken at the hospital that night revealed Appellant's blood alcohol level was .122. (R. p. 254). The intersection where the accident occurred had been under construction prior to the accident, but was not an active construction zone. (R. p. 49).

In his Amended Complaint, Appellant alleges Respondents violated "industry standards" relating to the "construction area." Appellant's Amended Complaint also alleges Respondents:

a. Negligently created and/or constructed the intersection;

b. Negligently allowed a dangerous condition to exist at the intersection;

c. Failed to eliminate known dangerous conditions at the intersection;

d. Failed to properly and adequately maintain a construction zone at the intersection;

e. Failed to warn of dangerous conditions; and

f. Otherwise negligently maintained, inspected, and/or repaired the intersection and/or the area surrounding the intersection during construction.

(R. pp. 42-43).

During his deposition, Appellant repeatedly testified, without prompting by opposing counsel, that the light turned yellow when he reached the middle of the highway:

> Q: So tell me what you remember as you got to the – as you approached that intersection.
> A: I just remember we crossed, we made it to the middle like of the intersection, and the lights turned yellow, the car closest to us stopped, and then we started to cross, and then I got hit.
> Q: And let's back up to when you first stepped off the sidewalk to cross, okay. What do you remember doing? Did you stop?
> A: We stopped, and then the car in the first lane came to a complete stop, so we started across.
> Q: And the stopped of that vehicle, is that what signaled to you that it was appropriate to go into the intersection?
> A: Yeah. And well, the light was yellow, turning red, the first car stopped, so we thought we were good to cross.

(R. pp. 205-206)

***

Q: What happened – after you got to the middle what's the next thing you remember?

A; The car in the lane closest to us, when the light turned yellow that car stopped, and so we started across...

(R. p. 209)

As indicated by the above excerpts from Appellant's deposition, once Appellant saw the light turn to yellow, the car in the left-hand turn lane slowed, and Appellant then proceeded across the eastbound lanes of traffic when he was struck by Mr. Williams. (R. pp. 205-206, 209). Contrary to the assertion in Appellant's brief, witnesses to the accident described Mr. Granatino being involved in "horse play" and running across the intersection just before impact. (R. p. 230; R. p. 246). For his part, Appellant characterized his speed crossing the street as "a brisk walk, walking as fast as I could while carrying somebody." (R. p. 206).

Appellant testified that he was familiar with the intersection. (R. p. 208). Lindsey Jones, the friend Appellant was piggybacking across the intersection, does not remember the accident or the moments leading up to it. (R. p. 223).

Appellant has not identified any witness(es) who are competent to testify regarding Respondents' respective duties, how those duties were breached, or how this accident would not have occurred but for those breaches.

STANDARD OF REVIEW

"Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005) (citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004) *and* Rule 56, SCRCP). The purpose of summary judgment is to expedite the disposition of cases that do

not require the services of a fact finder. *Rife*, 363 S.C. at 215, 609 S.E.2d at 568 (citing *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 443 (2003)). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (2003). To defeat a properly supported motion for summary judgment, the party opposing the motion "must come forward with specific facts showing there is a genuine issue for trial." *Regions Bank*, 354 S.C. at 660, 528 S.E.2d at 438. "Even though courts are required to view the facts in the light most favorable to the nonmoving party, to survive a motion for summary judgment, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Grimsley v. S.C. Law Enforcement Div.*, 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015) (internal quotations omitted). "Summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 11 (2006).

ARGUMENT

I. This Court should affirm the circuit court's decision based on the grounds appearing in the Record of Appeal.

For the reasons outlined below and pursuant to SCACR Rule 220(c), the circuit court's order was proper and should be affirmed.

II. Appellant's failure to secure expert testimony is fatal to Appellant's claims against Respondents.

a. Appellant has stipulated that expert testimony is required.

In attacking the final prong of the circuit court's Order granting summary judgment to Respondents, Appellant argues that expert testimony is not necessary to establish that

Respondents breached a duty of care to Appellant. However, at the hearing on Respondents' motions for summary judgment, Appellant's counsel stipulated that expert testimony *was* necessary to establish the claims against Respondents: "Now, I think they're right. I mean the problem is that [it] does get in the realm of experts" (R. p. 90). Appellant's counsel reiterated this concession during the following exchange with the Court at the hearing on Appellant's motion to reconsider:

> The Court: Well regardless of whether you have a scheduling order in place, this is a 2016 case. I mean, it seems like to me before, especially making claims against...the construction company, Thrift and I don't know, the Department of Transportation. I mean, it seems like that would be – the expert he would have got before he filed the lawsuit.
> Appellant's counsel: I can't disagree with that, Your Honor.

(R. p. 113).

"A stipulation is an agreement, admission or concession made in judicial proceedings by the parties thereto or their attorneys. **Stipulations are, of course, binding upon those who make them.**" *Kirkland v. Allcraft Steel Co.*, 329 S.C. 389, 392, 496 S.E.2d 624, 626 (1998) (Internal citations omitted) (Emphasis added). Furthermore, an issue conceded in the trial court cannot be argued on appeal. *State v. Bryant*, 372 S.C. 305, 314, 642 S.E.2d 582, 587 (2007) (Appellant could not assert violation of right to fair trial where he conceded trial court's ruling was not prejudicial). Because Appellant has conceded an expert witness is necessary to establish his case against Respondents, he is barred from now asserting otherwise.

Even assuming *arguendo* that Appellant is not bound by the repeated concessions of counsel at the two hearings related to Respondents' summary judgment motions, expert testimony is necessary to establish the elements of negligence against Respondents. Where an area of testimony is beyond the realm of ordinary lay knowledge, expert testimony usually will be required to establish both the standard of care and the defendant's departure therefrom,

because "juries must be informed of the criteria upon which a defendant's conduct is to be judged." *Kemmerlin v. Wingate*, 274 S.C. 62, 65, 261 S.E.2d 50 (1979). Appellant's Amended Complaint alleges Respondents violated unspecified "industry standards" relating to the "construction area" and contains a litany of alleged negligent acts or omissions. Therefore, in order to establish Respondents owed a duty to Appellant and then committed a breach, Appellant would need to establish the actual industry standards applicable to Respondents and how those standards were not met under the facts of this case. Those areas of discussion conceivably would entail testimony premised upon the appropriate markings, safety signage, and traffic control devices, as well as the frequency of inspections to ensure these devices remain in place. In light of Appellant's allegations against them, the **only** way Respondents' conduct can be judged is through expert testimony. Without it, Appellant's claims fail.

Moreover, in positing that expert testimony is unnecessary, Appellant is effectively seeking permission to present the fact that an accident occurred to establish liability. Not only is this plainly a *res ipsa loquitor* argument, but it is also an invitation to this Court to apply a strict liability standard to Respondents without any precedent for doing so. Accordingly, the Court should reject Appellant's arguments and affirm the circuit court's decision.

b. Appellant's failure to identify an expert to address the alleged negligence of Respondents required the circuit court to grant summary judgment to Respondents.

As noted above, Appellant's failure to establish, after nearly two years of discovery, the specific standard(s) of care owed by Respondents and acts demonstrating breach(es) is fatal to Appellant's case. Without testimony to establish the existence of a duty and a breach, Appellant's claim fails as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) ("A

complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.")

Because Appellant failed to identify an expert witness within the period imposed by the consent scheduling order entered in this case, there is no testimony or evidence establishing Respondents' standard(s) of care, or that a breach occurred. Correspondingly, there is no testimony that but for any such breach, the subject accident would not have occurred. The record is devoid of any evidence to establish these essential elements of Appellant's claims against Respondents.

Additionally, this Court should reject Appellant's argument that equity requires reversal of summary judgment due to alleged difficulties with prior counsel. As is evident from his appearance *pro hac vice*, Appellant's stepfather is a licensed attorney in Massachusetts who has been involved in this matter at every juncture. Moreover, "a scheduling order is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril." *Jorden v. E.I. du Pont de Nemours & Co.*, 867 F. Supp. 1238 (D.S.C. Sept. 30, 1994). After filing suit nearly two years after the accident occurred, Appellant had an additional fourteen months to locate and identify appropriate expert witnesses to address the standards of care imposed on Respondents. The **consent** scheduling order was filed October 25, 2017, over two months before Appellant's deadline to identify experts. As should be readily apparent, this deadline did not sneak up on anyone. Equity aids the vigilant and diligent. *See Collins v. Sigmon*, 299 S.C. 464, 385 S.E.2d 835 (1989). Therefore, even under an equitable analysis, the circuit court correctly determined that summary judgment was appropriate.

Moreover, Appellant specifically requests that this Court "reverse the circuit court's decision to grant summary judgment...and to remand the case to the circuit court to resume

proceedings from the point at which they were improvidently terminated." (Appellant's brief, p. 3). Even if this Court were to reverse the grant of summary judgment, Appellant still does not have an expert witness, and Appellant has not moved to enlarge the time to designate expert witnesses. Appellant would therefore remain unable to establish his claims and summary judgment would be appropriate once again. Therefore, even if this Court does what Appellant asks it to do, Appellant cannot rectify his failure to provide expert testimony to establish liability against Respondents.

III. The circuit court correctly determined Respondents could not be found liable to Appellant.

a. The circuit court's apportionment of liability was not appealed as to Clemson and therefore is the law of the case as to Respondents.

In its Order granting summary judgment as to Respondents and Clemson, the circuit Court determined that summary judgment was appropriate because Appellant's negligence was greater than 50%. Appellant has not appealed that ruling as to Clemson. (R. pp. 274-275). An unappealed ruling is the law of the case. *M-L Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997). A plaintiff is barred from asserting a claim if his negligence is greater than 50% when compared to that of those from which he seeks to recover. S.C. Code Ann. §15-1-300. Practically speaking, that means if a plaintiff is deemed to be greater than 50% liable in a case involving multiple defendants, then recovery is barred against **each** defendant. In this case, Clemson University was granted summary judgment on multiple grounds, including that Appellant was greater than 50% negligent in causing his own injuries. That finding as to Clemson was not appealed, and therefore it is the law of the case. *See Ralph v. McLaughlin*, No. 5681, 2019 S.C. App. LEXIS 76, 834 S.E.2d 213 (2019) (Finding the circuit court erred in failing to apply the specific rulings and findings of fact factual determinations

from a previous grant of summary judgment to a third-party defendant as the law of the case) (*cert pending*). Necessarily, that means Appellant is greater than 50% liable for his injuries, not only to Clemson, but to Respondents as well. Consequently, Appellant's claims are barred, and the circuit court's ruling on this issue (which is the law of the case) may not be disturbed.

b. Appellant failed to raise the purportedly improper liability apportionment to the circuit court, and therefore the issue is not preserved for appellate review.

Appellant takes great pains in his memo to demonstrate that the circuit court misapplied the "formula" for apportioning fault among Appellant, Respondents, and other Defendants. As discussed in more detail below, Appellant's argument is based on a misinterpretation of the circuit court's order. More importantly, however, this was neither raised to nor ruled on by the circuit court, and therefore it is not preserved for appellate review. *S.C. Dept. of Transp. v. First Carolina Corp of S.C.*, 372 S.C. 295, 641 S.E.2d 903 (2007). Therefore, this Court should not consider Appellant's arguments on this point.

It was incumbent upon Appellant to bring two issues to the circuit court's attention in order to present this issue on appeal. Neither was raised. First, because the order granting summary judgment never explicitly states Mr. Williams' potential fault is excluded from the circuit court's analysis, Appellant was required to seek clarification on that issue. Second, Appellant was obligated to contest the circuit court's findings on liability apportionment, on the basis that the circuit court failed to consider the combined fault of all four defendants.

Appellant's sole concern in his motion to alter or amend on this issue was that the circuit court relied too heavily upon the allegedly unreliable testimony of Appellant. He never mentioned any issue with what he now contends was a misapplied fault formula. Therefore, in

accordance with longstanding error preservation requirements in this state, Appellant's argument on this issue is unpreserved for review.

c. Based upon established precedent, the circuit court correctly determined that Respondents could not be liable to Appellant under either factual scenario presented by Appellant.

Appellant asserts that the circuit court misapplied the law relating to comparative fault, and therefore committed an error of law in finding Appellant was greater than 50% at fault as a matter of law. In support of his position, Appellant contends that the circuit court failed to consider the fault of Mr. Williams when evaluating the comparative fault of Appellant and Defendants. He also contends that the circuit court's alternative finding, based upon a factual scenario first presented by Appellant mere days before the summary judgment motion hearing, demonstrates the fallacy of the circuit court's determination. Appellant's argument is based upon a basic misreading of the circuit court's order. The circuit court never excluded Mr. Williams from its discussion of comparative fault, and it is completely speculative of Appellant to argue it did.

Furthermore, Appellant misunderstands the circuit court's order regarding its analysis of comparative fault. The circuit court plainly conducted an alternative analysis of fault in direct response to Appellant's conflicting accounts. As previously mentioned, Appellant repeatedly and freely testified in his deposition that the light turned yellow when he reached the middle of the intersection (implying that he began to cross the street when the light was green and therefore was illegally in the intersection). By contrast, in the affidavit submitted two days before the hearing on the motion for summary judgment, Appellant stated that the light turned red before he entered the intersection and remained red as he attempted to cross. Despite finding the affidavit to be a "sham," the circuit court nevertheless explored the alternative scenarios independently of

one another, ultimately determining that under either scenario, Respondents could not be liable to Appellant.

Under the "red light scenario" presented by Appellant, he waited until the light turned red before entering the intersection and made his way halfway across the intersection before being struck by Mr. Williams. Under these facts, Mr. Williams would have been guilty of running a red light that had been red for a significant amount of time. Based upon this realization, the circuit court concluded that Mr. Williams would be completely at fault for the accident as a matter of law under this scenario, a perfectly logical determination. Contrary to Appellant's criticism of the circuit court on this issue, it does not require a great deal of discussion to explain why a driver who completely disregards a traffic signal instructing him to stop is solely at fault for whatever injuries occur as a result of the driver's failure to heed that signal.

On the other hand, in examining whether Appellant would be greater than 50% responsible based upon the "yellow light scenario," the circuit court relied upon *Bloom v. Ravoira*, 339 S.C. 417, 529 S.E.2d 710 (2000), in which the Supreme Court reinstated the circuit court's grant of summary judgment to the driver of a vehicle who struck a pedestrian. In *Bloom*, the Supreme Court determined as a matter of law that no reasonable jury could find that the driver's negligence was greater than the pedestrian's own negligence. The Supreme Court based its decision on several considerations, including that the pedestrian quickly entered the roadway, that he stepped out into the road between two parked cars in the middle of a block, and that he was dressed in dark clothing. Based upon these facts, the Supreme Court reasoned:

> Here, the undisputed facts establish that [pedestrian] attempted to cross the street but did not do so in a safe, reasonable manner. Any factual issues which might exist as to [driver's] fault in this accident cannot alter the inescapable conclusion that, as a matter of law, [pedestrian's] fault exceeded fifty percent. Where evidence of the plaintiff's *greater* negligence is overwhelming, evidence of slight

> negligence on the part of the defendant is simply not enough for a case to go to the jury.

Bloom, 339 S.C. at 424, 529 S.E.2d at 714 (emphasis in original).

The facts in this case are significantly consistent with those in *Bloom* and require the same result being reached. Appellant testified that a car was in the left-hand turn lane, meaning he was obscured from the view of motorists traveling in the other lanes, just as the at-fault pedestrian in *Bloom*. Witnesses testified Appellant was engaged in "horse play" and was running across the intersection; Appellant testified he was moving "as fast as [he] could while carrying somebody." (R. pp. 206, 230, 246). The *Bloom* at-fault pedestrian quickly entered the roadway as well. Both collisions also occurred at night. Additional facts in the case at bar further support the circuit court's finding, including 1) Appellant had a blood alcohol level of .122 (R. p. 254); 2) Appellant was carrying someone piggyback across the intersection (R. p. 204), and 3) Appellant committed multiple statutory violations[2], including S.C. Code Ann. §56-5-3110 (Pedestrians shall obey the instructions of any official traffic control device); S.C. Code Ann. §56-5-3130 (No pedestrian shall suddenly leave a curb or other place of safety to walk or run into the path of a vehicle which is so close as to constitute an immediate hazard); S.C. Code Ann. §56-5-3150 (Pedestrians shall yield the right of way upon the roadway); S.C. Code Ann. §56-5-3160 (Any pedestrian upon a roadway shall yield a right of way to all vehicles upon the roadway); and S.C. Code Ann. §56-5-3270 (A pedestrian who is under the influence of alcohol to a degree which renders himself a hazard shall not walk or be upon a highway except a sidewalk) (R. pp. 14, 17-18). Even when viewed in the light most favorable to Appellant, the facts establish that Appellant was struck when he attempted to carry someone across an intersection, while

[2] Appellant has not challenged the trial court finding Appellant committed these statutory violations, and therefore it is the law of the case.

jaywalking at night, and in a legally-intoxicated state. He cannot reasonably argue that he failed to cross the street in a safe, reasonable manner, and therefore his fault exceeded 50%.

Appellant incorrectly states that Appellant's blood alcohol level and inferences drawn therefrom are inadmissible and should not have been considered by the circuit court. The Supreme Court has explicitly found an individual's blood alcohol level to be admissible in civil trials. *Hartfield v. Getaway Lounge & Grill, Inc.*, 388 S.C. 407, 417-18, 697 S.E.2d 558, 563 (2010) ("Appellants' contention that S.C. Code Ann. §56-5-2950 (Supp. 2009) forbids entrance of Helton's BAC is misplaced...So long as a sufficient chain of custody exists to authenticate the evidence in a civil case, this type of evidence is admissible"). Moreover, courts are permitted to charge the jury on the permissive inference of intoxication pursuant to S.C. Code Ann. §56-5-2950. *Id.* at 417, 697 S.E.2d at 563. Accordingly, both the level of intoxication and the inference which may be drawn from that intoxication level are admissible and were therefore appropriately considered by the circuit court.

Furthermore, none of these facts, even if in dispute, relate to any alleged negligence on the part of these Respondents. The only basis upon which Appellant asserts Respondents could be liable to Appellant is an allegedly-malfunctioning pedestrian signal and the lack of a painted crosswalk. Setting aside the fact that Appellant has no testimony to establish either constitutes a breach of any duty owed, neither amounts to a genuine issue of **material** fact. First, whether the crosswalk was painted is irrelevant to Appellant's actions, because he was crossing where the crosswalk would have been and he was familiar with the intersection, having crossed through on at least a weekly basis (R. p. 208). Second, the status of the pedestrian signal is a red herring. Initially, it must be noted that there is nothing in the record to establish the pedestrian crosswalk signal was within the control of either Respondent. Therefore, assuming it was not operable,

Appellant has no evidence that either Respondent was responsible for ensuring it worked. Moreover, if it had been operable, the signal would merely have been complementary to the traffic signals, which were undisputedly working. If, as Appellant testified in his deposition, the light turned yellow when Appellant reached the middle of the road, then the pedestrian signal would have been indicating "don't walk" when Appellant began to cross the road. Therefore, Appellant would have been ignoring that instruction, just as he ignored the green light. If Appellant's subsequent "red light scenario" is accurate, then the pedestrian signal would have indicated it was safe to cross, a fact that would have remained true up until the point in time when Mr. Williams ran the red light and struck Appellant.

Under either scenario, there is nothing in the record to suggest that the presence of a painted crosswalk or an operable pedestrian signal would have resulted in a different outcome for Appellant. Appellant has not presented any testimony or evidence that a finished crosswalk or pedestrian signal would have provided any additional warning to Mr. Williams and prevented Mr. Williams from hitting Appellant. There is no testimony or evidence that but for the absence of either item, this accident would not have occurred. Therefore, these alleged failings are not disputes of material facts regarding the negligence of Respondents, and do not allow Appellant to survive summary judgment.

Although not directly consequential to the appeal, the circuit court was properly skeptical of Appellant's affidavit. Submitted two days before the hearing on Respondents' motions for summary judgment, it directly contradicts Appellant's prior sworn deposition testimony, contains numerous instances of inadmissible hearsay and unsupported opinions, references a mid-deposition conversations with his counsel in violation of Rule 30, SCRCP, and is not notarized. (R. pp. 168-172). Moreover, Appellant submitted the affidavit in an effort to have the circuit

court disregard sworn testimony from Appellant, premised entirely on the basis that Appellant is unable to provide reliable testimony, based solely upon a representation by the same person who is claiming to be unreliable. (R. pp. 168-172). This assertion, which properly should come from a medical doctor or other person qualified to offer an appropriate diagnosis and opinion, is further betrayed by a release made by Appellant in this matter related to the withdrawal of his prior counsel. (R. pp. 132-133). That release was relied upon by the circuit court in relieving Appellant's prior counsel and certifies Appellant's knowledge, consent, and understanding of the ramifications of his prior counsel's withdrawal, and was executed one month after Appellant provided deposition testimony in this case[3]. (R. pp. 4, 132-133). In short, the affidavit is improper in its form, insufficient in its substance, and questionable in its veracity.

CONCLUSION

For the reasons discussed hereinabove, the circuit court correctly determined that summary judgment should be granted to Respondents. While this is undoubtedly a tragic situation, the law only allows recovery against those who are liable for injuries. Appellant has failed at every turn to establish any right of recovery against Respondents. Therefore, this Court should affirm the circuit court's order.

[3] In addition, although not part of the Record, Appellant represented himself in a collection action brought against him by Greenville Health System in 2016 (two years after the accident and a year before his deposition) relating to unpaid hospital bills. *See Greenville Health System v. Kevin M. Granatino*, C.A. No. 2016-CP-39-398.

Respectfully submitted,

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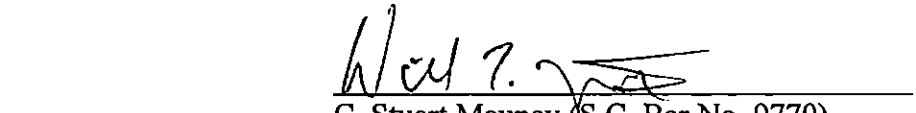
CERTIFICATE OF COMPLIANCE WITH RULE 211(b)

The undersigned counsel hereby certifies that Respondent's Final Brief complies with the provisions of Rule 211(b), SCACR.

I SO CERTIFY,

Respectfully,



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