

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

**RECEIVED**

William A. McKinnon, Circuit Court Judge

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**Apr 19 2021**

**SC Court of Appeals**

Appellate Case No. 2020-001657  
Trial Court Case No. 2018CP4602502

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Kimberly Ann Condra.....Appellant,

v.

Gregory Scott Childers and Jeffrey Steven Childers.....Respondents.

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INITIAL BRIEF OF RESPONDENT

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April 16, 2021

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STATEMENT OF ISSUE ON APPEAL

1. DID THE TRIAL COURT ERR IN GRANTING A DIRECTED VERDICT AS TO BOTH THE NEGLIGENCE AND BREACH OF THE UNFAIR TRADE PRACTICES ACT CAUSES OF ACTION TO THE LICENSED BUILDER WHO HAD ILLEGALLY ASSISTED IN THE CONSTRUCTION PROJECT THAT CAUSED THE APPELLANT'S DAMAGES?

COUNTER STATEMENT OF ISSUE ON APPEAL

1. DID THE TRIAL COURT ERR IN GRANTING A DIRECTED VERDICT TO STEVE CHILDERS AS TO BOTH THE NEGLIGENCE AND UNFAIR TRADE PRACTICES ACT CAUSES OF ACTION?

STATEMENT OF THE CASE

Respondent agrees with the appellant's procedural history of the case.

STANDARD OF REVIEW

For the limited purpose of this appeal, respondent agrees with the appellant's statement of the standard of review as it relates to the issue on appeal.

FACTS

For the limited purpose of this appeal, respondent agrees with the appellant's statement of the facts as they relate to the issue on appeal.

ARGUMENTS

- A. Condra's Negligence Claim Fails Because She Failed to Prove Causation.

Condra contends that Steve Childers is liable to her in negligence by and through his alleged violation of S.C. Code Ann. (§) 40-1-110(1)(c). However, statutory violations are not sufficient to establish a prima facie case of negligence. Rather, a statute may provide the first element by establishing a duty owed to the plaintiff.

To demonstrate a duty established by statute, the plaintiff must show: "(1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and

(2) that he is a member of the class of persons the statute is intended to protect.” *Whitlaw v. Kroger*, 306 S.C. 51, 53 (1991). Assuming, *arguendo*, that the statute is intended to protect her from the harm complained of and that Steve Childers actually violated (§) 40-1-110(1)(c), Condra has proved only that he owed her a duty and that he breached that duty. Condra must still show that Steve Childers’ alleged violation of the statute was the proximate cause of her injuries.

“Causation in fact is proved by establishing the injury would not have occurred “but for” the defendant’s negligence.” *Kroger*, 306 S.C. at 54. In short, Condra argues that she would not have lost her money to Greg Childers, but for Steve Childers’ work on the project when it was not properly permitted by the City of Rock Hill. Yet, she stated in her own testimony that she paid Greg Childers before and after Steve Childers came to her property.<sup>1</sup> When asked if Greg Childers “was taking your money whether Steve is there or not,” she replied: “yes.”<sup>2</sup>

Furthermore, Condra presented no evidence that Steve Childers performed less than satisfactory work when he was on the project site. Steve Childers’ alleged violation was not the cause in fact, much less the proximate cause, of Condra’s injuries in this case.

In fact, it was a violation of her own duty which led to her injuries. Condra testified that she got the initial permits for the project.<sup>3</sup> She also testified that, during the initial permitting

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<sup>1</sup> Tr. p. 125, lines 3-8 (Condra signed the contract with Greg Childers on June 25<sup>th</sup> [Tr. p. 16, lines 21-23; p. 17, lines 16-19]. By June 27<sup>th</sup>, she paid him \$24,250 [Tr. p. 24, lines 1-25, p. 282, line 25 – p.283, line 7]. Despite her knowledge of Greg declining to obtain proper permits, Condra paid him an additional \$3,500 [Tr. p. 21, lines 4-21; p. 79, line 25; p. 80, line 20; p. 105, line 11; p. 106, line 7]. Steve Childers worked at her home from mid-July to mid-August [p. 22, line 18; p. 23, line 10; p. 24, line 23; p. 25, line 6; p. 17, lines 9-22; p. 27, line 22; p. 76, lines 5-9]. Despite stalled work, Condra paid Greg Childers an additional \$15,000 on August 11<sup>th</sup>, despite the contract not yet requiring that payment based on the job completion [Tr. p. 24, line 1; p. 25, line 18]. A full month after Steve Childers left Condra’s property and never returned, she paid Greg Childers the remaining \$9,250, despite the lack of progress on the project.) [p. 26, line 22; p. 27, line 22; p. 85, lines 10-19].

<sup>2</sup> Tr. p. 125, lines 9-11.

<sup>3</sup> Tr. p. 98, lines 5-8.

process, she signed a statement in which she acknowledged: *“You may not hire an unlicensed person as your residential builder or specialty contractor. It is your responsibility to make sure people employed by you have licenses required by state law and by county or municipal licensing ordinances.”*<sup>4</sup> At trial, Condra’s witness – Mike Nugent, Rock Hill Building Official – testified that the homeowner is ultimately responsible for making sure a project is properly permitted.<sup>5</sup>

Condra admitted that she did not ask Greg Childers for a copy of his license before he started his work.<sup>6</sup> She further admitted that she only asked Greg Childers for his license number after Steve Childers had long since finished his work and left the property.<sup>7</sup> Additionally, Condra acknowledged that she never paid Steve directly for anything.<sup>8</sup> She never discussed permits with Steve, and he never offered to obtain any.<sup>9</sup>

The only logical inference to be drawn from all the evidence and testimony provided by the Plaintiff at trial is that Condra would have paid Greg Childers and lost her money regardless of Steve’s presence at the job site. If anything, Steve Childers’ completion of his own work mitigated Condra’s loss from her unfulfilled contract with Greg Childers.

**B. Condra’s UTPA Claim Fails Because She Failed to Prove an Effect on Public Interest or Causation.**

The analysis of Condra’s UTPA claim is similar. “To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the

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<sup>4</sup> Tr. p. 98, lines 21-25.

<sup>5</sup> Tr. p. 175, line 25 – p. 176, line 3; line 20 – p. 177, line 11.

<sup>6</sup> Tr. p. 99, lines 23-24.

<sup>7</sup> Tr. p. 100, lines 2-5.

<sup>8</sup> Tr. p. 121, lines 3-5.

<sup>9</sup> Tr. p. 121, lines 6-7.

plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s).” *Wright v. Craft*, 372 S.C. 1, 23 (Ct. App. 2006). Assuming, *arguendo*, that Steve Childers’ alleged violation of S.C. Code Ann. (§) 40-1-110(1)(c) constitutes “an unfair or deceptive act in the conduct of trade or commerce,” Condra’s claim still fails on the remaining two elements.

Steve Childers’ act did not affect public interest under the UTPA. “An impact on the public interest may be shown if the acts or practices have the potential for repetition.” *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379, (2004). “The potential for repetition may be demonstrated in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts.” *Singleton*, 358 S.C. at 379, 595 S.E.2d at 466.

First, none of Condra’s evidence showed that Steve Childers committed the same acts in the past. Her own witness, Cheryl Forlines, testified that Steve Childers performed worked for her in the past.<sup>10</sup> Forlines stated that Steve Childers “did a beautiful job and I would have him back in a heartbeat.”<sup>11</sup> She further testified that he did “excellent work” and “finished the job on time.”<sup>12</sup> Forlines labeled Steve Childers an “honest man.”<sup>13</sup> Second, there is no potential for repetition, because, as Forlines put it: Steve “got out of the business.”<sup>14</sup>

For substantially the same reasons under the negligence analysis above, Steve Childers also did not cause monetary or property loss to Condra, therefore failing to satisfy the third

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<sup>10</sup> Tr. p. 201, lines 10-13.

<sup>11</sup> Tr. p. 201, lines 15-16.

<sup>12</sup> Tr. p. 202, lines 9-12.

<sup>13</sup> Tr. p. 202, line 16.

<sup>14</sup> Tr. p. 198, lines 2-3.

element of her claim. Again, if anything, Steve Childers mitigated Condra's loss by adding value to Greg Childers' unfulfilled contract. Furthermore, she stated in both her deposition and live testimony that Steve never made any false representations to her of any kind.<sup>15</sup>

#### CONCLUSION

Condra's claims of negligence and violation of the UTPA against Steve Childers are without merit. All of the plaintiff's evidence, even when liberally construed in her favor, required the trial court to dismiss Condra's claims against Steve on a directed verdict.

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<sup>15</sup> Tr. p. 122, lines 2-21.