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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn-Pope, Circuit Court Judge

Appellate Case No.: 2020-001453

Stephan Shugart,.....Appellant,

v.

Historic Hospitality, LLC, Shah Investments, LLC,
and Southern Hotel Properties, LLC,.....Respondents.

INITIAL RESPONDENTS' BRIEF

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STATEMENT OF THE CASE

This premises liability case arises from an incident that occurred in Aiken, South Carolina, in September 2016. The Appellant Stephan Shugart ("Shugart") struck his head on a limb that was part of an ornamental shrub next to a breezeway at the Hotel Aiken. At the time, the Respondent Shah Investments, LLC, owned and operated that hotel.[1]

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[1] The defendant Historic Hospitality, LLC was granted summary judgment six months before the Order granting summary judgment to the Respondent Shah Investments, LLC. [Order.] Shugart's Notice of Appeal referenced *only* the Order as to Shah Investments. Therefore, Historic Hospitality is not properly a party to this appeal and has moved to be dismissed. In addition, according to the trial court's records, the defendant Southern Hotel Properties was never served with the Summons and Complaint and never made an appearance in this case. For that reason, the only proper Respondent in this appeal is Shah Investments, LLC. In an abundance of caution, however, Shah submits that the substantive arguments apply to any and all parties deemed by the Court to be proper Respondents, and the relief sought by Shah is applicable to any and all other such Respondents as well.

Proceeding *pro* se, Shugart filed a Summons and Complaint on April 24, 2019, in the Court of Common Pleas for Aiken County. [Summons and Complaint.] The Complaint named other corporate entities in addition to Shah. [Complaint.] The defendants filed a timely Answer. [Answer.] Later, when it was shown to the trial court's satisfaction that Shah was the only named defendant with any connection to the hotel at the time of the incident involving Shugart, the other defendants were dismissed from the case. Shugart has not appealed the orders dismissing those other defendants. Thus, for purposes of this appeal, Shah should be the only proper respondent.

After taking Shugart's deposition, counsel for Shah moved for summary judgment on July 6, 2020. [Motion for Summary Judgment.] Shah based that motion on the following grounds: (1) Shah had no duty to warn Shugart of the allegedly defective condition, which was open and obvious and which, in fact, Shugart had admittedly seen, and (2) the undisputed facts demonstrated that Shugart's negligence, as a matter of law, was greater than any negligence that could be attributed to Shah. [Motion for Summary Judgment, Memorandum in Support.] In support of the motion, Shah submitted a memorandum and exhibits, including excerpts from Shugart's deposition and photographs of the premises. [Memorandum in Support, Exhibits.]

The Honorable Courtney Clyburn-Pope conducted a hearing on Shah's motion via remote platform on August 31, 2020. [Transcript.] At the conclusion of the hearing, Judge Clyburn-Pope took Shah's motion under advisement. On September 29, 2020, the judge filed an Order Granting Summary Judgment As To Defendant Shah Investments, LLC, in which the judge concluded Shah was entitled to summary judgment on both of the grounds included in its motion. [Order.] Shugart filed a Notice of Appeal in this Court on or about

October 26, 2020. That Notice of Appeal referenced only the Order granting summary judgment to Shah.

STATEMENT OF THE FACTS

The material facts in this case are undisputed and straightforward. On September 29, 2016, while focusing his attention on the dog he was walking on a leash, Shugart ran into a limb that was part of an ornamental shrub next to a breezeway that led from a stairwell into the parking lot of the Hotel Aiken. [Depo. of Shugart, pp. 27, 44; Hearing Transcript, p. 11.] It was during the daytime hours when this occurred. [Depo. of Shugart, pp. 33, 40.] Shugart alleges that his head came into contact with the limb, causing him to fall down and sustain injuries. [Complaint.]

After checking into the hotel the previous day, Shugart had parked his truck in a hotel lot from which the line of ornamental shrubs was clearly visible. [Depo. of Shugart, Ex. 2.] He had then successfully walked past the shrub and its limbs multiple times prior to this incident. [Depo. of Shugart, pp. 45-46.] By Shugart's own admission, the foliage attached to the limb was plainly visible before this incident occurred. [Depo. of Shugart, pp. 33-34.] Despite all those facts, which are undisputed, Shugart walked into the limb. The other reasonable inference to draw is that Shugart simply failed to see the limb because he was paying attention to his dog and not to where he was walking.

STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the [circuit] court under Rule 56(c), SCRCP." *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009). "Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a [circuit] court may grant a motion for summary judgment

if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Id.* "In determining whether any triable issues of fact exist, the evidence and all inferences must be viewed in the light most favorable to the nonmoving party." *Larimore v. Carolina Power & Light*, 340 S.C. 438, 444-45, 531 S.E.2d 535, 538 (Ct. App. 2000).

"Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). "With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by "showing" – that is, pointing out to the [trial] court – that there is an absence of evidence to support the nonmoving party's case.'" *Id.* "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 365 (Ct. App. 2004).

ARGUMENT

I. Summary judgment for Shah should be affirmed because the trial court granted summary judgment on two independent grounds, and Shugart has challenged only one of the grounds on appeal.

Shah moved for summary judgment on two separate grounds. First, Shah asserted that the claimed defective condition was open and obvious, which meant Shah had no duty to warn of it. Second, Shah argued that even if it were negligent in some manner, Shugart's own negligence was greater than fifty percent as a matter of law. The trial judge granted summary motion on both of those grounds. The Order makes that point abundantly clear.

This is crucial for purposes of the appeal because Shugart has challenged only the second ground in his Appellant's Brief.

Although Shugart references "open and obvious conditions" in the brief's Table of Contents, there is little, if any, actual discussion of that issue in the brief. The closest Shugart comes to addressing this issue is in the section numbered as "3" under the "Arguments" heading. In that section, Shugart offers various purported explanations for why he could not see the shrub that he ran into. The rest of the brief focuses entirely on the comparative negligence ruling.

Even under a lenient reading of the *pro se* Shugart's brief, it does not satisfy the standard for preserving the "open and obvious" issue for review. As this Court has held, "[s]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore are not preserved for our review." *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003). *See also First Savings Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (an issue is deemed abandoned when the appellant fails to provide arguments and supporting authority for his assertion). Here, assuming for the sake of this argument that Shugart presented an argument on this issue, he still has not cited or discussed any authority to support his position.[2] Therefore, under the long-established rule, Shugart has abandoned any arguments against the trial court's ruling on the "open and obvious" issue.

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[2] Shugart cites numerous cases in the brief, but all of them deal with the comparative negligence issue. The only section that could possibly be deemed as an argument on the "open and obvious" issue does not cite, discuss or rely on any case law or other legal authorities.

This fact is significant because it prevents the Court from addressing the merits of the appeal. Since Shugart is deemed to have abandoned any challenge to the first summary judgment ground, the trial court's ruling on that issue is unappealed. "[A]n unappealed ruling, right or wrong, is the law of the case." *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). Thus, it is now the law of the case that Shah had no duty to warn Shugart of the allegedly dangerous condition because it was open and obvious. With one of the separate summary judgment grounds now the law of the case, the Court should affirm the result in the trial court without reaching the merits of Shugart's arguments on appeal. *See Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) (where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground becomes the law of the case).

II. The trial court properly granted summary judgment to Shah in this premises liability case because the undisputed facts demonstrate conclusively that the ornamental shrub alleged to be a defective condition was open and obvious to Shugart.

Even if the Court addresses the merits of Shugart's appeal, affirmance of the trial court's decision is still warranted. Shugart's testimony and the exhibits presented to the trial court plainly demonstrate that the shrub limb Shugart ran into was open and obvious to any reasonable person who was paying sufficient attention to where he was going. There was nothing remotely latent or disguised about the shrub and its limb. In other words, there was no reason Shugart *could not* see and avoid the limb; he simply *did not*. Consequently, there is no basis for any liability on Shah's part, and the trial court properly granted summary judgment.

As this Court has noted, "[a] property owner owes an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety and is liable for injuries resulting from any breach of such duty." *Peterson v. Porter*, 389 S.C. 148, 153, 697 S.E.2d 656, 658 (Ct. App. 2010) (quoting *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 256, 607 S.E.2d 362, 365 (Ct. App. 2004)). However, "[a] merchant is not an insurer of the safety of his customers" and "is not required to maintain the premises in such condition that no accident could happen to a patron using them." *Denton v. Winn-Dixie Greenville*, 312 S.C. 119, 120, 439 S.E.2d 292, 293 (Ct. App. 1993).

"The property owner has a duty to warn an invitee only of latent or hidden dangers of which the property owner has or should have knowledge." *Peterson*, 389 S.C. at 153, 697 S.E.2d at 658. "A property owner generally does not have a duty to warn others of open and obvious conditions, but a landowner may be liable if the landowner should have anticipated the resulting harm." *Id.* "The entire basis of an invitor's liability rests upon his superior knowledge of the danger that causes the invitee's injuries." *Sides*, 362 S.C. at 256, 607 S.E.2d at 365 (quoting *Larimore v. Carolina Power & Light*, 340 S.C. 438, 448, 531 S.E.2d 535, 540 (Ct. App. 2000)). "If that superior knowledge is lacking, as when the danger is obvious, the invitor cannot be held liable." *Id.*

There can be no reasonable assertion that the ornamental shrub was anything other than an open and obvious condition. In fact, Shugart does not really even argue otherwise. Shugart has never claimed that the shrub and its limbs were completely hidden from sight or otherwise incapable of being seen. Shugart has argued instead that he could not see "the bush that [he] came in contact [sic] ... because of the foliage that was concealing the limb behind." [Depo. of Shugart, p. 34, lines 8-10.] Significantly, though, Shugart has admitted

that he *could* see the foliage that supposedly concealed the limb. [Depo. of Shugart, p. 34, lines 14-15 ("There was foliage. If you look for the foliage, yes, you would see the foliage.").] Since the "foliage" and the "limb" are both inherent parts of the shrub, the ability to see one was necessarily the ability to see the other. Therefore, Shugart has at least tacitly admitted that he saw, or was able to see, the allegedly defective condition prior to his fall. It is difficult to imagine a condition that could be much more "open and obvious" than that.

Like the limb he walked into, the illogic in Shugart's position is readily apparent. Shugart apparently asks this Court to conclude that the foliage and the limb were two separate things. This is the only way to suggest that seeing one would not be the same thing as seeing both. But common sense strips that assertion of any credibility. The "foliage" that Shugart admittedly could see was *part of the limb*. Any reasonable person would know that without giving it much thought. How else would the foliage be in the air and protruding outward, as Shugart claims this foliage was? It was either part of the branch or magically hanging in midair. Thus, Shugart has failed to present any basis for reversing the trial court's decision that the limb constituted an open and obvious condition, of which Shah had no duty to warn invitees.

Several closely analogous cases support the trial court's decision to grant judgment as a matter of law in Shah's favor. For example, in *Meadows v. Heritage Village Church & Missionary Fellowship, Inc.*, 305 S.C. 375, 409 S.E.2d 349 (1991), the Supreme Court reversed a jury verdict in favor of the plaintiff, where the condition that led to her injuries was open and obvious. The plaintiff in *Meadows* was visiting the defendant's resort property. *Id.* at 376, 409 S.E.2d at 350. She dropped off some passengers in her car at the

resort's hotel and then drove to a parking lot, where she left her vehicle. *Id.* There was a gravel pathway leading from that lot to the hotel, but it was flooded due to recent rain. *Id.* For that reason, the plaintiff decided to cut across a patch of wet grass, which appeared to the quickest alternative route to the hotel. *Id.* While walking across that grassy patch, the plaintiff slipped and fell, injuring her back. *Id.* The trial judge submitted the case to the jury. *Id.* Following verdict for the plaintiff and the denial of its post-trial motions, the defendant appealed. *Id.*

The Supreme Court concluded the trial court had erred by not granting the defendant judgment as a matter of law. Explaining the basis for its decision, the Court stated:

> The question ... is whether [the defendant] owed [the plaintiff] a duty to warn her of the danger presented by wet grass. We hold that [the defendant] had no duty to warn [the [plaintiff], its invitee, about the wet grass because it was a natural condition, the peril of which was obvious. In contrast, a latent defect is one which an owner has, or should have, knowledge of, and of which an invitee is *reasonably* unaware. It is one which a reasonably careful inspection will not reveal.

305 S.C. at 378, 409 S.E.2d at 351 (emphasis in original). The plaintiff could have discovered the wetness of the grass with a "reasonably careful inspection," which meant the defendant had no liability as a matter of law.

The Court went on to note that it had recently adopted section 343 of the Restatement (Second) of Torts, which makes an exception to the "no duty to warn of the obvious" rule for situations where "the possessor should anticipate the harm despite such knowledge or obviousness." 305 S.C. at 378, 409 S.E.2d at 378 (citing *Callander v. Charleston Doughnut Corp.*, 305 S.C. 123, 406 S.E.2d 361 (1991)). However, the Court

concluded that the plaintiff had not presented any evidence sufficient to show that the defendant should have anticipated that particular harm. *Id.*

Using the rationale of *Meadows*, this Court affirmed summary judgment for a defendant premises owner in *Pryor v. Northwest Apartments*, 321 S.C. 524, 469 S.E.2d 630 (Ct. App. 1996). There, the plaintiff was walking across a common area of an apartment complex when she slipped on mud that was covered with pine straw and fell to the ground. *Id.* at 527, 469 S.E.2d at 632. The plaintiff broke her leg as a result of the fall. *Id.* The trial court granted summary judgment to the defendant, and the plaintiff appealed.

After discussing *Meadows* and its factual similarities to the case at bar, this Court held that the defendant had no duty to warn of the muddy, slippery area because it was open and obvious to the plaintiff. 321 S.C. at 529, 469 at 633. The Court further concluded there was no evidence showing that the defendant had any reason to anticipate the particular harm that the plaintiff suffered. *Id.* For those reasons, the Court upheld the summary judgment ruling in the defendant's favor.

In another case with analogous facts, this Court reversed a jury verdict in favor of a plaintiff who tripped and fell in the defendant's parking lot. *Denton v. Winn-Dixie Greenville*, 312 S.C. 119, 439 S.E.2d 292 (Ct. App. 1993). The defendant grocery store had installed a shopping cart corral in its parking lot, which consisted of several concrete dividers. *Id.* at 120, 439 S.E.2d at 293. While the plaintiff was walking from the store to her vehicle, another vehicle approached her at a rapid speed. *Id.* The plaintiff stepped to the side to give the passing car more space, and when she did so, she tripped over one of the dividers and fell, sustaining injuries. *Id.* After a trial resulted in a verdict for the

plaintiff, the trial judge denied the defendant's post-trial motion for judgment as a matter of law. *Id.*

This Court reversed, finding that the shopping cart corral (including the concrete dividers) was an open, obvious and expected part of the premises. The fact that the plaintiff tripped over one of the dividers while her attention was distracted by the other vehicle did not make the divider a defective condition. As the Court explained:

> Accidents may happen around these structures. ... That does not mean they are unreasonably dangerous or that a person exercising due care would not have them on the premises. They are, in fact, common structures that a person taking reasonable care for his own safety would likely expect and see while on the premises.

312 S.C. at 121, 439 S.E.2d at 294. For that reason, the defendant "was under no duty to warn of the cart corral or to fence it off from the rest of the parking lot." *Id.*[3]

The reasoning from *Meadows*, *Pryor* and *Denton* applies with equal force to the present case. As discussed above, the ornamental shrubs on the premises (including their limbs) were open and obvious to any reasonable person. A "reasonably careful inspection" certainly would have discovered them, which means they could not possibly be latent defects. *See Meadows*, *supra*. But that point is largely academic because Shugart admitted that he had actually seen the shrubs prior to his fall. Thus, the shrubs, like the conditions in the other cited cases, were open and obvious, and Shah had no duty to warn of them. *Meadows*, *Pryor* and *Denton* do not permit any other conclusion.[4]

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[3] The plaintiff in *Denton* alleged that if the defendant had put a railing around the cart corral, she might have been able to catch hold of the railing and thus avoid falling after she tripped. The Court rejected that theory as speculative and unsupported by the evidence.

[4] The photographs presented to the trial court further demonstrate that these shrubs were plainly visible and in no way concealed.

In addition, the decorative shrubs were things that a reasonable person would expect to find in or near the parking lot of a hotel or other business. Trees, bushes and shrubs are commonly used to decorate and provide shade for business parking lots. Indeed, "bare" parking lots are rarer than ones that include plants. No reasonable person could claim to be surprised at the presence of such types of plants in this setting. Again, though, even if that were not true, it would not matter in the present case, because Shugart was admittedly aware of the shrubs before he fell.

Just as in the other cited cases, there is also no record evidence even suggesting, let alone proving, that Shah had any reason to anticipate the specific harm involved in this factual scenario. The absence of any such evidence further supports the trial court's decision.

As a threshold matter, Shugart has failed to challenge the trial court's ruling on this issue in his appeal. The trial court specifically concluded that "Plaintiff has failed to provide any evidence that the alleged danger should have reasonably been anticipated by [Shah]." [Order, p. 4.] Despite that clear ruling, Shugart does not address this issue at all in his Appellant's Brief. Even in the section that might loosely be interpreted as a challenge to the "open and obvious" ruling, Shugart fails to discuss the "anticipated harm" issue. He also does not cite or rely upon any case law or other legal authorities with regard to that issue. Therefore, Shugart must be deemed to have abandoned any challenge to that ruling. *See First Savings Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (an issue is deemed abandoned when the appellant fails to provide arguments and supporting authority for his assertion).

Even if the Court were to consider this issue, however, the end result should be the same. The record is devoid of any evidence that Shah had reason to anticipate this specific harm. There is no evidence that any previous accidents involving these shrubs had occurred. Nor is there evidence that anyone ever complained about the shrubs to Shah or notified Shah that the shrubs were a potential hazard. The record is completely silent on that issue, which means Shugart failed to carry his burden of proof. Consequently, the trial court's decision to grant summary judgment was correct.

Although their respective fact patterns are not identical to the present case, *Meadows*, *Pryor* and *Denton* are sufficiently close to be controlling authorities. Like the plaintiffs in those cases, Shugart alleges he was injured by a condition that was fully open and obvious. And like the defendants in those cases, Shah had no reason to anticipate the specific harm involved in the incident. Therefore, as a matter of law, Shah had no duty to warn Shugart of the shrubs or their limbs, and this Court should affirm the trial court's decision to grant summary judgment on this basis.

III. The trial court properly granted summary judgment to Shah because the undisputed facts permit only one reasonable conclusion – that Shugart's negligence was, as a matter of law, greater than any possible negligence on the part of Shah.

Despite having seen the decorative shrubs near the hotel's parking lot and having walked past them multiple times, Shugart walked into one of them in broad daylight and struck his head on a limb. At the time, Shugart was admittedly paying attention to the dog he had on a six-foot leash rather than to the way directly in front of him. [Depo. of Shugart, pp. 27, 33-34, 40, 44-46; Hearing Transcript, p. 11.] Faced with those undisputed facts, the trial court concluded the only reasonable inference to be drawn was that Shugart's own

negligence was greater than fifty percent as a matter of law. That decision was correct, and this Court should affirm.

"Under South Carolina's doctrine of comparative negligence, a plaintiff may only recover damages if his own negligence is not greater than that of the defendant." *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 712-13 (2000). "Ordinarily, comparison of the plaintiff's negligence with that of the defendant is a question of fact for the jury to decide." *Id.* at 417, 529 S.E.2d at 713. "In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent." *Id.*

Although comparative negligence is generally a jury question, South Carolina's appellate courts have, on numerous occasions, upheld (or made) decisions that particular plaintiffs were more than fifty percent negligent as a matter of law. *See, e.g., Bloom v. Ravoira*, 339 S.C. 417, 529 S.E.2d 710 (2000) (summary judgment for defendant driver was proper because plaintiff pedestrian was more than fifty percent negligent, where he attempted to cross a street quickly, from in between two parked cars and not in a designated cross-walk, on a dark and rainy night); *Snavely v. AMISUB of SC, Inc.*, 379 S.C. 386, 665 S.E.2d 222 (Ct. App. 2008) (summary judgment was proper because the plaintiff patient's negligence in consenting to the disclosure of her medical condition exceeded any possible negligence attributable to the defendant doctor); *Singleton v. Sherer*, 377 S.C. 185, 207-08, 659 S.E.2d 196, 208 (Ct. App. 2008) (summary judgment was proper for defendant premises owners because visitor plaintiff was more than fifty percent negligent as a matter of law, where he attempted to catch a wild racoon on the property); *Estate of Harley v.*

Brown, 370 S.C. 240, 634 S.E.2d 62 (Ct. App. 2006) (directed verdict for defendant truck driver was affirmed, where plaintiff's minor decedent was more than fifty percent negligent for jumping a bicycle out of a parking lot and into the path of the oncoming truck); *Hopson v. Clary*, 321 S.C. 312, 468 S.E.2d 305 (Ct. App. 1996) (directed verdict for defendant driver affirmed, where plaintiff driver was more than fifty percent negligent for pulling to the side of the road and then attempting a U-turn without first checking to make sure there was no close and/or oncoming traffic).

All of those cases involve very different fact patterns, and none of them are exactly the same as the present case. However, the cases are instructive because they demonstrate that judgment as a matter of law in comparative cases is not only possible, but *warranted* when the undisputed facts lead to only one reasonable inference. That is precisely the situation that exists in the present case.

The undisputed facts create only the following reasonable inference: Shugart walked into the limb of a decorative shrub *because he was not paying attention to where he was going*. He had seen the shrubs before this happened. He had successfully walked past them multiple times before this happened. The shrubs were plainly visible, and the incident happened during daytime hours when the sun was out. There can be no reasonable doubt that Shugart could have – and *would have* – seen the limb his head struck if he had been paying attention to where he was walking. Instead, he was looking in a different direction at his dog that was on a long leash. Under those circumstances, any reasonable person would have to conclude that Shugart was more than fifty percent negligent.

This is especially true when one considers the non-existent negligence of Shah to which Shugart's negligence would be compared. Shugart's only theory of liability was an

allegation, never supported by even a scintilla of evidence, that Shah failed to maintain the decorative shrubs in a proper manner. Shugart never presented any testimony or other evidence to show what "shrub maintenance" Shah did or did not do, let alone what maintenance Shah should have done. Shugart offered only his self-serving opinion that the shrubs were overgrown. But even assuming for this argument that Shah did something wrong (or failed to do something right) with regard to the shrub, any such "negligence" would pale in comparison to Shugart walking straight into the shrub in broad daylight despite knowing it was there.

Again, cases finding for defendants on this issue as a matter of law might be uncommon, but they certainly do exist, and this case is more than worthy of joining the list of the cases cited above. As in those cases, the *only* reasonable inference is that Shugart's negligence was greater than fifty percent as a matter of law. Therefore, the trial court's decision on this issue was correct and should be affirmed.

IV. This Court should decline to consider Shugart's second stated appellate issue, because that issue was neither raised nor ruled upon in the trial court.

In the Appellant's Brief, Shugart lists two issues under the heading "Statement of the Issues on Appeal." The first appears to relate to the issues previously addressed in this Respondent's Brief. The second, however, is something entirely different. The statement of that second issue reads:

> Did the trial court err in granting summary judgment to the Respondent despite the fact that the Respondent altered the scene of the incident before the Petitioner could return from seeking medical attention to obtain pictures and other proof of the incident location?

For the reasons discussed below, the Court should decline to address that issue.

First, Shugart never raised this issue in the trial court. Neither Shugart's written submission, nor his arguments at the hearing ever mentioned alteration of the incident scene or the need for any additional discovery. Furthermore, even if some overly generous reading of the written submission could detect a hint of this issue being raised, the trial court certainly never ruled on it. As the Supreme Court has explained, "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). The statement of the second issue on appeal is the first reference to this issue. Therefore, it is not preserved for review, and this Court should not consider it.

Second, even if the issue had been raised and ruled upon in the trial court, the Appellant's Brief does not include any arguments related to that issue. Other than the statement of the issue, the Appellant's Brief is silent on matters relating to preservation of the scene or the opportunity to develop additional evidence. This is true no matter how leniently the brief is interpreted due to Shugart's *pro se* status. The lack of any substantive arguments and authorities on this issue means the Court should not consider it, regardless of whether or not it was initially preserved for review. *See First Savings Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (an issue is deemed abandoned when the appellant fails to provide arguments and supporting authority for his assertion).

Third, if the purported second issue relates to an attempt to conduct more discovery before the trial court ruled on the summary judgment motion, Shugart failed to protect his interests in that regard. When a party opposes a summary judgment motion on the basis that it is premature due to the need for more discovery, that party must request that the

hearing be continued or that the judge hold any ruling in abeyance pending the completion of discovery. *See Degenhart v. Knights of Columbus*, 309 S.C. 114, 118, 420 S.E.2d 495, 497 (1992). If the party fails to do that, any argument based on a ruling being premature is not preserved for appellate review. *Id.*

In the present case, Shugart neither moved for a continuance of the hearing, nor requested that the judge hold the matter in abeyance. Shugart did not even identify any specific additional information or materials that he needed to obtain. As previously discussed, Shugart's written submission to the trial court and his arguments at the hearing were completely silent as to such matters. Therefore, the issue is not preserved for appellate review and should not be considered.

CONCLUSION

The alleged defective condition in this premises liability case was open and obvious to any reasonable person, and Shah had no reason whatsoever to anticipate the specific harm that occurred. Thus, Shah had no duty to warn and cannot be liable under any premises liability theory. In addition, the only reasonable inference that can be drawn from the undisputed evidence is that Shugart was more than fifty percent negligent as a matter of law because he walked into a shrub limb in broad daylight, when he had previously seen the shrub and knew it was present on the premises. Shugart allowed his attention to be distracted by his dog and did not maintain a proper lookout for his own safety. Therefore, the trial court correctly granted summary judgment to Shah on both of those issues, and this Court should affirm the trial court's Order in its entirety.

Respectfully submitted,

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