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SC Court of Appeals

The South Carolina Court of Appeals

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October 04, 2021

The Honorable Richard A. Shirley
PO Box 8002
Anderson SC 29622-8002

REMITTITUR

Re: John Cross v. Gregory Weaver
Lower Court Case No. 2016CP0402468
Appellate Case No. 2018-001824

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen

CLERK

Enclosure

cc: David James Brousseau, Esquire
David F. Stoddard, Esquire
Terrie Fallow
Jason Seagraves

The South Carolina Court of Appeals

John Cross, Appellant,

v.

Gregory A. Weaver, Earl E. Weaver, Terrie Fallow and
Jason Seagraves, Respondents,

And:

Steven P. Cross, Appellant,

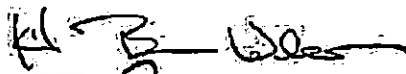
v.

Gregory A. Weaver, Earle E. Weaver, Terrie Fallow and
Jason Seagraves, Respondents.

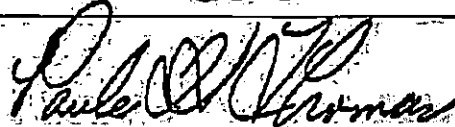
Appellate Case No. 2018-001824

ORDER

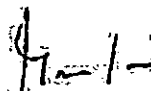
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

FILED
Aug 23 2021

Columbia, South Carolina

cc:

David James Brousseau, Esquire

David F. Stoddard, Esquire

Terrie Fallow

Jason Seagraves

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

John Cross, Appellant,

v.

Gregory A. Weaver, Earl E. Weaver, Terrie Fallow and
Jason Seagraves, Respondents,

And

Steven P. Cross, Appellant,

v.

Gregory A. Weaver, Earle E. Weaver, Terrie Fallow and
Jason Seagraves, Respondents.

Appellate Case No. 2018-001824

Appeal From Anderson County
R. Lawton McIntosh, Circuit Court Judge,

Unpublished Opinion No. 2021-UP-112
Submitted March 1, 2021 – Filed April 7, 2021

AFFIRMED

David James Brousseau, of McIntosh, Sherard, Sullivan

& Brousseau, of Anderson, for Appellant John Cross and Appellant Steven P. Cross.

David F. Stoddard, of Anderson, for Respondent Gregory A. Weaver and Respondent Earl E Weaver.

Terrie Fallow, of Anderson, pro se.

Jason Seagraves, of Belton, pro se.

PER CURIAM: John Cross and Steven P. Cross (the victims) appeal the circuit court's final order dismissing Gregory A. Weaver and Earl E. Weaver (the landlords) as parties to their negligence actions. Because the circuit court did not err in finding that the landlords did not owe a duty to protect the victims from a dog owned by Terrie Fallow and Jason Seagraves (the tenants), we affirm the order of dismissal pursuant to Rule 220(b), SCACR, and the following authorities: *Pryor v. Nw. Apartments, Ltd.*, 321 S.C. 524, 528, 469 S.E.2d 630, 632-33 (Ct. App. 1996) (providing that to establish a negligence claim, a plaintiff must establish (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach"); *Jackson v. Swordfish Invs., L.L.C.*, 365 S.C. 608, 612, 620 S.E.2d 54, 56 (2005) ("Whether the law recognizes a particular duty is an issue of law to be determined by the court."); *Mitchell v. Bazzle*, 304 S.C. 402, 405, 404 S.E.2d 910, 912 (Ct. App. 1991) (finding that under the common law, a landlord has no duty to prevent a tenant's dog from inflicting injury on a tenant's invitee, even when the landlord is on notice of the dog's propensity to bite); *Fair v. United States*, 334 S.C. 321, 323-24, 513 S.E.2d 616, 617 (1999) (reaffirming "the common law rule that a landlord is not liable to a tenant's invitee for injury caused by a tenant's dog"); *Jackson*, 365 S.C. at 612, 620 S.E.2d at 56 (holding that a commercial landlord has no duty to protect a commercial tenant's invitee from injury incurred *inside* the leased premises because the leased premises was not an area over which the landlord retained possession or control); *Bruce v. Durney*, 341 S.C. 563, 571, 534 S.E.2d 720, 725 (Ct. App. 2000) ("South Carolina has established that a landlord is not liable for injuries caused by an animal kept by a tenant on leased property."¹)

¹ We note there are two exceptions to the traditional rule of non-liability of landlords: the "affirmative acts" exception and the "common areas" exception. See *Jackson*, 365 S.C. at 613, 620 S.E.2d at 56 (acknowledging that the "two

AFFIRMED.²

WILLIAMS, THOMAS, and HILL, JJ., concur.

exceptions to the traditional rule of non-liability of landlords . . . are the 'affirmative acts' exception and the 'common areas' exception"). Neither of these exceptions are applicable here. First, the landlords did not perform any affirmative acts related to the dog. *See id.* ("[E]ven where there is no duty to act but the defendant voluntarily undertakes the act, the defendant assumes a duty to use due care."). Second, because the tenants had exclusive possession and control of the leased property, the location where the tenants' dog attacked the victims was not a "common area." *See id.* at 613-14, 620 S.E.2d at 56-57 (concluding that the "common areas" exception did not apply because the victim was injured inside the nightclub, where the landlord had no control).

² We decide this case without oral argument pursuant to Rule 215, SCACR.



South Carolina Court of Appeals

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SC Court of Appeals

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