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Dec 30 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No.: 2019-000152

Vanessa Wiggins,.....Appellant,

v.

ALDI, Inc.,.....Respondent.

**PETITION FOR
REHEARING**

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ATTORNEYS FOR THE APPELLANT

INTRODUCTION

This is an appeal from the trial court's granting of directed verdict against the Plaintiff/Appellant in a personal injury accident arising from a fall at Defendant/Respondent's grocery store on June 17, 2017. The Appellant contended the Respondent's cashier was negligent in providing a wheeled chair to the Appellant and assisting her to sit down. The employee was assisting the Appellant to sit in the chair, but without notifying her the employee simply walked away. Appellant thought the employee was holding the chair as she was sitting down. Because the employee ceased holding the wheeled chair, it rolled backward as Appellant was sitting down causing the Appellant to fall resulting in injuries.

After the close of Appellant's case the trial court granted a directed verdict for the Respondent. The Appellant appealed the granting of the directed verdict along with the trial court's failure to grant her motion to dismiss without prejudice prior to trial.

In ruling against Appellant on appeal this Court stated "Respondent's surveillance video indicates that Appellant saw Respondent's cashier walking away with the first chair she had retrieved for Appellant before Appellant even attempted to sit down in the second chair. We do not view the apparent conflict between the video's contents and the testimony of Appellant's witnesses as genuine." As a result of this conclusion the Court determined Respondent violated no duty in regard to Appellant as Appellant was aware Respondent's employee had left her before attempting to sit down. Therefore, the Court found no need to address the primary issues raised in the appeal of Appellant and affirmed the trial court.

Appellant respectfully petitions the Court for rehearing and reconsideration of this appeal on the grounds the Court overlooked or misapprehended the facts and law applicable to this appeal as follows:

ARGUMENT I

THE COURT MISAPPREHENDED OR OVERLOOKED THE CONTROLLING LAW AND FACTS IN CONCLUDING THE SURVEILLANCE VIDEO CONCLUSIVELY SHOWED MS. WIGGINS SAW THE CASHIER WALKING AWAY FROM HER BEFORE SHE ATTEMPTED TO SIT DOWN.

As the Court is aware Respondent's cashier initially provided a chair to Ms. Wiggins and attempted to assist her in sitting in the chair. The cashier attempted to adjust the chair, but was unsuccessful and obtained a second chair for Ms. Wiggins. At trial Ms. Wiggins testified she was unaware the cashier had left her immediately before she attempted to sit in the second chair and fell. She thought the cashier was still assisting her as she had done before. (R. p.253, line 18-p.255, line 11). As the cashier was no longer holding the chair it rolled out from under Ms. Wiggins causing her to fall resulting in her injuries. The testimony of Ms. Wiggins was confirmed by the witness Vivian Ashford, who observed the circumstances leading up to the fall. The witness also testified Ms. Wiggins was looking forward and did not see the cashier leave her prior to her fall. (R., p.234, line 4-line 8, and p.235, line 14-line 22).

The Appellant respectfully submits the Court erred in concluding the surveillance video conclusively showed Ms. Wiggins saw the cashier walk away prior to her fall. The video provided by Respondent was very blurry and it is impossible to tell if Ms. Wiggins was actually looking at the cashier as the cashier walked away. The video is not clear

enough to see exactly where Ms. Wiggins' was looking or even if her eyes were open in the few seconds prior to her failed attempt to sit down.

Appellant respectfully submits the video was blurry, it was impossible to tell exactly where Ms. Wiggins was looking immediately prior to her attempt to sit down, and because of the blurriness of the video submitted by Respondent it is impossible to tell where Ms. Wiggins was looking or if her eyes were even open. In view of testimony from two witnesses stating Ms. Wiggins did not look at the cashier as she walked off, Appellant respectfully submits a jury issue was created in regard to whether or not Ms. Wiggins saw the cashier leave immediately prior to her attempt to sit down.

ARGUMENT II

THE COURT MISAPPREHENDED OR OVERLOOKED THE CONTROLLING LAW AND FACTS IN NOT RULING UPON THE ISSUES RAISED IN APPELLANT'S BRIEF.

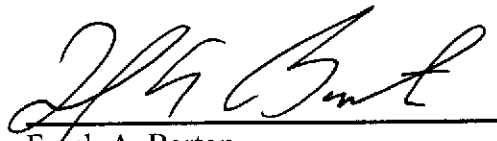
As the Court relied on the conclusion the surveillance video showed Ms. Wiggins saw Respondent's cashier leave before she attempted to sit down, it failed to address the issues raised in Appellant's Brief. The Appellant would respectfully request, however, the Court reconsider an issue and opinion addressing the issues raised by Appellant on appeal. Specifically, the lower court erred in denying Appellant's Motion to Dismiss without prejudice prior to trial, and whether or not the evidence showed Respondent's voluntary actions in providing a rolling chair, required the cashier to act with due care and not act in a careless or negligent manner.

CONCLUSION

Appellant respectfully submits the Court wrongfully concluded the surveillance video was sufficiently clear to determine where Ms. Wiggins was looking immediately prior to attempting to sit down. The issue of whether or not Appellant knew the cashier had left prior to sitting down was a jury issue. For this reason Appellant respectfully requests the Court to reconsider and address the arguments raised in Appellant's Brief.

Respectfully submitted,

December 30, 2021
Lexington, South Carolina



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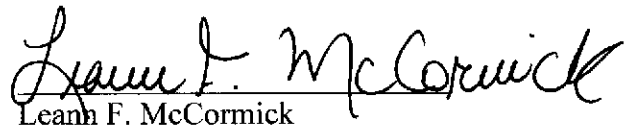
CERTIFICATE OF SERVICE

The undersigned does hereby certify one copy of the **APPELLANT'S PETITION FOR REHEARING** was served in the foregoing action by email and by regular mail on December 30, 2021, to each of the following addresses:

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December 30, 2021
Lexington, S.C.


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