

RECEIVED

DEC 06 2021

SC Court of Appeals

**FORM 15
RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Case No. 2019-CP-02-02426

Historic Hospitality, LLC,
Shah Investments,
Shah Enterprises, LLC,
Southern Hotel Properties

Respondent,

v.

Stephan Shugart,

Appellant.

RECORD ON APPEAL

s/ Stephan Shugart
546 Gates Court
Philadelphia, PA 19128
(215) 509-1088
Pro Se Appellant

INDEX

Answer ----- 1

Motion for Summary Judgement ----- 1

Order of Granting Summary Judgement ----- 1

Notice of Appeal ----- 1

Deposition

 Stephan Shugart ----- 1

Request to Charge ----- 1

Appellant's Exhibits

 1..... 1

 2 1

 3 1

 4 1

 5 2

 6 2

 7 2

 8 2

 9 2

 10 2

 11 2

 12 2

 13 2

 14 2

Case Citing's

1	2
2	2
3	3
4	3
5	3
6	3
7	3
8	4
9	4
10	4
Certificate of Appellant	4

ii
Answer

Please refer to Exhibit 7 attached.

Transcript of Motion for Summary Judgement & Order Granting Summary Judgement

Please refer to Exhibit 10 attached.

Notice of Appeal

Please refer to Exhibit 8 attached.

Deposition of Stephan Shugart

Please refer to Exhibit 12 attached.

Request to Charge

The Appellant states that the Respondent as a hotel owner has an impelling duty to warn guests staying at the hotel of any open and obvious conditions that exist, they should have known about or did have knowledge about. The facts pulled by the Respondent's lawyer are not in evidence causing an error of the court to rely on statements that were not beforehand put into evidence. Additionally, the appellant feels that there are no grounds for considering the doctrine of comparative negligence on behalf of the Petitioner given that there were multiple hidden and concealed hazards and obstacles at the time of the accident which rendered the Petitioner's ability to safeguard himself from harm. Therefore, the appellant is asking the court to award in his favor.

Appellant's Exhibit's

Exhibit 1- CMS Medicare Healthcare list of medical providers related to the care and treatment of the petitioner due to the accident and billed directly to the petitioner. Monies due, if any amount, is paid by, or has been paid by petitioner's Nationwide Insurance Provider.

Exhibit 2- Pictures of the Hotel Aiken Annex of rooms showing severely pruned back shrubbery, branches, and limbs ordered by the Hotel Aiken after the date of the accident, September 29, 2016. Photos were taken by the petitioner upon his return from the Emergency Room on September 30, 2016. Note the fresh cuttings of the branches and limbs that were removed after the accident was reported to hotel staff during the petitioner's stay.

Exhibit 3- Pictures of the Hotel Aiken Annex of rooms showing the current conditions of the shrubbery as of March 3, 2020. These photos were taken at the accident site. Note the weathered branches and limbs look vastly different than they did in the photos in EXHIBIT 2.

Exhibit 4- Chart notes from treating physician dated 12/05/2016 showing Petitioner sought medical treatment for injuries received while staying at Hotel Aiken on September 29, 2016.

Additional medical treatment is available after 12/05/2016 from different medical providers in records upon request.

1

Exhibit 5- Request by Petitioner to Respondent's Attorney James Knox of Turner and Paget requesting dates for mediation. The 300-day rule expired and Respondent's Attorney did not answer Petitioner by said date of August 10, 2020

Exhibit 6 - Petitioner's answer to Respondent's Attorney in regards to Respondent's motion to dismiss dated July 18,2020 heard via Zoom virtual hearing August 30,2020.

Exhibit 7- Answer to Defendant

Exhibit 8- Notice of Appeal from Common Pleas regarding Conviction in Magistrates or Municipal Court

Exhibit 9- Proof of Service of Notice of Appeal served to all involved parties.

Exhibit 10- Transcript of Record 2019-CP-02-02426 Held August 31, 2020Cl held before Honorable Courtney Clyburn-Pope, Judge. held via Zoom with no Exhibits attached by the court.

Exhibit 11- Picture of my South Native Carolina Service dog Layla, may she rest in peace, was with me at all times while staying in Hotel Aiken.

Exhibit 12 -Deposition of Petitioner conducted at the offices of James Knox of Turner and Paget, attorney for the Respondent.

Exhibit 13 -Answer by Petitioner to Respondent's Attorney submission of Notice of Motion and Motion for Summary Judgment in the matter Stephan Shugart v. Shah Investments LLC., Please note all Examples listed have already been put into Discovery prior to Appeal to the South Carolina Court of Appeals.

Exhibit 14- Video taken at Hotel Aiken's Annex of rooms, showing enclosed breezeway, and steps leading from second floor to covered breezeway. Also shows concrete pillars that support breezeway on the second floor, and the planting of shrubbery on parking lot side of pillars. The concrete pillars concealed the shrubbery. Since the shrubbery and branches were pruned back after the accident, I was unable to get realistic footage of how the branches protruded into the breezeway exits and out of the parking lot as they were when I had my accident. This video was submitted to the lower South Carolina court located in Aiken, South Carolina.

Case Citing's

Littrell v. Landmark Builders of S.C., LLC No. 2:19-cv-0637-DCN (D.S.C. Mar. 2, 2021)

Davenport v. Cotton Hope Plantation, 333 S.C. 71, 86-87, 508 S.E.2d 565, 573-74 (1998) ("[A]bsolute defense of assumption of risk is inconsistent with South Carolina's comparative

negligence system. . ."; unless assumption of risk can be characterized as express or primary implied assumption, plaintiff is not barred from recovery if degree of fault arising from assumed risk is less than defendant's negligence .).

2

Turner v. Mandalay Sports Entm't, 124 Nev. 213 (Nev.2008). Cited 123 times. Holding that baseball stadium operator had to provide sufficient amount of protected seating and must provide protection for spectators in the most dangerous parts of the stadium, but otherwise owed no duty to protect patrons from errant baseballs. As commonly understood, this form of assumption of risk arises when "the plaintiff impliedly assumes those risks that are inherent in a particular activity". Davenport v. Cotton Hope Plantation, 333 S.C. 71, 86-87, 508 S.E.2d 565, 573-74 (1998). Recognizing that "secondary" implied assumption of risk arises where "the plaintiff knowingly encounters a risk created by the defendant's negligence.

McCune v. Myrtle Beach Indoor, 612 S.E. 2d, 462 (S.C. Ct. App. 2005) Cited 8 times. Holding an exculpatory clause enforceable to preclude a negligence action where the plaintiff sued defendant business for injuries sustained while participating in a paintball game. Express assumption of the risk sounds in contract and occurs when the parties agree beforehand, "either in writing or orally, that the plaintiff will relieve the defendant of his or her legal duty toward the plaintiff". Davenport v. Cotton Hope Plantation, 333 S.C. 71, 86-87, 508 S.E.2d 565, 573-74 (1998). "Express assumption of risk is contrasted with implied assumption of risk which arises when the plaintiff implicitly, rather than expressly, assumes known risks."

Allison v. Charter Rivers Hosp., Inc., 514 S.E.2d 601 (S.C. Ct. App. 1999) Cited 1 time. Allison argues the defense of assumption of risk was not available to Charter as a complete defense to her action. She relies on this court's decision in Davenport v. Cotton Hope Plantation, 333 S.C. 71, 86-87, 508 S.E.2d 565, 573-74 (1998). In Davenport, we held "assumption of risk" is no longer a complete defense to an injured person's negligence claim.

Spahn v. Town of Port Royal, 330 S.C. 168,173, 499 S.E.2d 205, 208 (1998) (Doctrine of "last clear chance has been subsumed by adoption of comparative negligence such that it remains a factor for the jury's consideration" in determining the respective fault of the parties but "does not totally relieve a plaintiff of his or her negligence ."). See F. Patrick Hubbard Robert L. Felix, Comparative Negligence in South Carolina : Implementing Nelson v. Concrete Supply Co ., 43 S.C. L. Rev. 273, 282-283 (1992).

Patenaude v. Dick's Sporting Goods, Inc., Civil Action No. 9:18-CV-3151-RMG (D.S.C. Oct. 18, 2019). To show assumption of risk: "(1) the plaintiff must have knowledge of the facts constituting a dangerous condition; (2) the plaintiff must know the condition is dangerous; (3) the plaintiff must appreciate the nature and extent of the danger; and (4) the plaintiff must voluntarily expose himself to the danger" Davenport v. Cotton Hope Plantation, 333 S.C. 71, 86-87, 508 S.E.2d 565, 573-74 (1998). As defendants noted, the doctrine of assumption of risk has been applied in the sports context.

Humphrey v. Day & Zimmerman Int'l, 997 F. Supp. 2d 388 (D.S.C. 2014). The doctrine of primary implied assumption of risk "goes to the initial determination of whether the defendant's legal duty encompasses the risk encountered by the plaintiff." Davenport v. Cotton Hope

Plantation, 333 S.C. 71, 86-87, 508 S.E.2d 565, 573-74 (1998) Primary implied assumption of risk is not a true affirmative defense, but instead goes to the initial determination of whether the defendant's legal duty encompasses the risk encountered by the plaintiff.

3

Singleton v. Sherer, 659 S.E.2d 196, 206 (S.C. Ct. App. 2008). Holding a landowner was not liable to an invitee who was aware of the condition and who "voluntarily exposed himself to any potential danger posed by the condition". This goal would clearly be thwarted by adhering to the common law defense of assumption of risk. Davenport v. Cotton Hope Plantation, 333 S.C. 71, 86-87, 508 S.E.2d 565, 573-74 (1998) Based upon the foregoing, our supreme court concluded "a plaintiff is not barred from recovery by the doctrine of assumption of risk unless the degree of fault arising therefrom is greater than the negligence of the defendant".

Cunningham v. Helping Hands, Inc., 550 S.E. 2d 872 (S.C. Ct. App. 2001) Cited 1 time. We agree as to Helping Hands and disagree as to the Department because we find Helping Hands owed a higher duty to Cunningham than did the Department. This case is governed by the common law defense of assumption of risk because it occurred before the issuance of our Supreme Court's decision in" Davenport v. Cotton Hope Plantation, 333 S.C. 71, 86-87, 508 S.E.2d 565, 573-74 (1998). The defense of assumption of risk has four elements: "(1) the plaintiff must have knowledge of the facts constituting a dangerous condition; (2) the plaintiff must know the condition is dangerous; (3) the plaintiff must appreciate the nature and extent of the danger; and (4) the plaintiff must voluntarily expose himself to the danger".

Didier v. J.C. Penny Co., 868 F.2d 276,281 {8 Cir. 1989}.

Certificate of Appellant

I certify that this designation contains no matter which is irrelevant to this appeal.

November 29, 2021

s/ Stephan Shugart
Stephan Shugart
546 Gates Court
Philadelphia, PA 19128
(215) 509-1088
Pro Se Petitioner

RECEIVED

DEC 06 2021

SC Court of Appeals