

IN THE STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON

Witsell H. Beach, Jr.,

Plaintiff,

vs.

Donald S. O'Bryan, Jr.; Wynn Farms LLC;  
and Brandon Linder,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL  
CIRCUIT

Civil Action No. 2024-CP-15-00013

**MEMORANDUM IN OPPOSITION TO  
MOTION FOR SUMMARY JUDGMENT**

This is not a premises liability case. Brandon Linder and Wynn Farms are liable for Linder's affirmative negligence in planning, orchestrating, and leading an unsafe hunt. Linder's affirmative negligence caused Plaintiff's injuries. Plaintiff does not allege that Linder is liable for failing to keep the premises safe or failing to warn of dangers on the premises. Those theories of liability—which are exclusive to premises liability actions—are the subject of the recreational use statutes. The recreational use statutes are irrelevant to this case and do not immunize Defendants for their own active, affirmative negligence.

**FACTUAL BACKGROUND**

On December 29, 2022, Plaintiff was invited to hunt with Defendant Brandon Linder and his hunt club, Wynn Farms, on property Linder and Wynn Farms leased known as the "800 Acres" or the "Echo Lane tract." Linder organized the hunt as a dog drive, despite having leased the property pursuant to a lease that prohibited hunting with dogs. *See* Hunting Lease, **Exhibit A**. He served as the "hunt master" during the hunt and was responsible for the safe planning and execution of the hunt. Linder Depo. at 45–46, **Exhibit B**. His duties as hunt master required him to direct each hunter to a stand position, assign each hunter a safe shooting lane, ensure that each hunter

was properly equipped and competent to safely participate in the hunt, and enforce compliance with firearms safety rules. Jones Depo. at 8–14, 22–27, **Exhibit C**; Woodward Depo. at 28–38, **Exhibit D**.

Prior to the hunt, Linder directed Plaintiff and Donald O’Bryan to stand positions along a narrow dirt road adjacent to a wide-open space underneath transmission power lines on the southern end of the tract. Beach Depo. at 34–36, **Exhibit E**. Rather than assign O’Bryan a safe shooting zone, Linder told O’Bryan to shoot at deer in the roadway between his stand and Plaintiff’s stand. Linder Depo. at 85, **Exhibit B**. He allowed O’Bryan to participate in the hunt even though O’Bryan was not properly equipped or dressed, was wearing HeyDudes rather than proper hunting footwear, was using a borrowed shotgun with which he was unfamiliar, and had never hunted the property before. *See* Beach Depo. at 79–80, **Exhibit E**; O’Bryan Depo. at 19–20, **Exhibit F**.

Sadly, O’Bryan followed Linder’s instructions and fired his 12-gauge shotgun at deer in the roadway directly between his stand and Plaintiff’s stand. *See* Beach Depo. at 41–42, **Exhibit E**. O’Bryan missed the deer and shot Plaintiff in the hand. Plaintiff suffered permanent injuries as a result.

### **LEGAL STANDARD**

A court must deny a summary judgment motion unless “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. In reviewing a summary judgment motion, the court must view “the evidence and all inferences which can reasonably be drawn therefrom . . . in the light most

favorable to the nonmoving party.” *Quail Hill, LLC v. Richland Cty.*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010).

## ARGUMENT

### **I. The recreational use statutes are irrelevant and do not immunize Linder from liability for Plaintiff’s claims.**

The recreational use statutes are in derogation of the common law and therefore must be strictly construed. *Corbett v. City of Myrtle Beach*, 336 S.C. 601, 607, 521 S.E.2d 276, 279 (Ct. App. 1999). By their plain terms, they apply only in premises liability cases. They do not immunize a person—even if the person happens to be a land owner under the statute—from liability for his own affirmative negligence on the land. They do not apply to nor protect Defendants from liability for the negligence alleged by Plaintiff in this case.

Although the degree of duty varies based on a visitor’s status, a premises owner generally has a duty to maintain a safe premises or warn visitors of hazards on the premises. *See Singleton v. Sherer*, 377 S.C. 185, 201, 659 S.E.2d 196, 204 (Ct. App. 2008). However, the recreational use statutes provide that land owners who open their land to the public for recreational use do not have a duty of care to (1) keep the *premises* safe or (2) warn of dangers on the *premises*. S.C. Code Ann. § 27-3-30. The plain language of the statutes thus makes clear that their purpose is to protect land owners from premises liability. *See id.*; *see also* S.C. Code Ann. § 27-3-40 (providing a land owner’s permission to use the premises does not extend any assurance that the *premises* are safe, “[c]onfer upon [a user] the legal status of an invitee or licensee[—]statuses that are relevant only to premises liability[—]to whom a duty of care is owed,” or render the land owner vicariously liable for the actions of users); S.C. Code Ann. § 27-3-10 (limiting liability toward persons entering on the premises—a clear reference to premises liability). Thus, it protects land owners only from premises liability. *See Hodson v. Taylor*, 860 N.W.2d 162, 174 (Neb. 2015) (interpreting a

recreational use statute with the same language and holding, “[t]he Act applies only to premises liability actions” because, “[u]nder the Act, ‘an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes’”).

Plaintiff has not alleged that Defendants are liable because of their status as owners or lessees of the land where the incident occurred. Rather, as the complaint makes clear, Plaintiff alleges Defendants are liable for their own affirmative negligence in planning and executing an unsafe hunt. *See* Am. Compl. ¶ 31 (alleging Defendants breached their duties of care to Plaintiff by failing to properly plan and execute a safe dog drive; failing to establish proper safety protocols for the dog drive, including but not limited to establishing safe zones of fire; failing to ensure that all participants in the dog drive were experienced, competent, and safe hunters; failing to ensure that all participants in the dog drive were properly equipped; failing to ensure that all standers knew the location of all other standers; and failing to ensure that all standers followed proper safety protocols, including but not limited to shooting only within their prescribed safe zones of fire). As hunt master, Linder owed duties to Plaintiff and the other hunters to plan and execute a safe hunt. He breached those duties in numerous respects. Plaintiff’s amended complaint is clear and does not allege that Defendants breached any duty to keep the *premises* safe or to warn Plaintiff of any hazards on the premises. Thus, the recreational use statute is irrelevant to Plaintiff’s claims based on Defendants’ affirmative negligence. *See Davis v. Hinds*, 215 A.D.3d 1242, 1243 (N.Y. App. Div. 2023) (interpreting a similar statute in a case in which defendants’ liability “was not premised on any condition on the land, but rather was based on defendant’s alleged affirmative negligence in providing plaintiff with the faulty strap for the installation of the tree stand,” and holding that

“if a defendant’s alleged liability is not premised on any condition on the land but rather is based on the defendant’s ‘affirmative acts of negligence,’” the statute “is not applicable”).

Further, the statute expressly does not immunize a participant in recreational activities from the obligations he has in the absence of the statute, including Linder’s duties as hunt master:

Nothing in this chapter shall be construed to: . . . Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this chapter to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.

S.C. Code Ann. § 27-3-70. It is undisputed that Linder not only participated in the recreational activities on December 29, 2022, he acted as the leader and hunt master. *See* Linder Depo. at 45–46, **Exhibit B**. Plaintiff’s claims are based on Linder’s failure to exercise care in his activities on the land. Section 27-3-70 expressly provides that the recreational use statutes do not immunize Linder from the legal consequences of his failure to exercise care.

Plaintiff’s claims are not premises liability claims nor are they based on Linder’s status as a land owner or lessee. The location of Linder’s actions—whether on land where he qualifies as a “land owner” as defined by the statute or land where he does not—is irrelevant. His actions as hunt master are not immunized because they occurred on land that he leased.

Finally, even if the recreational use statutes applied to Linder, he is not entitled to summary judgment because genuine issues of material fact exist as to whether Linder was grossly negligent. S.C. Code Ann. § 27-3-60 (“Nothing in this chapter limits in any way any liability which otherwise exists: (a) For grossly negligent, willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.”). After Plaintiff filed this lawsuit, Linder concocted a story that Plaintiff set up in the incorrect stand position and therefore placed himself into O’Bryan’s shooting lane. Plaintiff set up exactly where he was instructed by Linder. However, even if Plaintiff inadvertently set up in the incorrect position, Linder testified in his deposition that he saw

where Plaintiff was positioned—a position that, according Defendants’ expert, created a dangerous situation—yet did nothing, despite having a duty as hunt master to correct any unsafe actions by his hunters. Linder Depo. at 83, **Exhibit B**; Byers Depo. at 88, 101, **Exhibit G**.

Gross negligence is “the absence of care that is necessary under the circumstances.” *Plyler v. Burns*, 373 S.C. 637, 651, 647 S.E.2d 188, 196 (2007). Linder’s conscious failure to take any corrective action when he saw Plaintiff in a dangerous situation that exposed him to gunfire from another hunter—who Linder had instructed to shoot in Plaintiff’s direction—is evidence from which a reasonable jury could find Linder was grossly negligent.

The recreational use statutes are irrelevant to this case, and the Court should deny Defendants’ motion for summary judgment. Even if the statutes apply, the Court should deny the motion because Linder was grossly negligent.

**II. Defendants’ argument as to Plaintiff’s standing to “challenge the lease” has no application to Plaintiff’s claims and is not a ground for summary judgment.**

Plaintiff does not assert any breach of contract claim against Defendants and does not claim to be a beneficiary under the hunting lease. Rather, Plaintiff’s case is based on Linder’s affirmative negligence in planning and executing an unsafe dog drive on the 800 Acres tract. A legal duty can be created by “statute, contract, relationship, status, property interest, or some other special circumstance.” *Rayfield v. S.C. Dep’t of Corr.*, 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988). Linder’s violation of the lease’s prohibition on hunting with dogs—and thus his breach of his duty not to organize a dog hunt on the property—is evidence of his negligence. Despite knowing he was prohibited from having dog hunts on the property, likely because dog hunts are dangerous, Linder planned, organized, and executed an unsafe dog hunt in the very place he should not have been holding a dog hunt at all. Plaintiff is entitled to present this evidence to the jury proving Linder’s negligence.

**III. Defendants' remaining arguments fail because they owed a duty to Plaintiff, and genuine issues of material fact exist as to breach and proximate cause.**

Defendants raised three additional arguments in their original motion for summary judgment that are not addressed in their supporting memorandum: (1) Defendants owed no duty to Plaintiff, (2) Defendants did not breach any duty owed to Plaintiff, and (3) Defendants' breaches of their duties were not a proximate cause of Plaintiff's injuries. To the extent Defendants have not withdrawn those arguments, the Court should deny their motion as to each ground.

First, the evidence—including Linder's own admissions—establishes that, as the hunt master responsible for planning and executing the hunt, Linder owed a duty to all hunt participants to ensure that the hunt followed generally accepted safety protocols and procedures. Linder Depo. at 45–46, **Exhibit B** (admitting he owed Plaintiff a duty); Woodward Depo. at 17–18, 22, 81–82, **Exhibit D** (DNR game warden Brandon Woodward testifying that Linder, as the hunt master, owed a duty to hunt participants and breached his duties); Jones Depo. at 10–14, 34–35, **Exhibit C** (DNR game warden J.P. Jones testifying that Linder, as the hunt master, owed a duty to hunt participants and breached that duty).

Second, Brandon Linder breached his duties to Plaintiff and the other hunt participants, as described throughout this brief. *See id.* As a proximate and foreseeable result of Linder's negligence, O'Bryan fired a shot within his prescribed—but unsafe—shooting zone and struck Plaintiff. Proximate cause is the quintessential jury question. *See McKnight v. S.C. Dep't of Corrs.*, 385 S.C. 380, 387, 684 S.E.2d 566, 569 (Ct. App. 2009). If any evidence exists from which a reasonable juror could find that Linder's breach of his duties as hunt master was a proximate cause of Plaintiff's injuries, the Court must deny Defendants' motion. The record is replete with evidence establishing that Linder's breaches were a proximate cause of Plaintiff's injuries.

Thus, genuine issues of material fact exist as to whether Linder breached his duties as hunt master and whether his breaches were a proximate cause of Plaintiff's injuries. The Court should deny Defendants' summary judgment motion on this point.

**CONCLUSION**

The Court should deny Defendants' motion for summary judgment, and this case should proceed to trial on October 27, 2025.

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October 24, 2025  
Charleston, South Carolina