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STATE OF SOUTH CAROLINA COUNTY OF HORRY Mary Ann Severino Plaintiff, vs. Horry County Solid Waste Authority and Horry County Defendants.	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT C/A NO.: 2022-CP-26-02569 **MEMORANDUM IN SUPPORT OF DEFENDANT HORRY COUNTY SOLID WASTE AUTHORITY'S MOTION FOR SUMMARY JUDGMENT**

Defendant, Horry County Solid Waste Authority (hereinafter, "Defendant") by and through their undersigned counsel, hereby offers the following memorandum of law in support of its Motion for Summary Judgment filed on December 16, 2024, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure:

STATEMENT OF FACTS

On or about August 28, 2020, Plaintiff went to the Horry County Solid Waste Authority located on Highway 701, in Conway, South Carolina, to dispose of waste that she had accumulated after doing yard work. *See* Severino Dep. 14:4-14. The recycling center was a short five-minute drive from Plaintiff's home, and she and her family often made trips to the recycling center to dispose of waste. *See* Id; Id. 35:15-24. During this trip, Plaintiff's grandsons assisted her with discarding the debris from her yard. *Id* at 14:15-25; *Id* at15:1-2. As Plaintiff's grandson was discarding items into the waste container, Plaintiff asserts that she was standing with both feet on the concrete pad where the waste container was located while handing the debris to her grandson to throw away. *Id* at 28:22-25. At some point, Plaintiff took a step backwards without looking and lost her footing causing her to fall onto the ground into a gravel pothole. *Id; Id* at 15:15-18. Plaintiff

initiated this action on April 26, 2022, wherein she alleges that she sustained injuries due to the change in elevation from the concrete pad to the ground. *See generally* Complaint.

STANDARD OF REVIEW

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Rule 56(c), SCRCP; *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Rule 56(c), SCRCP, regarding summary judgement states that, "[t]he judgment sought shall be rendered forthwith if 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." The South Carolina Supreme Court confirmed that the genuine issue of material fact standard is the controlling standard for summary judgment. *Kitchen Planners, LLC v. Friedman et. al*., 440 S.C. 456, 463-4 (2023).

In determining whether a genuine issue of material fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the non-moving party. Sauner v. Pub. Serv. Auth. Of S.C., 354 S.C. 397, 404, 581, S.E.2d 161, 165 (2003). "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. Am. Tel. & Tel. Co*., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). This initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case, and it is not necessary for the moving party to support its motion with affidavits or other similar materials negating the opponent's claim. *Id*.

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“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, 364 (Ct. App. 2004). “When a plaintiff is faced with a defendant’s motion for summary judgment that is supported by evidence, the plaintiff cannot defeat the motion by relying upon the mere allegations of his complaint but must disclose the facts he intends to rely on by affidavit or other proof.” *Shupe v. Settle*, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994). “A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.” *Id*., at 315 S.C. 516-17, 445 S.E.2d at 655.

DISCUSSION

According to South Carolina law, “in a negligence action, a plaintiff must show that (1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant’s breach was the actual and proximate cause of the plaintiff’s injury, and (4) the plaintiff suffered an injury or damages. *Madison ex rel. Bryant v. Babcock Ctr., Inc*., 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006). Defendant is not liable to Plaintiff and is entitled to summary judgment as a matter of law for the following reasons:

A. THERE WAS NO EVIDENCE OF A DANGEROUS OR DEFECTIVE CONDITION AT THE TIME OF THE ACCIDENT.

Plaintiff cannot establish the existence of the gravel pothole that she allegedly fell into or that there was a dangerous or defective condition at the time of the accident. South Carolina courts have been clear that “[t]he mere fact that there is a difference between the levels in the different parts of the premises does not, in itself, indicate negligence unless, owing to the character, location and

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surrounding condition of the change of level, a reasonably careful person would not be likely to expect or see it." *Bruno v. Pendleton Realty Co.*, 240 S.C. 46, 51, 124 S.E.2d 580, 582 (1962).

Here, both of Plaintiff's grandchildren who were present at the time of the fall testified in their depositions that there was no hole, but instead, a change in elevation upon which Plaintiff misplaced her foot.

Q: All right. Now, would you describe it as a hole or an uneven spot in the asphalt?

A: I would actually describe it as an uneven spot instead of a hole, actually.

(*See* M. Millroy Dep. 24:5-8).

Q: All right. So what in your estimate, because there's been talk about a hole or just a ledge, what caused this fall?

A: There is uneven ground, and I think that little slab kind of was, like a steep step that she misplaced her foot.

(*See* L. Millroy Dep. 31:15-20).

Photographic evidence also shows that the change in elevation leading to the concrete pad was open and obvious such that a reasonably careful person would be likely to expect and/or see it. *See* Exhibit A. Furthermore, the photo shows: that Defendant provided a large paved walkway with ample room for patrons leading to the concrete pad; there was no grass, foliage, or excess debris covering the change in elevation; and there was no pothole. Therefore, the record is void of any dangerous of defective conditions and Plaintiff's claim must be dismissed as a matter of law.

B. PLAINTIFF FAILED TO EXERCISE ORDINARY CARE.

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Plaintiff failed to exercise ordinary care and assumed the risk of harm when entering Defendant's premises because she was familiar with the facility and the change in elevation was open and obvious. According to the Supreme Court in *Creech v. SC Wildlife*:

> "In the ordinary case, an invitee who enters land is entitled to nothing more than knowledge of the conditions and dangers he will encounter if he comes. If he knows the actual conditions, and the activities carried on, and the dangers involved in either, he is free to make an intelligent choice as to whether the advantage to be gained is sufficient to justify him in incurring the risk by entering or remaining on the land. The possessor of the land may reasonably assume that he will protect himself by the exercise of ordinary care, or that he will voluntarily assume the risk of harm if he does not succeed in doing so. Reasonable care on the part of the possessor therefore does not ordinarily require precautions, or even warning, against dangers which are known to the visitor, or so obvious to him that he may be expected to discover them."

Creech v. SC Wildlife, 328 S.C. 24, 30, 491 S.E.2d 571, 574 (1997).

During her deposition, Plaintiff admitted that she was not paying attention as she was walking on Defendant's premises.

Q: Yes, ma'am. My main point was if you were walking up to that side and then stepped backwards into this alleged hole, you would have seen it when you were walking up, correct?

A: Actually, no, it's just black gravel. It's- - it's black gravel and also there are tire marks from these big gigantic trucks, so I wasn't looking at the ground. I was trying to get my way to the top of the dumpster. And when I fell in that gravel hole, it was a shock to me as it was to everybody else.

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Q: And you just said you weren't looking where you were walking?

A: I was - - I was walking.

Q: Okay. And--

A: You can't - - you can't walk and, you know, like, look down while you're trying to walk someplace. I mean, I thought I was okay.

(*See* Severino Dep. 17:1-18).

Additionally, Plaintiff testified that she saw the concrete slab that she was allegedly standing on as she was approaching the waste container prior to the accident.

Q: Okay. When you were approaching the concrete slab, did you have to think about it when you stepped onto it?

A: Do people do that? I mean, I was just walking.

Q: Do you realize you're stepping onto a stair when you step on a stair?

A: Yeah, yeah. I saw the concrete and started walking on the side of the dumpster.

Q: Was the concrete slab a different color than the gravel?

A: Yes. It's cement.

Q: Can you describe the color of the cement for me?

A: Describe the color of the cement for you?

Q: Sure.

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A: It was gray-ish, a dull - - it was dull, it was cracked. It was - - if I could - - like your computer, it was a little darker than that, but it was cracked and dirty and that's all I observed on that.

(*See* Severino Dep. 30:19-25; *Id* at 31:1-13).

There is also evidence in the record that not only was Plaintiff familiar with the make-up of this facility, but that she had been to this yard waste bin with her grandson in the past and should have expected the change in elevation between the concrete pad, asphalt, and dirt.

Q: Okay. And I'm - - had your grandmother been with you specifically to this yard waste bin in this spot before?

A: Like at any time before?

Q: Yes, sir.

A: Yes.

Q: Okay. So she was familiar with where the yard waste bin was located?

A: Yes.

(*See* L. Millroy Dep. 33:4-12).

There is no evidence in the record that Defendant had superior knowledge regarding any danger with the concrete pad or the surrounding area. Plaintiff was familiar with the facility and its layout, had knowledge of the change in elevation by the concrete pad, and assumed the risk of utilizing the facility when she entered upon the land to discard her trash. Defendant could reasonably assume that Plaintiff would exercise ordinary care by, at the very least, paying attention to where she was walking by the concrete pad which was obviously elevated from the ground level.

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Consequently, Plaintiff's claim must be dismissed as a matter of law due to her failure to exercise ordinary care.

C. THERE IS NO EVIDENCE THAT DEFENDANT CAUSED OR OTHERWISE HAD ACTUAL OR CONSTRUCTIVE NOTICE OF ANY ALLEGED DEFECTIVE CONDITION.

Defendant did not cause or otherwise have actual or constructive notice of any dangerous or defective condition where Plaintiff fell. According to the South Carolina Supreme Court, for a Plaintiff to recover damages for injuries caused by a dangerous or defective condition on Defendant's premises, "Plaintiff must show either (1) that the injury was caused by a specific act of the Defendant which created the dangerous condition; or (2) that the Defendant had actual or constructive knowledge of the dangerous condition and failed to remedy it. *Anderson v. Racetrac Petroleum, Inc*., 296 S.C. 204, 205, 371 S.E.2d 530, 531 (1988).

Defendant could not have anticipated the danger caused by the elevation of the concrete pad or even the alleged pothole as there is a lack of evidence in the record of any other falls, complaints, or similar incidents regarding the concrete pad or the alleged pothole that would have given Defendant actual or constructive notice. The only basis Plaintiff seems to have to support that these conditions were dangerous is because she fell. However, in *King v. J.C. Penney Co*., the Supreme Court held that the doctrine of res ipsa loquitar does not apply in the state of South Carolina; and for a plaintiff to recover damages, there must be proof of not only an injury, but also that it was caused by some actionable negligence of the defendant. *King v. J. C. Penney Co*., 238 S.C. 336, 339–40, 120 S.E.2d 229, 230 (1961).

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Here, the record is void of any actionable negligence of the defendant and fails to point to any defects in the concrete pad or the change in elevation. Defendant asserts that Plaintiff was not paying attention to where she was walking, and her inattention is what caused her to fall. As a result, Plaintiff's claim must fail as a matter of law.

CONCLUSION

Based on the foregoing reasons set forth herein, Defendant respectfully requests the Court GRANT its Motion for Summary Judgment and dismiss Plaintiff's Complaint.

RESPECTFULLY SUBMITTED,

SMITH | ROBINSON

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