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INTRODUCTION OF ISSUES AND ARGUMENTS ON APPEAL

The underlying case arises from a premises incident that occurred in Valdosta, Georgia. The issue here is whether the Trial Court erred when it granted Appellee's Motion for Summary Judgment. There are genuine issues as to whether the Appellant assumed the risk, and whether the Appellant exercised ordinary care for her own safety in the face of a bona fide emergency.

JURISDICTIONAL STATEMENT

Jurisdiction is properly in the Court of Appeals of Georgia as this is not a case in which the Supreme Court has exclusive jurisdiction under the Constitution of the State of Georgia. Ga. Const. Art. VI, § VI, ¶¶ 2, 3.

ENNUMERATION OF ERRORS

Whether the Trial Court erred in granting summary judgment in the face of genuine issues of material fact.

STATEMENT OF THE CASE

This is a premises liability action based on an incident which occurred on or about July 9, 2017 at the Appellee's home located in Valdosta, Georgia. (R: 8-12).

On July 9, 2017, Appellant was on her lunch break from work when she received a call from her mother, Carolyn Goslin. (R: 97, lines 4-10). Appellant missed the initial phone call but let it go to voicemail. (R: 97, lines 4-10). In the voicemail, Ms. Goslin was, "upset, crying, and anxious." (R: 97, lines 4-10). Appellant called her mother back. (R: 97, lines 4-10). Ms. Goslin reports being at the house of Appellee Susan Taylor and she was, "crying and screaming, telling me that she's being attacked." (R: 97, lines 4-10). Plaintiff was across town from her mother, but rushed to her aid, trying to keep her on the phone, but her phone goes dead. (R: 97, lines 11-15). To better understand the situation created by the Taylors at their house, we need to discuss Ms. Goslin's status and Appellant's state of mind.

In her deposition, Appellee's Counsel asks Appellant an important question which goes directly to the mental state and thought processes of Appellant on that day:

Q: I guess when you got to the scene of the accident, why did you wait to call the police?

A: My mom was in danger. She had already been tackled and choked and hit and she's blind. She could not see to defend herself. And, you know, that's my

mom so my first instinct was to try and get her out of danger, not to defend her, but to get her out of the situation.

(R: 103, lines 7-15).

Appellant's mother is blind, and she is being actively attacked by Mr. Taylor in the household of, and presence of, Ms. Taylor. The defense argues that they are not liable because it is Appellant's fault for inserting herself into a potentially violent situation. However, as we know, the attack on Ms. Goslin is happening in the house of Ms. Taylor, Ms. Taylor is present in the house during the attack, and Ms. Taylor did not want the police called. (R: 95, lines 4-6; R: 105, lines 1-8; and, R: 104, lines 14-16). In fact, Ms. Taylor ordered Appellant not to call the police. (R: 104, lines 14-16). This was of course after Mr. Taylor had already, and without any warning, violently choked, pushed, and tackled Appellant causing serious injuries to her right leg. (R: 98, lines 2-12). Ms. Taylor knew of the violent propensities of Mr. Taylor prior to Appellant's arrival, and of the altercation between Mr. Taylor and Appellant, but still requested that the police not become involved. Obviously, Appellant was left with very little choice if she wanted to protect her blind mother as it was obvious the Taylors were not going to do anything but allow further harm to be rained down upon Ms. Goslin.

Importantly, there is no evidence in this case that Appellant herself ever had a physical altercation with Mr. Taylor. In fact, Appellant testified that she had never

had a problem with Mr. Taylor before. (R: 106, lines 7-9). As such, how can one be said to appreciate a risk where the fruit of the risk has never ripened?

Also impacting her decision to not call the police prior to arrival, Appellant testified that she did not know the exact address of Ms. Taylor's house, but had been to it on two prior occasions, and had been inside the house on one of those prior occasions. (R: 95, lines 10-19; and, R: 98, lines 23-25). The reason Appellant had been to Ms. Taylor's house before was to pick up her mother. (Id). As such, Plaintiff was not a stranger to the property and had previous permission to come on and inside of the property. (Id). Importantly, at no point during the events of July 9, 2017, does Ms. Taylor ask Plaintiff to leave her property. (R: 104, lines 1-2).

In summation, Plaintiff was injured on the property of Defendant Ms. Taylor, at the hands of Defendant Mr. Taylor, during Plaintiff's response to an emergent and potentially violent situation created not by her, but created by the Defendants. The Defendants, specifically, Ms. Taylor, had no desire to deescalate the situation through the intervention of law enforcement. The actions of the Taylors on that day certainly show willful and wanton behavior in derogation of their duty to protect Plaintiff from intentional harm, and because of this, material issues exist and therefore the denial of summary judgment is authorized and proper.

ARGUMENT AND CITATION OF AUTHORITY

As noted above, this is an appeal from the Trial Court's granting of summary judgment against the underlying Plaintiff - Appellant, and the Appellant appeals.

A. THE STANDARD OF REVIEW

This Court has provided many examples of the appropriate standard of review. "Summary judgment is proper if the pleadings and evidence '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.' We review the grant of summary judgment de novo and view the evidence in the light most favorable to the nonmovant." Houston v. Wal-Mart Stores E., L.P., 324 Ga. App. 105, 105-106 (2013).

On a motion for summary judgment, "the evidence must be construed most favorably to the opposing party, and the Trial Court must give him the benefit of all favorable inferences that may be drawn from the evidence." Norton v. Ga. R. Bank & Trust, 253 Ga. 596, 603 (1984). Importantly, "questions of negligence, diligence, contributory negligence and proximate cause are peculiarly matters for the Jury, and a Court should not take the place of the Jury in solving them, except in plain and undisputed cases." Reed v. Carolina Cas. Ins. Co., 327 Ga. App. 130 (2014). See also, Sutton v. Justiss, 290 Ga. App. 565, 566 (2008) ("[i]f reasonable minds can differ on the cause of the injury, the case is not plain, palpable, and indisputable and it should go to the Jury").

B. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT

The Trial Court granted Appellees' Motion for Summary Judgment solely on the issue of assumption of the risk, and discredits the application of the emergency doctrine. (R: 4-7). However, Appellee allowed a situation to exist that was unknown to Appellant thereby allowing Appellant to unwittingly expose herself to a dangerous situation. Despite Appellees' arguments otherwise, there is record evidence in this case showing that material facts remain in dispute, and are ripe and proper for a Jury's determination.

“Evidence is insufficient to support summary judgment if it merely preponderates toward the defendant's theory, or if it only discloses that satisfactory proof of plaintiff's case on trial will be unlikely.” Scott v. Owens-Illinois, Inc., 173 Ga. App. 19, 21 (1984). Moreover, the Appellate Courts caution that just because a particular evidentiary posture may suffice to authorize the grant of a directed verdict, the very same evidence may not suffice to authorize the grant of summary judgment, especially in a case where, “the party making the motion for summary judgment is not required to carry the burden on the Trial of the case.” Winn-Dixie of Greenville v. Ramey, 186 Ga. App. 257, 258 (1988).

“We must remember that it is the Jury, not the Court, which is the fact-finding body. It weighs the contradictory evidence and inferences, judges the credibility of

witnesses, receives expert instructions, and draws the ultimate conclusion as to the facts. The very essence of its function is to select from among conflicting inferences and conclusions that which it considers most reasonable. The sole function of the Court on a motion for summary judgment is to determine whether there exists a genuine issue of material fact. And even slight evidence giving rise to a triable issue of material fact will suffice to defeat summary judgment.” Albright v. Terminal Investment Corp., 373 Ga. App. 798 at 804-805 (2024) (Citations and punctuation omitted.) Such evidence exists in the present record.

Specifically, to the basis for the Trial Court’s ruling, “[w]hen a motion for summary judgment is premised on the existence of an affirmative defense—such as assumption of the risk—the defendant must come forward with proof sufficient to establish each element of the affirmative defense. If the defendant does so, the plaintiff then must come forward with some evidence that shows a genuine, disputed issue of fact as to some element of the affirmative defense. [I]f the plaintiff is unable to meet this burden of production, the defendant is entitled to summary judgment as a matter of law. Although assumption of the risk often presents a question for the jury, the issue should be decided by the court as a matter of law where the evidence shows clearly and palpably that the jury could reasonably draw but one conclusion.” Kane v. Landscape Structures, Inc., 309 Ga. App. 14, 16-17 (2011) (Citations and

quotations omitted). Appellant believes there is sufficient record evidence to rebut the Appellee's affirmative defense.

A. Assumption of the Risk and the Emergency Doctrine

To establish the affirmative defense of assumption of the risk, Appellee is required to come forward with evidence establishing that: (1) Appellant had some actual knowledge of the danger; (2) she understood and appreciated the risks associated with the danger; and (3) she voluntarily exposed herself to the danger. *See, Kane*, 309 Ga. App. at 17. “The specific danger of which a plaintiff must be actually aware for purposes of assumption of the risk is ‘the specific, particular risk of harm associated with the activity or condition that proximately causes injury’” *Id.* “‘In its simplest and primary sense, assumption of risk means that the plaintiff, in advance, has given his consent to relieve the defendant of an obligation of conduct toward him, and to take his chances of injury from a known risk arising from what the defendant is to do or leave undone.’ Prosser, *Law of Torts* (4th Ed.) p. 440. ‘In by far the greater number of cases, the consent to assume the risk has not been a matter of express agreement, but has been found to be implied from the conduct of the plaintiff under the circumstances.’ Prosser, *supra*, at 445; *see, Harper and James, Law of Torts*, Vol. 2, Ch. XXI.” *Osburn v. Pilgrim*, 246 Ga. 688, 695 (1980).

The specific danger here is not just the violent propensities of Mr. Taylor, but the threat of violence from Mr. Taylor to Ms. Campbell herself.

Appellees argue, and the Trial Court agrees, that Appellant assumed the risk when she entered Ms. Taylor's property to remove her blind mother from an unknown yet violently dangerous situation that was being allowed to exist by the very same owner of the property. (R: 38-41). What is missing from Defendants' theory is evidence that Appellant knew she would be violently attacked by Mr. Taylor. What the evidence shows is that Appellant travelled to a house she is familiar with but does not know the exact address of in order to save her mother from a dangerous situation, not to defend her mother or otherwise engage with the danger itself, Mr. Taylor. What the evidence also shows is that after knocking on the door, while she is still outside of the house, Mr. Taylor suddenly and without warning reaches outside the house from the inside, chokes the Appellant, pushes the Appellant, falls to the ground with the Appellant, landing on top of her, thereby breaking her leg. There is no evidence that Appellant anticipated encountering this danger, and therefore there is a complete dearth of evidence to show that she appreciated this particular specific danger to the point that she would have voluntarily encountered same. That is the danger Appellant is supposed to be aware of in order to assume the risk. However, as we know, Appellant had never had an altercation with Mr. Taylor prior to the day in question. (R: 106, lines 7-9).

In support of its Order, the Trial Court relied on Kane v. Landscape Structures, Inc., 309 Ga. App. 14 (2011), to set forth the standard for assumption of the risk without appreciating that the underlying facts of the Kane case do not support its ruling here.

Turning back to the Kane case cited by the Trial Court, the Kane case involves a nine-year-old boy who fell from playground equipment. The child was aware that he could fall, he admitted that it was not something he should have been climbing on, and his mother warned him of the dangers. Kane, 309 Ga. App. at 15-16. However, through a fair amount of peer pressure, the young man took the chance anyway. Id. Given the disparate nature of the Kane case to the attendant underlying facts, Kane does not apply here.

The Trial Court also relied on Carter v. Scott, 320 Ga. App. 404 (2013), in its evaluation of the assumption of the risk defense raised by Appellees. In Carter, this Court held that, “no tort can be committed against a person consenting thereto if that consent is free, is not obtained by fraud, and is the action of a sound mind. Moreover, it is well settled that an adult of ordinary intelligence assumes the risk of possible injury when he deliberately and voluntarily joins in a fight, or enters into a fight for the purpose of breaking it up.” Id. at 407-408. Given this holding, Carter is inapplicable to our facts as the plaintiff there admitted in an affidavit that he intervened into the fight. Appellant did not consent to getting into an altercation

with Mr. Taylor, she was punched and attacked shortly after arriving at Ms. Taylor's door. Moreover, Appellant did not join a fight, nor did she enter into a fight for the purpose of breaking it up. Appellant testified that she went to Ms. Taylor's house to remove her mother from the situation, not to join the fight but to defend her mother. (Depo. of Doris Campbell, p. 54, lines 7-15). As such, Carter does not apply to the instant facts.

What really happened here is that Plaintiff was faced with an emergent need to protect her blind mother, and she rushed to a place where she knew the location but did not know the street address to enable her to call law enforcement. Much like Ms. Taylor, Appellant was aware of Mr. Taylor's violent past, but Mr. Taylor had never before been violent towards Appellant, so there is a reasonable expectation by Appellant that the non-violent behavior toward Appellant would continue. "Anything which operates to deprive a person of ability to exercise his intellectual powers and guide h[er] acts thereby will relieve h[er] of an imputation of negligence that otherwise might arise from h[er] conduct. Emergencies or sudden perils illustrate this proposition. The rule judicially stated is that one who in a sudden emergency acts according to his best judgment, or who, because of want of time in which to form a judgment, omits to act in the most judicious manner, is not chargeable with negligence." Ware v. Alston, 112 Ga. App. 627, 629 (1965). The Ware Court continued: "A person threatened with an imminent danger is not held to

the same circumspection of conduct that [s]he would be held to if [s]he were acting without the compulsion of an emergency. A person has a right to choose even a dangerous course, if that course seems the safest one under the circumstances.” Id. at 630. Here, Appellees created the emergency to which Appellant was responding. Ms. Taylor could have ended the emergency by calling law enforcement, but it is obvious she did not want to do that considering she ordered Appellant not to make that call. As such, Appellees should not be granted summary judgment by arguing that Appellant assumed the risk when she was frantically responding to an emergency wholly created by the Appellees. There are genuine issues of material fact that exist and summary judgment should be therefore be reversed.

CONCLUSION

Due to the existence of genuine issues of material fact as to Appellees’ negligence, Appellees’ motion for summary judgment should have been denied because, “questions of negligence, diligence, contributory negligence and proximate cause are peculiarly matters for the Jury, and a Court should not take the place of the Jury in solving them, except in plain and undisputed cases.” Reed, 327 Ga. App. 130 (2014). Moreover, the existence of even slight evidence that gives rise to a triable issue of material fact will suffice to defeat summary judgment. Albright, 373 Ga. App. 798 at 805 (2024). Therefore, Appellant respectfully requests that this

Honorable Court reverse the Trial Court's ruling on summary judgment and remit for further proceedings in that Court.

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully Submitted,

THIS 26th day of JANUARY 2026.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing APPELLANT’S BRIEF upon the following:

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Electronically filing this document which sends notice via that system to all parties and counsel.

THIS 26th day of JANUARY 2026.

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