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ARGUMENT AND CITATION OF AUTHORITY

In her Response Brief, Appellee first responds to the sole decision by the Trial Court, that Appellant assumed the risk when she went to rescue her mother from the beating being administered by Ms. Taylor's son. Additionally, Appellee raises a new superior knowledge argument that was not considered by the Trial Court in its Order¹, not raised by Appellant in its Initial Brief, and is in fact different from the arguments advanced at the Trial Court level.

“Where a party to a case, upon whom the burden of proof upon the Trial of the case does not lie, makes a motion for summary judgment, is all of the evidence adduced on said motion, including the testimony of the party opposing the motion, construed most strongly against the movant?” Burnette Ford, Inc. v. Hayes, 124 Ga. App. 65, 65-66 (1971). “The Supreme Court answered the question in the affirmative.” Id.

A. APPELLANT DID NOT ASSUME THE RISK

In her Brief, Appellee argues that Appellant mistakenly takes the view that consent is an element of the defense of the assumption of the risk, and then makes the argument that consent is a part of the defense of assumption of the risk, that it's “baked in”. (Appellee Brief, p. 6). Appellant has never argued that consent is an element of the assumption of the risk defense and that cannot be found in her Brief.

¹ See, R-V2-7n.4.

That said, Appellant believes the Parties are reading from the same sheet of music on the consent issue.

As this Court has noted: “O.C.G.A. § 51-11-2 provides the statutory basis for the assumption of the risk defense, stating 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 sound mind.’” Carter v. Scott, 320 Ga. App. 404, 407-408 (2013). Appellee cites the case of Muldovan v. McEachern, 271 Ga. 805 (1999), in arguing that the consent runs to, “the known risks arising from the chosen acts or omissions of the plaintiff.” In Muldovan, Muldovan and McEachern were playing Russian roulette with a firearm loaded by McEachern and McEachern ordered Muldovan to point the gun at him and pull the trigger. The first time there was no bullet to discharge. McEachern ordered Muldovan to pull the trigger again, and this time the firearm discharged killing McEachern. “‘Knowledge of the risk is the watchword of assumption of the risk,’ and means both *actual* and *subjective* knowledge on the plaintiff’s part. The knowledge that a plaintiff who assumes a risk must subjectively possess is that of the specific, particular risk of harm associated with the activity or condition that proximately causes injury. As recently stated by [the Supreme] Court: In its simplest and primary sense, assumption of the 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.*” Id. at 808 (italics in original).

Continuing, the Muldovan Court held: “Thus, the extent to which a plaintiff assumes the risk of injury caused by another’s action or inaction depends upon the extent to which the plaintiff subjectively comprehended the specific hazard posed, and affirmatively or impliedly assumed the risk of harm that could be inflicted therefrom. Where a plaintiff subjectively assumed only the specific risk of harm emanating from negligent conduct, recovery is barred only for injuries that were negligently inflicted; in that situation, recovery is not barred for injuries that resulted from wilful and wanton conduct. However, as recognized by the Court of Appeals in Roberts v. King, where a plaintiff subjectively chooses to assume a specific risk of harm posed by wilful or wanton misconduct that he knows is contemplated by the party that inflicts the injury, recovery on the basis of such misconduct is precluded.” Id.

In the instant matter, there is no evidence that the Appellant subjectively comprehended the specific hazard posed, that of an attack by Mr. Taylor. In fact, Appellant testified that Mr. Taylor had never attacked her before and she was going to the house, not to confront Mr. Taylor, but to remove her blind mother from a dangerous situation. Admittedly, this would be a different case if there was an active beating upon Appellant’s arrival and Appellant immediately entered the house and

joined the fight. But that is not what happened here. As such, it cannot be argued that Appellant had specific comprehension of the specific hazard, an attack would come upon her person. For that reason, the determination of whether Appellant assumed the risk is properly a Jury question.

In addition to Muldovan, Appellee relies upon three cases to argue that Appellant understood the risk and assumed the injury when she went to her mother's rescue. (Appellee's Brief, p. 7). The first is Carter v. Scott, 320 Ga. App. 404 (2013). "[I]t is well settled that an adult of ordinary intelligence assumes the risk of possible injury when he deliberately and voluntarily joins a fight, or enters into a fight for the purpose of breaking it up." Carter at 408. Appellee relies upon the Carter case in support of its argument that Appellant assumed the risk. In that case, Scott, the plaintiff below, stated in an affidavit that he intervened in a fight between a nursing home resident and a nurse. Id. As such, assumption of the risk applied there because Scott chose to intervene into an active confrontation. He inserted himself into the fray. That is not what happened in the instant case. Here, Appellant went to extract her mother from a dangerous situation, not to "join a fight" nor to "enter into a fight for the purpose of breaking it up." As such, the degree of consent to the injury understood by Scott is markedly different than Appellant, and as such, the facts of the Carter case do not apply to the appeal here.

Next, Appellee relies on Saulsbury v. Wilson, 348 Ga. App. 557 (2019). In Saulsbury, the plaintiff, Wilson, interfered in an active dog fight and tried to break up the dog fight using her bare hands. Id. at 558. The Court ruled against Wilson, finding that she assumed the risk when she intervened in the dog fight. “Assumption of risk in its simplest and primary sense means that the plaintiff has given [her] express consent to relieve the defendant of an obligation of conduct toward [her] and to take [her] chance of injury from a known risk. The result is that the defendant is simply under no legal duty to protect the plaintiff.” Id. at 559 (Citations omitted). As noted by both Parties, knowledge of the danger is the first element of the assumption of the risk defense. To that, this Court stated in Saulsbury that, “[t]he knowledge requirement does not refer to a comprehension of general, non-specific risks. Rather, the knowledge that a plaintiff who assumes the risk must subjectively possess is that of the specific, particular risk of harm associated with the activity or condition that proximately causes injury.” Id. at 559-560 (Citations omitted). Here, and again, Appellant had no prior knowledge or experience with the specific risk posed, that of an attack on her person by Mr. Taylor. Unlike the plaintiff in Saulsbury, who had extensive experience with prior dog fights, Appellant who had never been attacked by Mr. Taylor on prior occasions, had no way to appreciate the whole picture of what she was walking into, and had no opportunity to measure the risk of an event that had never occurred on a prior occasion. Given the lack of

knowledge by Appellant as to the specific risk, assumption of the risk should not apply.

The third case relied upon by Appellee on the issue of assumption of the risk is Fagan v. Atnalta, Inc., 189 Ga. App. 460 (1988). In that case, Mr. Fagan was at an establishment called The Beer Mug when some patrons were asked to leave. Id. The patrons became aggressive towards the female waitstaff and Mr. Fagan decided to intervene. Id. Once he intervened, a beating was delivered upon Mr. Fagan. Id. In his deposition, Mr. Fagan acknowledged that he knew he would be hurt if a fight broke out. Id. at 461. Regarding this testimony from Mr. Fagan, this Court concluded: “From appellant's own testimony, only one conclusion is permissible. He saw the situation, recognized the danger to himself, and voluntarily and deliberately thrust himself into the melee, without being asked.” Id. This observation stands in stark contrast to that of our Appellant. Here, the Appellant did not recognize the danger to herself and she did not voluntarily and deliberately thrust herself into any active melee. Appellant had never been attacked by Mr. Taylor despite there being opportunity for him to do so, and she did not go to Ms. Taylor’s house to join a fight nor enter a fight for the purpose of breaking it up. Appellant was present merely to remove her mother from the situation when she was attacked.

Interestingly, in a dissent to the majority opinion in Fagan, Judge Deen felt that summary judgment is contraindicated based upon the application of the rescue

doctrine. Fagan at 462. That doctrine holds: “The negligence which causes injury or danger to another is negligence also as to the rescuer, and the latter in an effort to save human life will not be barred on the ground that he did not exercise ordinary care for his own safety or even that he assumed the risk of injury to himself unless his actions are so imprudent and beyond what a person in the same circumstances might be expected to do that they must be classified as reckless or wanton. Any means reasonably appropriate to the purpose may be used. There is no issue involved as to assumption of risk, since the doctrine of rescue necessarily contemplates an assumption of the risk inherent in the peril created by the defendants’ negligence and allows recovery for injuries thereby incurred, for the reason that the defendants were charged with the duty of anticipating that their negligence might attract rescuers who would necessarily have to assume the dangers inherent in the situation.” Flowers v. Slash Pine Elec. Membership Corp., 122 Ga. App. 254, 258 (1970). Here, the rescue doctrine applies as the Taylors knew Ms. Goslin had called her daughter, and instead of ceasing their tortious activity, ramped it up, thereby causing an injury to the Appellant who was there to rescue her mother, not to insert herself into an altercation. As such, Appellant’s desire to remove her mother from the situation and not insert herself in an active fight creates an issue of fact for the Jury and is not barred by the defense of assumption of the risk.

B. THE EMERGENCY DOCTRINE APPLIES

Appellee contends that the sudden emergency doctrine does not apply. (Appellee's Brief, p. 6). However, that is not the case, and a plaintiff is not barred from using it.

“The defense of emergency is not available unless the evidence shows that there has been a sudden peril caused by circumstances in which the [plaintiff] did not participate and which offered him a choice of conduct without time for thought so that negligence in his choice might be attributable not to lack of care but to lack of time to assess the situation The doctrine requires that the person confronted by the emergency have the opportunity to exercise one of several reasonable alternative courses of action. In the absence of such factors, there can be no conduct to which to apply the standard and the doctrine is inapplicable. A plaintiff may also use the doctrine of sudden emergency as a defense in connection with the issue of comparative negligence” Buford v. Benton, 232 Ga. App. 102, 102-103 (1998).

Appellee argues that Appellant can “only” use the doctrine when rebutting a defense of comparative negligence, and cites the Buford case. (Appellee's Brief, p. 6). However, the Buford case does not appear to so limit its application because it states that: “A plaintiff may also use the doctrine of sudden emergency as a defense in connection with the issue of comparative negligence” As such, a plaintiff is not so restricted and may take advantage of the doctrine where the need requires.

Therefore, the doctrine's application creates a Jury question as to the use of the assumption of the risk doctrine.

C. MS. TAYLOR HAD SUPERIOR KNOWLEDGE

As noted in the beginning of this Brief, Appellee is making a superior knowledge argument, that while sort of raised in the Trial Court, was not considered by the Trial Court in its Order. (R-V2-7n.4). Hence, same was not argued in the Appellant's Initial Brief. In fact, it is important to note that the arguments made in the Trial Court by Appellee are different than those made here, including citations to different cases than those cited in the Response Brief. That said, in an abundance of caution, Appellant responds as follows.

The parties agree that Appellant was a licensee, and as such, the owner of the premises is liable to a licensee only for willful or wanton injury. O.C.G.A. § 51-3-2(b). “[I]t is usually willful or wanton not to exercise ordinary care to prevent injuring a person who is actually known to be, or may reasonably be expected to be, within the range of a dangerous act being done or a hidden peril on one's premises.” Rigdon v. Kappa Alpha Fraternity, 256 Ga. App. 499, 501 (2002). Continuing, “[a]ccordingly, if a danger to a licensee is ‘known and foreseen by the property owner,’ then the owner must exercise ordinary care and diligence to protect that licensee from the peril.” Id. “Willful conduct is based on an actual intention to do harm or inflict injury.” Ga. DOT v. Strickland, 279 Ga. App. 753, 754 (2006).

“Wanton conduct has been described as that ‘which is so reckless or so charged with indifference to the consequences as to be the equivalent in spirit to actual intent.’”

Id. As Appellant has shown, Ms. Taylor was present for her son’s attack on Ms. Goslin, excused same as a “mental break”, and then actively tried to prevent Appellant from calling the police. That certainly sounds like consciously indifferent, reckless conduct to the Appellant.

Appellee points to testimony where Appellant acknowledges she knew at the time of the incident that Mr. Taylor was violent, but ignores the testimony indicating that she had never had any prior issues with Mr. Taylor herself. (R-V2-109, lines 11-13; R-V2-106, lines 7-9). Again, this goes to superior or equal knowledge of the specific harm. There is no testimony that Appellant was aware of the specific harm, Mr. Taylor lashing out and attacking her. However, Ms. Taylor was at ground zero that day. She observed everything that was occurring. She knew and acknowledged that Mr. Taylor was having a “mental break”. Certainly, she was in the best position to take action, but she chose not to and allowed the violence to escalate in her presence. This is the essence of superior knowledge and should not be characterized and cast upon the Appellant as equal knowledge. Given the superior knowledge, summary judgment was improper.

D. THE RIGHT FOR ANY REASON RULE DOES NOT APPLY

Lastly, Appellee makes a right for any reason rule argument. (Appellee’s Brief, p. 8). For the following reasons, this does not apply.

“Under the right-for-any-reason rule, we will affirm a judgment if it is correct for any reason, even if that reason is different than the reason upon which the Trial Court relied. This rule applies to motions for summary judgment and motions to dismiss, so long as the movant raised the issue in the Trial Court and the nonmovant had a fair opportunity to respond. However, we must balance this principle with ‘[t]he tenet that the Appellate Courts do not rule on issues not ruled on by the Trial Courts[, which] preserves the Appellate Courts’ jurisdiction and delineates the proper roles of the Courts at the Trial and Appellate levels.’” Perry v. Emory Healthcare Services Management, LLC, 374 Ga. App. 41, 47 (2025). This Court chose not to apply the right for any reason rule in Perry, instead noting: “These arguments may be considered on remand, and ‘the cardinal principle of judicial restraint — if it is not necessary to decide more, it is necessary not to decide more — counsels us to go no further.’” Id. at 48.

Given the new arguments advanced by Appellee’s Counsel, there is no reason for this Court to decide this case on anything beyond the four corners of the Order below. That Order was limited to the argument of assumption of the risk, and that is where it should lie.

CONCLUSION

In summation, Appellee failed to protect Appellant from willful and wanton behavior. Due to the existence of genuine issues of material fact as to Appellee's negligence, Appellee's 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 v. Carolina Cas. Ins. Co., 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 v. Terminal Investment Corp., 373 Ga. App. 798 at 805 (2024). For all of these reasons, summary judgment was inappropriate and reversal is authorized and proper.

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

Respectfully Submitted,

THIS 31st day of MARCH 2026.

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