

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-919

No. COA22-449

Filed 29 December 2022

Cumberland County, No. 19 CVS 4910

ESTATE OF ZAMARIE CHANCE, by and through KAREEM S. MOORE, JR.,
Administrator, Plaintiff,

v.

FAIRFIELD INN & SUITES BY MARRIOTT, FAIRFIELD INN BY MARRIOTT
LIMITED PARTNERSHIP, NEWPORT RAMSEY, LLC, ATC MANAGER, LLC, MLP
MANAGER, LLC, NEWPORT HOSPITALITY GROUP, INC., MARRIOTT
INTERNATIONAL, INC. AND ADAM K. COLLIER, Defendants.

Appeal by plaintiff from order entered 6 October 2021 by Judge Stephan
Futrell in Cumberland County Superior Court. Heard in the Court of Appeals 15
November 2022.

*Legal Center of Attorney Kelly Brown, PLLC, by Kelly Renee Brown, for
Plaintiff-Appellant.*

*Yates, McLamb & Weyher, L.L.P., by Rodney E. Pettey and Samuel G.
Thompson, Jr., for Defendants-Appellees.*

CARPENTER, Judge.

¶ 1

The Estate of Zamarie Chance (“Plaintiff”), by and through Kareem S. Moore, Jr. (“Moore”), the biological father of nine-year-old Zamarie Chance (“Decedent”) and administrator of Plaintiff, appeals from an order (the “Order”) granting Fairfield Inn

& Suites by Marriott; Fairfield Inn by Marriott Limited Partnership; Newport Ramsey, LLC; ATC Manager, LLC; MLP Manager, LLC; Newport Hospitality Group, Inc.; Marriott International, Inc.; and Adam K. Collier’s (“Defendants”) motion for summary judgment and motion to strike the affidavits of Jerod Grant (“Grant”) and Thandiwe Irvin (Trusdale) (“Irvin”),¹ and denying Plaintiff’s motion for summary judgment and motion to strike the affidavit of Bruce Jacobs, Ph.D. (“Dr. Jacobs”).

¶ 2 After careful review of the record and Plaintiff’s arguments, we conclude Plaintiff has failed to forecast evidence showing Defendants breached any duty of care owed to Decedent. Accordingly, we affirm the trial court’s Order.

I. Factual & Procedural Background

¶ 3 This case arises from the fatal assault upon Decedent by his mother, Crystal Matthews (“Matthews”), in a Fairfield Inn & Suites by Marriott hotel (the “Hotel”) room located in Fayetteville, North Carolina, while Decedent and Matthews were guests. Matthews pled guilty to second degree murder of Decedent.

¶ 4 On 16 August 2019, Plaintiff filed a complaint against Defendants, the entities and individual Plaintiff believed owned, operated, franchised, or controlled the Hotel or its operations at the time of Decedent’s death. The complaint alleged that on 21

¹ In the record on appeal and in the appellant’s brief, this individual is referred to as “Thandiwe Irvin (Trusdale),” “Thandiwe Irvin Trusdale,” “Thandiwe Irwe (Trusdale),” or “Thandi Irvin.”

October 2017 at around 7:00 a.m., Irvin, who was staying in the room directly below Matthews' room, "heard repetitive thuds, stomping and muffled cries for help." Irvin phoned the front desk to notify hotel staff of her observations. Approximately thirty minutes later, Irvin heard similar noises and made a second call to the front desk regarding "sounds and cries for help." Around the same time of her second call to the front desk, Irvin also called 911 to report she heard "sounds like a woman [was] getting beat and screaming for help." The police department responded to Matthews' hotel room due to Irvin's call, where officers found Decedent and transported him to a nearby hospital. Decedent was pronounced dead at the hospital; his cause of death was blunt force trauma. Plaintiff alleged Defendants were liable in tort for Decedent's death on the grounds they did not properly prevent and respond to the 21 October 2017 incident after being notified of the disturbance in Matthews' room.

¶ 5

In the complaint, Plaintiff contends Defendants were negligent and breached their duties to Decedent as a lawful guest and business invitee of Defendants by failing to:

- (1) "provide adequate security";
- (2) "respond and intervene by knocking and entering the room when first notified by the guest below [Matthews'] room";
- (3) "go to the room occupied by [Matthews] to further investigate after they were notified";
- (4) "conduct a wellness check and enter [Matthews'] room

to verify the safety of the room’s occupants after they were notified of the disturbance”;

- (5) “have security staff on duty that could have responded and intervened after first receiving notice from the guest below [Matthews’] room”;
- (6) “properly train their employees to properly respond to a report of suspected physical violence in a hotel room”; and
- (7) “properly respond” to complaints regarding noise coming from Matthews’ room.

¶ 6 On 4 May 2020, Defendant Fairfield Inn & Suites by Marriott filed a motion to dismiss on the basis it is a trade name and not a legal entity. Defendants Newport Ramsey, LLC; ATC Manager, LLC; MLP Manager, LLC; Newport Hospitality Group, Inc.; Marriott International, Inc.; and Adam K. Collier each filed an answer to Plaintiff’s complaint.

¶ 7 In the latter half of 2020, discovery began and interrogatories, requests for admission, and requests for production of documents were exchanged between the parties. On 18 December 2020, Moore was deposed upon oral examination and admitted to having no personal knowledge of the 21 October 2017 incident at the Hotel.

¶ 8 On 7 April 2021, Defendants filed a motion for summary judgment, “based upon the admissions made by [P]laintiff and other evidence which leave no genuine issue of material fact remaining in the . . . matter.” Defendants argued in their

motion that Plaintiff, by not responding to Defendants’ first and second requests for admission, admitted Defendants were not liable on the grounds: (1) Defendants owed no duty to Decedent; (2) Defendants breached no duty to Decedent; and (3) no act or omission by Defendants is causally linked to Decedent’s death.

¶ 9 Defendant further argued the affidavits of D. Wayne West, III (“West”) and Loren Nalewanski (“Nalewanski”) “serve as an independent basis for granting summary judgment.” Defendants appended these affidavits to their motion as exhibits.

¶ 10 Lastly, Defendants asserted in their motion for summary judgment, relying on Nalewanski’s affidavit for support, that Marriott International, Inc. is merely a franchisor of the Hotel and has no agency relationship with any other Defendant and does not manage or exercise any control over the day-to-day operations of the Hotel.

¶ 11 On 13 May 2021, Plaintiff served on Defendants its initial responses to Defendants’ January and February 2021 requests for admission.

¶ 12 On 30 August 2021, Defendants filed the initial “Declaration of Bruce Jacobs, Ph.D.,” in which Dr. Jacobs formed his opinion, after reviewing certain “materials,” that the crime prevention measures at the Hotel as well as the Hotel’s response to information it received regarding noise in Matthews’ room were “reasonable and appropriate.”

¶ 13 On 13 September 2021, Defendants filed an amended motion for summary

judgment, arguing Defendants were entitled to judgment as a matter of law because: (1) Plaintiff did not respond to Defendants' requests for admissions; (2) the intentional criminal act was not foreseeable; and (3) there was no causal link between any alleged negligence and the death. Defendants further argued Marriott International, Inc. was a franchisor, and thus, not subject to liability for alleged torts on the Hotel property, and the other named corporate entities did not exercise the requisite control for tort liability on the Hotel property. Along with the motion, Defendants filed a second affidavit of Dr. Jacobs, in which he formed three opinions, in addition to those included in the initial affidavit, related to the lack of foreseeability of Decedent's death.

¶ 14 On 15 September 2021, Plaintiff served on Defendants supplemental responses to Defendants' various requests, including the first and second requests for admission. The next day, Plaintiff served two documents on Defendants: (1) the affidavit of Grant, the owner of Grant Hotel Group, LLC, who swore as to his experience as an owner and operator of a hotel and the standard practice in the industry for responding to hotel noise complaints, and (2) the purported affidavit of Irvin, which was not signed by the affiant. On 23 September 2021, Defendants filed a motion to strike Plaintiff's affidavits pursuant to Rules 16, 26, 33, and 34 of the North Carolina Rules of Civil Procedure.

¶ 15 On 24 September 2021, Plaintiff served on Defendants "Plaintiff's Opposition

to Defendants’ Motion and Amended Motions for Summary Judgment under Rule 56, Opposition to Defendants’ Motions to Strike Statements by Thandiwe Irvin and Jerod Grant, Opposition to Defendants’ Motion to Compel Discovery, and Counter Motion for Summary Judgment [under] Rule 56.”

¶ 16 On 27 September 2021, a hearing was conducted before the Honorable Stephan Futrell, and the parties argued their motions for summary judgment and motions to strike. Plaintiff moved the trial court, “in its authority, [to] withdraw any answers that were deemed admitted” and allow the supplemental responses to be treated as timely. At the conclusion of the hearing, the trial court granted Plaintiff’s motion to amend its responses and treat its supplemental responses as timely served, after finding the admission of the supplemental responses would not “prejudice [Defendants] in maintaining th[eir] action or defense on the merits” Defendants did not object to the trial court’s conclusion that Plaintiff’s supplemental responses to Defendants’ requests for admission would be treated as timely.

¶ 17 On 29 September 2021, the trial court entered its written Order, in which it: (1) granted Plaintiff’s motion to amend its responses to Defendants’ requests for admission to deem them timely; (2) granted Defendants’ motion to strike the affidavit of Grant and the purported unsigned affidavit of Irvin; (3) denied Plaintiff’s motion to strike the affidavit of Defendants’ security expert Dr. Jacobs; (4) denied Plaintiff’s motion for summary judgment; and (5) granted Defendants’ motion for summary

judgment after “consider[ing] the relevant authority and materials that were timely and properly submitted and allowed under Rule 56.” On 26 October 2021, Plaintiff gave timely written notice of appeal.

II. Jurisdiction

¶ 18 The Court has jurisdiction to address Plaintiff’s appeal from a final order pursuant to N.C. Gen. Stat. § 7A-27(b) (2021).

III. Issues & Violation of Non-Jurisdictional Appellate Rules

¶ 19 Plaintiff presented five issues as proposed issues at the conclusion of the record on appeal as well as in its appellant’s brief. *See* N.C. R. App. P. 10(b) (“Proposed issues that the appellant intends to present shall be stated without argument at the conclusion of the record on appeal in a numbered list.”); N.C. R. App. P. 28(b)(2) (requiring “[a] statement of the issues presented for review” in an appellant’s brief and allowing issues to be presented apart from the proposed issues). These issues are whether the trial court erred in: (1) allowing Defendants’ motion to strike the affidavits of Grant and Irvin; (2) denying Plaintiff’s motion to strike the affidavit of Defendants’ security expert Dr. Jacobs; (3) granting Defendants’ motion for summary judgment; (4) denying Plaintiff’s motion for summary judgment; and (5) sustaining Defendants’ objection to the trial court’s consideration of witness interviews Plaintiff proffered as evidence to support its motion for summary judgment.

¶ 20 Rule 28 of the North Carolina Rules of Appellate Procedure limits this Court’s

scope of review to the issues presented in the parties' briefs. N.C. R. App. P. 28(a). "Issues not presented and discussed in a party's brief are deemed abandoned." *Id.*

¶ 21 Here, Plaintiff's only issue for which it presents an argument concerns the trial court's grant of Defendants' motion for summary judgment. Thus, we deem the remaining issues abandoned. *See id.*; N.C. R. App. P. 28(b)(6) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.").

¶ 22 Next, Plaintiff does not provide any citation to the record or transcript in its Statement of Facts, as required by Rule 28(b)(5). Instead of providing "a non-argumentative summary of all material facts underlying the matter in controversy which are necessary to understand all issues presented for review," Plaintiff makes reference to several facts—including Moore's military background, work history, child support arrearage, and relationship with Matthews when Decedent was conceived—these facts are irrelevant to the issues on appeal before this Court and Plaintiff's arguments. Plaintiff also includes in its Statement of Facts the contentious claim that "[t]he trial court refused to hear any evidence proffered by Plaintiff" at the summary judgment hearing. *See id.*

¶ 23 Finally, we consider Plaintiff's Rule 9 violations. "This Court's review on appeal is limited to what is in the record or in the designated verbatim transcript of proceedings." *State v. Bryant*, 281 N.C. App. 116, 2021-NCCOA-696, ¶ 7. Rule 9

governs the record on appeal in civil actions and special proceedings. N.C. R. App. P.

9. The record must contain “copies of all . . . papers filed and statements of all other proceedings had in the trial court which are necessary to an understanding of all issues presented on appeal” N.C. R. App. P. 9(a)(1)(j). Furthermore, “[d]iscovery materials offered into evidence at trial shall be brought forward, if relevant, as other evidence.” N.C. R. App. P. 9(c)(4).

¶ 24 As we discuss in greater detail below, Plaintiff omitted from the record on appeal documents pertinent to this Court’s review of the key issue: whether Defendants breached their standard of care based on Irvin’s noise complaints. *See id*; N.C. R. App. P. 9(a)(1)(j). Here, the record reveals two written statements made by Hotel employees as well as the Hotel’s incident report were “produced in discovery.” Yet Plaintiff included neither the employee statements nor incident report in the record on appeal. Instead, Plaintiff included numerous photographs of Decedent and Moore as well as documents concerning Moore’s state licensures, which are unnecessary for this Court’s understanding of the issue Plaintiff presents on appeal. *See* N.C. R. App. P. 9(b)(2).

¶ 25 Further, we note Plaintiff included in the record on appeal numerous “pleading[s], motion[s], affidavit[s and] other paper[s]” that do not indicate the date on which the documents were filed, in violation of Rule 9(b)(3). *See* N.C. R. App. P. 9(b)(3).

¶ 26

It is well established that compliance with the North Carolina Rules of Appellate procedure is “mandatory” for all parties. *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 194, 657 S.E.2d 361, 362 (2008). Plaintiff’s appellate rules violations constitute non-jurisdictional rule violations, which generally do not subject an appeal to dismissal. *See id.* at 198, 657 S.E.2d at 365. We conclude Plaintiff’s defaults under Rules 9 and 28 do not “rise to the level of a ‘substantial failure’ or ‘gross violation,’” but we warn Plaintiff that failure to comply with the rules may subject a party to the imposition of sanctions, including the dismissal of an appeal, depending on the nature and severity of the violations. *See id.* at 199, 657 S.E.2d at 366. Accordingly, we address the merits of Plaintiff’s appeal.

IV. Standard of Review

¶ 27

This Court reviews “an appeal from summary judgment . . . *de novo*.” *Morrell v. Hardin Creek, Inc.*, 371 N.C. 672, 680, 821 S.E.2d 360, 366 (2018) (citation omitted and emphasis added). A motion for summary judgment is properly granted “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 any party is entitled to a judgment as a matter of law.” N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 56(c) (2021). An issue is considered “‘genuine’ if it may be maintained by substantial evidence.” *Koontz v. City of Winston-Salem*, 280 N.C. 513, 518, 186 S.E.2d 897, 901 (1972). “If the granting of summary judgment can be

sustained on any grounds, it should be affirmed on appeal.” *Shore v. Brown*, 324 N.C. 427, 428, 378 S.E.2d 778, 779 (1989). “All facts asserted by the [nonmoving] party are taken as true and . . . viewed in the light most favorable to that party.” *Ussery v. Branch Banking & Tr. Co.*, 368 N.C. 325, 334, 777 S.E.2d 272, 278 (2015) (citation omitted).

¶ 28 A defendant carries the burden of establishing no genuine issue of material fact exists and their entitlement to judgment as a matter of law, and may satisfy this burden by: “(1) proving that an essential element of the opposing party’s claim is nonexistent, or by showing through discovery that the opposing party (2) cannot produce evidence to support an essential element of his or her claim, or (3) cannot surmount an affirmative defense which would bar the claim.” *Bernick v. Jurden*, 306 N.C. 435, 441–42, 293 S.E.2d 405, 409 (1982) (citation omitted). “If the movant demonstrates the absence of a genuine issue of material fact, the burden shifts to the nonmovant to present specific facts which establish the presence of a genuine factual dispute for trial.” *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008). When “the moving party fails in [this] showing, summary judgment is not proper regardless of whether the opponent responds.” *City of Thomasville v. Lease-Afex, Inc.*, 300 N.C. 651, 654, 268 S.E.2d 190, 193 (1980) (citation omitted).

V. Analysis

¶ 29 On appeal, Plaintiff argues the trial court erred in granting Defendants’ motion

for summary judgment because the evidence in this case shows there are genuine issues of material fact. Specifically, Plaintiff claims the trial court refused to consider Plaintiff's evidence, including evidence "wheeled into the [summary judgment] hearing in a wagon," and cites only the signature page of Plaintiff's supplemental responses as support for this argument. We remind Plaintiff it is not this Court's role "to supplement and expand upon poorly made arguments of a party filing a brief." *See Hill v. Hill*, 229 N.C. App. 511, 514, 748 S.E.2d 352, 356 (2013). We deem this argument abandoned as Plaintiff has provided no legal authority or support to explain the trial court's alleged refusal to consider Plaintiff's evidence. *See* N.C. R. App. P. 28(b)(6). Defendants maintain summary judgment was properly granted in their favor because they satisfied their initial burden under Rule 56. After careful review, we agree with Defendants to the extent they argue no genuine issue of material fact exists.

¶ 30 "Negligence is the failure to exercise proper care in the performance of a legal duty owed by a defendant to a plaintiff under the circumstances." *Cassell v. Collins*, 344 N.C. 160, 162, 472 S.E.2d 770, 772 (1996) (citation omitted), *overruled on other grounds by*, *Nelson v. Freeland*, 349 N.C. 615, 507 S.E.2d 882 (1998). "[I]n order to prevail in a negligence action, [a plaintiff] must offer evidence of the essential elements of negligence: duty, breach of duty, proximate cause, and damages." *Camalier v. Jeffries*, 340 N.C. 699, 706, 460 S.E.2d 133, 136 (1995) (citation omitted).

¶ 31

To make out *prima facie* claim for negligence, a

plaintiff must show that there has been a failure to exercise proper care in the performance of some legal duty which the defendant owed to the plaintiff under the circumstances in which they were placed and that such negligent breach of duty was the proximate cause of the injury—a cause that produced the result in continuous sequence and without which it would not have occurred, and one from which any man of ordinary prudence could have foreseen that such a result was probable, under all the facts as they existed.

Heuay v. Halifax Constr. Co., 254 N.C. 252, 253, 118 S.E.2d 615, 616 (1961) (citations omitted). “An inherent component of any ordinary negligence claim is reasonable foreseeability of injury” *Winters v. Lee*, 115 N.C. App. 692, 694, 446 S.E.2d 123, 124 (1994), *disc. rev. denied*, 338 N.C. 671, 453 S.E.2d 186 (1994) (emphasis removed).

¶ 32

Here, Plaintiff alleged in its complaint that Decedent was a “lawful guest and business invitee” of Defendants, and Defendants “owe the guests of [their H]otel the duty to exercise reasonable care for their personal safety.” Plaintiff further alleged Defendants breached the duty owed to Decedent by not providing adequate security and by failing to respond to complaints concerning Matthews’ room, which indicated there were “repetitive thuds, stomping and muffled cries for help” coming from the room. In light of the allegations set forth in Plaintiff’s complaint, we conclude the duty alleged by Plaintiff in its complaint can be broken down into two separate and pertinent duties of care: (1) the duty of an innkeeper to keep the premises and hotel

rooms in reasonably safe condition; and (2) the duty of an innkeeper to respond to and provide aid to a guest who the innkeeper knows, or should know, is injured.

A. Duty to Maintain Premises in Reasonably Safe Condition

¶ 33 In considering the first duty stated above, we note it is well established in this State that “an innkeeper is not an insurer of the personal safety of his guests but is required to exercise due care to keep his premises in a reasonably safe condition and to warn his guests of any hidden peril.” *Rappaport v. Days Inn of Am., Inc.*, 296 N.C. 382, 383, 250 S.E.2d 245, 247 (1979) (citations and quotation marks omitted), *overruled in part on other grounds by*, *Nelson v. Freeland*, 349 N.C. 615, 507 S.E.2d 882 (1998). Moreover, “[t]he criminal acts of a third party are generally considered unforeseeable and independent, intervening cause[s] absolving the [defendant] of liability.” *Bridges v. Parrish*, 366 N.C. 539, 541, 742 S.E.2d 794, 796 (citations and quotation marks omitted). Thus, North Carolina law does not usually “impose a duty to prevent the criminal acts of a third party.” *Id.* at 541, 742 S.E.2d at 797 (citation omitted;”). “The test in determining when a proprietor has a duty to safeguard his invitees from injuries caused by the criminal acts of third persons is one of foreseeability.” *Murrow v. Daniels*, 321 N.C. 494, 501, 364 S.E.2d 392, 397 (1988) (citations omitted).

¶ 34 Here, the tragic murder of Decedent by his biological mother in a hotel room was completely unforeseeable by the Hotel, and there was no reasonable safety

measure that the Hotel could have implemented to prevent the crime. *See Winters*, 115 N.C. App. at 694, 446 S.E.2d at 124. Plaintiff has not pled any facts in its complaint to indicate the Hotel was on notice of Matthews' violent or unstable nature. Thus, we conclude the criminal act of Matthews was an independent and intervening act, breaking any causal chain flowing from Defendants' failure to provide reasonable safety or security measures. *See Bridges*, 366 N.C. at 541, 742 S.E.2d at 796.

B. Duty to Take Reasonable Action to Provide Aid to Injured Guest

¶ 35

Next, we consider the duty of Defendants to respond to Matthews' room upon receiving noise complaints indicating that a Hotel guest was potentially in need of aid or protection. Our review of the negligence cases in our jurisdiction reveals this is a case of first impression. Previously decided North Carolina cases involving innkeeper liability have generally concerned an innkeeper's duty to prevent a third party's criminal act on the guest of the innkeeper, or an innkeeper's failure to exercise reasonable care in maintaining a safe premises or notifying a guest of a hidden peril. *See, e.g., Connelly v. Family Inns of Am., Inc.*, 141 N.C. App. 583, 540 S.E.2d 38 (2000), *Rappaport v. Days Inn of Am., Inc.*, 296 N.C. 382, 250 S.E.2d 245 (1979). The instant case concerns whether Defendants, in their role as innkeeper, had a duty to take affirmative action to provide aid or protection to a guest.

¶ 36

"No legal duty exists unless the injury to the plaintiff was foreseeable and avoidable through due care." *Stein v. Asheville City Bd. of Educ.*, 360 N.C. 321, 328,

626 S.E.2d 263, 267 (2006). One exception to this general rule occurs when a special relationship exists between the parties. *Bridges*, 366 N.C. at 541, 742 S.E.2d at 797. In a special relationship, one party takes on the duty to take “affirmative action for the aid or protection of another” Restatement (Second) of Torts § 314A, cmt. b. Our Supreme Court has recognized that a special relationship exists between an innkeeper and its guests. *Bridges*, 366 N.C. at 542, 742 S.E.2d at 797 (citing Restatement (Second) of Torts, § 314A). Under such circumstances, Sections 314A(1)(b) and 314(2) impose a duty on the innkeeper “to take reasonable action . . . to give [the guest] first aid after its knows or has reason to know that [the guest is] ill or injured, and to care for [the guest] until [he or she] can be cared for by others.” Restatement (Second) of Torts, §§ 314A(1)(b), 314A(2) (analogizing the duties owed by a common carrier to its passengers with the duties owed by an innkeeper to its guests); *see also* Restatement (Second) of Torts, § 314A, cmt. d (“The duty to give aid to one who is ill or injured extends to cases where the illness or injury is due to natural causes, to pure accident, to the acts of third persons, or to the negligence of the plaintiff himself”). North Carolina Courts have adopted neither Section 314A(1)(b) nor Section 314A(2), and we expressly decline to do so here. Based on the record before us, we conclude Plaintiff has failed to forecast substantial evidence to show Defendants breached any duty of care owed to Decedent.

lawful guest and business invitee of the Hotel. The allegations in its complaint are sufficient to state a claim for negligence based upon a duty created by the special relationship between the Hotel, an innkeeper, and Decedent, a guest of the Hotel. *See Bridges*, 366 N.C. at 541, 742 S.E.2d at 797 (considering the sufficiency of the plaintiff's complaint in determining whether the plaintiff "allege[d] facts sufficient to show [a special relationship existed]"). We assume, without deciding, that Defendants had a duty to take affirmative action to provide Decedent aid after the Hotel front desk received Irvin's phone calls.

¶ 38 In viewing the evidence in the light most favorable to Plaintiff, we conclude Plaintiff has failed to forecast evidence demonstrating Defendants breached their duty of care to Decedent. *See Camalier*, 340 N.C. at 706, 460 S.E.2d at 136. Plaintiff did not allege in its complaint how the Hotel responded to the incident, nor did Plaintiff provide any evidence in the record tending to show the responsive measures taken by the Hotel after it received Irvin's phone calls. Thus, Plaintiff did not offer substantial evidence of an essential element of its negligence claim—breach—which was required to survive summary judgment. *See id.* at 706, 460 S.E.2d at 136. We therefore conclude the trial court did not err in granting Defendants' motion for summary judgment. *See* N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 56(c).

VI. Conclusion

¶ 39 For the above reasons, we affirm the trial court's Order granting summary

CHANCE V. FAIRFIELD INN & SUITES BY MARRIOTT

2022-NCCOA-919

Opinion of the Court

judgment for Defendants.

AFFIRMED.

Judges INMAN and ARROWOOD concur.