

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Karolina Richardson and Krista Richardson,)
Plaintiffs,)
v.)
Mt. Pleasant Square Associates, II, LLC d/b/a)
Oyster Park Apartments, Dewberry Capital)
Corporation, and GREP Southeast, LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-3286

**ORDER ON PLAINTIFFS'
OBJECTIONS TO DEFENDANTS'
NOTICE OF RULE 32, SCRPC,
DEPOSITION DESIGNATIONS**

Plaintiffs objected to Defendants' Rule 32, SCRPC, deposition designations for use at the trial of this matter. After considering the parties' oral arguments, reviewing the record in the case, and balancing the considerations set forth in South Carolina Rule of Evidence 403, the Court rules on Plaintiffs' objections as follows:

**A. KAROLA RICHARDSON
Taken June 5, 2020**

<u>BEGIN</u>	<u>END</u>	<u>OBJECTION</u>	<u>RULING</u>
12:13	17:6	Irrelevant; improper character evidence under SCRE 404; inadmissible under SCRE 403	SUSTAINED
18:4	18:16	Irrelevant; improper character evidence under SCRE 404; inadmissible under SCRE 403	SUSTAINED
21:1	21:12	Improper character evidence under SCRE 404; inadmissible under SCRE 403; lacks foundation	SUSTAINED
22:9	23:17	Irrelevant; improper character evidence under SCRE 404; inadmissible under SCRE 403	SUSTAINED
24:19	24:22	Irrelevant; improper character evidence under SCRE 404; inadmissible under SCRE 403	SUSTAINED

IT IS SO ORDERED.

Jennifer B. McCoy
Presiding Circuit Court Judge

July _____, 2022
Charleston, South Carolina

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Aug 29 2022
SC Court of Appeals



Charleston Common Pleas

Case Caption: Karolina Richardson , plaintiff, et al VS Mt Pleasant Square Associates II LLC , defendant, et al
Case Number: 2018CP1003286
Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO.: 2018-CP-10-3286
Karolina Richardson and Krista Richardson,)	
)	
Plaintiffs,)	
)	
v.)	PLAINTIFFS' MOTION IN LIMINE
)	AND MEMORANDUM IN SUPPORT
Mt. Pleasant Square Associates, II, LLC d/b/a)	
Oyster Park Apartments, Dewberry Capital)	
Corporation, and GREP Southeast, LLC,)	
)	
Defendants.)	

Plaintiffs, by and through their undersigned counsel, hereby submit to this Honorable Court their Motion in Limine for the trial of this matter, currently scheduled for July 18, 2022. This motion seeks to exclude evidence relating to Plaintiff Karolina Richardson’s prior conviction for driving under the influence and involuntary hospitalization from February 2017, as both lack any relevance to the present trial, improper character evidence under SCRE 404, and if ruled relevant, are inadmissible under SCRE 403.

1. Evidence of Karolina Richardson’s prior charge of driving under the influence and involuntary hospitalization are irrelevant under SCRE 401 to any matter of consequent to this trial and inadmissible under S.C. Code Ann. § 44-22-100.

“Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE.

Years ago, Karolina Richardson’s (“Karolina”) pled guilty to driving under the influence (“DUI”) and was thereafter convicted of the same. In February 2017, Karolina was involuntarily hospitalized in Pinehurst (“Hospital Visit”) (collectively referred to herein as the “Proffered Evidence”). For the Proffered Evidence to be relevant here, it must relate to a fact that is of

consequence to this trial. Neither pertain to any of Plaintiffs' causes of actions, nor their injuries sustained from mold exposure while living in Oyster Park. In addition, both occurred prior to their residency at Oyster Park, which is the focus of this trial.

Defendants have asserted no arguments indicating or suggesting the Proffered Evidence pertains, in any way, to their defenses nor as a possible alternative examination to the injuries she sustained relating to the Defendants' conduct.

Further, for evidence relating to the Hospital Visit to be relevant and admissible, this Court must determine it is admissible under S.C. Code Ann. § 44-22-100¹. "Section 44-22-100 permits disclosure if a "court directs disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure is contrary to the public interest." *State v. Terry*, 339 S.C. 352, 529 S.E.2d 274 (2002), cert. denied, 531 U.S. 882, 148 L. Ed. 2d 137 (2000).

Evidence relating to the Hospital Visit is inadmissible for this trial because 1) it is not necessary to conduct the present proceeding, as it lacks any relevance and 2) aligns with the public interest and the purpose of § 44-22-100.

Therefore, this Court should rule the Proffered Evidence is inadmissible for this trial under SCRE 401 and S.C. Code Ann. § 44-22-100.

2. The Proffered Evidence is improper character evidence under SCRE 404 and, therefore, is inadmissible.

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show

¹ S.C. Code Ann. § 44-22-100 states, "Certificates, applications, records, and reports . . . directly or indirectly identifying a mentally ill or alcohol and drug abuse patient or former patient or individual whose commitment has been sought, must be kept confidential, and must not be disclosed unless . . ." specific instances are present, none of which are present here.

motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” SCRE 404 (b).

“[E]vidence that the victim is an alcoholic is not admissible to prove she was intoxicated at a particular time.” *Walker v. State*, 397 S.C. 226, 241-42, 723 S.E. 2d 610, 618 (Ct. App. 2012).

The Proffered Evidence is also improper character evidence, as it does not pertain to any admissible uses of character evidence under SCRE 404 (b). Defendants have not asserted the Proffered Evidence speaks to Karolina’s motive, the existence of a common scheme or plan, nor the absence of mistake or accident, nor intent.

Karolina is not an alcoholic. However, even if she was and this trial pertained to whether her injuries resulted from her being intoxicated, as opposed to mold exposure, evidence of her prior DUI would still be improper character evidence under *Walker*.

Therefore, evidence pertaining to Karolina’s prior DUI conviction is improper character evidence and is inadmissible.

3. The Proffered Evidence is inadmissible under SCRE 403.

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” SCRE 403.

“[Evidence of] [b]lood alcohol was inadmissible because insufficient evidence linked intoxication to the second accident, making the evidence substantially more prejudicial than probative. *Johnson v. Horry County Solid Waste Authority*, 389 S.C. 528, 698 S.E.2d 835 (Ct. App. 2010).

The Proffered Evidence has no bearing on any matter of consequence to this trial. Therefore, any evidence thereof would be substantially more prejudicial than probative. In addition to the evidence lacking any probative value, it would also substantially confuse and mislead the jury by bringing in inflammatory evidence which has no bearing on either party's causes of actions or defenses.

Further, admitting this evidence would only waste this Court's valuable time in adjudicating this matter because the question of whether or not to admit it into evidence and under what conditions would be timely and serve no purpose toward resolving this dispute.

Therefore, even if this Court rules the Proffered Evidence is relevant, it is inadmissible under SCRE 403.

McCULLOUGH • KHAN • APPEL

s/Clayton B. McCullough
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July 15, 2022
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2022, I caused the foregoing document to be electronically filed with the Clerk of Court using CM/ECF, which will provide electronic notice of such filing to all counsel of record.

s/Clayton B. McCullough
Clayton B. McCullough

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