

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Takeema Jones Young)
)
 Plaintiff,)
)
 vs.)
)
 Regal Cinema, Inc., d/b/a)
 Sandhill 16)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS

Civil Action No: 2019-CP-40-05127

ORDER

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SC Court of Appeals

This matter is before the Court by way of the Defendant's timely-filed post-trial motions seeking a new trial, a judgment as a matter of law, a judgement notwithstanding the verdict, and a new trial *nisi remittitur*. The Plaintiff, Takeema Jones-Young, was represented by Dietrich A. Lake, Esquire, and the Defendant, Regal Cinema, d/b/a Sandhill 16, was represented by S. Ross Shealy, Esquire.

Factual Background

The Plaintiff was an invitee onto the Defendant's premises on February 17-18, 2018. The Plaintiff slipped and fell due to a dangerous condition on the floor which was witnessed by two independent parties. The Plaintiff filed a civil action against the Defendant in Richland County, Columbia, South Carolina on September 13, 2019. A trial was held before this Court on the week of January 10, 2022. At the conclusion of the trial on January 14, 2022, the jury determined that the Defendant had constructive knowledge of the dangerous condition and awarded the Plaintiff the following verdict: one-hundred and seventy-five thousand dollars (\$175,000.00) in actual damages for Negligence; and one-hundred and twenty-five thousand (\$125,000.00) in punitive damages. The Plaintiff seeks an order allowing her to recover the damages award and costs. The

Defendant seeks an order of JNOV, orders for a new trial based upon the Thirteenth Juror Doctrine and/or New Trial Absolute and/or New trial *Nisi Remittitur*, order for a new trial based upon failure to charge comparative negligence, an order seeking to eliminate and/or reduce the amount of the punitive damages awarded to the Plaintiff, and an order denying costs.

Legal Analysis

New Trial/New Trial Absolute

The Defendant moved for a new trial based upon the failure to charge comparative negligence, and based upon the Defendant's contention that the evidence does not support the jury verdict under the "thirteenth juror" doctrine. Alternatively, the Defendant moved for a new trial absolute and new trial *nisi remittitur* as to damages based upon the Defendant's assertion that the damages awarded were either grossly excessive or excessive.

Comparative Negligence

The Defendant contends that it is entitled to a new trial due to the trial court's directed verdict as to comparative negligence. The Defendant contends that the failure to charge comparative negligence and to include it on the verdict form was a "prejudicial error of law." In support of its' argument, the Defendant references the shoes worn by the Plaintiff on the night of the slip and fall. The Defendant supposes that because the Plaintiff was walking in heels at the time of the fall that a comparative charge was warranted in this case; in addition, the Defendant asserts that because the Plaintiff did not ask anyone for assistance when walking to her seat that a comparative charge was warranted in this case.

Our courts have reaffirmed our case law and held that when the evidence yields only one inference and/or the case only presents only a question of law, a directed verdict in favor of the moving party is proper. *Estate of Haley ex rel. Haley v. Brown*, 370 S.C. 240, 634 S.E.2d 62

(S.C.App. 2006). The issue of whether more than one reasonable inference can be drawn is for the court to determine. *Horton v. Greyhound Corp.*, 241 S.C. 430, 128 S.E.2d 776 (S.C.1962).

In this case, this Court finds that only one reasonable inference could be drawn from the evidence presented at trial. There was independent eyewitness testimony presented to the jury regarding the Plaintiff's shoes from both Tyrie Tisdale and Tina Tisdale who both testified that the Plaintiff's shoes did not contribute in any way to her fall. There was no evidence of the instability of the shoes; there was no evidence that the Plaintiff's shoes were defective or worn or slippery or ill-fitting or lacked traction; there was no evidence that the shoes were not sturdy; and there was no evidence that the Plaintiff needed assistance with walking nor evidence that the Plaintiff was either prone to losing her balance or more likely to fall due to wearing heels.

Furthermore, the general manager for the Defendant testified that he had no evidence and/or any information that the Plaintiff's shoes contributed to her fall nor was he aware of any other factors that contributed to her fall other than the oil that was present on the floor. The general manager further testified that the Defendant expects that its' invitees (moviegoers) on its' premises will wear a variety of different shoes to include heels. The general manager testified that the policy regarding footwear applied only to the Defendant's employees; the employees were required to wear slip-resistant shoes due to their inherent knowledge of the dangerous conditions caused by wet and/or oily floors.

Finally, there was testimony from an expert who testified that the Plaintiff's shoes were ordinary footwear and that he found no evidence that the Plaintiff's shoes contributed to her fall. The Defendant seeks to present speculative evidence to the jury, which is prohibited. *See, Horton*. The Defendant's motion for a new trial on the basis of failure to charge comparative negligence is **DENIED**.

Thirteenth Juror Doctrine

The Defendant seeks a new trial based upon the Thirteenth Juror Doctrine. This doctrine allows the circuit court to grant a new trial absolute when the court finds the evidence does not support the verdict. The Thirteenth Juror Doctrine allows the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely on the facts. *Lane v. Gilbert Const. Co., Ltd.*, 383 S.C. 590, 681 S.E.2d 879 (2009).

In this case, this court finds that there was sufficient evidence existed in the record to support the submission of the cause of action to the jury and to support the jury's verdict. Tyrie Tisdale and Tina Tisdale testified at trial that they both observed a dangerous condition on the floor before the accident and that the dangerous condition was the cause of the Plaintiff's fall. There was testimony from an expert that the floor where the Plaintiff fell was kept in a dangerous manner, testimony that the floor was dangerously slippery when the floor was not maintained in a dry, non-slippery condition, and testimony that the failure to maintain the floor in a dry, non-slippery condition caused the Plaintiff to slip, fall, and be injured. Finally, there was testimony from Dr. Justin Knight that the injuries to the Plaintiff's knees, back, and shoulder labrum tear were proximately caused by her fall at the movie theater to a reasonable degree of medical certainty; and, Dr. Knight's testified that all of the Plaintiff's medical expenses were reasonable and necessary.

This Court finds that there was ample evidence in the record to support the jury's determination that the Defendant engaged in willful, wanton or reckless conduct. There was evidence that there was a dangerous condition on the Defendant's walkway in the theater; there was evidence that the Defendant either knew or should have known about the dangerous condition

on the floor due to it having an agent in close proximity to the dangerous condition when the lights were on in the auditorium; there was evidence that the Defendant failed to keep its' walkway in a reasonably safe condition and had a history of not maintaining the theater in a reasonable condition; there was testimony from the Defendant's agent that oil/butter on the floor contribute to slip and falls on the Defendant's premises; there was evidence of a prior fall in that exact theater due to oil/butter on the floor; and, there was evidence that the Plaintiff suffered damages which were proximately caused by her fall on the Defendant's premises. This Court finds that there was also ample evidence to support the jury's conclusion that the Defendant engaged in willful, wanton, or reckless conduct to warrant punitive damages. Therefore, the Defendant's request for a new trial under the Thirteenth Juror Doctrine is **DENIED**.

New Trial Absolute

The Defendant moves for a new trial absolute as to damages on the ground that the compensatory and punitive damages portions of the verdict are excessive. A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993). The circuit court should grant a new trial absolute on the excessiveness of the verdict only if the amount is so grossly excessive as to shock the conscience of the court and clearly indicates the verdict amount reached was the result of passion, caprice, partiality, corruption or some other improper motives. *Id.*

The trial court has discretion to deny the Defendant's motion for a new trial. A trial court's decision to either deny or grant a new trial motion will not be disturbed on appeal unless the findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. *Swicegood v. Lott*, 379 S.C 346, 355, 665 S.E.2d 211, 216-216 (Ct. App. 2008). The trial court must consider the testimony and reasonable inferences to be drawn there from in the light

most favorable to the nonmoving party when determining whether to grant the Defendant's motion for a new trial. *Id.*

The Defendant contends that the jury verdict was grossly excessive because the verdict was indicative of prejudice or partiality or bias or caprice; furthermore, the Defendant argues that the punitive damages award constituted a violation of the Defendant's due process rights and because the evidence presented to the jury did not justify the award.

This Court finds that there was sufficient evidence in the record to indicate that the jury's verdict was not grossly excessive. The jury had an opportunity to hear and determine the Plaintiff's credibility during her testimony. The Plaintiff testified about her injuries and medical treatment, she testified about her economic loss from her injuries and medical treatment, she testified about her job accommodations, she testified about her lost wages, and she testified about the negative impact this accident had on her quality of life. Furthermore, the Plaintiff testified about her loss of consortium with her husband, she testified about the scarring left from the surgery, and she testified about continuing pain to her left shoulder from the time of the accident to present date at court. This type of testimony is evidence of damages to justify the verdicts in this case.

This Court finds that the jury award amount was not so outrageously disproportionate so as to indicate the jury was influenced by either passion or caprice or prejudice; therefore, the verdict was not grossly excessive. The Defendant's request for a New Trial Absolute on the issue of damages is **DENIED**.

Judgment Notwithstanding the Verdict (JNOV)

The Defendant contends that it is entitled to a JNOV as a matter of law as the Defendant contends that there is no evidence to support the finding that the Defendant had either actual or constructive notice of an "unreasonably dangerous condition."

A judgment notwithstanding the verdict is justified when there is either no evidence to support the verdict or when the trial court's legal conclusions were controlled by errors in law. *Wright v. Hiester Constr. Co.*, 389 S.C. 504, 698 S.E.2d 822, (Ct. App.2010). The court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party in ruling on a JNOV motion. *Bishop Logging Co. v. John Deere Industrial Equipment Co.*, 317 S.C. 520, 450 S.E.2d 183 (Ct.App. 1995). Furthermore, the court in *Bishop Logging* stated that the case must be submitted to the jury if more than one inference can be drawn from the evidence and held that the factual finding of the jury should not be disturbed unless a review of the record reflects that there was no evidence to reasonably support the verdict..

The Defendant made a motion for directed verdict as to actual and/or constructive notice. Viewing the evidence in the light most favorable to the Plaintiff, this Court finds that more than one inference could be drawn from the evidence as to whether the Defendant had either actual and/or constructive notice of the dangerous condition. There was testimony by eyewitnesses that the Defendant's employee(s) were cleaning in the area where the dangerous condition was obviously visible and located. There was testimony from Tina Tisdale and Tyrie Tisdale that the dangerous condition was visible and obvious to them on the floor of the theater when the lights were on and before the movie started; furthermore, both Mr. and Mrs. Tisdale testified that the Defendant's employee was in the area of the "shiny ... greasy" spot and that the employee should have observed the dangerous condition due to his close proximity to the dangerous condition.

Tina Tisdale and Tyrie Tisdale testified about the condition of the floor before the slip and fall, the condition of the floor while the Defendant's agent was in close proximity of the dangerous condition with the lights on in the auditorium, and there was further testimony from them that the sole cause of the Plaintiff's slip and fall was the butter/oil on the floor.

The Defendant cites *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32 (2001), for justifying its' request for a Judgement Notwithstanding the Verdict. In the *Wintersteen* case, the issue was one of foreseeability of a dangerous condition and not a dispute over whether the Defendant had actual or constructive notice of a dangerous condition. *Wintersteen* admitted that he had no evidence that Food Lion created the dangerous condition or had actual or constructive notice of the dangerous condition. This case can be distinguished from *Wintersteen* as this case presents no issues of a "foreseeability test" as the Plaintiff presented evidence that the Defendant had either actual or constructive notice of the dangerous condition in the theater at the time of this incident.

In this case, this Court finds that there was sufficient evidence presented by which there was more than one inference that could be drawn that the Defendant was on constructive notice of the dangerous condition and, therefore, was a question for the jury. The Defendant's motion for Judgement Notwithstanding the Verdict is **DENIED**.

New Trial *Nisi Remittitur*

The Defendant moves for a new trial *nisi remittitur* in the alternative for a new trial absolute on the matter of damages. The Defendant argues that the verdict was excessive as to actual damages and punitive damages.

A trial court may grant a new trial *nisi remittitur* whenever it finds the amount of the verdict excessive; however, substantial deference must be afforded to the jury's determination of damages and the trial court must offer compelling reasons for invading the jury's province. *Todd v. Joyner*, 385 S.C. 509, 685 S.E.2d 613 (Ct. App. 2008).

The jury had an opportunity to hear the Plaintiff's testimony concerning damages and to determine the Plaintiff's credibility during her testimony. There was sufficient evidence in the record for the trial court to determine that both awards were neither excessive as to shock the

conscience nor were the awards the result of passion, caprice, partiality, corruption or some other improper motives. The Plaintiff testified that she sustained \$78,395.45 in medical expenses along with \$3891.44 in lost wages; in addition, the Plaintiff presented testimony regarding out of pocket expenses for prescription medication, childcare, housekeeping, and the purchase of a recliner that the Plaintiff slept on after her surgery. The Plaintiff presented testimony regarding the negative impact to her sleep, to her family and social life, and to her current physical condition of continued pain and discomfort from clicking in her shoulder some four (4) years after the accident which is the subject of this action.

This Court finds that there is sufficient evidence in the record to indicate that the Defendant acted wantonly, willfully, and with reckless disregard for the safety of the Plaintiff. Our Supreme Court has held that “a conscious failure to exercise due care constitutes willfulness.” *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). This Court finds clear and convincing evidence of the Defendant’s willful conduct in the following: 1) The Defendant knew that oil/butter on the dark floor could result in a slip and fall accident, yet the Defendant did not remove the dangerous condition from the floor when it had an opportunity to do so to keep the floor in a reasonably safely condition; 2) The existence of “spoliation” from the Defendant not producing and/or maintaining the Daily Inspection Reports which would have reflected the condition of the theater on the morning of and/or day after the Plaintiff’s fall in the theater; 3) The Defendant was aware of the danger of oil on the floor left by popcorn on the floor yet maintained no cleaning schedule and/or protocol and/or records; 4) The Defendant had previous slip and falls at its’ place of business due to oil/butter on the floor; and 5) The Defendant failed to follow its’ own internal policies regarding safety procedures, scheduling of movies times, maintaining adequate staffing, maintaining safe conditions, clean-up, and training.

This Court finds that there is no evidence that the jury's awards were excessive so as to be the result of passion, caprice, prejudice, or some other influence outside of the evidence. This Court further finds that there was sufficient evidence in the record to indicate that the Defendant acted wantonly, willfully, and with reckless disregard for the safety of Plaintiff in this incident. Therefore, the Defendant's request for new trial *nisi remittitur* as to actual damages and punitive damages is **DENIED**.

Punitive Damages

This Court is aware that a *de novo* review must be conducted when evaluating the constitutionality of a punitive damage award. The purpose of punitive damages is to serve as a deterrent for offenders and to prevent others from committing certain or similar wrongs in the future. In assessing whether a punitive damages award violates due process, the Court must consider "the degree of reprehensibility of the defendant's conduct," "the ratio of actual or potential harm to the punitive damages award," and "the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 587-588, 686 S.E.2d 176, 185-186 (2009). After reviewing the evidence presented at trial, the arguments of counsel, and memoranda presented, the Court finds that the punitive damages award does not violate due process.

In reviewing reprehensibility, the Court must consider:

- (i) the harm caused was physical as opposed to economic;
- (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others;
- (iii) the target of the conduct had financial vulnerability;
- (iv) the conduct involved repeated actions or was an isolated incident;
- and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.

Id., 686 S.E.2d at 185. First, Plaintiff suffered physical injuries to her knees, back, and shoulder labrum, and she suffered economic injuries in the form of medical expenses and lost wages.

Second, the jury specifically found Defendant acted recklessly, willfully, or with wanton disregard in causing Plaintiff's injuries. Third, there was evidence presented that Defendant had a history of not maintaining the theater in a reasonable condition and there was evidence of a prior fall in the exact theater Plaintiff suffered her injuries in. Additionally, witnesses Tina and Tyrie Tisdale testified to the dangerous condition of the floor and that a Defendant employee was in the area of the slippery spot while the lights were on in the theater. After considering the evidence, the Court finds that Defendant's conduct was so reprehensible as to sustain an award of punitive damages.

Plaintiff was awarded \$175,000 in actual damages and \$125,000 in punitive damages. The ratio of these two awards is not grossly excessive and the Court finds that the ratio sustains an award of punitive damages.

"Although a thorough review of case law has uncovered no cases on all fours factually with the present case," this Court finds that punitive damages awards have been upheld in negligence actions and sustains an award of punitive damages. *Id.* at 185-186.

Therefore, the Defendant's motion for a new trial *nisi remittitur* is **DENIED**.

THEREFORE, IT IS HEREBY:

ORDERED that all of the Defendant's motions for a Judgment Notwithstanding the Verdict or as a matter of law is **DENIED**;

IT IS FURTHER ORDERED that all of the Defendant's motions for a new trial or new trial absolute as to damages are **DENIED**;

IT IS FURTHER ORDERED that all of the Defendant's motions for a new trial *nisi remittitur* is **DENIED**;

IT IS SO ORDERED.

THE HONORABLE DEANDREA GIST BENJAMIN
RESIDENT JUDGE, FIFTH JUDICIAL CIRCUIT

Date: _____
Columbia, South Carolina

******Electronic Signature to Follow******



Richland Common Pleas

Case Caption: Takeema Jones Young vs Regal Cinema Inc , defendant, et al

Case Number: 2019CP4005127

Type: Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161

