

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG)	CIVIL ACTION NO.: 2021-CP-38-254
)	
REBECCA ARMSTRONG, AS)	
PERSONAL REPRESENTATIVE OF)	
THE ESTATE OF JAMES HYATT,)	
)	
)	Order re Damages Hearing
v.)	
)	
CEDAR COMMUNITIES AT SANTEE,)	
LLC D/B/A MAGNOLIAS OF SANTEE)	
AND CEDAR COMMUNITIES REALTY)	
HOLDING AT SANTEE, LLC,)	
)	

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SC Court of Appeals

This matter came to be heard by me on March 16, 2022, by way of the Court’s April 27, 2021 Order of Default and Reference and pursuant to this Court’s order of October 13, 2021 denying Defendants Cedar Communities at Santee, LLC d/b/a Magnolias of Santee and Cedar Communities Realty Holding at Santee, LLC’s Motion to Set Aside Default. Appearing on behalf of Defendants was S. Chase Parker of Lewis, Brisbois, Bisgaard & Smith LLP. Appearing on behalf of Plaintiff Rebecca Armstrong as Personal Representative of the Estate of James Hyatt was Lee D. Cope of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.

Pursuant to the Orders referenced above, the purpose of this hearing was to hear testimony and determine the damages owed by the Defendants to the Plaintiff for the allegations set forth in the complaint that are now deemed admitted. In exercising this function, the Court must make a damage award for all elements of damages that are properly alleged in the complaint for which evidence has been presented to the court. *See Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 202, 723 S.E.2d 597, 602 (Ct. App. 2012) (“Questions regarding credibility and weight of evidence are exclusively for the [master-in-equity].”); *Mazloom v. Mazloom*, 382 S.C. 307, 320, 675 S.E.2d

746, 753 (Ct. App. 2009) (“If evidence in the record supports the award for actual damages, this [c]ourt will only review the award for errors of law.”). The complaint contains allegations that are deemed admitted as a result of the defendants’ default. Those allegations center around fourteen falls by the decedent, Mr. Hyatt, from admission to the defendants’ facility until June 25, 2019. In addition, the complaint alleges that Mr. Hyatt suffered from dehydration and a urinary tract infection that was diagnosed at the hospital after leaving the defendants’ facility on August 16, 2019. Lastly, the complaint alleges that Mr. Hyatt suffered a pressure sore to his left hip that was discovered on August 13, 2019 that more than doubled in size by August 23, 2019.

The testimony at the damages hearing established that Mr. Hyatt suffered prior to his death as a result of the negligence of the defendants. The Court heard testimony from Mr. Hyatt’s daughter, Rebecca Hyatt, and his hospice nurse, Pam Crisp. Pursuant to SC Code Ann. §§ 15-5-90 to -100, a decedent’s estate is entitled to recover money damages for conscious pain and suffering, mental anguish, loss of dignity, diminished quality of life prior to death and funeral expenses. *Smalls v. S.C. Dep’t of Educ.*, 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000).

Ms. Crisp testified that when she was asked to assist in his care, he was still at the defendants’ facility. She described in detail the pain and suffering that he suffered from his hip wound that resulted from basic care that she rendered. She testified that when she would have to move him around in the bed to provide her care, he would moan and groan and wince in pain anytime his left hip was touched. She provided testimony that due to the infection in the wound that the pressure sore had a distinct odor. Once he was home, he continued to show the physical signs of pain and suffering. As a nurse with 20 year of experience, she testified that the size of the wound, the pain caused by the obviously infected wound and the smell associated with it inevitably led to a conclusion that such a condition deprived him of his dignity prior to his death and greatly

diminished his quality of life prior to his death. Ms. Armstrong submitted as evidence to the Court a copy of the original death certificate that showed the sepsis from his pressure sore was his primary cause of death.

Ms. Armstrong was also able to give eyewitness testimony of his pain and suffering prior to his death. Mr. Hyatt was Ms. Armstrong's father. As a veteran of the U.S. Air Force, she described how his last days on this earth were in direct contrast to his life. She confirmed the smell of the wound and his pain and suffering anytime the wound was touched while he was moving in the bed or being cared for by his nurses. She confirmed that he had numerous falls in the facility prior to his death as well.

Ms. Armstrong also presented evidence of damages supporting the claim for wrongful death damages. Pursuant to SC Code Ann. §§ 15-51-10 to -40, statutory beneficiaries are entitled to recover for their grief, sorrow, and mental anguish as a result of Mr. Hyatt's death. *Welch v. Epstein*, 342 S.C. 279, 304, 536 S.E.2d 408, 421 (Ct. App. 2000). Ms. Armstrong testified that at the time of the hearing, Mr. Hyatt's wife was deceased. The only surviving heirs at his death were Ms. Armstrong and her brother, Richard Hyatt, who lives in North Carolina. She described in vivid detail the loss that the family suffered as a result of Mr. Hyatt's wrongful death. She testified that she visited almost daily with her dad while he was at the defendants' facility. She provided compelling testimony regarding the facility's attempt to hide from her the pressure sore that eventually led to his death. While she had been notified immediately of most of his falls at the facility, she only learned of the pressure sore from hospital staff when he was sent from the facility. Thereafter, Ms. Crisp found a notebook that contained attempts to treat the wound. The notebook was found in the nightstand by Mr. Hyatt's bed at the facility. She described the shock

and dismay at the defendants' attempts to hide from her the life-threatening condition that they allowed to occur.

The testimony established grief, sorrow and mental anguish at the loss of Mr. Hyatt. She spoke of the guilt that she had for not knowing about his condition and thus her inability to advocate for his health and dignity. She described how she can still smell the odor coming from the pressure sore and how it still haunts her to this day. She also talked about a reminder that she has each day of his passing. As she sits at her kitchen table in the morning, she looks out over her back yard and sees an American flag. She thinks of her proud veteran father and how he died an unnecessary death from the neglect at the Defendants' facility.

The Defendants were allowed and did cross examine the witnesses. While the Defendants' questioning was appropriate, there was no retraction of any witness as to the damages that they had already testified too. Moreover, there was no new testimony presented during cross-examination that would limit or bring into question the testimony on direct. Lastly, the defendants did not object to any witness or documentary evidence put forth by the Plaintiff or seek to introduce any evidence.

Based on the law governing this action and the clear, uncontroverted evidence before me, the Court is compelled to find actual damages for the survival and wrongful death claims brought by the Estate. The testimony presents a clear picture of unimaginable loss and suffering by Mr. Hyatt and his children. The photographic evidence vividly document the extent of the bed sore and how it caused his pain and suffering. Moreover, the death certificate makes clear that the bed sore caused his death. Having considered the allegations and the evidence set forth above, the Court awards \$350,000.00 in actual damages for Mr. Hyatt's conscious pain and suffering prior to

his death. Having considered the allegations and the evidence set forth above, the Court awards \$350,000.00 in actual damages for the wrongful death beneficiaries of Mr. Hyatt.

The Court is also mindful of the Plaintiff's request for punitive damages. Where there is evidence of a defendant's grossly negligent or reckless conduct that supports such an allegation by the plaintiff, punitive damages must be considered. *Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90, 99, 727 S.E.2d 407, 411-12 (2012). Here, Ms. Armstrong has properly pled punitive damages. In addition, direct evidence of reckless conduct has been submitted to the Court. Ms. Crisp and Ms. Armstrong testified that the defendants purposely hid from Ms. Armstrong the existence and condition of Mr. Hyatt's pressure sore. In order to establish reckless conduct, courts generally look to determine if the actions of the defendant were such that a reasonable person would have been conscious of the fact that the acts deprived the plaintiff of his basic rights. *Cartee v. Lesley*, 290 S.C. 333, 337, 350 S.E.2d 388, 390 (1986). Allowing a pressure sore to worsen such that it is painful and has an odor without seeking medical attention in a timely fashion or even notifying Ms. Armstrong is more than sufficient evidence of reckless behavior. The evidence established that Ms. Armstrong was very involved in the care of her father. The defendants' facility had a history of including her in his changes in condition in order to promote his health and well-being. The testimony makes clear that the facility attempted to hide this serious health concern from her and thereby depriving Mr. Hyatt of his basic rights. Accordingly, the Court awards \$350,000.00 in punitive damages.

IT IS SO ORDERED

James B. Jackson, Jr., Master-In-Equity

May _____, 2022
Orangeburg, South Carolina



Orangeburg Common Pleas

Case Caption: Rebecca Armstrong , plaintiff, et al VS Cedar Communities At Santee, Llc , defendant, et al
Case Number: 2021CP3800254
Type: Order/Damages

So Ordered

James B. Jackson, Jr. 3077 Master in Equity