STATE OF SOUTH CAROLINA

IN THE COURT OF APPEARLS

APPEAL FROM LEXINGTON COUNTY

Walton J. McLeod, IV, Circuit Court Judge

RECEIVED

OCT 19 2022

SC Court of Appeals

Appellate Case No.: 2022-000263

William Klotz — Appellant

v.

General Joe Vanlier — Respondent

INITIAL BRIEF OF RESPONDENT

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S.C. BAR #3453
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9. The trial court did not err in failing to review Appellant's motion for a Rule 16 earing as such hearing was held prior to commencement of the trial.

10. The trial court did not err in charging the jury on the defenses of sudden emergency and sudden mechanical failure as these issues were questions of fact for the jury.

11. The assignment of a day certain trial worked no hardship in Appellants presenting his case since the case was under a scheduling Order filed November 4, 2021, which set the case for a day certain trial the week of February 14, 2022.

TABLE OF AUTHORITIES

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STATEMENT OF ISSUES ON APPEAL

1. There is nothing in the record showing any *ex parte* communications between defense counsel and the trial judge at the beginning of the trial.

2. The trial court did not err in allowing testimony regarding a broken axle on Respondent's vehicle.

3. The trial court did not err in excluding references to of liability insurance nor applying the law of South Carolina rather than Georgia on the issue of insurance.

4. The trial court did not err in refusing to allow Appellant himself to state opinions as to technical matters, accident reconstruction, sudden mechanical failure and medical causation issues since Appellant was not qualified as an expert witness.

5. The trial court did not err in allowing the testimony and opinions of the South Carolina State Trooper nor did it err in allowing the trooper to rely upon information in his accident report pursuant to S.C. Code Ann. 56-5-1290.

6. The trial court did not err in applying South Carolina law to all issues at trial.

7. The trial court did not err in ruling upon Appellant's Rule 16 Motion and his proposed exhibits nor did the trial court fail to provide Appellant sufficient time for evidence and exhibit presentation as the case had been set for a day certain trial.

8. The trial court did not err in its rulings on Appellant's Voir Dire questions regarding potential jurors' feelings about the outcome of the 2020 Presidential Election, "white supremacy" or the value of Appellant's Tesla automobile.

9. The trial court did not err in failing to review Appellant's motion for a Rule 16 hearing as such hearing was held prior to commencement of the trial.

10. The trial court did not err in charging the jury on the defenses of sudden emergency and sudden mechanical failure as these issues were questions of fact for the jury.

11. The assignment of a day certain trial worked no hardship in Appellants presenting his case since the case was under a scheduling Order filed November 4, 2021 which set the case for a day certain trial the week of February 14, 2022.[1]

STATEMENT OF CASE

On February 22, 2015 Appellant was involved in an automobile collision with the Respondent on Interstate 20 in South Carolina. On February 13, 2018 Appellant filed this negligence action against Respondent seeking damages for both property damages and personal injuries. On March 15, 2018 a timely Answer was filed by Respondent. In his Answer Respondent denied that he was negligent or reckless in causing or contributing to the collision in question. Additionally, Respondent raised the defense of sudden and unexpected mechanical failure, sudden emergency and unavoidable accident to Appellant's claims.

On May 14, 2018 Counsel for Appellant served Answers to Respondent's Interrogatories.

On July 19, 2018 Appellant's counsel, Marion Chace Hawk, filed a Motion to Withdraw as counsel. On July 31, 2018 the lower court issued its Order allowing counsel for Appellant to withdraw. Said Order stayed all proceedings in this action and ordered Appellant to retain other counsel within thirty (30) days or inform the lower court of his intention to proceed *pro se*. On August 21, 2018 the lower vacated its earlier Order relieving counsel for Appellant until a hearing on a motion by Appellant could be held. On October 10, 2018 a hearing was held by the lower court on the motion made by Appellant's attorney to be relieved as counsel. On October 12, 2018 the lower court again granted attorney Hawk's motion to be relieved as counsel and again ordered Appellant to retain other counsel within thirty (30) days or inform the court of Appellant's intention

[1] **Respondent has re-stated what he believes to be the Issues on Appeal. Appellant's Issues on Appeal are somewhat inartfully worded and sometimes repetitive and confusing. Respondent believes that Appellant has not complied with Rule 208 (208) (b)(1)(B) SCACR in that Appellant's Issues on Appeal are not concise and direct as to each issue. Respondent's Issues on Appeal attempt to address, refine and consolidate the issues raised by Appellant.**

to proceed *pro se*. Appellant did not retain new legal counsel and continued with his case against Respondent *pro se*.

On April 3, 2019 the lower court issued an Order striking Appellant's case under Rule 40 (j) SCRCP. On April 3, 2020, one year later, the court issued an Order restoring the case to the active docket.

On February 26, 2021 the case was mediated in accordance with the court rules. The case later appeared on one or more jury trial rosters in 2021. On October 1, 2021, Appellant filed a motion for continuance requesting that the case not be called for trial until Appellant could receive a COVID vaccine booster shot available at that time. Appellant's motion for continuance was granted. On November 4, 2021 the lower court issued an Order setting this case for a day certain trial the week of February 14, 2022.

On February 14, 2022 a jury trial was commenced before Judge Walton J. McLeod, IV in the Lexington County Court of Common Pleas. On February 15, 2022, the jury returned a verdict in favor of Respondent finding that Respondent was not negligent with regard to the automobile accident with Appellant. Appellant made no post-trial motions. On March 16, 2022 Appellant filed his Notice of Intent to Appeal.

STATEMENT OF THE FACTS

This matter arises from a two (2) vehicle collision which occurred on February 22, 2015, along Interstate 20 in South Carolina. Both Appellant and Respondent were proceeding westbound on Interstate 20. Appellant was in the far-right lane closest to the guardrail. Both vehicles were traveling approximately the speed limit. As Respondent began to pass Appellant in the adjoining inside lane, Respondent lost control of his vehicle and collided with Appellant. Respondent's vehicle traveled further down Interstate 20 where it came to rest.

A South Carolina State Trooper was called to the scene to investigate the collision. It was determined that Respondent had lost control of his vehicle when the rear axle on his pick-up truck

suddenly broke or sheered off limiting Respondent's ability to control, steer or otherwise safely operate his vehicle. The investigating officer felt that Respondent had experienced a "*catastrophic*" mechanical failure of his vehicle which caused Respondent to side swipe Appellant. After the collision Respondent's vehicle was towed from the scene.

From this collision, Appellant brought this action against Respondent seeking compensation for both personal injury and property damages. The Respondent denied that he was negligent in any material way and contended that the collision was caused by a sudden and unexpected mechanical failure of his vehicle of which he had no prior actual or constructive knowledge.

STANDARD OF REVIEW

The standards for judicial review in this matter include "abuse of discretion," "any evidence" standard. Under an "abuse of discretion" standard, a trial court can only be overturned if its ruling is " ... based upon an error of law or, when grounded on factual conclusions is without evidentiary support." Arthur v. Section Dental Clinic; Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E. 2d 528, 539 (2000). Under the "any evidence" standard, the trial judge's findings should be upheld "... if there is any evidence of probative value to support them." Simpson v. Moore, 367, S.C. 587, 595, 627 S.E. 2d 701, 705-706 (2006).

ARGUMENTS

1. There is nothing in the record evidencing any *ex parte* communications between defense counsel and trial judge at the beginning of the trial.

STANDARD OF REVIEW: DENOVO

Appellant contends that counsel for Respondent had an *ex parte* conversation with the trial judge at the beginning of the trial. However, there is nothing in the Transcript of Record corroborating Appellant's argument and counsel for Respondent has no recollection of any such conversation. Appellant somehow speculates that this alleged communication provided some type

of "tactical advantage" to Respondent but he does not cogently elaborate how this affected his case.

Appellant next argues that a hearing on Appellant's Motion for a pre-trial hearing pursuant to Rule 16 SCRCP was never held. Appellant's Designation of Matter in the Record includes "emails relevant to Rule 16 Hearing." However, no such emails were offered into the record at trial prior to the pre-trial conference conducted by Judge McLeod before commencement of the jury trial on February 14, 2022. Appellant raises this issue now for the first time. The holding of a Pre-trial hearing is discretionary. Rule 16 SCRCP. Respondent later herein discusses Rule 16 issues in his Argument number seven (7). Typically pre-trial hearings relating to evidentiary matters and the conduct of a trial are conducted by the trial judge. In a court order dated November 4, 2021, the court set this matter for a day certain trial for the week of February 14, 2022. Had the court exercised its discretion to schedule a pre-trial conference between November 4, 2021 and February 14, 2022, Respondent would have certainly complied. However, no such conference was scheduled by the court. Appellant speculates that Respondent and Respondent's insurance company somehow employed delay tactics with regard to any pre-trial hearing requested by Appellant. Again, Respondent had no control over nor did he oppose the scheduling of a pre-trial conference had one been set by the court.

2. <u>The trial court did not err in allowing testimony regarding a broken axle on Respondents vehicle</u>

STANDARD OF REVIEW: ANY EVIDENCE

In Appellant's Complaint filed February 13, 2018 he alleges in paragraph four (4) that *"... Respondent's rear axle broke thereby causing a collision ..."* with Appellant's vehicle. Thus, the issue relating to the broken axle was a fact pled by Appellant in his Complaint. This fact was supported at trial by the testimony of Trooper Antley and Respondent. Transcript of Proceedings, P. 155, LL 1-7; P. 156, LL 12-20; P 178, LL 3-12. The trial judge discussed this very issue with

Appellant during the trial. Transcript of Proceedings, P. 165, LL 11-13; P. 66, LL 23 to P. 67, LL 1-11. Consequently, no error of law was made by the trial judge in admitting the evidence of the broken axle on Respondent's vehicle.

3. **The trial court did not err in excluding references to liability insurance applying the law of South Carolina rather than Georgia on the issue of the insurance.**

STANDARD OF REVIEW: ANY EVIDENCE

Rule 411 of the SCRE provides that whether a person was or was not insured by liability insurance is inadmissible on the issue of whether a party acted negligently or wrongfully. Furthermore, there is a long-standing rule in South Carolina that the existence of liability insurance may not be introduced in a trial except for very limited purposes. See, Yoho v. Thompson, 345 S.C. 361, S.E. 2d 584 (2001). The accident in question occurred in South Carolina and not in Georgia. Therefore, the law of South Carolina would apply on issues related to the mention or admissibility of liability insurance. The trial court did not err in forbidding the mention of liability insurance at trial as Appellant was not seeking to inject insurance into the case for any of the recognized exceptions. Appellant's argument seems to imply that there was some type of "conspiracy" to prejudice his case by Respondent's liability carrier and Respondent's counsel. There is nothing in the record to suggest this.

4. **The trial court did not err in refusing to allow Appellant himself to testify and give opinions as to technical matters, accident reconstruction, sudden mechanical failure and medical causation issues since Appellant was not qualified as an expert witness.**

STANDARD OF REVIEW: ANY EVIDENCE

In Appellant's Answers to Respondent's Interrogatories, specifically Interrogatory number six (6), Appellant was asked to list any and all expert witnesses who Appellant proposes to use at the trial on the case. Nowhere in his response to Interrogatory (6) did Appellant identify himself as an expert witness. Moreover, under Rule 702, SCRE, a witness who wishes to render

expert opinions must be qualified as an expert by his or her "... knowledge, skill, experience, training, or education..." The record is clear that Appellant was not so qualified. Transcript of Proceedings, P. 63, LL 12-22; P. 71, LL 13-14; P. 72, LL 7-25 to P. 73, LL 1-3, 16-25. Appellant was not an automotive mechanic, accident reconstructionist, metal failure expert or medical doctor. Appellant listed medical expert witnesses in his Answers to Interrogatories but for whatever reason, Appellant elected not to depose any of these experts nor have them testify live at trial. The court correctly ruled that Appellant himself did not have the education, knowledge and experience to testify regarding technical matters related to both accident reconstruction and his own alleged injuries and medical problems. Appellant was especially unqualified to render expert opinions as to the causation of his medical issues allegedly related to the collision. Transcript of Proceedings, P. 20, LL15-25; P. 21, LL1-25; P. 22, LL 1-25; P. 23, LL 1-14; P.51, LL 22-25, P.53, LL8-13; P. 54, LL22-25; P. 55, LL 1 to P. 57, LL 17-25; P. 58, LL 1-10, P. 59, LL 1-24.

5. **The trial court did not err in allowing the testimony and opinions of the South Carolina State Trooper nor did it err in allowing the trooper to rely upon information in his accident report pursuant to S.C. Code Ann. 56-5-1290.**

STANDARD OF REVIEW: ANY EVIDENCE

Respondent would point out that it was Appellant who listed the South Carolina State Trooper, A.L. Antley, as an expert witness whom Appellant may offer at trial. See Appellant's Responses to Respondent's Interrogatories, paragraph six (6). According to Appellant's cross-examination of Trooper Antley, it was Appellant himself who elicited from Trooper Antley the requisite bases for qualifying the trooper as an expert witness on automobile repair and mechanics. Transcript of Proceedings, P. 155, LL 2-21; P. 160, LL 8-19. The trooper testified as to his longstanding experience in auto mechanics and how and why he could tell that the rear axle of Respondent's vehicle had broken thereby creating a "catastrophic situation". Appellant made by no objection to the trooper providing such testimony as he answered questions posed by Appellant nor did Appellant move to strike such testimony.

S. C. Code Ann. 56-5-1290 does not allow the admission of a South Carolina accident report as evidence of negligence at any trial. However, this section provides that an investigating officer may refer to these reports *"... when testifying in order to refresh their recollection of events."* Trooper Antley's accident report was not offered as a trial exhibit. However, the statute allows him to review his accident report to refresh his memory while testifying at trial. Transcript of Proceedings, P. 149, LL 24-25 to P. 150, LL 1-3; P. 151, LL 16-25 to P. 152, LL 1-13; P. 164, LL 22-25 to P. 165, LL 1-18.

6. The trial court did not err in applying South Carolina law to all issues at trial.

STANDARD OF REVIEW: DE NOVO

This automobile collision occurred on Interstate 20 in South Carolina. Plaintiff is a resident of South Carolina, and his Complaint alleges that the Court of Common Pleas of South Carolina has jurisdiction over this matter since a substantial portion of the acts giving rise to the action (i.e. the accident) occurred in South Carolina. Consequently, there is no legal basis for Appellant to claim that the law of South Carolina was not appliable to this action.

7. The trial court did not err in ruling upon Appellant's Rule 16 Motion and his proposed exhibits nor did the trial court fail to provide Appellant sufficient time for evidence and exhibit presentation as the case had been set for a day certain trial.

STANDARD OF REVIEW: ABUSE OF DISCRETION

Appellant filed a Rule 16 Motion requesting a pre-trial hearing. Respondent never opposed a pre-trial hearing. Under Rule 16 SCRCP such a hearing is discretionary by the Court. Respondent was ready, willing and able to attend and participate in any pre-trial hearing scheduled by the court and address any issues which the court deemed appropriate. Appellant attempted to engage Respondent in discussing issues and trial matters outside the context of a formal pre-trial hearing. Respondent declined and advised Appellant that he would address any pre-trial issues or matters which the court, in its discretion, may raise at a hearing. The court never scheduled a pre-

trial hearing until the morning of February 14, 2022 since that is the first date the trial judge presided. Transcript of Proceedings, P. 84, LL 16-25 to P. 85, L 1. Judge McLeod requested pre-trial briefs from the parties on February 10, 2022 and both Appellant and Respondent submitted such briefs to Judge McLeod that same day.

Appellant contends that the court failed to provide him with sufficient time for evidence and exhibit presentation prior to commencing the trial. This position lacks merit. In an Order filed November 4, 2021, the court advised the parties that the case was being set for a day certain trial the week of February 14, 2022. See, Order of the Court filed November 4, 2021. Appellant had ample time and opportunity to prepare his case between November 4, 2021 and February 14, 2022. Therefore, it cannot be cogently argued that the court failed to provide sufficient time for Appellant to prepare his case for trial.

8. **The trial court did not err in its rulings on Appellant's Voir Dire questions regarding to potential jurors' feelings about the outcome of the 2020 Presidential Election.**

STANDARD OF REVIEW: ABUSE OF DISCRETION

Appellant requested that the court question potential jurors about their political beliefs, the *"outcome of the 2020 Election"* and some matters related to *"white supremacy."* Transcript of Proceedings P. 19, LL 2-19. The judge correctly declined to ask the jury these questions as the political beliefs and social attitudes related to such issues are personally intrusive and unnecessary in order to determine a potential juror is asking these questions could be viewed as inflammatory and the trial judge correctly declined to question the jury on these issues.

9. **The trial court did not err in failing to review Appellant's motion for a Rule 16 hearing as such hearing was held prior to commencement of the trial.**

STANDARD OF REVIEW: ABUSE OF DISCRETION

As discussed in Argument seven (7) above, the scheduling of a pre-trial hearing or conference is discretionary under Rule 16 SCRCP. Moreover, the trial judge did hold a pre-trial

hearing on the morning of February 14, 2022, and reviewed the issues related to the trial, including certain evidentiary matters. Transcript of Proceedings, P. 84, LL 16-25 to P. 85, LL 1. This was sufficient and Appellant was in no way prejudiced with regard to his Rule 16 Motion.

10. **The trial court did not err in charging the jury on the defenses of sudden emergency and sudden mechanical failure as these issues were questions of fact for the jury.**

STANDARD OF REVIEW: ANY EVIDENCE

Appellant's Complaint alleged that there was a mechanical failure on Respondent's vehicle when an axle broke causing the Respondent to lose control of his vehicle thereby causing the collision. There was testimony by Respondent concerning the mechanical condition of his vehicle leading up to the day of the accident, including the fact that Respondent had never experienced any such mechanical failure nor had any awareness that a potential mechanical failure might occur. Transcript of Proceedings, P. 173, LL 12-25 to P. 174, LL 1-11. This was corroborated by the investigating officer who characterized the condition as a "*catastrophic*" failure due to the breaking of an axle on Respondent's vehicle. Transcript of Proceedings, P. 151, LL 16-23; P. 165, LL 7-18. Given this testimony there was an ample factual basis for the court charging these issues which were pled as defenses in Respondent's Answer. See, Grier v. Cornelius, 247 S.C. 521, 148 S.E. 2d 338 (1966); McVeigh v. Whittington, 248 S.C. 447, 151 S.E. 2d 92 (1966).

11. **The assignment of a day certain trial worked no hardship in Appellants presenting his case since the case was under a scheduling Order filed November 4, 2021 which set the case for a day certain trial the week of February 14, 2022.**

STANDARD OF REVIEW: ABUSE OF DISCRETION

As previously discussed in paragraph seven (7) above, the court issued an Order on November 4, 2021 setting this case for a day certain trial on February 14, 2022. Appellant has shown no evidence that the setting of this case for trial in February of 2022 created any hardship whatsoever in his trial preparation. Appellant's objection to the trial date was first raised by him

in this appeal. No motion for continuance was made by Appellant subsequent to the Court's November 2021 Order setting this case for trial the week of February 14, 2022.

CONCLUSION

For the reasons stated herein and under the applicable statutory and case law, it is respectfully submitted that verdict of the jury should be affirmed as there is nothing in the Record demonstrating any reversible error at trial.

Respectfully submitted,

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October 19, 2022

STATE OF SOUTH CAROLINA

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APPEAL FROM LEXINGTON COUNTY

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William Klotz — Appellant

v.

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondent complies with Rule 211 (b), SCACR.

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Attorneys for Respondent

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Columbia, South Carolina

STATE OF SOUTH CAROLINA

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v.

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CERTIFICAT OF SERVICE

I, the undersigned of the law offices of McDonald, McKenzie, Rubin, Miller and Lybrand, L.L.P. attorneys for the Respondent, do hereby certify that I served upon Appellant the Respondent's Initial Reply Brief and the Respondent's DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, by causing same to be mailed on October 19, 2022, by United States Mail, proper postage prepaid, to the following address:

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James B. Lybrand Jr

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October 19, 2022

VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: William Lee Klotz v. General Joe Valier
In the Court of Appeals – Case No.: 2022-000263

Dear Ms. Kitchings:

Enclosed herewith is the RESPONDENT'S INITIAL BRIEF, RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD OF APPEAL, and our CERTIFICATE OF SERVICE of those items on Appellant.

By copy of this letter to Appellant, I am requesting that he ensure that all Matters identified by Respondent in his Designation are included in the Record on Appeal. If he has questions, I request that he contact your office.

With kind regards,

Very truly yours,

James B. Lybrand Jr.

James B. Lybrand, Jr.

JBLjr/bg
Enclosures
cc: William Lee Klotz