

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)
)
Jennifer Harmon Scott,)
)
Plaintiff,)
)
vs.)
)
Allen L. Fortner and Jason C. Griffin,)
)
Defendants.)

THE COURT OF COMMON PLEAS
Civil Action No. 2010-CP-24-01236

ORDER AMENDING CAPTION

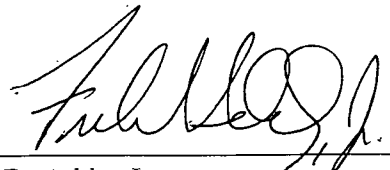
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8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
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SC Court of Appeals

THIS MATTER IS BEFORE THE COURT on Plaintiff's motion to correct the caption of the court's Order Denying Post-Trial Motions, dated November 21, 2012, and filed November 26, 2012. That caption incorrectly reflected Plaintiff's name as Jennifer Scott Harmon and the case number as 2012-CP-24-01236. The court has received a copy of the Court of Appeals' order granting this court jurisdiction pursuant to Rule 60(a), SCRPC, to amend the prior order.

THEREFORE, IT IS ORDERED THAT the caption of the court's November 21, 2012, order be amended to change Plaintiff's name to Jennifer Harmon Scott and the case number to 2010-CP-24-01236. The caption of this order reflects the proper caption. The Clerk of Court may amend the order's caption accordingly.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Circuit Court Judge
Eighth Judicial Circuit

May 20, 2013
Greenwood, South Carolina

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Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

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Harmon Scott)
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THE COURT OF COMMON PLEAS
2010
Civil Action No. 2012-CP-24-01236

ORDER DENYING POST-TRIAL
MOTIONS

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

THIS MATTER IS BEFORE THE COURT on Plaintiff's motions for Judgment Notwithstanding the Verdict (JNOV), New Trial Absolute, and New Trial Pursuant to the Thirteenth Juror Doctrine. I find as follows:

STATEMENT OF THE CASE

Plaintiff Jennifer Scott Harmon (Plaintiff) alleged that Defendants Allen Fortner and Jason Griffin (Defendants) were negligent in causing a ladder to fall and strike her in the face, causing injuries and damage. (Pl.'s 2nd Am. Compl. ¶ 4). Defendants denied any negligence on their part, asserted that Plaintiff was contributorily negligent, and denied they caused Plaintiff's injuries. (Defs.' Answer). This case was tried before a jury on October 3rd and 4th, 2012. Plaintiff was represented by Jon E. Newlon. Defendants were represented by Jack Griffeth and Ross Plyler. At the close of Plaintiff's case in chief, Defendants moved for a directed verdict on the grounds that Plaintiff had not established Defendants' actions proximately caused her injuries. Plaintiff moved for a directed verdict on the question of liability because Defendants

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had admitted to causing the ladder to fall. Plaintiff also moved to strike Defendants' comparative negligence defense on the same grounds. The court declined to direct a verdict, stating that both parties had presented sufficient evidence on the issues of breach of a duty, proximate cause, and comparative negligence to submit the questions to the jury. The court submitted the case to the jury late in the afternoon of October 4th. Shortly thereafter, the jury submitted a question to the court asking "If we answer no to #1, are we done?" (Ct.'s Ex. #4). The jury was referring to the first question on the verdict form, which asked "Did Plaintiff meet her burden of proving that Defendants were negligent and that the Defendants' negligence proximately caused her injuries?" The court reinstructed the jury on directions for completing the verdict form and informed them that the time of day should not factor into their deliberations. The jury resumed deliberations for approximately fifteen (15) minutes, and then returned a defense verdict on the grounds that Plaintiff had not met her burden of proving Defendants were negligent and that such negligence proximately caused her injuries.

FACTS PRESENTED AT TRIAL

Plaintiff rented a house from Defendant Fortner. As part of the lease agreement, Fortner performed routine maintenance and repairs to the house. On the date of Plaintiff's injury, Defendants were at the house to repair a broken water heater. Defendants had to access a circuit breaker panel in the laundry room as part of the repairs. Plaintiff had recently repainted the kitchen, and had borrowed a ladder from a friend to complete the job. When the ladder was no longer in use Plaintiff placed it against the wall in the laundry room in front of the circuit breaker panel. When Defendant Griffin went to access the circuit breaker panel, his arm brushed against the ladder. The ladder fell and struck Plaintiff, who was in the laundry room, in the arm and face, causing a cut on her nose.

At trial, Plaintiff and her doctors testified that Plaintiff suffered from complications from the impact, including: headaches, facial pain, neuralgia, and post-concussive syndrome. Plaintiff presented expert testimony that the ladder could have struck her with fifteen (15) to twenty-two (22) pounds of force. Defendants presented evidence that Plaintiff suffered no complications from the impact and that she had prior medical problems that were not exacerbated by the accident.

LAW/ANALYSIS

I. Standard of Review

In deciding a motion for JNOV, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. Welch v. Epstein, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct. App. 2000). The court may grant a motion for JNOV only if no reasonable jury could have reached the challenged verdict. Id. at 300, 536 S.E.2d at 419 (citing Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992)). The court will not overturn the jury verdict if any evidence exists that sustains the factual findings implicit in its decision. Id. (citing Smalls v. S.C. Dep't of Educ., 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000); Hunter v. Staples, 335 S.C. 93, 515 S.E.2d 261 (Ct. App. 1999)).

The court may grant a new trial absolute where the jury verdict was “against the greater weight of the evidence presented at trial.” Creighton v. Coligny Plaza Ltd. P'ship, 334 S.C. 96, 114, 512 S.E.2d 510, 519 (Ct. App. 1998). Under the thirteenth juror doctrine, the court may grant a new trial if, in the opinion of the court, the verdict is “unsupported by the evidence” or “inconsistent and reflects the jury’s confusion.” Vinson v. Hartley, 324 S.C. 389, 403-04, 477 S.E.2d 715, 722 (Ct. App. 1996) (citations omitted). The trial judge exercises his discretion to grant a new trial based on his view of the facts, the evidence, the witnesses, the trial

circumstances, and the verdict. Id. at 404, 477 S.E.2d at 723 (citing Fallon v. Rucks, 217 S.C. 180, 60 S.E.2d 88 (1950)). However, disturbance of a jury's verdict is not to be lightly invoked simply because a party has unsuccessfully tried its case. Rhodes v. Winn-Dixie Greenville, Inc., 249 S.C. 526, 530, 155 S.E.2d 308, 310 (1967) ("It is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found.").

II. The Question Of Liability Was Properly Submitted To The Jury.

Plaintiff argues that JNOV is appropriate on two grounds.¹ First, she argues that no reasonable jury could have found Defendant's not liable when Defendant Griffin admitted to brushing against the ladder before it fell. Second, she argues that the issue of comparative fault was improperly submitted to the jury. Essentially, Plaintiff wants the court to impose liability on Defendants as a matter of law, and to order a new trial on solely the issue of damages. Because the question of Defendants' (and Plaintiff's) liability is one for the jury, the court disagrees.

In a cause of action for negligence, the plaintiff must establish three factors: "(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately caused by a breach of duty." Vinson, 324 S.C. at 399, 477 S.E.2d at 720. In the present case, the Plaintiff established as a matter of law that Defendant's owed her a duty to use reasonable care while they were in her home performing repairs to her water heater. However, both Plaintiff and Defendants submitted conflicting evidence on the issues of breach and proximate cause.

The breach of a duty of due care is a question of fact for the jury. Singletary v. S.C. Dept. of Educ., 316 S.C. 153, 157, 447 S.E.2d 231, 233 (Ct. App. 1994) (citing Cantrell v. Green, 302 S.C. 557, 397 S.E.2d 777 (Ct. App. 1990)). Plaintiff argues that a breach of duty was established

¹ Plaintiff's grounds for her Motion for a New Trial mirror her grounds for JNOV. Therefore, the court will consider the new trial motion and JNOV together. See Marsh v. S.C. Dept. of Highways & Pub. Transp., 298 S.C. 420, 423, 380 S.E.2d 867, 869 (Ct. App. 1989).

because Defendant Griffin testified to brushing the ladder and causing it to fall.² However, Defendants presented evidence that Griffin acted reasonably and with due care in reaching for the circuit breaker panel. Whether Griffin acted with due care inherently revolves around the credibility of his and Plaintiff's testimony. Because credibility determinations are best left to the factfinders, the court properly submitted the breach of duty issue to the jury. See Tisdale v. Kerr McGee Chem. Corp., 266 S.C. 64, 67-68, 221 S.E.2d 531, 533 (1976) ("The credibility of the testimony of witnesses is, of course, a function of the jury, not the court, and it is the jury that decides what weight is to be given." (citations omitted)).

Likewise, proximate cause is for the jury to determine. Vinson, 324 S.C. at 402, 477 S.E.2d at 721 ("Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence." (citations omitted)). The plaintiff argued to the jury that the uncontroverted evidence she suffered a cut to her nose establishes causation between the impact and her headaches, facial pain, neuralgia, and post-concussive syndrome. However, "proximate cause requires proof beyond just the act or omission in question and concerns whether it is the 'but for' cause of the plaintiff's injuries and whether the harm was foreseeable." Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 538, 725 S.E.2d 693, 697 (2012) (citing Bishop v. S.C. Dep't of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998)). Even if the jury did assume that Griffin acted negligently when accessing the circuit breaker panel, it may not have attributed Plaintiff's headaches, facial pain, neuralgia, and post-concussive syndrome to that negligence. Defendants presented evidence that Plaintiff suffered

² Plaintiff seems to be arguing, to some extent, that Defendants are negligent simply because the ladder fell. However, South Carolina does not recognize the doctrine of res ipsa locutor. See Watson v. Ford Motor Co., 389 S.C. 434, 452, 699 S.E.2d 169, 179 (2010) (a plaintiff may not rely solely on the fact that an accident occurred to prove negligence).

from these conditions and symptoms prior to being struck with the ladder. Although Plaintiff presented expert testimony as to the force of the impact, Defendants argued that the only immediate consequence was a small scratch. The jury was entitled to believe that the only injury proximately caused by the falling ladder was a scratch, and not headaches, facial pain, neuralgia, and post-concussive syndrome.³ The jury was free to decide what evidence it believed, and the court properly left the proximate cause issue to the jury. Because the questions of breach and proximate cause were properly submitted to the jury, this court will not overturn the verdict.

Plaintiff next argues that the issue of comparative negligence was improperly submitted to the jury. A plaintiff's comparative negligence "presents a question of fact for the jury, at least where conflicting inferences may be drawn." Berberich v. Jack, 392 S.C. 278, 286, 709 S.E.2d 607, 611 (2011) (citing Hurd v. Williamsburg Cnty., 363 S.C. 421, 611 S.E.2d 488 (2005)). Here, Defendants presented evidence that Plaintiff placed the ladder against the wall, and that her positioning of the ladder contributed to it falling and striking her. Thus, the issue of Plaintiff's fault in causing the ladder to fall should have been submitted to the jury.⁴ Because the issues of liability were properly before the jury, this court will not grant a JNOV or a new trial absolute.

III. The Jury's Verdict Is Not Unsupported By The Evidence Nor The Product Of Jury Confusion

Plaintiff finally argues that the court should exercise its discretion as a thirteenth juror because the verdict represents a disregard for the preponderance of the evidence. For the reasons outlined above, the court is not convinced the jury's verdict is unsupported by the evidence

³ No evidence was presented concerning the valuation of damages for the scratch to Plaintiff's nose. As such, the court must conclude that the jury, if it even reached the causation issue, only considered whether the impact was the proximate cause for the headaches, facial pain, neuralgia, and post-concussive syndrome.

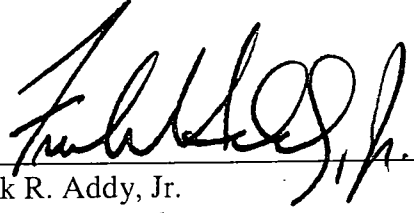
⁴ Even if this issue was not properly before the jury, it did not affect the outcome in this case. The jury concluded that Defendants were not negligent in causing the ladder to fall. It is axiomatic that for the jury to even consider the plaintiff's comparative fault, it must first conclude there was fault on the part of the defendant.

presented. Because the evidence was conflicting and relied primarily on a determination of the credibility of witnesses, the court will defer to the discretion of the jury. Plaintiff's main point of contention is that the short deliberations indicate the jury did not properly consider the law and the facts of the case. However, the brevity of jury deliberations is not grounds to grant a new trial. See Youmans ex rel. Elmore v. S.C. Dept. of Transp., 380 S.C. 263, 282, 670 S.E.2d 1, 10 (Ct. App. 2008) (overview of the "spate of juridical writings" limiting the discretion to overturn a jury verdict based on the length of deliberations). Giving due deference to the role of juries in our system of justice, this court is hesitant to set aside a jury's verdict absent more compelling circumstances.

CONCLUSION

WHEREFORE, Plaintiff Jennifer Scott Harmon's motions for Judgment Notwithstanding the Verdict, for a New Trial Absolute, and for New Trial Pursuant to the Thirteenth Juror Doctrine are respectfully **DENIED**.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Circuit Court Judge
Eighth Judicial Circuit

November 21, 2012
Greenwood, South Carolina