

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
Robin R. Stilwell, Judge

RECEIVED

JUN 14 2013

SC Court of Appeals

Case No. 2011-CP-20-4086

Deena L. Bettencourt and Scott Bettencourt, Appellants,
v.
Mary R. Wald, Respondent.

REPLY OF APPELLANT

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STATEMENT OF ISSUES RAISED BY REPLY

1. Are the issues and arguments raised by the Respondent in its Brief preserved for appellate review?

ARGUMENT

I. THE RESPONDENT' ARGUMENT WAS NOT RAISED IN THE LOWER COURT AND THEREFORE CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.

The Respondent has argued that the amount of attorney's fees and costs were duplicative or related to a federal action. This argument was not presented to the lower court and therefore, there is no ruling on the issue of whether any fees incurred were duplicative or were unrelated to this case. This argument was not presented to the lower court. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Elam v. S.C. Dept. of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 780 (2004). "To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court." Doe v. Doe, 370 S.C. 206, 212, 634 S.E.2d 51, 54 (Ct. App. 2006). "A matter may not be presented for the first time on appeal; rather, it must have been both raised to and ruled upon by the court below." Pikaart v. A & A Taxi, Inc., 393 S.C. 312, 324, 713 S.E.2d 267, 273 (2011). Respondent's argument on the duplicative or unrelated nature of fees should therefore be rejected.

II. THE RESPONDENT'S ARGUMENT FAILS TO ADDRESS THE ISSUES RAISED BY THE APPELLANT.

The Respondent's argument has characterized its denial as "failed to admit to a permanent head injury because he had reasonable grounds to believe he might prevail in this matter." Respondent fails to address the full scope of its denials. In response to the Plaintiff's Requests pursuant to Rule 36, the Defendant denied that the Plaintiff sustained a physical injury as a result of the wreck; denied that the Plaintiff suffered pain and suffering as a result of the wreck; denied that the Plaintiff incurred various medical expenses for injuries as a result of the wreck; and denied that the Plaintiff suffered a traumatic brain injury as a result of the wreck.

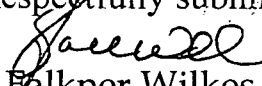
As a result of the Respondent's denial of all the foregoing, the Appellant was forced to prepare for and prove the case on injury. The jury clearly found an injury, pain and suffering, and the existence of medical expenses, all a result of the Defendant's fault. While the Respondent seeks to narrow its denial, this is simply not the case as the record is clear that the Respondent denied the existence of the injury, that the injury resulted in pain and suffering, and that the injury resulted in medical expenses, all of which the Respondent's argument simply fails to address or justify. As a result, the Appellant is entitled to a recovery of fees and costs incurred as a result of the Respondent's denial of the Appellant's requests to

admit.

CONCLUSION

Based on the foregoing, the decision of the lower court should be reversed and/or modified and the Plaintiff awarded expenses and fees as requested.

Respectfully submitted,


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June 10, 2013.

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CERTIFICATE

I certify that on June 10, 2013, I served the Reply of Appellant on the Respondent by placing a copies of same in the United States Mail, first class postage prepaid, addressed to counsel of record and others as indicated below:

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