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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
The Honorable Deadra L. Jefferson, Circuit Court Judge

Civil Action No. 2017-CP-08-02153
Appellate Case No.: 2020-000757

Doretta McHugh, as Personal Representative for the Estate of Daniel Coy, Appellant,

v.

John Doe Respondent.

FINAL BRIEF OF RESPONDENT

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I. STATEMENT OF THE ISSUES ON APPEAL

1) DID THE CIRCUIT COURT PROPERLY ALLOW INTO EVIDENCE TESTIMONY REGARDING APPELLANT'S CONDUCT?

2) DID THE CIRCUIT COURT CORRECTLY DENY APPELLANT'S MOTION FOR A DIRECTED VERDICT?

3) DID THE CIRCUIT COURT CORRECTLY DENY APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT?

II. STATEMENT OF THE FACTS

This matter arises out of a motor vehicle-motorcycle accident that occurred on June 14, 2017 in which a motorcycle being operated by Appellant, Daniel Coy, allegedly collided with an unknown driver's, Respondent John Doe's, automobile. On September 15, 2017, Mr. Coy filed a lawsuit and alleged that the unknown driver, John Doe, negligently rear-ended him while he was on his motorcycle, attempting to make a right turn into his place of employment, Circle K, on Highway 17A near or around Summerville, South Carolina. [R.pp. 30-36]. Counsel for John Doe timely filed an answer to the complaint and denied liability, as well as, pled comparative negligence, amongst several other affirmative defenses. [R.pp. 41-47]. Mr. Coy filed an amended complaint on October 25, 2019 and John Doe timely filed an answer and re-asserted comparative negligence as an affirmative defense. [R.pp. 37-40; R.pp. 52-53, ¶29].

This matter proceeded to a jury trial before the Honorable Deadra Jefferson on November 12th and 13th, 2019, in Berkeley County. However, prior to trial, Mr. Coy was killed in an unrelated motor-vehicle accident. As such, during trial, Mr. Coy was represented by his Personal Representative, Doretta McHugh. At the close of John Doe's case, counsel for Mr. Coy moved for a Directed Verdict, which was subsequently denied. [R.p. 293, Line 5]. After deliberating, the jury returned a verdict in favor of the Defendant. [R.pp. 23-29]. After publication of the verdict, the Court required post-trial motions pursuant to Rule 50(e), SCRCP. Counsel for Mr. Coy moved for judgment notwithstanding the verdict ("JNOV"). The Court denied the motion for JNOV and made contemporaneous findings of fact and conclusions of law for the record. [R.p. 420, Line 15-p. 421, Line 20]. The Court required any further motions or matters for the Court's consideration to be heard at that time. Counsel for Mr. Coy did not move for a new trial, and did not request ten (10) days within which to make a motion for new trial. At that time, the Court deemed all post-trial

motions not made, waived. The Court's Order denying the JNOV Motion was filed by the Clerk of Court on November 19, 2019. [R.pp. 4-6]. That same day, counsel for Mr. Coy filed a Motion for New Trial or to Alter or Amend the Judgment. [R.p. 424]. Counsel for John Doe filed a response in opposition of Mr. Coy's Motion for New Trial or to Alter or Amend the Judgment on November 26, 2019. [R.p. 429-431]. In its sound discretion, the Circuit Court denied Mr. Coy's Motion for a New Trial and found that Mr. Coy had presented no argument that would justify disregarding the verdict of the jury. [R.p. 9, pg. 3]. Counsel for Mr. Coy filed his Motion to Reconsider on December 2, 2019, but failed to serve its Motion on the Court within the ten (10) days required by Rule 59(g), SCRCP, and likewise, also failed to serve a copy of its motion on opposing counsel. Ultimately, the Circuit Court was provided with a copy of Mr. Coy's Motion for Reconsideration on March 9, 2020, by the Clerk of Court. [R.pp. 13-22]. On April 29, 2020, by way of Order, the Circuit Court denied Mr. Coy's Motion to Reconsider. Id. Counsel for Mr. Coy timely filed his Notice of Appeal on May 6, 2020.

III. STANDARD OF REVIEW

"The standard of review for an appeal of an action at law tried by a jury is restricted to corrections of errors of law. A factual finding of the jury will not be disturbed unless there is no evidence which reasonably supports the findings of the jury." Felder v. K-Mart Corp., 297 S.C. 446, 448, 377 S.E.2d 332, 333 (1989).

The admission of evidence is a matter left to the discretion of the trial judge. Carlyle v. Tuomey Hosp., 305 S.C. 187, 407 S.E.2d 630 (1991). Therefore, on appeal, an appellate court will not disturb a trial court's evidentiary rulings absent a clear abuse of discretion. R&G Constr., Inc. v. Lowcountry Reg'l Transp. Auth, 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct. App. 2000); American Federal Bank v. No. 1 Main Joint Venture, 321 S.C. 169, 467 S.E.2d 439 (1996); "For

this Court to reverse a case based on the admission of evidence, both error and prejudice must be shown." Seabrook Island Prop. Owners' Ass'n., 365 S.C. 234 at 242, 616 S.E.2d 431 at 435 (Ct. App. 2005).

When reviewing the trial judge's decision on directed verdict motions or judgment notwithstanding the verdict, an appellate court must apply the same standard as applies to the lower court by viewing the evidence and all inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. Weir v. Citicorp Nat'l Servs., Inc., 312 S.C. 511, 435, S.E.2d 864 (1993); Welch v. Epstein, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct. App. 2000). The appellate court may only reverse the denial of a motion for directed verdict or JNOV if no evidence supports the trial court's ruling. Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 514 S.E.2d 126 (1999). When considering directed verdict and JNOV motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence. Welch v. Epstein, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000); Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006). A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992). The jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision. Smalls v. South Carolina 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).

A respondent may argue any additional reasons why an appellate court should affirm the appealed ruling, "regardless of whether those reasons have been presented to or ruled on by the lower court." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). A reviewing court may, in its discretion, review the additional reasons presented by the respondent

and "if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." Id. at 420, 526 S.E.2d at 723. See also Rule 220(c) SCACR.

IV. ARGUMENT

A. The Circuit Court Did Not Abuse its Discretion and Correctly Allowed into Evidence Testimony Related to Mr. Coy's Pre-Existing Conditions.

The admissibility of evidence lies within the sound discretion of the trial court whose decision will not be overturned on appeal absent a clear abuse of that discretion. Gamble v. Int'l Paper Realty Corp., 323 S.C. 367, 474 S.E.2d 438 (1996); Washington v. Whitaker, 317 S.C. 108, 451 S.E.2d 894 (1994); Carlyle v. Tuomey Hosp., 305 S.C. 187, 407 S.E.2d 630 (1991). Under South Carolina law, only relevant evidence that tends to prove or disprove the existence of a material fact is admissible. Jamison v. Ford Motor Co., 644 S.E.2d 755, 766 (S.C. Ct. App. 2007) (citing SCRE 401).

As previously mentioned above, Mr. Coy had passed away prior to the trial of this case. Thus, his deposition transcript was presented to the jury and read by his mother, Ms. McHugh. In his brief, Appellant mischaracterizes the purpose of the testimony regarding Mr. Coy's prior fall from his motorcycle, which occurred approximately six weeks before the subject accident. Appellant argues that the testimony was presented as an attempt to show Mr. Coy's propensity for falling by his own mistake, and therefore, was inadmissible. [Appellant's Brief, p. 7]. Appellant further argues that "Plaintiff did not place his character or habit for safety practices at issue…". [Appellant's Brief, p. 7]. However, the evidence and testimony regarding Mr. Coy's previous fall was presented to show that Mr. Coy had suffered headaches as a result of that previous fall and therefore, should be considered as it related to the injuries Mr. Coy claimed to have also sustained

as a result of subject accident and John Doe's negligence. Importantly, during his deposition, Mr. Coy's testimony related to his previous fall was not elicited in the context of previous accidents and/or his propensity to fall off of his motorcycle, but instead, followed the question "what injuries did you sustain as a result of this accident?" [R.p. 65, Lines12-13]. At that time, Mr. Coy interjected and offered this particular testimony to explain the underlying cause of his headaches, which is a complaint he also associated with the subject accident. [R.p. 66, Lines 2-14]. Therefore, it is counsel for Mr. Coy who is misplacing this line of testimony and its purpose, not counsel for John Doe. In order for the jury to determine what damages Mr. Coy suffered as a result of the subject accident versus a pre-existing condition resulting from a previous accident, they were entitled to a clear and full picture of his injuries. Thus, the testimony offered by Mr. Coy was relevant and wholly within the context of his injuries.

An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. Commander, 396 S.C. 254, 262-63, 721 S.E.2d 413, 417 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). The Circuit Court's decision in finding that the testimony offered by Mr. Coy, which related to his previous accident and subsequent headaches, was relevant, well-reasoned, and absent of any clear abuse of discretion. Therefore, as the law cited above provides, the trial court's decision should be affirmed.

B. The Circuit Court Correctly Denied the Motion for a Directed Verdict Because Clear Questions of Fact Existed And The Evidence Was Susceptible of More Than One Reasonable Inference.

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Condrey 349 S.C. 184, 562 S.E. 2d 320 (S.C. App. 2002). When ruling on a motion for a directed verdict, the trial court must view all

evidence and all reasonable inferences in the light most favorable to the nonmoving party, and if the evidence is susceptible of more than one reasonable inference, the trial court should submit the case to the jury. Unlimited Servs., Inc., v. Macklen Enters. Inc., 303 S.C. 384, 386, 401 S.E.2d 153, 154 (1991). Comparing the negligence of two parties is ordinarily a question of fact for the jury. Creech S.C. Wildlife & Marine Res. Dept., 328 S.C. 24, 32, 491 S.E. 2d 571, 575 (1997). The Supreme Court is been "reticent" to endorse directed verdicts in cases involving comparative negligence. Thomasko v. Poole, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002). "The appellate court will reverse the circuit court's ruling on a directed verdict motion only when **no** evidence supports the ruling or the ruling is controlled by an error of law." Fay v. Grand Strand Reg'l Med. Ctr., 412 S.C. 185, 193, 771 S.E.2d 639, 644 (2015) (citing Law v. S.C. Dep't of Corr., 368 S.C. 424, 434-35, 629 S.E.2d 642, 648 (2006)).

Appellant has failed to prove or show that the evidence presented before the jury was not susceptible of more than one reasonable inference. Appellant has also failed to show that the ruling denying the motion for directed verdict was controlled by an error of law. In fact, Appellant did not present any basis in his brief except to simply say, "denying Plaintiff's motions for Directed Verdict and JNOV were reversible error." [Appellants Brief, p. 9]. He continues to ignore the abundance of evidence and testimony that was presented before the jury that tended to show that more than one reasonable inference could be drawn from the evidence presented. When counsel for Mr. Coy moved for a directed verdict, clear questions of fact existed, which were properly submitted for the jury to determine. As such, the motion for directed verdict was properly denied.

C. The Circuit Court Correctly Denied Appellant's Motion for Judgement Notwithstanding the Verdict Because Ample Evidence and Testimony Existed to Support the Jury's Finding.

When ruling on a Motion for JNOV, a trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. Pye v. Estate of Fox. 369 S.C. 555, 56 3,633 S.E.2d 505, 509 (2006). If the evidence as a whole is susceptible of more than one reasonable inference, a jury issue is created and a JNOV motion should be denied. Parrish v. Allison, 376 S.C. 308, 319, 656 S.E.2d 382, 388 (Ct. App. 2007). On JNOV motions, the trial court does not have "the authority to decide credibility issues or to resolve conflicts in the testimony or evidence." Thomas v. Dootson, 377 S.C. 293, 297, 659 S.E.2d 253, 255 (Ct. App. 2008) ("[I]t is the jury that must decide what part of the witness's testimony it wants to believe and what part it wants to disbelieve."). When considering a Motion for JNOV, a trial judge is concerned with the existence of evidence and not its weight. State v. Wakefield, 323 S.C. 189, 197, 473 S.E.2d 831, 835 (Ct. App. 1996). Therefore, a jury's verdict should not be overturned if **any** evidence exists that sustains the factual findings implicit in its decision. Id. (emphasis added). A jury verdict should be upheld when it is possible, so as to carry out the effect of the jury's clear intention. Billups v. Leliuga, 303 S.C. 36, 39. 398 S.E.2d 75, 76 (Ct. App. 1990).

In Appellant's brief, he contends that the jury was presented with very little evidence, and what little evidence was presented, it related only to a prior fall while operating his motorcycle. However, and contrary to Appellant's brief, the jury was presented with an array of evidence including testimony from Mr. Coy's deposition, Doretta McHugh, and two (2) witnesses, who claimed to have witnessed the accident. It is undisputed that the jury had the opportunity to hear

arguments presented by each party and therefore, had every opportunity to weigh the credibility of the facts and evidence that was presented by each party. While presenting his case before the jury, counsel for Mr. Coy argued that this was a "hit and run" case. In effort to support his argument, he called two witnesses to the stand, who testified before the jury, they did in fact witness Mr. Coy get hit by a vehicle and that vehicle fled the scene. However, after hearing arguments, testimony, and viewing the evidence presented by both parties, the jury was simply not convinced, and thus, Mr. Coy was unable to meet his burden. Moreover, contrary to Appellant's brief, there was compelling testimony, which revealed that John Doe was not involved in the subject accident. For example, the jury was presented with testimony from Mr. Coy whereby he stated under oath that he did not even know that he had been struck in the rear by a vehicle. [R.p. 62, Lines 12-19; Coy Depo. Transcript, p. 26, Lines 12-19]. Further, Mr. Coy testified that he felt as though his motorcycle had "seized up," causing him to wreck the motorcycle. [R.p. 61, Line 21 – p. 62, Line 4; Coy Depo. Transcript, p. 25, Line 21 – p. 26, Line 4]. Finally, Mr. Coy also testified that prior to the accident he had not heard a vehicle behind him nor had he seen any vehicle lights behind him. [R.p. 62, Line 23 – p. 62, Line 12; Coy Depo. Transcript p. 26, Line 23 – p. 27, Line 12]. Additionally, and to that same effect, Ms. Goblet, who was called to the stand by counsel for Mr. Coy, admitted that she did not actually see a car coming in contact with the rear of Mr. Coy's motorcycle. [R.p. 221, Lines 17-22]. She further testified that from where she was standing, it would have been "impossible" to see what was going on behind Mr. Coy's motorcycle at the time of the accident. [R.p. 222, Lines 15-20]. The foregoing facts are just a "tip of the iceberg" of the evidence that existed and was presented before the jury that tended to show that Mr. Coy was not actually hit by a John Doe driver.

As the finders of the fact, the jury is "imbued with broad discretion in determining credibility or believability of witnesses." Small v. Pioneer Machinery, Inc., 329 S.C. 448, 465, 494 S.E.2d 835, 843 (Ct. App. 1997). It is clear that there was more than enough evidence that existed to create factual disputes regarding liability and whether or not John Doe, an unknown driver, was negligent, which was an issue for the jury to resolve. As the law cited above provides, the standard is that all inferences are to be drawn in support of the jury's determination. The jury, based on a reasonable analysis of the facts presented during trial, returned a verdict in favor of the John Doe Defendant. Therefore, given the amount of evidence that existed, the Circuit Court's order denying Plaintiff's Motion for JNOV should be affirmed.

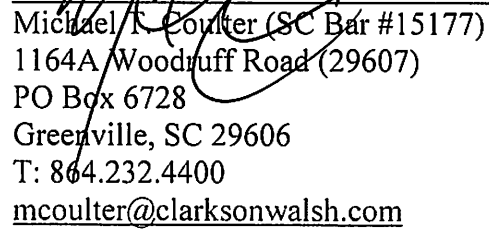
V. CONCLUSION

The Circuit Court did not abuse its discretion when it correctly found testimony related to Mr. Coy's previous fall and subsequent headaches were relevant to the issue of Mr. Coy's alleged injuries, was not substantially outweighed by the danger of unfair prejudice, and admissible. The Circuit Court also correctly denied both Mr. Coy's Motion for Directed Verdict and Mr. Coy's Motion for JNOV. Therefore, Respondent respectfully requests the Circuit Court's Order/Verdict Form and the November 19, 2019 Order all be affirmed.

[signatures on following page]

Respectfully Submitted by:

CLARKSON, WALSH & COULTER, P.A.



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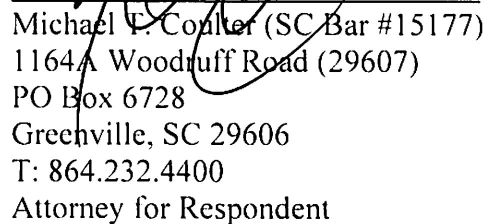
CERTIFICATE OF COUNSEL

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



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