



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

KELLIE BINGHAM AND KAYLA BINGHAM,

Plaintiffs,

v.

MEDICAL UNIVERSITY OF SOUTH CAROLINA,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2017-CP-10-5699

RECEIVED

Jun 09 2023

SC Court of Appeals

ORDER GRANTING DEFENDANT'S MOTION TO REDUCE THE VERDICT PER THE SCTCA AND DENYING PLAINTIFFS' MOTION TO DETERMINE NUMBER OF OCCURRENCES

This matter went to a jury trial on Plaintiffs' claims for defamation from November 14-18, 2022. The jury returned a verdict in favor of Plaintiffs and awarded each Plaintiff \$750,000 in compensatory damages, using a general verdict form. Following the verdict, Defendant MUSC argued that the trial judge should, consistent with the Tort Claims Act, reduce the verdicts to \$300,000 each for Kayla and Kellie Bingham. Plaintiffs filed a post-trial Motion to Determine Number of Occurrences, asking the court to determine the number of occurrences and to increase or amend the verdict accordingly. For the reasons that follow, Plaintiffs' Motion to Determine Number of Occurrences is denied and the Defendant's motion to reduce the verdict to \$300,000 for each of the Plaintiffs is granted.

Under the South Carolina Tort Claims Act (SCTCA), recovery is limited to \$300,000 per claimant for a single occurrence, with the total maximum amount of recovery for a single occurrence (if multiple claimants) of \$600,000. See S.C. Code § 15-78-120(a)(1) & (2). The term "occurrence" is defined not as single wrongful act, but rather as "an unfolding sequence of events which proximately flow from a single act of negligence." See S.C. Code § 15-78-30(g).

In order for Plaintiffs to obtain a judgment that includes more than one occurrence, the jury must have been properly instructed to determine the number of occurrences and presented with appropriate special interrogatories.

Plaintiffs bear the burden of proving multiple "occurrences" and must submit a verdict form to the jury (the finder of fact), if they seek a judgment in excess of the cap:

In her post-trial order, the judge gave as one reason for reducing appellant's award the impossibility of determining from the jury instruction and verdict forms whether the jury found one or more than one nurse had rendered negligent care to appellant. Thus, she held, it was impossible to conclude that the jury had found more than one occurrence. Appellant now contends that AnMed bore the burden of proving there was only one occurrence. We disagree.

Just as in any tort action, a CFA plaintiff bears the burden of proof. If she alleges multiple occurrences, that is, that there was more than one single act of negligence from which proximately flowed an unfolding sequence of events, she bears the burden of proving each occurrence. *Here, the jury was never instructed on the definition of occurrence nor was it asked to determine whether there was more than one occurrence, either in the instructions or in its verdict. The trial judge correctly reformed this verdict to reflect a single occurrence.*

See Chastain v. Anmed Health Found., 388 S.C. 170, 174, 694 S.E.2d 541, 543-44 (2010) (emphasis added).

In this case, the court did not instruct the jury on the definition of "occurrences," and Plaintiff did not object to the sufficiency of the instructions. In addition, the verdict form did not require the jury to determine the number of occurrences, and again the Plaintiff did not object or request a different verdict form. In fact, both parties agreed to the verdict form that was used in this case. The verdict form asked the jury to answer the following questions:

1. Do you, the jury, unanimously find by a preponderance of the evidence that Defendant Medical University of South Carolina made a false and defamatory statement about the Plaintiffs Kellie and Kayla Bingham?
2. Do you, the jury, unanimously find by a preponderance of the evidence that the

defamatory statement exceeded the scope of Defendant's qualified privilege?

3. What is the amount of damages, if any, sustained by each Plaintiff?

Plaintiffs did not ask the jury to make specific determinations as to the number of occurrences or the losses attributable to each. The jury was not instructed about determining the number of occurrences. It was not asked to, and did not, find more than one occurrence. It did not specifically identify what conduct gave rise to its verdict. It did not determine the "loss" attributable to each alleged occurrence.

At the time the parties agreed upon the verdict form and jury instructions, the parties discussed and agreed, as is customary in cases tried under the South Carolina Tort Claims Act, that the jury would not be informed of the statutory cap and that the Court would, if necessary, apply the cap before entering judgment. Plaintiffs did not mention that they intended to argue that there were multiple occurrences. The Court does not recall any discussion whatsoever of the possibility of there being more than one occurrence. Similarly, there was no stated agreement that the Court would determine the number of occurrences after the entry of a verdict and after the jury was excused.

South Carolina law is clear that it is for the jury to determine whether there were multiple occurrences. It would be impossible for the court to determine the number of occurrences without knowing the basis for the jury's verdict. It would be inappropriate for this court to speculate as to the basis for the jury's verdict or to make post-trial findings of fact that come within the exclusive province of the jury.

Because Plaintiffs failed to request a verdict form in compliance with *Chastain*, they cannot now ask the Court to find multiple occurrences, and are limited to a single occurrence.

See Holly Woods Ass'n of Residence Owners v. Hiller, 392 S.C. 172, 191, 708 S.E.2d 787, 797

(Ct. App. 2011) ("We find that Appellants had an obligation to request a special interrogatory once the jury returned its verdict. Appellants waived appellate review of this issue because they failed to request a special interrogatory when the deciding jury was available and in place to review such a matter.").

CONCLUSION

The court finds that the jury's verdict is limited to the statutory cap of \$300,000 for Kellie Bingham and \$300,000 for Kayla Bingham.

AND IT IS SO ORDERED.

Circuit Court Judge

_____, 2023



Charleston Common Pleas

Case Caption: Kellie Bingham VS Medical University of South Carolina

Case Number: 2017CP1005699

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762