

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE 4TH JUDICIAL CIRCUIT

Samantha Joanne Carwile, individually and
as the Personal Representative of the Estate
of Marlayna Joan Carwile,

C/A No. 2020-CP-16-00299

Plaintiff,

ORDER OF DEFAULT JUDGMENT

v.

Chris Anderson and Danielle Anderson,

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Jun 22 2023

Defendants.

SC Court of Appeals

HEARING DATE: April 13, 2023

SPECIAL REFEREE: Patrick J. McLaughlin, Esq.

PLAINTIFFS' ATTORNEYS: Ryan C. Andrews
David B. Yarborough, Jr.

DEFENDANT'S ATTORNEY: Andrew MacLeod

COURT REPORTER: Q & A Reporting Services

This matter came before me on Plaintiff Samantha Joanne Carwile's Motion for Damages Hearing and Default Judgment against Chris Anderson and Danielle Anderson pursuant to Rule 55(b)(2), SCRPC. After proper notice to Defendant, the matter was heard on April 13, 2023.

At the hearing, Plaintiff withdrew her claims for survival, negligent infliction of emotional distress, and punitive damages. Plaintiff limited her request for default judgment to the claim of wrongful death on behalf of Marlayna Carwile's statutory beneficiaries, Samantha Joanne Carwile and Justin Baxter, who are Marlayna's parents. Based on the findings of fact and conclusions of law set forth below, I hereby grant the motion and enter judgment against Chris Anderson and Danielle Anderson as follows:

1. In favor of Samantha Joanne Carwile, in the amount of Fifteen Million and 00/100 Dollars (\$15,000,000); and
2. In favor of Justin Baxter, in the amount of Fifteen Million and 00/100 Dollars (\$15,000,000).

PROCEDURAL HISTORY

This is a negligence action arising out of an automobile collision that occurred on December 6, 2017, in Darlington County. The collision resulted in the death of Marlayna Carwile, the three-year-old daughter of Plaintiff Samantha Carwile and Justin Baxter.

Plaintiff filed this action on March 17, 2020, and each Defendant was personally served on April 6, 2020. After Defendants failed to timely serve a responsive pleading, the Court entered Defendants' default on June 15, 2020.

On May 26, 2021, the Court set aside the entry of default, and on June 11, 2021, the Defendants, by and through personal counsel, filed and served an Answer to the Complaint.

After Defendants failed to respond to discovery requests, Plaintiff filed a motion to compel, which the Court granted. After Defendants failed to comply with the Order to Compel, Plaintiff filed a motion for sanctions, which the Court granted. As part of the grant of sanction, the Court struck Defendants' Answer pursuant to Rule 37(b)(2)(C) and (d), SCRCP. *See* Order entered November 17, 2022. In the Order, the Court ruled that Defendants would be placed back into default "upon application by the Plaintiff. *Id.* After Plaintiff filed the application, the Court placed Defendants back into default. *See* Order for Entry of Default entered November 29, 2022.

On February 10, 2023, the Court appointed Attorney Patrick J. McLaughlin as Special Referee pursuant to Rule 53, SCRCP. The Order of Reference provides that the Special Referee

“shall have and retain jurisdiction over any motions...related to the entry of default....” See Order of Reference to Special Referee entered February 10, 2023.

On March 7, 2023, Plaintiff filed this motion for default judgment pursuant to Rule 55(b)(2), SCRCP, and the hearing for the motion was scheduled for April 13, 2023. Plaintiff filed and served Defendants with formal notice of the hearing on March 7, 2023, in compliance with Rule 5(a), SCRCP, and Rule 55(b)(2), SCRCP. Defendants, through new counsel, filed a motion for relief from entry of default on April 12, 2023. After reviewing the motion and hearing the arguments of counsel, the Court denied Defendants’ motion.

The Court then proceeded with the damages hearing.

FINDINGS OF FACT

At the hearing, Marlayna Carwile’s parents and statutory beneficiaries, Samantha Carwile and Justin Baxter, provided extensive testimony as to their severe mental anguish, grief and sorrow, loneliness, loss of companionship, lost wages, and diminished earning capacity each has experienced with the loss of their daughter. The Court finds the testimony of both parents to have been extremely credible. The pain and grief both are still struggling with over the loss of their daughter was visible. It is clear that tragic loss of their daughter has imposed a heavy emotional and mental burden that both parents have, and will continue to, struggle to overcome.

In addition, the *de bene esse* deposition of Vanessa Lobo, LPC-1, was entered into the record. All opinions of Ms. Lobo were given to a reasonable degree of certainty. In addition to this testimony, twenty five (25) photographs of Marlayna Carwile and her family were properly admitted into evidence.

Based on the testimony and the documentary evidence, I find as follows:

1. The above recitation of the procedural history of this case is incorporated herein as part of the Court's findings of fact.
2. Plaintiff's decedent, Marlayna Carwile, was three years old at the time of her death.
3. Plaintiff and statutory beneficiary Samantha Joanne Carwile is currently thirty-one years old.
4. Statutory beneficiary Justin Baxter is currently thirty-two years old.
5. Before Marlayna's passing, both Ms. Carwile and Mr. Baxter lived with and raised Marlayna together as a family. Ms. Carwile and Mr. Baxter had a special bond and loving relationship with their daughter, and each considered her to be their best friend. Ms. Carwile traveled with Marlayna throughout the United States to visit family and friends. Marlayna looked up to and loved playing with her older brother, Rylan Carwile. Mr. Baxter would spend a majority of his time off work with his daughter. Ms. Carwile and Mr. Baxter both spent immense time with and maintained a close and personal relationship with their daughter. Marlayna was a happy child who was full of joy.
6. Before Marlayna's passing, Ms. Carwile was a nurse while Mr. Baxter was employed as an armed nuclear security officer at Robinson Nuclear Power Plant.
7. Both Ms. Carwile and Mr. Baxter witnessed the condition of their daughter immediately after she was struck by an automobile, and testified to seeing the blood on her body. Mr. Baxter attempted CPR on Marlayna, and the two held and were with Marlayna while she passed away. Ms. Carwile's older child, Rylan Carwile, witnessed his sister being struck by the automobile. Rylan was seven years old on the day of his sister's death.
8. After the wreck, Ms. Carwile experienced and continues to experience severe depression, anxiety, sleepless nights, panic attacks, loss of appetite, feelings of loneliness, headaches,

hopelessness, and a loss of companionship as a result of her daughter's death. She has been diagnosed by a licensed counselor as suffering from post-traumatic stress disorder, severe anxiety, and depression as a result of her daughter's death. All of this has negatively affected her relationships with her family and friends, and it led Ms. Carwile to move from South Carolina to Florida in the months following her daughter's death. She testified that she does not socialize with the friends and co-workers she had before her daughter's death because doing so causes her to relive the day her daughter was killed. She also testified that her daughter's death eventually led to the end of her relationship with Mr. Baxter.

9. Ms. Carwile was also unable to return to work for approximately eleven months after her daughter's death.
10. Ms. Carwile's son, Rylan, was greatly affected by witnessing and experiencing his sister's death. Ms. Carwile testified that Rylan has had trouble handling his emotions and has been in numerous counseling sessions since her death. While Rylan is not a statutory beneficiary, the Court finds that the effects of his sister's death on him directly affect Ms. Carwile and compound her own "mental shock and anguish, wounded feelings, grief and sorrow, loss of companionship, and deprivation of the use and comfort of the decedent's society." *Singletary v. Shuler*, 861 S.E.2d 591, 596 (S.C. Ct. App. 2021) (setting forth the non-economic damages available in an action for wrongful death) (citation omitted).
11. After the wreck, Mr. Baxter experienced and continues to experience severe depression, anxiety, sleepless nights, panic attacks, loss of appetite, feelings of loneliness, physical chest pain, numbness, and a loss of companionship after his daughter's death. He has been diagnosed by a licensed counselor as suffering from post-traumatic stress disorder, severe anxiety, and depression as a result of his daughter's death. All of this has negatively

affected his relationships with his family and friends, and it led Mr. Baxter to move to and from different states approximately fifteen times since his daughter's death. Mr. Baxter testified that he tries to avoid socializing and building relationships with others since his daughter's death because he is scared those new relationships could be gone in an instant like his relationship with his young daughter. He also testified that his daughter's death eventually led to the end of his relationship with Ms. Carwile.

12. Mr. Baxter had planned to continue his career at Robinson Nuclear Power Plant all the way through retirement. However, after his daughter's death he could not muster the focus or ability to perform the job. In fact, since his daughter's death, Mr. Baxter has had trouble maintaining any consistent employment and is currently employed making approximately one-third of the salary he was making prior to his daughter's death.
13. Both Ms. Carwile and Mr. Baxter have sought counseling since this tragedy and would benefit from future counseling as a result of their daughter's death.
14. Ms. Lobo testified she treated Ms. Carwile and her son, Rylan, for approximately eight months after Marlayna's death until the family moved to Florida. She testified to a reasonable degree of certainty that Ms. Carwile would likely require permanent counseling to work on Ms. Carwile's depression, anxiety, and shame, and also to deal with the flashbacks and nightmares she experiences as a result of her daughter's death. She also recommended long term continuing counseling for Ms. Carwile's son, Rylan.
15. Based on the credible testimony of Ms. Carwile, Mr. Baxter, and Ms. Lobo, the statutory beneficiaries sustained the following damages as a direct and proximate result of their daughter's death:
 - a. Mental Shock and Anguish;

- b. Wounded Feelings;
 - c. Grief and Sorrow;
 - d. Loss of Companionship and the Use and Comfort of Their Daughter's Society;
 - e. Lost Wages; and
 - f. Diminished Earning Capacity.
16. Based on the South Carolina statutory life expectancy, Ms. Carwile's life expectancy is presumed to be 50.60 years.
17. Based on the South Carolina statutory life expectancy, Mr. Baxter's life expectancy is presumed to be 45.90 years.
18. By a preponderance of evidence, I find that Ms. Carwile and Mr. Baxter will experience the effects of their daughter's passing for the rest of their lives.
19. Ms. Carwile and Mr. Baxter have proved by a preponderance of the evidence that they are entitled to recover for all of the damages set forth above as a proximate result of the admitted negligence of Defendants.

CONCLUSIONS OF LAW

1. The above recitation of the procedural history of this case is incorporated herein as part of the Court's conclusions of law.
2. The Court has jurisdiction over the subject matter and all of the parties, and venue is proper.
3. This damages hearing was properly noticed and served in compliance with Rule 5(a), SCRCPC, and Rule 55(b)(2), SCRCPC, and Defendants did not contend otherwise.
4. "[B]y suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and have conceded liability." *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 319 (Ct. App. 2004) (quoting *Roche v. Young Bros.*, 332 S.C. 75, 81 (1998)).

Because Defendants have been held in default, all of Plaintiff's allegations in the Complaint relating to Defendants' liability must be taken as true.

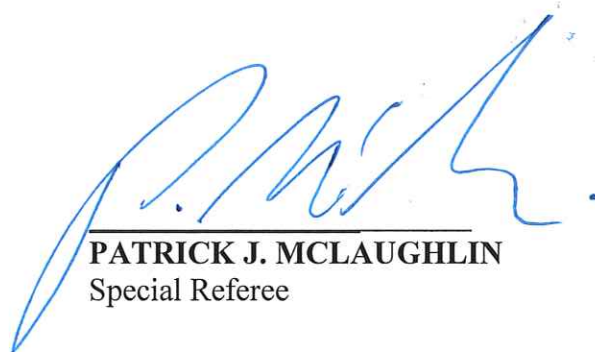
5. By a preponderance of the evidence, Plaintiff has proved that Defendants' admitted breach of duty proximately caused the injuries and damages to the statutory beneficiaries set forth above.
6. Finding that the essential elements of Plaintiff's claim for negligence has been established against Defendants, the amount of damages to fairly compensate the statutory beneficiaries for the injuries they suffered is now addressed. "Under S.C. Code Ann. § 15-51-20 (Supp. 1993), a personal representative may bring a wrongful death action for the benefit of statutory beneficiaries, including the parents of the deceased.... Damages recoverable for wrongful death are the damages sustained by the statutory beneficiaries resulting from the death of the decedent, including pecuniary loss, mental shock and suffering, wounded feelings, grief, sorry, and loss of society and companionship." *Ballard v. Ballard*, 314 S.C. 40, 41-42 (1994).
7. In her deposition, which was admitted into evidence without objection, Ms. Lobo, a licensed professional counselor who focuses on trauma-informed care, testified that Ms. Carwile suffered from flashbacks, grief, depression, hopelessness, survivor's guilt, numbness, wounded feelings, and mental shock as a result of witnessing her daughter's death and that Ms. Carwile would more likely than not permanently require counseling and treatment.
8. Ms. Carwile and Mr. Baxter have proved, by a preponderance of the evidence, that they sustained severe mental shock and anguish, wounded feelings, grief and sorrow, loss of

companionship, deprivation of the use and comfort of their daughter's society, lost wages, and diminished earning capacity.

9. Further, Ms. Carwile and Mr. Baxter proved by a preponderance of evidence that their damages are the direct and proximate result of Defendants' admitted negligence.
10. "The purpose of actual or compensatory damages is to compensate a party for injuries suffered or losses sustained. The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position her or she was in before the wrongful injury occurred." *Clark v. Cantrell*, 339 S.C. 369, 378 (2000).
11. The Court concludes that the amount reasonably required to fairly and justly compensate Ms. Carwile and Mr. Baxter for each of their individual, incredible losses, is Fifteen Million Dollars (\$15,000,000.00) to each of them.

IT IS ORDERED, ADJUDGED, and DECREED that Plaintiff Joanne Carwile, as Personal Representative of the Estate of Marlayna Carwile, should be and hereby is awarded judgement against Defendants Chris Anderson and Danielle Anderson, jointly and severally, in the amount of **Thirty Million and 00/100 Dollars (\$30,000,000.00)**. The Clerk of Court shall enter the judgment against Defendants Chris Anderson and Danielle Anderson in the Judgment Rolls of Darlington County, South Carolina.

IT IS SO ORDERED.



PATRICK J. MCLAUGHLIN
Special Referee

May 23, 2023
Florence, South Carolina