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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case: 2023-000592
Case No. 2021CP2200552

Jessica Flegel,

Appellant,

v.

Thayne Dawkins Reece,

Respondent

RESPONDENT'S INITIAL BRIEF

Respectfully submitted,

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Rules

South Carolina Rules of Civil Procedure, Rule 59 1

STATEMENT OF ISSUES ON APPEAL

The Order Denying Appellant's Motion for a New Trial should be upheld because Appellant's Counsel failed to timely submit the Motion for a New Trial to the Trial Court. The motion was not made immediately after the jury was discharged, and Appellant's Counsel did not request an additional 10 days from the Court to submit the motion as required by Rule 59 of the South Carolina Rules of Civil Procedure. SCRCP, Rule 59. See also Boone v Goodwin, 314 S.C. 374, 444 S.E.2d 524 (1994).

Furthermore, the Trial Court properly denied Appellant's request to submit the jury charge regarding punitive damages to the jury because the Appellant failed to submit any evidence during the trial of this case showing that the Respondent violated a statute or that Respondent was willful, wanton or reckless in causing the accident. The Appellant testified that she did not know how the accident occurred, and the Respondent never testified during the trial. The only other witnesses that were called at the trial of this case were Appellant's parents who did not witness the accident. Throughout the trial, the Appellant failed to prove by clear and convincing evidence that Respondent was reckless, willful or wanton, and no evidence was presented that he violated a statute. Therefore, the Appellant failed to meet her burden of proof to warrant the submission of a jury charge regarding punitive damages to the jury.

STATEMENT OF THE CASE

This case involves an automobile accident that occurred on September 8, 2020 in Georgetown County. The Respondent rearended the Appellant, and Appellant alleged that she suffered injuries as a result of that accident.

The matter was tried before a jury on March 6, 2023 and March 7, 2023 with the Honorable Maite Murphy presiding. In her case in chief, the Appellant was called as a witness along with her parents. The Respondent did not call any witnesses. At the close of the evidence, Judge Murphy denied Appellant's request for a jury charge on punitive damages because no evidence was presented of reckless, willful or wanton conduct on behalf of the Respondent. At the conclusion of the trial, the jury returned a verdict for Appellant for \$10,000.00 actual damages. When the jury was discharged, Judge Murphy asked both sides if they had any further matters for her consideration. Both sides indicated that they did not have any motions. Appellant's counsel failed to move for a new trial on March 7, 2023 after the jury was discharged, and failed to request 10 days to file any post-trial motions at that time. On March 16, 2023, Appellant filed her Motion for New Trial. On April 4, 2023, Judge Murphy signed and filed an Order Denying Plaintiff's Motion for New Trial. Appellant then filed her Notice of Appeal.

ARGUMENTS

I. The Order Denying Appellant's Motion for New Trial Should be Upheld because Appellant's Motion for New Trial was Untimely

The Order Denying Appellant's Motion for New Trial should be upheld because Appellant failed to timely submit her motion for a new trial to the Trial Court.

Rule 59 of the South Carolina Rules of Civil Procedure provides that "[t]he motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter.'..." Boone v. Goodwin, 444 S.E.2d 524, 314 S.C. 374 (S.C. 1994) "We hold a party must make a motion for a new trial promptly after the jury is discharged or request ten days within which to make the motion." Id. at 525.

After the verdict was returned on March 7, 2023, Judge Murphy asked each side if they had anything further before she released the jury. (Transcript p. 88). Appellant's counsel and Respondent's counsel both indicated that they did not have any motions. (Transcript p. 88). Appellant's counsel did not move for a new trial and did not request 10 days to submit the Motion for New Trial once the jury was discharged (Transcript p. 88). Appellant filed her Motion for New Trial on March 16, 2023. Therefore, Appellant's Motion for a New Trial was untimely, and the Order Denying Appellant's Motion for New Trial should be upheld.

II. The Order Denying Appellant's Motion for New Trial Should be Upheld Because There was No Evidence Presented that Respondent Violated a Statute or that His Conduct was Reckless, Willful or Wanton

A plaintiff cannot recover punitive damages based on negligent conduct. Taylor v Medenica, 324 S.C. 200, 479 S.E.2d 35, 45 (S.C.1996). Mere negligence will not support a

punitive damages award. Id. To recover punitive damages, the Appellant must prove by clear and convincing evidence that the Respondent's actions were willful, wanton, or reckless. Austin v Specialty Transp. Servs., Inc., 358 S.C. 298, 594 S.E.2d 867, 875 (Ct. App. 2004). Meaning, there must be a conscious failure to exercise due care or a conscious indifference to the rights and safety of others or a reckless disregard thereof.

At trial, the burden is on the plaintiff to prove punitive damages. Punitive damages "can only be awarded where the plaintiff proves by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights." Id. at 875.

During trial, the Appellant did not present any evidence of willful, wanton, or reckless behavior on the part of the Respondent. The Appellant testified that it was dark outside, and she was listening to music at the time of the accident. (Transcript p. 30). She did not hear or see anything prior to impact. (Transcript p. 30). Additionally, the Appellant testified that she did not see the Respondent's vehicle before impact. (Transcript p. 43). Julie Flegel and Charles Flegel both testified at trial. However, neither of them was present when the accident occurred. (Transcript p. 47, 48, and 56). There was no evidence presented of Respondent's actions immediately prior to or during the accident. Appellant failed to prove by clear and convincing evidence that Respondent was willful, wanton or reckless.

Furthermore, the Respondent was not called to testify at trial. The Appellant could have called the Respondent as a witness in her case in chief if she chose to do so. Moreover, there was no evidence presented by Appellant showing Respondent's actions immediately before the accident occurred. Appellant relies on the fact that Charles Flegel testified that he did not see any tire marks in the roadway. (Appellant Initial Brief p. 7 and Transcript p. 54) However, the Respondent could have had a medical emergency or sudden emergency that caused him to rearend

the Appellant's vehicle. The lack of tire marks does not prove willful, wanton or reckless conduct on behalf of the Respondent.

The Appellant failed to prove by clear and convincing evidence that the Respondent was willful, wanton or reckless. There was also no evidence presented that the Respondent violated a statute in causing the accident. Evidence to support an award of punitive damages would have been based solely on speculation and not by clear and convincing evidence.

CONCLUSION

The Order Denying Appellant's Motion for New Trial should be upheld because Appellant's Counsel failed to timely submit the Motion for New Trial to the Trial Court. The Motion for New Trial was not made after the jury was discharged and Appellant's Counsel did not request an extension of 10 days from the Trial Court to submit the Motion for New Trial.

Furthermore, no evidence was presented during the trial of the case which would warrant a jury charge regarding punitive damages. At trial, Appellant failed to prove by clear and convincing evidence that Respondent was reckless, willful or wanton. Appellant further failed to show that Respondent violated a statute.

For the above stated reasons, the Order Denying Appellant's Motion for New Trial should be upheld.

Respectfully submitted,

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