

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Reba Willard,

Plaintiff,

vs.

Wal-Mart Stores, Inc., d/b/a Walmart, Inc.

Defendant.

COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2022-CP-26-04874

**ORDER DENYING PLAINTIFF’S
POST-TRIAL MOTION FOR NEW
TRIAL ABSOLUTE AND
THIRTEENTH JUROR**

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SC Court of Appeals

This matter initially came before the Court for a jury trial on May 15, 2023. The jury returned a verdict for Defendant Wal-Mart Stores, Inc. (hereinafter “Walmart”) on all causes of action brought by Plaintiff Reba Willard (hereinafter “Plaintiff”). On May 26, 2023, Plaintiff filed a Post-Trial Motion for New Trial Absolute and Thirteenth Juror (the “Post-Trial Motion”). Having duly considered the Post-Trial Motion, Defendant’s Memorandum in Opposition to the Motion, as well as the evidence properly presented at trial, the Court hereby denies Plaintiff’s Post-Trial Motion and finds as follows:

PROCEDURAL HISTORY

Plaintiff filed suit on August 16, 2019, alleging three causes of action for negligence, negligent entrustment, and equitable estoppel against Walmart. The case was tried before a jury in Horry County from May 15 to May 17, 2023. The jury returned a defense verdict in favor of Walmart. On May 26, 2023, Plaintiff filed the Post-Trial Motion for a New Trial Absolute and Thirteenth Juror.

STATEMENT OF THE CASE

Plaintiff alleged that on April 30, 2019, she was shopping at Walmart Store #643 at 10820 Kings Road, Myrtle Beach, South Carolina. Plaintiff was knocked to the floor when another

customer reversed a motorized shopping cart into Plaintiff's buggy, which bumped into Plaintiff. The at-fault customer left the scene before he could be identified. Plaintiff alleged Walmart was negligent in various respects. Plaintiff was absent from trial by consent of all parties due to her age (101 years old) and unrelated infirmity. At trial, Walmart presented surveillance video and witnesses to support the theory that Plaintiff's accident was caused by the carelessness of the third-party customer, not any act or omission by Walmart.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Plaintiff's Motion for New Trial Absolute is denied on the grounds that it is improper given the evidence and the jury's verdict in favor of Walmart.

Pursuant to Rule 59, SCRPC, a trial court may grant a party's motion for a new trial in an action where there has been a jury trial. A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993). "The jury's determination of damages, however, is entitled to substantial deference." *Id.* The court should grant a new trial absolute *only* if the verdict amount is so grossly inadequate so as to shock the conscience of the court and clearly indicates the verdict was the result of passion, caprice, prejudice, partiality, corruption, or some other improper motive. *Id.* at 379-80, 426 S.E.2d at 805. The grant or denial of new trial motion rests within the discretion of the court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. *Umhoefer v. Bollinger*, 298 S.C. 221, 224, 379 S.E.2d 296, 297 (Ct. App. 1989).

Plaintiff moved this Court for a new trial absolute arguing the jury's verdict was contrary to the evidence presented at trial. The Court disagrees. The jury properly weighed the evidence presented at trial and the arguments of counsel, and it found favor in favor of Walmart. The factual findings implicit in the jury's decision indicate that sufficient evidence existed to conclude that

Walmart was not liable for Plaintiff's damages. The Court cannot find any indication of improper motive on the jury, including prejudice against the absent Plaintiff, as this verdict was a reasonable inference drawn from the evidence presented at trial.

The jury in this matter considered the most objective evidence in this matter, the surveillance video. The surveillance video shows another customer abruptly reversed his motorized cart into Plaintiff's cart, thereby providing the opportunity for the jury to determine that the customer was the sole cause of the alleged incident rather than any alleged negligence of Walmart. Accordingly, the surveillance video alone provides an evidentiary basis to support the jury's defense verdict.

Plaintiff further argues certain evidentiary rulings by this Court were in error and controlled the conclusions reached by the jury. The Court disagrees. The Court's evidentiary rulings were proper and there is no indication the jury's verdict was the result of any improper motive; therefore, Plaintiff's arguments do not support a finding of a new trial absolute.

A. Exclusion of Medical Billing.

Plaintiff argues the Court's decision to exclude her medical bills, records, and a summary was in error and that error alone entitles her to a new trial. This Court disagrees. Plaintiff attempted to admit her medical billing solely on the basis of certificates of authenticity provided by records custodians and an affidavit by Plaintiff stating that she felt the presented documents "appear to contain all of the medical records/bills/summaries that [she] incurred in connection with my injuries." Certificates of authenticity only establish a required element of authenticity; Plaintiff must then establish that such billing is admissible. Plaintiff's affidavit did not lay the foundation for admissibility as she is not qualified to opine as to medical causation or the treatment that may have been reasonably necessary as a result of, or relevant to, the alleged incident. Moreover,

Plaintiff's affidavit provided no clarity about what documents she reviewed or what injuries she may believe they are connected with. In fact, at trial Plaintiff proffered thousands of pages of records and bills, much of which pertained to unrelated medical treatment, including records dating back to 2010, years prior to the alleged incident. Also, this vague affidavit first presented at trial denied Walmart any meaningful opportunity to cross examine the absent Plaintiff regarding her affidavit. Thus, the Court properly excluded the proffered medical record, billing, and any purported summaries thereof. Regardless, the exclusion of medical bills had no effect upon the jury's determination that the evidence did not support liability against Walmart, thus, it is not a proper ground for a new trial.

B. Exclusion of Evidence regarding Rear Automatic Emergency Braking Sensors.

Plaintiff argues the Court's decision to exclude evidence about rear automatic emergency braking sensors was in error and that error alone entitles her to a new trial. This Court disagrees. Plaintiff's expert admitted such technology was not commercially available to retailers such as Walmart and he further admitted that it was not a violation of any industry standard and/or regulation for a retailer to offer motorized carts without the rear automatic emergency braking sensor technology. *See* Morse Dep. Tr. 108:5-20. Thus, evidence of that technology was irrelevant, and its admission would have misled the jury and confused the issues of the claim before it—negligence that sounded in premises liability. Accordingly, the Court properly excluded the evidence pursuant to Rules 402 and 403, SCRE, and the Court's evidentiary ruling cannot form the foundation for a new trial absolute.

C. Directed Verdict on Plaintiff's Claim for Equitable Estoppel.

Plaintiff argues the Court failed to rule upon and/or rule in Plaintiff's favor as to her claim for equitable estoppel entitles her to a new trial absolute. This Court disagrees. The Court directed

the verdict in Walmart's favor on Plaintiff's cause of action for equitable estoppel during trial. Plaintiff's argument otherwise seeks to deprive Walmart of a defense altogether and render it an insurer of the safety of its customers, which is expressly not the law in South Carolina. *See Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 628, 541 S.E.2d 831, 832-33 n.1 (2001). "In its broadest sense, equitable estoppel is a means of preventing a party from asserting a legal claim or defense that is contrary or inconsistent with his or her prior action or conduct." *Rodarte v. Univ. of S.C.*, 419 S.C. 592, 601, 799 S.E.2d 912, 916 (2017) (quoting 28 Am. Jur. 2d Estoppel and Waiver § 27 (2011)).

Elements of equitable estoppel as to the party estopped are: (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. Essential elements of estoppel as related to the party claiming the estoppel are: (1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position.

Regions Bank v. Schmauch, 354 S.C. 648, 674-75, 582 S.E.2d 432, 446 (Ct. App. 2003). "Estoppel cannot exist if the knowledge of both parties is equal and nothing is done by one to mislead the other." *Evins v. Richland Cty. Historic Pres. Comm'n*, 341 S.C. 15, 20, 532 S.E.2d 876, 878 (2000). "[R]eliance by the party seeking to assert estoppel must be reasonable." *S. Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth.*, 311 S.C. 29, 34, 426 S.E.2d 748, 751 (1993).

The Court found equitable estoppel was not applicable to Plaintiff's negligence action, which sounded in premises liability, as there was no contractual relationship between the two parties. Further, the Court's grant of directed verdict does not render the verdict grossly inadequate in any form or fashion, and thus, a new trial absolute is not an appropriate remedy.

II. Plaintiff's Motion for New Trial under the Thirteenth Juror Doctrine is denied.

Under the thirteenth juror doctrine, a trial judge may "grant a new trial absolute when he finds the evidence does not justify the verdict." *Vinson v. Hartley*, 324 S.C. 389, 402, 477 S.E.2d

715, 722 (Ct. App. 1996). The South Carolina Supreme Court has held that “the thirteenth juror doctrine ... entitles a trial court to sit, in essence, as the thirteenth juror when [it] finds ‘the evidence does not justify the verdict,’ and then to grant a new trial based solely ‘upon the facts.’” *Norton v. Norfolk Southern Railway Company*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002).

Plaintiff moved this Court for a new trial under the thirteenth juror doctrine based on the argument that the jury’s verdict was contrary to the evidence. The Court disagrees. As discussed above, the jury considered the surveillance video, which was objective evidence that showed another customer abruptly reversed his motorized cart into Plaintiff’s cart. This video evidence alone justified the jury’s defense verdict because the video provided a basis for the jury to determine the customer was the sole cause of the incident rather than any alleged negligence of Walmart. Further, although Plaintiff presented an expert at trial, a jury is permitted to weigh the expert’s credibility as they would a fact witness. Plaintiff’s expert admitted that he did not inspect the specific motorized cart at Walmart in this matter, which the jury was welcome to weigh when it considered the expert’s opinions about alleged defects in the subject cart. *See Morse Dep. Tr.* 96:7 – 97:14. Further, Plaintiff’s expert conceded that his opinion that the back-up beeper was defective was solely derived from Plaintiff’s testimony that she did not hear the beeper, yet he had never interviewed Plaintiff, did not know if Plaintiff had hearing issues, and had not considered other explanations to explain why Plaintiff did not hear the beeper. *Id.* at 97:22 – 99:18. Plaintiff’s expert admitted that offering motorized carts to customers as a retailer is not, in and of itself, a violation of any industry standard or regulation. Accordingly, the jury had ample evidence to justify its defense verdict. Based upon the foregoing, the Court denies Plaintiff’s Motion for a New Trial Absolute based upon the thirteenth juror doctrine because the evidence justified the jury’s verdict.

In light of the evidence presented, the verdict is not so grossly inadequate as to shock the conscience of the Court nor to indicate that the jury was motivated by passion, caprice, or prejudice. Therefore, this Court gives substantial deference to the jury's determination which was reasonable and supported by the evidence introduced at trial.

IT IS THEREFORE ORDERED that Plaintiff's Post-Trial Motion for New Trial Absolute and Thirteenth Juror is respectfully **DENIED**.

IT IS SO ORDERED.

_____, 2023

The Honorable William H. Seals, Jr.
Chief Admin. Judge, 15th Judicial Circuit



Horry Common Pleas

Case Caption: Reba Willard VS Wal Mart Stores Inc , defendant, et al

Case Number: 2022CP2604874

Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157