RECEIVED
Aug 09 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2020-000203

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

Case No. 2017-CP-42-03523

Shannon P. Green and
Darrell Russell,
v.

Plaintiff(s),

Edward C. McGee and
David Hudgins,

Respondent(s),

Of whom Shannon P. Green is

Appellant/Respondent and

Of whom David Hudgins is the Respondent/Appellant.

APPELLANT/RESPONDENT SHANNON GREEN'S PETITION FOR REHEARING AND INCORPORATED MEMORANDUM

Douglas A. Churdar, Esq.
UPSTATE LAWYER
304 Pettigru Street
Greenville, South Carolina
29601 Phone: (864) 233-0203
Fax: (864) 233-3020
Email: doug@upstatelawyer.com

Attorney for Appellant/Respondent

INTRODUCTION

Appellant/Respondent, Shannon P. Green, respectfully files this Petition for Rehearing and asks this Court to reconsider its Opinion filed July 26, 2023. This Petition is filed in accordance with the requirements of Rule 221(a) and Rule 240(i).

I. THIS COURT SHOULD HAVE REMANDED THIS CASE FOR ADDITUR.

A. *WARING v. JOHNSON* MANDATES THE CONCLUSION THAT GREEN DID NOT RECEIVE ONE (1) PENNY FOR PAIN AND SUFFERING.

This Court noted that the jury's actual damages award "corresponds exactly (to the cent) with the exhibit Green offered for her economic damages". This is true. In closing argument, Green's counsel showed the jury Exhibit 10: "Exhibit 10 shows the actual financial costs… This is $88,546.78 this adds up to. You can do the math. It's penny for penny what it is." Green's counsel then explained and argued for pain and suffering. In its verdict for actual damages, the jury returned only the actual financial costs.

SHANNON GREEN'S FINANCIAL COSTS

	MEDICAL PROVIDER	DATES OF SERVICE	CHARGES
1)	Spartanburg County EMS	11/19/15	$ 712.80
2)	Spartanburg Regional Medical Center	11/19/15	12,435.89
3)	Carolinas Pathology	11/19/15	45.23
4)	Medical Group of the Carolinas	11/19/15	470.00
5)	Upstate Eye Care	11/20/15	320.36
6)	St. Francis Urgent Care	11/22/15	324.00
7)	Cassandra E. Bray, M.D.	11/30/15	124.00
8)	St. Francis Hospital (X-ray)	11/30/15	795.00
9)	Upstate Carolina Radiology	11/19/15-11/30/15	890.00
10)	S.C. Diagnostic Imaging	12/10/15	1,650.00
11)	S.C. Diagnostic Imaging	12/28/15	1,870.00
12)	St. Francis Hospital (EKG)	3/17/16	409.00
13)	Palmetto Anesthesiology	3/23/16	3,245.00
14)	St. Francis Hospital (Surgery)	3/23/16	41,392.28
15)	St. Francis Hospital P.T.	4/12/16-9/13/16	13,157.00
16)	Piedmont Orthopaedic Associates	12/18/15-11/17/16	4,637.00
17)	Medical Supplies		35.63
18)	Prescription Medications		46.85
		Total Medicals	**$ 82,560.04**
19)	Miscellaneous (Cell Phone Replacement)		$ 83.06
20)	Lost Wages		$ 5,903.68
		TOTAL FINANCIAL COSTS	**$ 88,546.78**

GREEN'S EXHIBIT 10

5. **ONLY ANSWER THIS QUESTION IF YOU ANSWERED YES TO QUESTIONS 2, 3, 4 ABOVE.** Taking into account the combined negligence that proximately caused Plaintiffs' damages, what percentage of fault is attributable to Defendant Edward C. McGee and Defendant David Hudgins? NOTE: YOUR NUMBERS MUST ADD UP TO 100%.

Defendant Edward C. McGee 60 %

Defendant David Hudgins 40 %

After making the determination, **GO TO QUESTION 6.**

6. We find that Plaintiff Shannon P. Green is entitled to actual damages in the amount of:

$ 88,546.78.

7. Do you find that the Defendant, Edward C. McGee's negligence proximately caused Loss of Consortium to Mr. Darrell Russell?

[ ] Yes

[X] No

PLEASE GO TO QUESTION 8

8. Do you find that the Defendant, David Hudgins', negligence proximately caused Loss of Consortium to Mr. Darrell Russell?

[ ] Yes

[X] No

IF YOU ANSWERED YES TO EITHER QUESTION 7 OR 8 OR BOTH, PLEASE GO TO QUESTION 9. IF YOU ANSWERED NO TO BOTH QUESTIONS 7 AND 8, PLEASE GO TO QUESTION 10.

Verdict Form
Shannon P. Green and Darrell Russell vs. Edward C. McGee and David Hudgins
C.A.#: 2017-CP-42-03523

JURY VERDICT

In *Waring*, this Court drew a common sense conclusion. When a jury returns a verdict for out-of-pocket expenses "to the penny", it is "patently untenable" (clearly and without a doubt

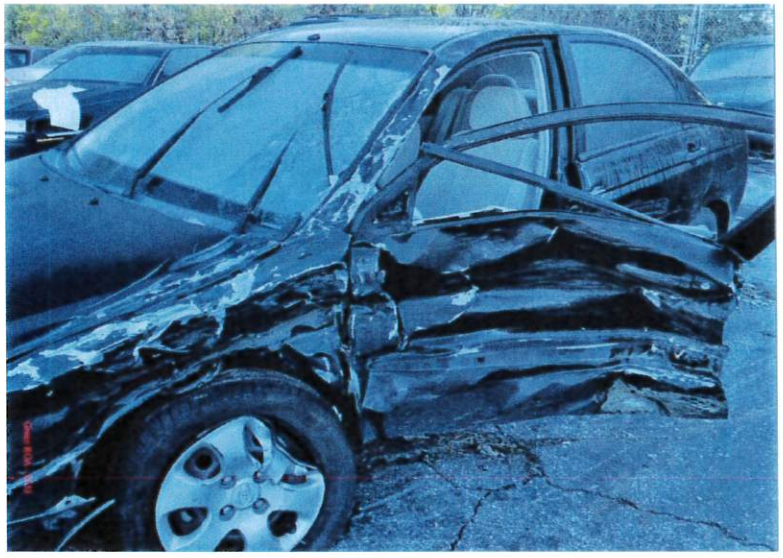
indefensible) to argue that the jury included anything in its verdict for pain and suffering. *Waring v. Johnson*, 341 S.C. 248, 260, 533 S.E. 2d 906 (2000). Based on *Waring* (and common sense), it can only be concluded that the jury in this case did not award one (1) penny for Green's pain and suffering.

B. *WARING'S* COMMON SENSE CONCLUSION APPLIES REGARDLESS OF WHICH PARTY WON OR LOST ON THE ISSUE OF ADDITUR.

This Court stated that "the key to *Waring* is that this Court was reviewing a grant of additur rather than the denial of it". That overlooks and misapprehends the logic of *Waring*. Yes, the standard of review on the issue of additur is deferential, but the common sense conclusion in *Waring* should apply both when additur is granted and when it is denied.

C. THE ABUSE OF DISCRETION STANDARD DOES NOT REQUIRE BLIND OR AUTOMATIC DEFERENCE.

This Court did not address the fact that cuts to the head; glass in the mouth, eyes, and hair; an inability to breath that causes fear of death; fractures to the left ribs; a torn left bicep tendon, surgery, and physical therapy are indisputably painful.[1] Nor did it adequately address the fact that these injuries were solely caused by the crash in this case. These injuries were to the left side of Green's body – consistent with the intrusion into the driver door.



[1] Green's pain and suffering is outlined much more fully on pages 3-8 of her Final Brief.

Instead, the Court acknowledged "there is no doubt [Green] received serious injuries in the wreck", but it ignored the clear causal link between the crash and Green's serious injuries. ("[C]ausation was an issue for treatment and ongoing pain because Green had pre-existing ailments.") The Court overlooked or misapprehended the undisputed evidence that the painful injuries referenced above were in no way caused by "pre-existing ailments". The defense muddied the waters at trial by bringing up remote ailments, *i.e.* bursitis of the hip, low back pain, and a frozen right shoulder - all from years before the crash. While this tactic might confuse a jury, it should not confuse the trial court or this Court. It cannot be seriously suggested, much less persuasively argued, that the painful injuries referenced above - fractured left ribs, torn left bicep tendon, etc., were caused by pre-existing ailments that are remote in time and affected different parts of the body (i.e., hip, low back, or right shoulder).

Plain and simple. The jury refused to return anything in its verdict for pain and suffering. They turned a blind eye. For the trial court to defer to that decision is an abuse of discretion. This Court should not, in turn, blindly and automatically defer to the trial court ("The standard of review is weighted in favor of affirming the trial court's decision..."). *By doing so, this Court is essentially informing the bench and the bar that denial of a motion for additur is not appealable. Make no mistake, this case will be cited for that proposition.*

II. THIS COURT SHOULD HAVE REMANDED THE CASE FOR ALLOCATION OF THE $100,000 SETTLEMENT.

Before filing suit, Green and her husband were paid $100,000 by Nationwide, which insured Respondent Edward C. McGee. In exchange, Nationwide required them to sign a Covenant Not to Execute. Specifically, Nationwide required the husband to sign the Covenant, and he signed as "spouse". He gave up the right to execute a judgment against McGee for "any and all claims...including...loss of services". The trial court should have attributed some of the $100,000 payment to the husband and subtracted that amount from the offset amount applied to

the verdict in favor of Green.

This Court's opinion questioned whether the $100,000 was paid to settle multiple claims. Clearly it did. It listed all the claims that were covered, which included loss of consortium. Moreover, it required two (2) signatures.

This Court's opinion also partially relied on the fact that the jury returned a defense verdict on the husband's consortium claim. That reliance is misplaced. The fact that a jury returned nothing in its verdict on the loss of consortium claim – the same jury that returned nothing it its verdict for indisputable pain and suffering - is entirely irrelevant to the question of whether any of the $100,000 paid by Nationwide was intended to cover loss of services to the husband.

This Court should have remanded the case to the trial court for a hearing or *in camera* review of the $100,000 settlement to consider all relevant circumstances and allocate some of the payment the husband. The balance should have been applied as a setoff to the verdict in favor of Green. *See,* Green v. Bauerle, No. 2019-MO-026, 2019 S.C. Unpub. LEXIS 27. (S.C. Unpub. May 29, 2019); *Glenn v. 3M Company*, Appellate Case No. 2019-001600, filed April 5, 2023.

CONCLUSION

Based on the foregoing, these two (2) issues should be reheard and reconsidered.

Respectfully submitted,

BY: _____

Douglas A. Churdar, Esq.
UPSTATE LAWYER
304 Pettigru Street
Greenville, South Carolina 29601
Phone: (864) 233-0203
Fax: (864) 233-3020
Email: doug@upstatelawyer.com

Attorney for Appellant-Respondent
Shannon P. Green

RECEIVED
Aug 09 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2020-000203

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

Case No. 2017-CP-42-03523

Shannon P. Green and
Darrell Russell, Plaintiff(s),
v.

Edward C. McGee and
David Hudgins, Respondent(s),

Of whom Shannon P. Green is

Appellant/Respondent and

Of whom David Hudgins is the Respondent/Appellant.

PROOF OF SERVICE

I hereby certify that I have this 9th day of August 2023 served the **Appellant/Respondent Shannon Green's Petition for Rehearing and Incorporated Memorandum** by e-mail addressed as follows:

cott@gwblawfirm.com
jlaffitte@gwblawfirm.com
Curtis L. Ott
Jessica W. Laffitte
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Suite 1200
P.O. Box 10589
Greenville, SC 29603
Telephone: (864) 271-5362
Facsimile: (864) 271-7502

Attorneys for Respondent-Appellant, David Hudgins

and

mendemann@clarksonwalsh.com
mcoulter@clarksonwalsh.com
tbrown@clarksonwalsh.com
Michelle Endemann
Michael T. Coulter
CLARKSON, WALSH, & COULTER, P.A.
Post Office Box 6728
Greenville, South Carolina 29606
Phone: (864) 232-4400
Fax: (864) 235-4399

Attorney for Respondent Progressive Direct Insurance Company

BY: 

Douglas A. Churdar, Esq.
UPSTATE LAWYER
304 Pettigru Street
Greenville, South Carolina 29601
Phone: (864) 233-0203
Fax: (864) 233-3020
Email: doug@upstatelawyer.com

Attorney for Appellant-Respondent
Shannon P. Green