

EELE6P1BRNICALY FILED 2023 Jul 14 10:39 AM GEORGETOWN COMMON PLEAS CASE#2022CP2209131

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

Jane Elizabeth Vohringer,)

Plaintiff,)

vs.)

Robert C. Watford and Watford's Wrecker Service, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2022-CP-22-0131

ORDER DENYING PLAINTIFF'S MOTION FOR NEW TRIAL, NEW TRIAL NISI ADDITUR AND NEW TRIAL

ABSOLUTE RECEIVED

AUG 23 2023

SC Court of Appeals

This matter comes before the Court upon Plaintiff's Motion for New Trial, New Trial Nisi Additur and New Trial Absolute. For the reasons stated herein, Plaintiff's motions are denied.

As to all three of Plaintiff's Motions, this court finds no basis upon which to grant these motions. The circuit court may grant a new trial nisi when it finds that when it finds the amount to be merely inadequate or excessive. *Kunst v. Loree*, 424 S.C. 24, 47, 817 S.E.2d 295 (Ct. App. 2018), reh'g denied (Aug.16,2018) (citing *Vinson v. Hartley*, 324 S.C. 389at 405, 477 S.e.2d 715 at 723.). However, a party must provide compelling reasons to justify invading the province of the jury. *Id.* Here the Court finds no such reasons. The following is a summary of the Court's determination as to the evidence presented at trial.

A. Expert Testimony

This Court allowed a proffer of the Defendant's expert as to accident reconstruction. After hearing over a half hour of proffered testimony this Court concluded that the Defendant's accident reconstruction expert, Mr. Paradiso, was qualified as an expert witness. There was no

contemporaneous objection by the Plaintiff at the time of the Court's determination of Mr. Paradiso's expert qualifications. Similarly, there was no contemporaneous objection to the qualification of Dr. Ian Campbell as an expert. This Court found at trial, and still finds, that the testimony of Mr. Paradiso was reliable, helpful, and properly before the jury. Plaintiff's failure to object to Mr. Paradiso's expert testimony constitutes a complete waiver. *Greer v. Greenville County*, 245 S.C. 442, 141 S.E.2d 91 (SC 1965). (Expert testimony, which is introduced without objection, should be considered, and can support a verdict. Where no objection is made to the qualifications of an expert witness, the testimony of such a witness must be considered and given its due probative value). The jury properly considered the testimony of Mr. Paradiso regarding the Delta-V of the Plaintiff's vehicle, amount of intrusion, deformation, and the forces exerted upon Plaintiff's vehicle during the collision. Each of these aspects of Mr. Paradiso's testimony was backed by calculation, analysis of IIHS crash tests, charts, and the expert's analysis of the data. The jury analyzed this evidence before it and gave that evidence its due probative value.

Similarly, I find that Dr. Ian Campbell was duly and properly qualified as a bio-mechanical expert by this Court. Similar to Mr. Paradiso, there was no contemporaneous objection to Dr. Campbell's expert qualification. Therefore, the Plaintiff has waived any objection to the expert testimony of Dr. Campbell. *Greer v. Greenville County*, 245 S.C. 442, 141 S.E.2d 91 (SC 1965). Absent an objection at the time the witness is presented, any claims the Plaintiff had are waived. *United States v. Odom*, 736 F.2d 104 (4th Cir. 1984); *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (SC Ct. App 1995) "A party cannot for the first time raise an issue by way of a motion which could have been raised at trial." The jury properly considered the expert biomechanical testimony of Dr. Campbell. All aspects of Dr. Campbell's testimony were backed by competent expert

analysis of all the data available before the jury. The jury analyzed this evidence and gave it its due probative value.

B. Punitive damages

The Plaintiff has alleged that she is entitled to a new trial based upon the fact that the Court did not bifurcate the trial for a punitive damage phase. In this case Plaintiff's counsel made no mention of a punitive damages claim in his opening statement. Further, punitive damages were not mentioned at closing, no jury charges as to punitive damages were provided, and there was no mention of punitive damages on the Verdict Form. During the trial the Plaintiff did not elicit any testimony to support a punitive damage claim. When the verdict was read Plaintiff's counsel never complained that bifurcation was not requested or ordered. Therefore, the Court finds that the Plaintiff abandoned or waived any claim for punitive damages. See *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 734 S.E.2d 177 (S.C. 2012) (recognizing a party's ability to abandon a claim); see also *Patterson v. Reid*, 318 S.C. 183 (S.C. Ct. App. 1995).

C. Emergency Room Bill

Plaintiff argued that she is further entitled to a new trial based upon Defense counsel's reference to the value of the case and possible emergency room bill in his closing. This Court finds that Plaintiff opened the door during his Closing, and earlier in his Opening, when he suggested that the Jury "ask Mr. Simmons what this case is worth." The Defense, responding to these statements by Plaintiff's counsel, merely suggested a number that it deemed "reasonable" given the facts of the case. The jury requested the bill, but it was not entered into the record. Defense counsel never mentioned the amount of the emergency room bill. Therefore, this issue does not provide adequate grounds for a new trial. The law in this State is clear that otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that

evidence. *State v. Page*, 378 S.C. 476, 663 S.E.2d 357 (Ct. App. 2008). Further, the admission of evidence is fully within the trial Court's discretion. *Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 764 S.E.2d 249 (SC App. 2014).

D. Additur or Motion for New Trial because damages were too low

None of the arguments in the Plaintiff's motion provide the compelling reasons needed to invade the province of the jury. "When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion caprice and prejudice." *Waring v. Johnson*, 341 S.C. 248, 257, 533 S.E.2d 906, 911 (Ct. App. 2000). There is nothing in this case to suggest that the jury's verdict was rendered upon anything more than a reasonable interpretation of the facts and evidence that the parties presented at trial. Therefore, this Court finds that the verdict rendered by the jury here is consistent with, and reflects a reasonable interpretation of, the evidence that was presented at trial. I find no basis for ordering a new trial, new trial nisi additur or new trial absolute.

CONCLUSION

Based upon the foregoing, the Plaintiff's motions for New Trial, New Trial Nisi Additur, and New Trial Absolute are hereby denied in their entirety.

IT IS SO ORDERED.

**Hon. William H. Seals, Jr., Circuit Judge
Fifteenth Judicial Circuit**

Date



Georgetown Common Pleas

Case Caption: Jane Elizabeth Vohringer VS Robert C Watford , defendant, et al

Case Number: 2022CP2200131

Type: Order/Other

IT IS SO ORDERED

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