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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2016-CP-40-04463
Appellate Case No. 2023-000556

Jean Watkins, as Personal Representative of the Estate of Mildred Watkins, Respondent,

v.

Sterling Healthcare, Inc., Country Wood Nursing Center, LLC, and Guardian Resources, LLC, Appellants.

REPLY BRIEF OF APPELLANTS

Taylor J. Stewart
S.C. Bar No. 101974
David R. Schlosser, II
S.C. Bar No. 102820
LEWIS BRISBOIS BISGAARD & SMITH LLP
24 Drayton Street, Suite 300
Savannah, Georgia 31401
(912) 525-4960
Attorneys for Appellants

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ARGUMENT

I. Appellants' default status does not limit Respondent's burden of proof regarding punitive damages.

Respondent cannot shirk her burden to prove she is entitled to punitive damages by resting on Appellants' admissions by virtue of default. In her brief and at trial, Respondent has made much of Appellants' default status. But Appellants do not contend they are not in default, and they are conscious of the ramifications of that status. However, "[t]here is a difference between a defendant being declared in default and subsequently having judgment entered against him for damages. By defaulting, a defendant forfeits his 'right to answer or otherwise plead to the complaint.'"[1]

Much of Respondent's brief focuses on Appellants' default status as providing definitive proof that they acted in a willful, wanton, or reckless manner.[2] Specifically, Respondent cites several paragraphs from her Complaint which, according to her Brief, supposedly show that Appellants have admitted they acted "willfully, wantonly, and recklessly" in relation to the decedent. Yet South Carolina law is clear: "By entry of default, the defendant is deemed to have 'admitted the plaintiff's well-pled allegations of fact.'"[3] In other words, a default does not admit conclusions of law.[4] Thus, in routinely pointing to legal conclusions in the Complaint regarding Appellants' intent, Respondent seems to be arguing that Appellants have essentially admitted that punitive damages are warranted. This,

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[1] *Solly v. Navy Federal Credit Union*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012) (quoting *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241-42, 246 S.E.2d 880, 882 (1978) (citations omitted)).
[2] Initial Brief of Respondent at 8-11, 14, 16, 20, 22.
[3] *Tracker v. Kody Ray* (*In re Kristine Ray*), 2022 U.S. Dist. LEXIS 226748, at *5 (D.S.C. June 30, 2022) (quoting *Ryan v. Homecomings Fin. Network*, 253 F.3d 779, 780 (4th Cir. 2001)).
[4] *Id.*

however, ignores the fact that "[a] defendant in default admits liability but not the damages as set forth in the prayer for relief."[5]

Respondent's arguments overlook the trial judge's role in a bench trial.[6] While Respondent is correct that the exhibits presented at the bench trial of this case were introduced without objection, it is the court's *reliance* on inadmissible evidence and testimony taken over objection to which Appellants' take issue. In addition to considering obviously inadmissible evidence[7], Appellants' counsel made several objections to the testimony presented by Respondent during the damages hearing, all of which were summarily overruled.[8]

Additionally, Respondent overlooks her own duty to prove punitive damages are warranted by clear and convincing evidence by pointing repeatedly to Appellants' default status and provisions within the complaint which state the words "willful, wanton, and reckless." To be sure, Respondent spends a considerable amount of time discussing the evidence presented at the damages hearing[9] but, aside from essentially regurgitating the conclusions of the trial judge, she does not establish how this evidence supports that Appellants' conduct was willful, wanton, or reckless by clear and convincing evidence. "In order for a plaintiff to recover punitive damages, there must be evidence the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights."[10]

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[5] *Id.* (citing *Renney v. Dobbs House, Inc.*, 375 S.C. 562, 566, 274 S.E.2d 290, 292 (1981)).
[6] *See Brown v. Allstate Ins. Co.*, 344 S.C. 21, 27, 542 S.E.2d 723, 726 (2001) ("A trial judge's role in a bench trial is to admit all evidence and then evaluate it in a non-jury setting.").
[7] Initial Brief of Appellants at 13.
[8] Damages Hearing Tr. p. 29:17; 34:3-4; 58:13-14; 70:16-17; 71: 3-5; 76: 7; 77: 14-16; 119: 24-25.
[9] Initial Brief of Respondent at 10-24.
[10] *Taylor v. Medencia*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996) (citing *McGee v. Bruce Hospital Systems*, 312 S.C. 58, 439 S.E.2d 257 (1993); *McCourt By and Through McCourt v. Abernathy*, 318 S.C. 301, 457 S.E.2d 603 (1995)).

In continually pointing to areas where she believes that Appellants are arguing causation, Respondent routinely fails to see the forest for the trees. "Although a defendant is in default as to liability, the award of damages must be in keeping not only with the allegations of the complaint and the prayer for relief, but also *with the proof that has been submitted*."[11] Appellants do not point this Court's attention to the evidence presented to dispute liability; that has been established by Appellants' default status. No, Appellants point to the evidence to show it to be wanting. "Whether a defendant is or is not in default, it is incumbent upon the judge and/or the jury to make a determination of the amount recoverable based on the proof."[12] "The amount of damages in a default action must be proved by the preponderance of the evidence."[13] Furthermore, "[o]n the issue of punitive damages, ***the highest burden of proof known to the civil law is applicable***. . . [i]n any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence."[14] Appellants point to the evidence to show the trial judge's overwhelming reliance on Respondent's self-serving testimony at the damages hearing, even when her testimony was not supported by the admitted documentary evidence.

Some of the most troublesome examples of this reliance become apparent when examining the testimony provided at the hearing compared to the documents produced. For instance, Respondent repeatedly emphasizes the idea that Appellants "sawed off" the

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[11] *Id* at 204, 723 S.E.2d at 603 (citing *Jackson v. Midlands Human Res. Ctr.*, 296 S.C. 526, 529, 374 S.E.2d 505, 506 (Ct. App. 1988)) (emphasis added).
[12] *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 567, 274 S.E.2d 290, 293 (1981).
[13] *Id*. (citing also, *Jackson v. Midlands Human Res. Ctr.*, 296 S.C. 526, 529, 374 S.E.2d 505, 507 (Ct. App. 1988) ("A judgment for money damages must be warranted by the proof of the party in whose favor it is rendered.")
[14] *Austin v. Specialty Transp. Servs*., 358 S.C.298, 313, 594 S.E.2d 867, 875 (Ct. App. 2004) (quoting S.C. Code Ann. § 15-33-135) (emphasis added).

decedent's bedrail, leaving a jagged metal piece sticking out of the side of the bed. This assertion was evidence on which the trial judge relied heavily in finding clear and convincing evidence of Appellants' willful, wanton, or reckless conduct. However, an examination of the actual documentary evidence contains no mention of any saw.[15] Even more egregious was Respondent's mischaracterization of a statement made by staff at Appellants' facility on this issue. Specifically, during the hearing, Respondent was asked the following upon being shown the DHEC Ombudsman Report:

> Q. All right. And so this is the first part of that is a two-page written report looks like it's signed by Ms. [Deppe] from Country Wood. And does this recount the fact that the bed rail was sawed off by the facility and it caused your mother's injury?
> A. Yes.[16]

But nowhere in Ms. Deppe's statement, let alone the 20-page DHEC report, does it state that the bed rail was sawed off.[17] Rather, Ms. Deppe's statement states only that an inspection of the area "found a metal projection on the lower bed frame."[18] The only mention of a saw being used to remove the bedrail came from Respondent and the trial judge.[19]

This is not the only example of the trial judge's reliance on Respondent's testimony even when it contrasted with the documentary evidence. In another instance, the trial judge routinely emphasized the decedent's weight loss at Appellants' facility, while ignoring the documents submitted by Respondent stating that the decedent had a history of hiding her

[15] *See generally*, Damages Hearing Plaintiff's Ex. 18.
[16] Damages Hearing Tr. p. 63, lines 19-24.
[17] *See generally*, Damages Hearing Plaintiff's Ex. 18.
[18] Damages Hearing Plaintiff's Ex. 18, p.12.
[19] See Damages Hearing Tr. p. 10, lines 8-12; p. 41, lines 18-24; p. 63, lines 19-23; p. 64, lines 13-15; p. 77, lines 1-5; p. 121, lines 20-22; p. 122, lines 4-5; see also Order Awarding Damages to Pl. 11, 18

medication in her cheeks and refusing to eat or drink,[20] as well as Respondent's own statement acknowledging that she was aware that the decedent was not eating while at the facility.[21] Similarly, regarding the issue of the decedent's dislocated thumb, outside of Respondent's in-court testimony[22] and the statement in her DHEC complaint that she was told by a doctor that it appeared someone had to have bent or twisted the thumb,[23] there is no mention of force being used or that any doctor had a suspicion of abuse.[24] Moreover, the record contains no evidence that any of decedent's medical providers made what would have been a mandatory report if they had reason to believe that she was being abused or neglected. Again, the trial judge's reliance on Respondent's word over what the documents plainly show was not only improper but resulted in extreme prejudice to Appellants.[25]

Overall, while Appellants were in default at the time of the damages hearing, the default did not satisfy Respondent's burden to prove she was entitled to punitive damages by clear and convincing evidence. Further, the trial judge's overwhelming reliance on Respondent's testimony, which was largely unsupported by the documentary evidence presented at trial, resulted in great prejudice to Appellants and does not support a finding that Appellants acted willfully, wantonly, or recklessly such that an award of punitive damages was proper.

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[20] *See* Damages Hearing Pl.'s Ex. 12.
[21] *See* Damages Hearing Pl.'s Ex. 18, p.4.
[22] Damages Hearing Tr. 37: 5-9.
[23] Damages Hearing Pl.'s Ex. 18, p. 9.
[24] *See generally*, Damages Hearing Pl.'s Ex. 6.
[25] *See State v. Byers*, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011) (*quoting State v. Reeves*, 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (1990) ("No definite rule of law governs [a finding of harmless error]; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial.").

II. Appellants' timely raised its argument related to the punitive damages caps set forth in S.C. Code Ann. § 15-32-530, et. seq.

Appellants raised the issue of the punitive damages caps and requested that punitive damages should be capped, if awarded, in their post-hearing brief; the trial judge awarded damages based on the briefed arguments in addition to the arguments presented at the hearing.[26] To preserve an issue for appellate review, an issue must be (1) raised and ruled upon by the trial court, (2) by the appellant, (3) in a timely manner, and (4) with sufficient specificity.[27] Despite Respondent's contention that this issue was not preserved, it was specifically mentioned by the trial judge—albeit without any indication of the requisite underlying analysis.[28] Finally, regarding the specificity of the request, Appellants specifically asked that the judge "consider the limitations on punitive damages set forth in S.C. Code Ann. § 15-32-530 et seq."[29] It is axiomatic that, in requesting that the trial judge consider the entirety of S.C. Code Ann. § 15-32-530, Appellants also asked the trial judge to consider all of its provisions and possible applications. Thus, the issue as to whether S.C. Code Ann. § 15-32-530(B) applies to this matter was preserved by Appellants for this Court's review.

III. As the case ended with the trial judge's order awarding damages, all subsequent discovery orders would, by function of law, fall under the purview of Rule 69, SCRCP.

When the trial court entered judgment against Appellants after a full hearing on the action, the case ended and all prior discovery orders were rendered moot. Therefore, even

[26] See generally, Defendant's Memorandum in Opposition to Damages.
[27] *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).
[28] Order Awarding Damages to Pl. 20, 21, 27.
[29] Def. Memorandum in Opposition to Damages 2, 12-13.

though the information ordered to be produced in the trial court's post-judgment order was the same or similar to what had been previously ordered to be produced, the trial court's post-judgment order was clearly governed by Rule 69 of the South Carolina Rules of Civil Procedure.

Rule 54(a) of the South Carolina Rules of Civil Procedure states "[j]udgment as used in these rules includes any decree or order which dismisses the action as to any party or finally determines the rights of any party."[30] Additionally, Rule 58 of the South Carolina Rules of Civil Procedure provides that, "[s]ubject to the provisions of Rule 54(b):

> upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court.[31]

Thus, by virtue of entering the Order Awarding Damages to Plaintiff on January 31, 2023, all of the matters arising out of this case had been finally adjudicated. It stands to reason, then, that the only purpose of entering a contemporaneous discovery order was, as the trial court stated, so that "[Respondent] may continue her efforts to ascertain if there are even assets available to satisfy [the] judgment."[32] It is important to note that the language of the provisions governing the discovery process indicate the time of trial as the cut off for the duty to supplement responses.[33] It is evident from the rules governing the discovery process that after the trial has concluded and judgment has been entered, prior discovery deficiencies and/or

[30] Rule 54(a), SCRCP (internal quotations omitted).
[31] Rule 58(a)(1), SCRCP.
[32] Order Awarding Damages to Pl.9 n.9.
[33] See Rule 26(e), SCRCP ("[…]requests for discovery under Rules 31, 33, 34, and 36 shall be deemed to continue from the time of service *until the time of trial of the action*….") (emphasis added).

duties are no longer applicable. Thus, any orders related to discovery subsequent to or contemporaneous with the entry of the judgment would, by function of the South Carolina Rules of Civil Procedure, necessarily have to fall under Rule 69 and the process for conducting supplemental proceedings.[34]

As has been previously stated, had the circuit court intended this order to be a continuation of its prior order compelling discovery, there were other avenues down which it could have proceeded.[35] In failing to take these other avenues, the Court improperly attempted to initiate supplemental proceedings on the Respondent's behalf. Because the rules governing the discovery process provide a cutoff of the time of trial, any previous order compelling discovery would be moot and must satisfy the provisions of Rule 69, SCRCP and its accompanying case law.

CONCLUSION

While undeniably true that Appellants were in default at the time of the damages hearing, Respondent must still prove her entitlement to punitive damages. Well-settled precedent in this state establishes that, despite Appellants' default status, Respondent still had the burden of proving by clear and convincing evidence that she was entitled to punitive damages. The discrepancies between Respondent's testimony and the documentary evidence makes clear that, had the trial court properly examined all of the evidence, that burden was not met. As such, the award of punitive damages should be overturned by this Court.

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[34] *See Johnson v. Service Mgmt.*, 319 S.C. 165, 167, 459 S.E.2d 900, 902 (Ct. App. 1995); *Lynn v. International Brotherhood of Firemen & Oilers*, 228 S.C. 357, 362, 90 S.E.2d 204, 206 (1955); *see also* S.C. Code Ann. § 15-39-310).

[35] *See generally* Rule 58, SCRCP.

Additionally, should this Court decline to overturn the award of punitive damages, this Court should find that Appellants have timely preserved the issue as to whether S.C. Code Ann. § 15-32-530(B) applies in this matter and should remand the issue to the trial court with instruction to apply the statutory caps set forth therein. As stated above, the Appellants raised this issue in their post-hearing brief to the trial court, specifically asking that, prior to entering its order, the trial court consider the application of the entirety of S.C. Code Ann. § 15-32-530, which the trial court addressed, albeit without providing any analysis or evidence as to why it refused to apply section (B), in its Order Awarding Damages to Plaintiff.

Finally, as it pertains to the Order Compelling Production of Insurance and Financial Information which was filed contemporaneously with the Order Awarding Damages to Plaintiff, an analysis of the South Carolina Rules of Civil Procedure makes plain that discovery ends with the trial of the matter. Thus, any deficiencies or orders to compel discovery are made moot by the trial court's conducting of the trial and subsequently entering judgment disposing of all of the issues. The trial court's Order Awarding Damages to Plaintiff did just that. As has been stated previously, had the trial court intended to hold the discovery process open, there were other avenues it could have taken. Its refusal to do so brings any continuing discovery squarely within the purview of Rule 69, SCRCP, and the trial judge's order compelling production was improper and untimely through that lens.

(Signature on following page)

Respectfully submitted,

August 25, 2023.

s/ Taylor J. Stewart

Taylor J. Stewart
S.C. Bar No. 101974
David R. Schlosser, II
S.C. Bar No. 102820
LEWIS BRISBOIS BISGAARD & SMITH LLP
24 Drayton Street, Suite 300
Savannah, Georgia 31401
(912) 525-4960
Attorneys for Appellants

CERTIFICATE OF SERVICE

I certify that on this date, I served this **REPLY BRIEF OF APPELLANTS** upon all counsel of record via electronic mail:

Jennifer R. Purdy
S. Prior Hunt, III
POPOWSKI & SHIRLEY, P.A.
1430 Blanding Street
Columbia, South Carolina 29201
(803) 799-2100
Counsel for Respondent
jennifer@pandsattorneys.com
phunt@pandsattorneys.com

Graham L. Newman
CHAPPELL, CHAPPELL, & NEWMAN, ATTORNEYS, LLC
2801 Devine Street, Suite 300
Columbia, South Carolina 29205
(803) 233-7050
Counsel for Respondent
graham@chappell.law

Respectfully submitted this 25th day of August, 2023.

s/ Taylor J. Stewart
Taylor J. Stewart
S.C. Bar No. 101974
David R. Schlosser, II
S.C. Bar No. 102820
LEWIS BRISBOIS BISGAARD & SMITH LLP
24 Drayton Street, Suite 300
Savannah, Georgia 31401
(912) 525-4960
Attorneys for Appellants