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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2023-001281

Dorothy Riley individually, and as
Personal Representative of the
Estate of Marion F. Riley

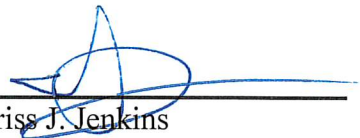
Respondent,

v.

Marcus Riley

Appellant.

INITIAL BRIEF OF APPELLANT



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TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Standard of Review..... 1

Facts 1

Arguments

 1. Errorr of law.....2

 2. The Court actions is contrary to its previous declarations.....7

Conclusion.....7

OTHER AUTHORITIES

Transcripts from trial *Marcus Riley v. Dorothy Riley*. 2020-CP-03-0176.....3

American Bar Association

https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/jury_role/.....3

STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in improperly ordering a new trial absolute?
- II. Did the trial court make an Error of Law when it ordered the new trial absolute?

STATEMENT OF THE CASE

This jury trial was heard before the Honorable Brooks Goldsmith on October 31st, 2022. This action involved fraudulently obtained estate document and the illegal transfer of assets. The Plaintiff Marcus Riley filed this action as an heir to his father's estate seeking the removal of Fraudulent property that was in the estate. The case was placed in the hands of the jury on November 1st, 2022. The jury deliberated for roughly 40 minutes before returning a unanimous decision for the Plaintiff. On November 3rd, 2023, the Defendant filed a motion for a new trial based on Rule 59 a. In this motion the Defendant questioned the facts of the case and ask the Court to act as the Thirteenth juror and overturn the jury verdict. On May the 4th the Court produced filed a supplemental Order revoking the Power of Attorney that was in dispute in this action. On May 8th the Defendant filed a supplemental motion based on Rule 59 e. This motion challenged the ruling of the Court in the preliminary phase of the trial and the dismissal of the directed verdict motions. Judge Goldsmith ask for briefs on the motions and stated that he will decide based on the briefs. No oral arguments were presented. On July 18th, 2023, the Court Granted the motion for a new trial absolute on the basis that the evidence presented in this case does not justify the verdict.

STANDARD OF REVIEW

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, 426 S.E.2d 802 (1993). However, the jury's determination of damages is entitled to substantial deference. *Id.* The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. *See Cock-n-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996); *McCourt by and through McCourt v. Abernathy*, 318 S.C. 301, 457 S.E.2d 603 (1995); *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557 (1993); *O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993); *Rush, supra*. The failure of the trial judge to grant a new trial absolute in this situation amounts to an abuse of discretion and on appeal this Court will grant a new trial absolute. *Weir v. Citicorp Nat'l Servs., Inc.*, 312 S.C. 511, 435 S.E.2d 864 (1993); *Allstate, supra*; *O'Neal, supra*.

A trial judge may grant a new trial nisi additur whenever he or she finds the amount of the verdict to be merely inadequate. *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 438 (Ct. App. 1995). While the granting of such a motion rest within the sound discretion of the trial court, substantial deference must be afforded to the jury's determination of damages. *Evans v. Taylor Made Sandwich Co.*, 337 S.C. 95, 100, 522 S.E.2d 350, 352 (Ct. App. 1999). To this end, a judge must offer compelling reasons for invading the jury's province by granting a motion for additur. *Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995). We will only reverse if the trial judge abused his discretion in deciding a motion for new trial nisi additur to the extent that an error of law results. *Patterson*, 318 S.C. at 185, 456 S.E.2d at 438.

Upon review, a trial judge's order granting or denying a new trial will be upheld unless the order is "wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law. *Folkens v. Hunt*, 300 S.C. at 254-55. Despite the broad deference of the trial court, the Fourth Circuit has held that a material legal error, constitutes an abuse of discretion. *Connor v. Schraeder-Bridgeport, Int'l, Inc.*, 227 F. 3d 179 (4th Cir. 2000)

Error of Law

The trial Court must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was a result of passion, caprice, prejudice, partiality, corruption or some other improper motives. *Hassell v. City of Columbia, S.C Ct. App. July 1st 2020*. A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. *Howard v. Roberson*, 376, S.C. 143, 154, 654 S.E. 2d. The Court never stated that the jury verdict was excessive or inadequate. The Court also did not rule that the supplemental Order was a shock to the conscience. The Court drafted and signed a supplemental Order roughly five months after the jury verdict for the Plaintiff. If the Court deem the verdict as not supported by evidence, why did the Court produce a supplemental Order, demanding the Power of Attorney in question be rescinded.

The Court producing a Supplemental Order is an action that reiterates the Court's verification of the jury verdict.

In the Howard case the Court goes on to say the Court "Compelling reasons must be given to justify invading in the jury's province in this manner." At Id. 155, 654 SE. 2d at 883. The Court did not have a compelling reason to overturn the jury's verdict. In the Order dated

July 18th 2023, the Court never mentioned any compelling reasons as to why the new trial would be granted.

The Court actions is contrary to its previous statements

The Judge's decision was contrary to his statement made in Court in the charge to the jury where it states:

Court: Ladies and gentlemen, as I told you yesterday, you are the sole and exclusive judges of the facts in this case. What I think about the facts of the case is totally irrelevant. If I've done anything to cause you to believe that I have an opinion about the facts of the case, put that out of your mind. Because the law does not permit me to express an opinion about the facts of the case in your presence. The same law that makes you the judges of the facts of the case makes me the judge of the law of the case. (transcript page 145-146)

It is contrary to the statement made to the jury for the Court to take the responsibility of determining facts from the jury and positioning it with the Court.

Outside of the preliminary motions and motions for directed verdict, Counsel never directed his arguments toward the Courts. All factual presentations were made to the jury. The language and presentation were given to the jury in a manner and language that is more plausible for a layperson to understand. If Counsel for the Plaintiff understood that the Judge was the did weigh the facts of the case in lieu of just weigh the issues of law, there would have been a different presentation as if this was a bench trial instead of a jury trial. Preparing and presentation of a bench trial differs from that of a jury trial.

The statement of the Court confirming its role as a trier of law lures Plaintiff's counsel into believing that the facts of the case were not within his power.

CONCLUSION

According to the American Bar Association, a jury is a group of people summoned and sworn to decide on the facts in issue at a trial. The jury is composed of people who represent a cross-section of the community.

The jury listens to the evidence during a trial, decides what facts the evidence has established, and draws inferences from those facts to form the basis for their decision. The jury decides whether a defendant is "guilty" or "not guilty" in criminal cases, and "liable" or "not liable" in civil cases.

When cases are tried before a jury, the judge still has a major role in determining which evidence may be considered by the jury. The jury is the fact-finder, but it is left to "find" facts only from the evidence which is legally admissible. The judge instructs the jury on the legal principles or rules that must be followed in weighing the facts. If the jury finds the accused guilty or liable, it is up to the judge to sentence the defendant.

The facts of the case are solely in the hands of the jury. Taking that responsibility away from the jury is a duty that the judge should not take lightly. The Appeals Court is clear that compelling reasons must be given to justify invading the jury's province. We are asking this Court not to allow this judge to invade this jury's province and offend one of the most precious facets of our system of jurisprudence.