RECEIVED
Nov 21 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
In the Court of Common Pleas

Brooks Goldsmith, Circuit Court Judge

Appellate Case No.: 2023-000132

Jill Maliszewski,

Appellant,

v.

Margaret Yeager, Respondent.

FINAL REPLY BRIEF OF APPELLANT

URICCHIO HOWE KRELL JACOBSON
TOPOREK & KEITH, P.A.

Jeff Buncher, Jr., Bar No.: 78890
jeff@uricchio.com
Post Office Box 399
Charleston, South Carolina 29402
(843) 723-7491
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

ARGUMENT

As to the case cited by Respondent, V*inson v. Hartley*, 324 S.C. 389, 397, 477 S.E.2d 715, 719 (1996), that case is distinguishable as the defense in that case admitted fault but denied the plaintiff was injured and the result was a defense verdict, not a verdict for $0.00. Further, this case confirms the exact reason why the trial court in this matter should be reversed and remanded: "The quintessential case presenting the issue of reformation of a jury verdict is a jury verdict for 'no dollars.' " *Id.*, 324 S.C. at 407, 477 S.E.2d at 724. In this case, the only question for the jury to determine was the amount of damages, not whether the wreck was a proximate cause of Plaintiff's injury. (R. p. 5).

Respondent also cites *Black v. Hodge*, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991) in support of their argument that the verdict of $0 should stand. *Black* is a unique case in that the plaintiff's husband, a chiropractor, treated the plaintiff for her injuries. *Black*, 306 S.C. at 197, 410 S.E.2d at 595-96. In *Vinson* and *Black*, both collisions were noted by the appellate court as "minor." *Vinson*, 324 S.C. at 410, 477 S.E.2d at 726; *Black*, 306 S.C. at 197, 410 S.E.2d at 595. The photos and testimony in this case reveal that this collision was more than minor. (R. pp. 66, 75-76; 235-248).

The prior treatment Respondent's counsel discusses in their brief for Appellant's lower back pain occurred in 2004. (R. p. 88, lines 20-22; R. p. 89, lines 8-15; R. p. 90, lines 1-23). There is no evidence in the record that Appellant had any treatment, or pain, in her lower back whatsoever from 2004 up until the time of the wreck in 2018.

Respondent's counsel also asserts in their brief that counsel never said Appellant was entitled to a verdict in some amount. When Respondent's counsel stated to the jury "…and Maggie is not going to like this part — ultimately she [Plaintiff] is entitled to something, no one is questioning that. She did – we all agree she got hurt. When you look at that jury form it's going to say what are her actual damages? And we want you to put a number there, there has to be one." (R. p. 171, lines 2-7). This is unequivocally a statement by defense counsel that the jury had to bring back a verdict, in some monetary amount, for the Appellant.

CONCLUSION

As set forth in Appellant's brief and reply brief, the trial court abused its discretion and committed an error of law by failing to grant a new trial absolute or new trial *nisi* as a jury's verdict of $0.00 is inconsistent as a matter of law, grossly inadequate and facially inconsistent and Plaintiff is entitled to a new trial. Thus, Plaintiff asks that the trial court order be reversed and remanded for a new trial.

Respectfully submitted,

s/ Jeff Buncher, Jr.
Jeff Buncher, Jr., Bar No. 78890
17 ½ Broad Street
Post Office Box 399
Charleston, SC 29402
Phone: (843) 723-7491
Fax: (843) 577-4179
jeff@uricchio.com
Attorney for Appellant

November 15, 2023
Charleston, South Carolina

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

URICCHIO HOWE KRELL JACOBSON
TOPOREK & KEITH, P.A.

s/ Jeff Buncher, Jr.
Jeff Buncher, Jr., Bar No. 78890
17 ½ Broad Street
Post Office Box 399
Charleston, SC 29402
Phone: (843) 723-7491
Fax: (843) 577-4179
jeff@uricchio.com
Attorney for Appellant

November 15, 2023
Charleston, South Carolina