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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

Maite Murphy, Circuit Court Judge

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Appellate Case No. 2023-000592  
Case No. 2021-CP-22-00552

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Jessica Flegel

Appellant,

v.

Thayne Dawkins Reece,

Respondent.

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FINAL REPLY BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

Table of Authorities .....	ii
Statement of Issues on Appeal.....	1
Statement of Case .....	2
Standard of Review.....	3
Arguements.....	4
I.    The trial court erred in refusing to submit the issue of punitive damages to the jury and in failing to grant Appellant Jessica Flegel’s motion for a New Trial as to Punitive Damages or in the Alternative for a New Trial Absolute. ....	4
II.   The trial court erred in failing to grant Appellant Jessica Flegel's motion for a New Trial as to Punitive Damages or in the Alternative for a New Trial Absolute because Appellant timely filed her post trial motion.....	7
Conclusion .....	8

## TABLE OF AUTHORITIES

### Cases

Austin v. Specialty Transp. Services, Inc.,  
358 S.C. 298, 594 S.E.2d 867 (S.C. App. 2004).

Bolton v. Doe,  
266 S.C. 344, 223 S.E.2d 187 (1976).

Daniels v. Bernard,  
270 S.C. 51, 240 S.E.2d 518 (1978).

Ex parte Travelers Home & Marine Ins. Co. v. Stringfellow,  
427 S.C. 238, 241, 830 S.E.2d 718, 720 (Ct. App. 2019)

Hamm v. S.C. Pub. Serv. Comm'n.,  
287 S.C. 180, 336 S.E.2d 470 (1985).

Hutson v. Cummins Carolinas, Inc.,  
280 S.C. 552, 314 S.E.2d 19 (Ct.App.1984).

Keel v. Seaboard Air Line Ry.,  
108 S.C. 390, 95 S.E. 64 (1918).

Lister v. NationsBank of Delaware,  
329 S.C. 133, 494 S.E.2d 449 (Ct.App.1997).

Murphy v. Owens Corning,  
393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011).

Ralls v. Saleeby,  
178 S.C. 431, 182 S.E. 750 (1935).

Shearer v. DeShon,  
240 S.C. 472, 126 S.E.2d 514 (1962).

Taylor v. Medenica,  
324 S.C. 200, 479 S.E.2d 35 (1996).

Wise v. Broadway,  
315 S.C. 273, 433 S.E.2d 857 (1993).

## **Statutes and Rules**

S.C. Code Ann. § 56-5-1520 (a).

S.C. Code Ann. § 56-5-1930 (a).

S.C. Code Ann. § 56-5-2330.

S.C. Code Ann. § 56-5-2740.

Rule 59, SCRCP.

### STATEMENT OF ISSUES ON APPEAL

Because the “violation of a statute is negligence per se and evidence of willfulness and recklessness **requiring** submission of the issue of punitive damages to the jury,” (Austin v. Specialty Transp. Services, Inc., 358 S.C. 298, 594 S.E.2d 867 (S.C. App. 2004) (emphasis added), did the lower court err in refusing to submit the issue of punitive damages to the jury and in denying Appellant’s motion for a New Trial as to Punitive Damages or in the alternative for a New Trial Absolute where the evidence showed Respondent rear-ended Appellant’s vehicle causing substantial damage to both vehicles as shown in the photos admitted into evidence, indicating a violation of S.C. Code Ann. § 56-5-1930(a) (Following too closely) and/or S.C. Code Ann. § 56-5-1520(a) (General rules to maximum speed), also indicating excessive speed under the circumstances by Respondent, all of which led the jury to determine Respondent was negligent and award judgment in the amount of \$10,000 actual damages in favor of Appellant?

Because “the purpose of the rule [59] is to promote finality of judgments by requiring parties to move for a new trial promptly after they learn of an adverse verdict” Ex parte Travelers Home & Marine Ins. Co. v. Stringfellow, 427 S.C. 238, 830 S.E.2d 718 (Ct. App. 2019), a motion for a new trial shall be made promptly and **no later** than ten (10) days after the jury is discharged SCRCP, Rule 59, did the lower court err in denying Appellant’s motion for a New Trial as to Punitive Damages or in the Alternative for a New Trial Absolute where the record reflects Appellant promptly filed her post trial motion within ten (10) days thereafter?

## STATEMENT OF CASE

On September 8, 2020, around 10:20 pm, the Appellant was traveling north on Highway 41 near the intersection of Highway 41 and North Morgan Avenue in Georgetown County, SC. As Appellant approached the construction/paving flag man, she came to a stop when Respondent rear-ended Appellant's vehicle. As a result, Appellant sustained injuries to her entire body, including neck, shoulder, back and legs.

Appellant Jessica Flegel filed suit on July 7, 2021, in the Court of Common Pleas of Georgetown County, South Carolina. Appellant alleged negligence against Respondent for actual and punitive damages for injuries sustained to her entire bodying, including neck, shoulder, back and legs as a result of a motor vehicle accident on September 8, 2020, near the intersection of Highway 41 and North Morgan Avenue in Georgetown County, South Carolina.

This matter was tried March 6, 2023, and March 7, 2023, before Circuit Court Judge Maite Murphy and a jury. At the conclusion of the trial, the jury returned a verdict for Appellant finding the Respondent was negligent and that such negligence proximately caused Appellant's injuries. At the close of all evidence, Jessica Flegel requested the jury receive an instruction to include punitive damages and the verdict form to include a section as to punitive damages. The jury returned a verdict in the amount of \$10,000.00, representing actual damages to the Appellant. Despite the evidence presented at trial, the jury charges and verdict form did not include an instruction as to punitive damages, although such charge was requested by Appellant. Jessica Flegel's post-trial motions were denied. Accordingly, judgment was entered against Thayne Dawkins Reece in the amount of \$10,000.00.

Jessica Flegel filed a timely appeal to this Court.

## **STANDARD OF REVIEW**

The standard of review for questions of law is *de novo*. The appellate court “may reverse where the decision is affected by any error of law.” Murphy v. Owens Corning, 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011). The appellate courts are “free to decide matters of law with no particular deference to the fact finder.” Id. The appellate court’s “task in reviewing a damages award is not to weigh the evidence, but to determine if there is any evidence to support the damages award”. Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 594 S.E.2d 867 (Ct. App. 2004) See also Hutson v. Cummins Carolinas, Inc., 280 S.C. 552, 314 S.E.2d 19 (Ct.App.1984).

## ARGUMENTS

### **I. The trial court erred in refusing to submit the issue of punitive damages to the jury and in failing to grant Appellant Jessica Flegel's motion for a New Trial as to Punitive Damages or in the Alternative for a New Trial Absolute.**

This rear-end collision is a clear case of liability. There was but one dispute at this trial: the amount of actual damages and punitive damages to be awarded. That dispute was decided by the jury in favor of the Appellant as to actual damages. The jury accepted Appellant's testimony and evidence showing that Appellant, while stopped at a construction zone, was rear-ended by Respondent, sustaining injuries to her entire body, including neck, shoulder, back and legs. Appellant's father, Charles "Chuck" Flegel, testified he arrived shortly after the accident and did not see tire marks in the roadway. The evidence at trial is conclusive that Respondent did not attempt to stop and/or avoid the collision referenced herein<sup>1</sup>. Despite evidence presented indicating a violation of S.C. Code Ann. § 56-5-1930(a) (Following too closely) and S.C. Code Ann. § 56-5-1520(a) (General rules as to maximum speed limits), the court did not, as Appellant requested, instruct the jury as to punitive damages and the verdict form did not include a section as to punitive damages.

As to following too closely, South Carolina Code provides:

The operator of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

S.C. Code Ann. § 56-5-1930 (a)

As to the general rules as to maximum speed limits, South Carolina Code provides:

A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Speed must

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<sup>1</sup> Respondent, Thayne Dawkins Reece did not testify at trial. (R. p. 28).

be so controlled to avoid colliding with a person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of a person to use care.

S.C. Code Ann. § 56-5-1520 (a)

South Carolina law requires drivers to adjust their speed and distance based upon conditions and hazards on the road. Failing to do so is a statutory violation. “The causative violation of a statute constitutes negligence *per se* and is evidence of recklessness and willfulness, requiring the submission of the issue of punitive damages to the jury”. Wise v. Broadway, 315 S.C. 273, 433 S.E.2d 857 (1993). (citing Daniels v. Bernard, 270 S.C. 51, 240 S.E.2d 518 (1978); Shearer v. DeShon, 240 S.C. 472, 126 S.E.2d 514 (1962)). While “violation of a statute does not constitute recklessness, willfulness, and wantonness *per se*”, it “is some evidence that the defendant acted recklessly, willfully, and wantonly”. Wise v. Broadway, 315 S.C. 273, 276, 433 S.E.2d 857, 859 (1993). (citing Keel v. Seaboard Air Line Ry., 108 S.C. 390, 95 S.E. 64 (1918)).

South Carolina Courts have held “a factual question as to punitive damages is presented when there is evidence of a statutory violation.” Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 594 S.E.2d 867, 875 (Ct. App. 2004) See also Wise v. Broadway, 315 S.C. 273, 433 S.E.2d 857 (1993). Punitive damages serve to 1) punish the defendant’s reckless, willful, wanton, or malicious conduct; 2) deter similar conduct; and 3) compensate for the reckless or willful invasion of plaintiff’s rights. Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 594 S.E.2d 867, 875 (Ct. App. 2004). The burden is on the plaintiff to prove punitive damages and “can only be awarded where the plaintiff proves by clear and convincing evidence the defendant’s misconduct was willful, wanton, or in reckless disregard of the plaintiff’s rights”. Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 594 S.E.2d 867, 875 (Ct. App. 2004). (citing Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (1996); Lister v. NationsBank of Delaware, 329 S.C. 133, 494 S.E.2d 449

(Ct.App.1997)). Therefore, it is for the jury to decide whether a party has been reckless, willful, and wanton. Wise v. Broadway, 315 S.C. 273, 277, 433 S.E.2d 857, 859 (1993). (citing Ralls v. Saleeby, 178 S.C. 431, 182 S.E. 750 (1935)).

In Austin, supra. the court upheld the trial court's award of punitive damages, which found the defendant violated S.C. Code Ann. § 56-5-2330 and 2740 when he failed to stop and yield the right of way and struck plaintiff's vehicle. Moreover, in Wise, supra. when the defendant rear-ended the plaintiff's vehicle, the court ruled the trial judge erred when it granted the defendant's motion to strike punitive damages. Thus, when evidence of a statutory violation is presented at trial, the issue of punitive damages must be presented to the jury.

In this case, the jury found that Respondent was negligent as set forth above, requiring the court to charge the jury as to punitive damages. The Court's decision not to allow the jury to have considered punitive damages deprived Appellant of consideration of such damages, which under the evidence Appellant was entitled to have been considered and determined by the jury.

Appellant, Jessica Flegel testified at trial that she recalls hearing the glass break as a result of the impact of the rear-end collision and being thrown across the road. (R. p. 12). Appellant further testified that "it felt like a dead hit". (R. p. 12) Plaintiff's Exhibit No. 1 depicted substantial damage to Appellant's vehicle. (R. p. 15). Appellant later described the impact in her testimony (R. p. 15) of glass popping. Further, Appellant testified, the rear-end impact caused her spare tire and rear windshield glass to fall in. (R. p. 15). Appellant testified that on a scale of one to ten the impact felt "like a ten". (R. p. 15). Testimony further stated the severity of the impact, causing Appellant's seat to break. (R. p. 16) and the vehicle deemed a total loss (R. p. 18).

Appellant's father, Charles Flegel, Jr. testified at trial that as he arrived on scene he saw Appellant and Respondent's vehicles in opposite directions in ditches and it appeared to be "a

pretty violent impact”. (R. pp. 20-21) Plaintiff’s Exhibits No. 2 and 3 depicted the severity of the collision and substantial damage to Appellant’s vehicle. Charles Flegel further testified that he did not remember seeing any skid marks or tire marks on the road. (R. pp. 22-23, 26). Appellant’s father testified that it was a “violent accident” and “a pretty hard hit”. (R. p. 24).

The evidence at trial is conclusive that Respondent did not attempt to stop or avoid the collision, violating S.C. Code Ann. §56-5-1520 and S.C. Code Ann. § 56-5-1930. The Appellant plead punitive damages in her Complaint. At the close of evidence, Appellant requested a jury instruction as to punitive damages. (R. p. 30). The Court denied Appellant’s request despite incontrovertible evidence Respondent violated South Carolina law. (R. p. 30) The court did not instruct the jury as to punitive damages and the verdict form did not include a section as to punitive damages. The jury returned a verdict finding Respondent negligent and that negligence being the proximate cause of Appellant’s injuries and awarding the Appellant \$10,000.00. (R. p. 40)

On the evidence before the Court, the jury’s finding that Defendant was negligent is conclusive the jury found a violation of statute(s). The failure to submit the issue of punitive damages was error.

**II. The trial court erred in failing to grant Appellant Jessica Flegel’s motion for a New Trial as to Punitive Damages or in the Alternative for a New Trial Absolute because Appellant timely filed her post trial motion.**

Rule 59(b) of the South Carolina Rules of Civil Procedure provides a “motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter”. This rule promotes “finality of judgments by requiring parties to move for a new trial promptly after they learn of an adverse verdict.” Ex parte Travelers Home & Marine Ins. Co. v. Stringfellow, 427 S.C. 238, 830 S.E.2d 718 (Ct. App. 2019). When interpreting time limits the court uses common sense. Ex parte Travelers Home & Marine Ins. Co. v. Stringfellow,

427 S.C. 238, 830 S.E.2d 718 (Ct. App. 2019). See also Hamm v. S.C. Pub. Serv. Comm'n., 287 S.C. 180, 336 S.E.2d 470 (1985). Furthermore, Rule 59(e), SCRPC states “a motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order”.

Rules and statutes are “not to be read in an atmosphere of sterility, but in the context of what actually happens when human beings go about the fulfillment of its purposes”. Bolton v. Doe, 266 S.C. 344, 223 S.E.2d 187 (1976). The jury returned a verdict in the amount of \$10,000.00 on March 7, 2023 (R. p. 40), and the Court filed the Verdict Form. On March 16, 2023, the Court filed a Form 4 Order and Judgment and Appellant promptly filed a motion for a New Trial as to Punitive Damages, or in the Alternative for a New Trial Absolute.

Therefore, Appellant promptly filed her motion for a new trial within the required ten (10) days of the jury being discharged and then timely served and filed her notice of appeal. The court’s failure to grant Appellant’s post-trial motion based upon untimely filing was error.

### **CONCLUSION**

Based on the foregoing discussion and analysis, the Appellant Jessica Flegel respectfully requests that the Court reverse the post-trial order denying Plaintiff’s Motion for a New Trial as to Punitive Damages, or in the alternative a New Trial Absolute, and order a new trial as to punitive damages or in the alternative a New Trial Absolute.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned attorney for Appellant Jessica Flegel certifies that the Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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The undersigned attorney for the Appellant Jessica Flegel certifies that the Final Reply Brief of Appellant complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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The undersigned counsel for Appellant Jessica Flegel certifies that on December 4, 2023, he served the within Final Reply Brief of Appellant to Respondent Thayne Dawkins Reece by sending a copy by email and US mail to the following counsel listed below:

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