THE STATE OF SOUTH CAROLINA
In The SUPREME COURT

RECEIVED
Jan 02 2024
S.C. SUPREME COURT

APPEAL FROM SC COURT OF APPEALS
AND
SPARTANBURG COUNTY
COURT OF COMMON PLEAS

Grace Gilchrist Knie, Circuit Court Judge

Appellate Case No. 2023-001735
Case No. 2017CP4203523

Shannon P. Green and Darrell Russell……. Plaintiff(s),

v.

Edward C. McGee and David Hudgins……Respondent(s),

Of whom Shannon P. Green is Petitioner/Respondent

And

Of whom David Hudgins is the Respondent/Petitioner

RETURN TO RESPONDENT/PETITIONER DAVID HUDGINS' PETITION FOR WRIT OF CERTIORARI

Douglas A. Churdar, Esq.
UPSTATE LAWYER
SC Bar No. 11971
304 Pettigru Street
Greenville, SC 29601
Tel.: (864) 233-0203
Fax: (864) 233.3020
Email: doug@upstatelawyer.com

Attorney for Petitioner/Respondent Shannon P. Green

Other Counsel of Record:

Curtis L. Ott, SC Bar #66145
Jessica W. Laffitte, SC Bar #100256
Ioannis (Ian) G. Conits, SC Bar #102675
GALLIVAN, WHITE & BOYD, P.A.]
P.O. Box 10589
Greenville, SC 29603
Tel.: (864) 271-9580
Email: cott@gwblawfirm.com
jlaffitte@gwblawfirm.com
iconits@gwblawfirm.com

Attorneys for Respondent-Petitioner David Hudgins

Michael T. Coulter, SC Bar #15177
1164A Woodruff Road (29607
P.O. Box 6728
Greenville, SC 29606
Tel.: (864) 232-4400
Email: upstatecoulter@clarksonwalsh.com

Attorney for Respondent Progressive Direct Insurance Company as UIM Carrier

INDEX

QUESTIONS PRESENTED

1. Did the Court of Appeals properly affirm the trial court's ruling on Hudgins' motion to set aside the verdicts against him?
2. Did the Court of Appeals correctly apply the setoff from McGee's settlement with Green?

STATEMENT OF THE CASE

Facts relating to Question 1/Argument I.

Respondent/Petitioner Hudgins (hereinafter Hudgins) actively participated in a road rage incident that caused serious injury to Petitioner/Respondent Shannon P. Green (hereinafter Green). The incident began around rush hour on November 19, 2015, on **1-** 85 near the Cherokee County/Spartanburg County line. R. pp. 90, lines 4-5; 93, lines 18-21. The incident began 15-20 minutes before Green was injured. R. p. 109, lines 20-23.

While driving in heavy traffic, Respondent Edward C. McGee (hereinafter McGee) was driving a very large Chevy 2500 truck. He ran up behind Hudgins who was driving a small sedan. Both McGee and Hudgins were in the left lane, and the traffic was bumper to bumper in the right lane. R. p. 94, lines 1-2. McGee testified Hudgins slammed on his brakes and almost caused an accident. R. p. 95, lines 13-17. ("Yeah, he's slamming on brakes. Not just putting his brake lights on." R. p. 95 lines 13-16.) According to McGee, Hudgins slammed on his brakes and almost caused an accident three times. R. p. 96, lines 1-25; R. p. 312, lines 2-8. When 1-85

widened from two lanes to three, McGee passed Hudgins on the right and then attempted to make a lane change in front of Hudgins, who was still in the left lane. R. pp. 99, line 19 - R. p. 100, line, 2. Hudgins attempted to block McGee. They almost collided again. R. p.101, line 16- p. 102, line 18. McGee testified you could have "slipped a piece of paper" between the two vehicles. R. p. 102 lines 6-18. Hudgins testified: "I think it was less than that." R. p. 313, lines 2-6.

McGee then drove ahead and tried to get away from Hudgins. R. p. 103, lines 8-9. Hudgins knew it was "best to just stay out of it". R. p. 316, lines 1-2. Nonetheless, Hudgins followed McGee - "a couple of car lengths behind me". R. p. 103, lines 12-17. "I would turn my turn signal on to move over, get around another car.. .it was like, you know, ... you were NASCAR or something or another, and, you know, they're drafting on you." R. p. 103, lines 18-24. McGee was fearful for his life. R. p. 104, lines 6-17.

McGee exited 1-85 at Hearon Circle in Spartanburg, and Hudgins was right behind him. "Somehow or another he wiggles his way in there, I don't know how." R. p. 112, lines 3-10. McGee took the Hearon Circle exit at a high rate of speed.

According to Hudgins, "[McGee] was doing 90 miles an hour". R. p. 323, lines 9-24. McGee turned right on Simuel Road, and Hudgins was still right behind him. According to McGee, Hudgins was "two or three car lengths" behind him. R. p. 148, lines 11-20. Hudgins was distracting McGee, causing him to take his eyes off the road. R. p. 113, lines 13-23. McGee, driving his very large Chevy 2500 truck, took a sharp right turn crossed the center line, and hit Green. R. p. 91, line 17-23; p.

113, lines 2-12. "I look in my mirror to see if he's still back there, and that's when I went over the center line and hit her." R. p. 113, lines 8-10. At the scene, McGee told the investigating officer he was being chased by Hudgins. R. p. 80, lines 12-17. Hudgins was ticketed and pled guilty to driving too fast for conditions. R. p. 328, line 24 – p. 329, line 10.

Facts relating to Question 2/Argument II.

Before Green filed her lawsuit, McGee paid $100,000.00 (through his liability carrier) to her and her husband, Darrell Russell. In exchange for such payment, Green and her husband signed a Covenant Not to Execute any judgment against McGee. Green then filed suit against McGee and Hudgins, and McGee remained a defendant through the trial.

The case went to trial on October 14, 2019. On October 16, 2019, the jury returned a verdict in favor of Green. R. pp. 6-9. According to the verdict, McGee's percentage of fault was 60%, and Hudgins' percentage of fault was 40%. Green was entitled to $88,546.78 in actual damages. R. p. 6- p. 9. The jury also returned a verdict for $35,000.00 in punitive damages against McGee and $35,000.00 in punitive damages against Hudgins. R. p. 6- p. 9. Hudgins filed a motion for setoff, which the trial court granted. However, it applied the entire $100,000.00 payment against Green's verdict (without regard to any percentage of the payment allocated to her husband), and the setoff was applied to the *combined* verdicts against McGee and Hudgins, *i.e.* $158,546.78. R. p. 1- p. 4. The trial court then found that the remaining amount of the verdict to be paid to Green would be $58,546.78 and that

said amount must be shared by McGee and Hudgins on a pro-rata basis based upon the fault assigned to each of them by the jury. R. p. 1- p. 4. Thus, the trial court found that McGee is responsible for 60% of the remaining amount owed to Green, and Hudgins is responsible for 40% of the remaining amount owed to Green.

Both Green and Hudgins appealed over how the $100,000.00 setoff should have been applied. The Court of Appeals found that the $100,000.00 should first be allocated to McGee's share of the actual damages and then to the punitive damages award against him. After that, the excess should be credited to the judgments against Hudgins.

ARGUMENT

I. THE COURT OF APPEALS PROPERLY AFFIRMED THE TRIAL COURT'S RULING ON HUDGINS' MOTION TO SET ASIDE THE VERDICTS AGAINST HIM.

When reviewing a trial court's ruling on a motion for directed verdict or JNOV, an appellate court must apply the same standard as the trial court. All evidence and all reasonable inferences from that evidence must be viewed in the light most favorable to the non-moving party. *Elam v. SCDOT*, 361 S.C. 9, 602 S.E.2d 772 (2004). A motion for directed verdict or JNOV must be denied if the evidence yields more than one reasonable inference or its inference is in doubt. *Strange v. S.C. Dept. of Highways and Pub. Transp.,* 314 S.C. 427, 445 S.E.2d 439 (1994). "A motion for JNOV may only be granted if no reasonable jury could have

reached the challenged verdict." *Gastineau v. Murphy,* 331 S.C. 565, 586, 503 S.E.2d 712, 713 (1998). Thus, an appellate court must not reverse a trial court's ruling on JNOV if there is any evidence to support the ruling. *Welch v. Epstein,* 342 S.C. 279, 536 S.E.2d 408 (Ct. App. 2000).

Applying the standards outlined above, the Court of Appeals was required to affirm the trial court if it found any evidence to support the jury's verdicts for negligence and gross negligence against Hudgins. If such evidence exists, then it properly affirmed the trial court's denial of Hudgins' JNOV Motion.

There is abundant evidence that Hudgins acted negligently and was grossly negligent from the moment he encountered McGee on I-85. The Interstate was crowded; bumper to bumper in the right lane. R. p. 92, lines 7-21; p. 94, lines 1-3. Defendants were driving 65-70 miles per hour. R. p. 94, lines 1-3. When McGee pulled up behind Hudgins, Hudgins chose to slam on his brakes. He could have continued driving at the same speed or increased his speed until he could eventually move into the right lane. He didn't even "tap" his brakes. "He's slamming on brakes. Not just putting his brake lights on." R. p. 95, lines 13-16. He is "almost causing an accident". This happened three separate times in crowded traffic.

There is also evidence that Hudgins then attempted to cut McGee off. McGee passed him on the right and started to move over into the left lane in front of Hudgins. Hudgins "speeds up as I look over, you know, like he's gonna try to block me from coming over." R. p. 99, lines 19-p. 100, line 2. This incident also almost caused a collision. This is the point at which you could have "slipped a piece of paper"

between the two vehicles. R. p. 102, lines 6-18; p. 303, lines 2-6. Hudgins said it was McGee who tried to cut him off but that "he almost crashed me." R. p. 313, lines 2-6.

Finally, there is evidence that Hudgins "chased" McGee until he struck Green. "NASCAR" says everything you need to know. McGee testified that Hudgins was driving like NASCAR.

> Q. Did he follow you?
>
> A. He sure did.
>
> Q: How close was he?
>
> A: A couple of car lengths behind me. I mean, you know, you could - it was evident he was back there every time I changed lanes.
>
> Q. What happened when you changed lanes?
>
> A. I would turn my turn signal on to move over, get around another car, turn my turn signal and he was - it was like ... you were NASCAR or something or another, and, you know, they're drafting on you.
>
> Q. With Mr. Hudgins drafting on you?
>
> A. Yeah, that's what I'm saying. He was right behind me.
>
> Q. So, you change lanes, and he changes lanes?
>
> A. Exactly.
>
> Q. You change lanes, and he changes lanes?
>
> A. Exactly.
>
> Q. You change lanes, and he changes lanes?
>
> A. Exactly.
>
> Q. Alright, did you become concerned?

A. Real concerned.

R. p. 103, lines 12 - p. 104, line 7. According to McGee, Hudgins was right behind him; there were no other vehicles between them. R. p. 112, lines 9-10; p. 112, line 22-p. 113, line 1; p. 113, lines 13-15. Hudgins was distracting McGee, which caused him to take his eyes off the road. R. p. 113, lines 13-20. That, along with McGee's excessive speed, caused him to hit Green.

This evidence of Hudgins' speeding, following too closely, and almost crashing (repeatedly) would support a finding of negligence and gross negligence. However, there is further evidence of Hudgins' gross negligence. First, he knew better. He knew from past experience it was "best to just stay out of it... if you can." R. p. 316, lines 1-2. Yet, after reporting McGee to the Highway Patrol and providing a description of McGee's truck and license tag number, he chose to chase McGee. Second, based on McGee's testimony, Hudgins had fifteen (15) to twenty (20) minutes to back off and let McGee go. R. p. 109, lines 15-23. (According to Hudgins, he had 10 minutes. R. p. 316, lines 12-14.) That's a lot of time to make a conscious decision, i.e. "For the safety of all those on the road, maybe I should back off." Instead, he "drafted" behind McGee and followed him at a high rate of speed. Third, Hudgins pled guilty to driving too fast for conditions. R. p. 328, line 24 -p. 329, line 10. This guilty plea alone required the issue of punitive damages to be submitted to the jury. "Violation of a statute is some evidence the defendant acted recklessly, willfully and wantonly." *Austin v. Specialty Transportation Services, Inc.*, 358 S.C. 298, 315, 594 S.E.2d 867 (Ct. App.

2004). And fourth, it was obvious to the jury and to the court that Hudgins had not learned a lesson as a result of Green's injury. As a matter of fact, he would do the very same thing again under the same circumstances.

Q. You played no part in this collision whatsoever?

A. No, sir.

Q. You don't feel like you did anything wrong?

A. No, sir.

Q. And you don't feel like you would do anything different... under the same circumstances?

A. That's right.

Q. The very same thing?

A. That's right.

Q. Yes?

A. Yes, sir.

R. p. 325, lines 12-22. Thus, Hudgins personifies the need for punitive damages, i.e. deterrence.

In *Clark v. S.C. Dept. of Public Safety,* 362 S.C. 377,608 S.E.2d 573 (2005), a woman, Clark's daughter, was killed when her vehicle was struck by a man being pursued by a State Trooper. The trial court submitted the issue of gross negligence on the part of the Department to the jury, and the jury returned a verdict against the Department. The Department filed a motion for JNOV, and the trial court denied the motion. In affirming both the trial court and this court, the Supreme Court found that the trial court properly submitted the case to the jury to consider

whether the Trooper was grossly negligent in initiating and failing to terminate the pursuit. Id. at 383. Construing the evidence in a light most favorable to Clark, the Court found the pursuit should have been called off once it was obvious the fleeing driver was willing to do whatever it took to get away and after he attempted to run the Trooper off the road, almost colliding with another vehicle. Id. at 385.

Clark is analogous to this case with one glaring distinction. The Trooper in *Clark* was a law enforcement officer who was actually charged with enforcing the law and whose job required him to pursue people. In this case, we have Hudgins who is simply angry, frustrated, and vengeful, so he continued to pursue McGee even when it was obvious he was not going to stop. And as in *Clark,* the pursuit almost caused other collisions and ultimately did cause the collision with Green's vehicle. Based upon *Clark,* it is clear that both the issue of negligence and gross negligence were properly submitted to the jury.

II. THE COURT OF APPEALS CORRECTLY APPLIED THE SETOFF FROM MCGEE'S SETTLEMENT WITH GREEN. [1]

As the Court of Appeals noted, this case involves a set of facts that have

---

[1] Green merely agrees with the method of application. She does not concede the setoff against her verdicts should have been $100,000.00. A portion of McGee's $100,000.00 liability payment was made to Green's husband, Darrell Russell, to satisfy his claim for loss of consortium. Based upon *Green v. Bauerle*, No. 2019-MO-026, at 6 (S.C. Sup. Ct. filed May 29, 2019) and *Green v. Bauerle*, Op. No. 6029 (S.C. Sup. Ct. October 4, 2023), the court should have held a hearing to properly allocate the settlement payment among those who received it; relying on the jury's verdict is arbitrary. *See also, Glenn v. 3M Company*, 440 S.C. 34, 86, 890 S.E.2d 569 (Ct. App. 2023) (trial court must conduct an *in camera* review of the settlement documents to verify the amount of the settlement, whether it was given in good faith, and the claims that it covered.) As Green argued before the Court of Appeals and in her Petition for Writ of Certiorari, the setoff against her verdict should not have been $100,000.00.

not been the focus of a prior appeal. McGee settled with both Green and her husband, Darrell Russell, for $100,000.00 on a Covenant Not to Execute. But McGee was then named in Green's lawsuit and remained a defendant at trial. The jury apportioned 60% of the fault to McGee and 40% of the fault to Hudgins. Hudgins argues that only he – and not McGee - is entitled to any setoff. Hudgins argues, further, that he is entitled to a full $100,000.00 setoff against (40%) of the actual damages verdict ("his portion"), as well as the entire punitive damages verdict against him.

As a backdrop to this discussion, it should be recognized that both McGee and Hudgins are 100% liable (pure joint and several liability) for Green's actual damages. (This matter was not addressed by the trial court or the Court of Appeals.) While the jury found Hudgins 40% at fault for the collision that caused Green's injuries, it also found that he was reckless, willful, and wanton. *See* verdict form. R. p. 8. Thus, the jury's apportionment of fault on the verdict form does not help him. §15-38-15(F) ("This section does not apply to a defendant whose conduct is determined to be willful, wanton, reckless…") Pure joint and several liability applies; Green can collect her actual damages verdict of $88,546.78 from Hudgins alone. If she does so, and Hudgins then believes he has paid more than his pro rata share of the common liability, he can seek contribution in a separate action against McGee. §15-38-20(A) ("[W]here two or more persons become jointly or severally liable in tort for the same injury… there is a right of contribution among them…"; §15-38-40(A) ("…contribution may be

enforced by separate action.") In other words, because McGee and Hudgins are jointly and severally liable to Green, it is *their* problem if one of them overpays on the actual damages judgment. [2]

The Court of Appeals properly recognized that setoff is all about equity. It has been an equitable principle for over 100 years. *Riley v. Ford Motor Co.,* 414 S.C. 185, 195, 777 S.E.2d 824 (2015). Setoff was codified in §15-38-50 as part of the comprehensive chapter titled The Uniform Contribution Among Tortfeasors Act. S.C. Ann. §15-38-10 et. seq. (the Act). Significantly, this Court has recognized and discussed the legislative intent of the Act. "[T]he Act represents the Legislature's determination of the proper balance between *preventing double-recovery* and South Carolina's *'strong public policy favoring the settlement of disputes'*…" *Id.* at 196. Since *Riley,* other opinions have recognized that the Act, and particularly the setoff section, reflects legislative intent to prevent double recovery and encourage settlements. *Glenn v. 3M Company*, 44 S.C. at 82-84; *Palmetto Pointe v. Island Pointe*, 440 S.C. 190, 200-202, 890 S.E.2d 603 (Ct. App. 2023).

Green will concede that §15-38-50 could have been drafted better; however, it *can* be logically read in a manner consistent with the legislative intent of the

[2] Applying the same reasoning and as noted in Argument 3 of the Initial Brief of Appellant/Respondent, when the setoff for McGee's $100,000.00 liability payment is applied to the actual damages verdict of $88,546.78, there remains an unused portion or credit in the amount of $11,453.22. Even that amount cannot be allocated based upon the jury's apportionment of fault; rather, how it is allocated must be determined in a separate action for contribution. (See §15-38-20 and/or 15-38-40), and it was not.

Act. Meanwhile, Hudgins proposes an interpretation of §15-38-50 that clearly conflicts with such legislative intent. His proposed interpretation would not strike "the proper balance between *preventing double recovery* and South Carolina's *'strong public policy favoring the settlement of disputes'…*" *Id.* Rather, it would upset that balance.

Hudgins' interpretation would *not* merely prevent *double* recovery, it would prevent *single* recovery. Take 40% of the actual damages verdict ($88,546.78), which is $35,418.71. Add to it the $35,000.00 punitive damages award against Hudgins, and you have $70,418.71. Hudgins contends that $70,418.71 is all he owes Green and that he gets to apply the full $100,000.00 setoff (paid by McGee) to that amount; that the payment Green (and her husband) received from McGee is more than she is entitled to.[3] Thus, Green would only receive $100,000.00 (the amount of the settlement), despite a verdict totaling $158,546.78. Hudgins acknowledges this is not an equitable result. In his Final Brief for his Cross Appeal to the Court of Appeals, he observed that "application of this setoff provision under §15-38-50 may seem to lead to an inequitable result for appellant Green…" Final Brief of Respondent-Appellant David Hudgins for his Cross Appeal, p. 29. This is an understatement.

Likewise, Hudgins' interpretation would not *encourage* settlements; rather, it would *discourage* them. Adoption of his interpretation would tell

[3] In his Final Brief of Respondent-Appellant David Hudgins for his Cross-Appeal, Hudgins writes on pg. 28: "Because the $100,000.00 is more than the $70,418.71 attributable to Mr. Hudgins application of the setoff under § 15-38-50 to Mr. Hudgins results in Appellant Green being precluded from any recovery from Mr. Hudgins".

plaintiffs they cannot safely engage in a common strategy: settle with a tortfeasor for liability policy limits on a Covenant Not to Execute and then file a lawsuit against him to collect underinsured motorist benefits. Doing so would put that plaintiff at risk of not receiving a *single* recovery.

The Court of Appeals properly focused on legislative intent. "Various rules of statutory construction have been employed by courts; however, each of them is subservient to the goal of achieving the manifest intention of the Legislature. The vitality of any rule of construction is dependent upon the assistance it renders the court in its endeavor to ascertain the legislative purpose. (citations omitted)." *Martin v. Ellisor,* 266 S.C. 377, 381, 223 S.E.2d 415 (1976). Even when a statute is "plain and ambiguous" (and that is not the case here), a "rule of literal application may be forced to yield…[]when its application would produce an absurd result. In those instances, the supporting rationale is that the legislature would not have intended an absurdity; the court does not reform the statute. (citations omitted)." *Id.* at 381-382; *see also, Southeastern-Kusan v. S.C. Tax Com.*, 276 S.C. 487, 490 280 S.E.2d 57 (1981) ("Only when the literal application of a statute produces an absurd result will we consider a different meaning."); *and State v. Taylor*, 436 S.C. 28, 34, 870 S.E.2d 168 (2022) (holding courts "must reject a statutory interpretation if it leads to an absurd result that could not possible have been intended by the legislature or that defeats plain legislative intent.")

On these principles alone, the Court of Appeals made the right decision. Give McGee credit for his settlement against all verdicts against him. An interpretation that results in a settling defendant (McGee) not getting credit for the amount he paid is an absurd and unjust result. Giving a non-settling defendant (Hudgins), who is 100% responsible for an actual damages verdict, a full setoff from a settling defendant's payment against 40% of the actual damages verdict is an absurd and unjust result. Leaving a plaintiff with less than a *single* recovery is also an absurd and unjust result and clearly inconsistent with legislative intent, as this Court has found it.

The language Hudgins relies upon in support of his position is not "plain and unambiguous language". It is somewhat unclear, especially in light of prior common law and the application of §15-38-50. However, as noted previously, §15-38-50 can be logically read in a manner that is consistent with legislative intent and will not lead to an absurd and unjust result. The court must work from the logical and just premise that a settling tortfeasor is entitled to the benefit of his bargain, *i.e.* credit for the payment he made. McGee entered a Covenant Not to Execute with Green and her husband because he "wish[ed] to limit any liability for damages in excess of $100,000.00". R. 460. Based upon that logical premise, it is clear that reference to "the others" in §15-38-50(1) assumes the settling tortfeasor gets credit for the payment he made and includes all other tortfeasors who may be entitled to benefit from the *full* payment. McGee's payment "reduces the claim against the others to *the extent* of any amount stipulated by the release

or covenant…" §15-38-50(1). (Emphasis provided.) In other words, the purpose of the language is that no portion of the settlement payment go unused. Thus, if a settling tortfeasor pays more in settlement than the verdict ultimately awarded against him, "the others" may apply "*the extent"* of the payment*, i.e.* the residual amount or leftovers, from the settlement. This prevents the plaintiff from receiving double recovery and at the same time does not discourage settlement.

Hudgins repeatedly quotes *Ellis v. Oliver*, 335 S.C. 106, 113, 515 S.E.2d 268 (Ct. App. 1999): "§15-38-50 grants the court no discretion in determining the equity involve in applying a setoff once a release has been executed in good faith between a plaintiff and one of several joint tortfeasors." Context is important here. In that case, plaintiff settled with a defendant hospital before instituting her lawsuit against defendant Dr. Oliver. The hospital had paid plaintiff $140,000.00, the amount of the medical bills incurred because of the hospital's negligence. The trial court gave Dr. Oliver a setoff and made the statement above. Had the hospital remained a defendant, it would undoubtedly have been entitled to credit for the amount it had paid plaintiff. The Court in *Ellis* also favorably quoted the following language: "Our sole function is to determine and…give effect to the intention of the legislature…" *Id.* at 114.

The intention of the legislature regarding the Act, including §15-38-50, is beyond dispute. *Riley* at 196. It must be interpreted in a manner consistent with that intent. The Court of Appeals got it right.

CONCLUSION

For the reasons stated herein, Ms. Green asks this Court to deny Mr. Hudgins' Petition for Writ of Certiorari.

January 2, 2024

/s/ Douglas A. Churdar
Douglas A. Churdar, Esq.
UPSTATE LAWYER
SC Bar No. 11971
304 Pettigru Street
Greenville, SC 29601
Tel.: (864) 233-0203
Fax: (864) 233.3020
Email: doug@upstatelawyer.com

Attorney for Petitioner/Respondent Shannon P. Green