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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2023-001405

Linda C. Horne, …….. Appellant,

v.

Kelsey Rae Clapp, …… Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

1. Whether the circuit court erred in submitting a verdict form that asked jurors whether the at-fault party in a rear-end collision caused the plaintiff "any" damages when the parties stipulated the plaintiff was entitled to $ 1,055 for her collision-related chiropractor bills.

2. Whether the circuit court erred in denying a motion for new trial when the jury ignored the circuit court's instructions and returned a zero verdict even though the defendant admitted in court that she was responsible for a portion of the plaintiff's claimed losses.

STATEMENT OF THE CASE

Appellant Linda C. Horne filed this negligence/recklessness action against fellow motorist Kelsey Rae Clapp[1] arising out of a February 15, 2018, motor vehicle collision where Clapp's Honda Accord sedan struck Ms. Horne's Honda SUV from behind as she was stopped for traffic on Highway 521 in Lancaster County. (Compl. ¶ 3; Answer ¶ 3). Ms. Horne's August 15, 2020, complaint alleged the collision was caused by Clapp following too closely and failing to keep a proper lookout resulting in injuries to Ms. Horne's neck, back, and a sacral nerve stimulator device previously implanted in Ms. Horne to address incontinence issues. (Compl. ¶¶ 4-5). Clapp denied liability in her May 20, 2020 answer. (Answer ¶¶ 4-6).

Following discovery, the case was tried by a Lancaster County jury before the Honorable Daniel D. Hall on June 19-22, 2023. Clapp retreated from her liability denials prior to trial, and the parties reached a stipulation on most of the elements of Ms. Horne's negligence/recklessness claim which Clapp's attorney summarized to the jury in his opening statement:

> we've stipulated, at least Kelsey stipulated that she was negligent causing the accident, and she -- and that that negligence was the cause for her to have -- for Ms. Horne to have about two and a half months of extra chiropractic treatment for problems of preexisting neck and back problems that Ms. Horne had, and that the expense of about $ 1,055 was caused by her negligence.

(Tr. 61, lines 20-25). Clapp chose to enter the stipulation to limit the issues to be resolved and, in turn, to limit the type and amount of evidence Ms. Horne could introduce against her. (Tr. 68-70).

The trial proceeded with lay and expert testimony focused on which portion of Ms. Horne's claimed damages Clapp would be required to pay. The stipulation placed beyond dispute Clapp's responsibility for a series of chiropractic visits Ms. Horne had in the months following the

[1] Clapp is also referred to in the trial transcript by her married name Kelsey Partin. E.g. (Tr. 15, line 22).

collision. Clapp, through her counsel, acknowledged these expenses (totaling $ 1,055) in announcing the stipulation during opening arguments. (Tr. 61, lines 20-25). Clapp's closing argument also unambiguously stated Ms. Horne was entitled to $ 1,055 for her chiropractic treatments. (Tr. 319, lines 8-9) ("the expenses for those treatments were $ 1,055. In your award, include the $ 1,055").

On the last day of trial, the circuit court circulated a proposed verdict form that would ask the jury to address two prompts:

1. Was the defendant's negligence the proximate cause of any of the plaintiff's injuries

   _____ Yes. If yes, proceed to question 2.

   _____ No. If no, sign below and deliberate no further.

2. As a result of the defendant's negligence, plaintiff suffered damages in the following amount:

   $_____

(Verdict Form). Ms. Horne's counsel objected to the proposed form based on the stipulation. (Tr. 267, lines 8-11). Ms. Horne argued Question No. 1 would be inappropriate because it would grant the jury the option of finding Clapp was not responsible for "any" of Ms. Horne's alleged damages despite Clapp's admission that she owed $ 1,055 for chiropractor bills. Id. (arguing Clapp "stipulated to some damages. i.e. the chiropractor bill but not all economic or noneconomic damages").

In support of the objection, Ms. Horne requested and received permission to submit an alternative proposed verdict form. (Tr. 268, line 23 – 269, line 1). To account for the stipulation and the parties' dispute over the remaining damages claim, Ms. Horne's proposal would have asked jurors to address a single prompt:

1. The Defendant's admitted negligence was the proximate cause of the following damages:

Economic Damages: $_____

Non-Economic Damages:
Pain & Suffering: $_____

Loss of Enjoyment
Of Life: $_____

Mental Suffering $_____

Apprehension $_____

Humiliation $_____

TOTAL DAMAGES $_____

Ms. Horne's counsel argued this structure should be used because Clapp "admitted some" alleged damages were proximately caused by Clapp's negligence "and some aren't." (Tr. 268, lines 12-14).

Ms. Horne's objection was overruled, and the case proceeded to closing arguments during which attorneys for both parties told jurors Ms. Horne was entitled to at least $ 1,055 in damages. (Tr. 289, lines 14-15; 319, lines 8-9). The circuit court then submitted the two-question verdict form to the jury after charging jurors that the stipulation was binding (Tr. 335, line 5) and that all of the stipulated facts must be treated as "conclusively proved." (Tr. 335, line 10). Later that day (June 22, 2023), the jury returned a verdict answering "No" on Question No. 1. (Verdict Form). Pursuant to Rule 59(b), SCRCP, Ms. Horne's counsel requested and received permission to take ten days to file post-trial motions. (Tr. 339, lines 22-23). Ms. Horne's June 30, 2023, post-trial motions argued the stipulation and undisputed evidence of Ms. Horne's chiropractor bills made the verdict form flawed as a matter of law and the jury's verdict both legally invalid and plainly inconsistent with all evidence presented at trial. (Pla. Mot. for New Trial at 3-7).

The circuit court denied Ms. Horne's post-trial motions without a hearing in a Form 4 order entered on July 26, 2023. (Order, entered July 26, 2023). Ms. Horne filed a motion to alter, amend, and reconsider on August 4, 2023, which was denied on August 24, 2023. (Pla. Mot. to Alter/Amend; Order, entered Aug. 24, 2023). Ms. Horne filed a timely notice of appeal on August 30, 2023. (Notice of Appeal).

STANDARD OF REVIEW

A circuit court may grant a new trial following a jury verdict based on any reason for which a new trial has previously been granted in South Carolina legal actions. Rule 50(a), SCRCP. A defective verdict form and a verdict at odds with the evidence are both permissible grounds for a new trial. S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903, 907-08 (2007) (citing 9A Wright & Miller, *Federal Practice and Procedure*, Civil 2d § 2508, p. 193) (stating that a special verdict form question "may be so defective in its formulation that its submission results in a prejudicial effect which constitutes reversible error"); Ex Parte Travelers Home & Marine Ins. Co. v. Stringfellow, 427 S.C. 238, 245, 830 S.E.2d 718, 721 (Ct. App. 2019) ("because it is obligated to see that justice is done," a trial court is "duty-bound to grant a new trial if the evidence does not support the verdict"). The court may grant a new trial on the facts of a case by invoking the thirteenth juror doctrine if the evidence shows the jury's verdict is "contrary to the fair preponderance of the evidence" or that "justice has not prevailed." Sapp v. Wheeler, 4052 S.C. 502, 513, 741 S.E.2d 565, 571 (Ct. App. 2013); Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) (quoting R.C. McEntire v. Mooregard Exterminating Servs., Inc., 353 S.C. 629, 633, 578 S.E.2d 746, 748 (2003)). On appeal, the denial of a motion for new trial is reviewed for abuse of discretion and will be reversed when "wholly unsupported by the

evidence, or [when] the conclusion reached was controlled by an error of law." Vinson v. Hartley, 324 S.C. 389, 402, 477 S.E.2d 715, 722 (Ct. App. 1996).

ARGUMENT

By the time the trial began, this auto accident litigation had become a damages case only. Clapp did not want jurors to know she was preoccupied with her cell phone when she ran into the back of Ms. Horne's stopped car so she proposed a stipulation. The parties would agree Clapp's unreasonable driving caused the collision and Ms. Horne incurred a sum certain amount of collision-related medical expenses ($ 1,055) for chiropractic care. All that remained to try was the parties' dispute as to whether the collision also interfered with the operation of a costly surgical implant Ms. Horne used to mitigate bowel and bladder control problems. Before the first witness was called and after the last piece of evidence was admitted, Clapp's attorney told jurors Ms. Horne was entitled to $ 1,055 in damages. (Tr. 61, lines 20-25); (Tr. 319, lines 8-9) ("the expenses for those treatments were $ 1,055. In your award, include the $ 1,055"). A zero damages verdict was not a viable outcome under the stipulation's terms or in light of the evidence presented at trial.

Yet, the circuit court chose a verdict form that asked jurors to determine whether Clapp caused "any" of Ms. Horne's losses over a form simply asking the jury to enumerate the collision-related damages. The defective verdict form gave jurors the option to find Ms. Horne suffered no collision-related losses—a conclusion foreclosed by the stipulation and Clapp's in-court admissions. When the jury returned just such a verdict, the circuit court compounded its error by denying Ms. Horne's motion for a new trial. In short, the circuit court abused its discretion by issuing rulings that disregarded the stipulation, embraced a verdict form out of step with the contested issues, and entered judgment on a verdict that disregarded the circuit court's instructions

and that was at odds with undisputed evidence. This court should reverse those rulings and order a new trial.

1. **The verdict form posed an inaccurate, confusing question that presented the jury with an option foreclosed by stipulated facts and undisputed evidence.**

The circuit court erred by crafting a verdict form that did not align with the matters contested at trial. While the parties disputed whether *all* of Ms. Horne's claimed damages were caused by Clapp's admitted negligence, they agreed Clapp was responsible for *some* of Ms. Horne's losses. A stipulation and multiple in-court admissions established Clapp's responsibility for Ms. Horne's chiropractic expenses ($ 1,055), but the jury was still asked whether Clapp caused "any" of Ms. Horne's injuries. The circuit court erred in submitting this inaccurate, confusing verdict form to the jury and in denying Ms. Horne's related motion for a new trial.

While a trial court has discretion in formulating a verdict form, civil procedure rules and precedent impose some baseline parameters. Most importantly, the form must be targeted toward and limited to issues actually in dispute in the trial. The circuit court must restrict the jury's options in a verdict form to "findings which might properly be made under the pleadings and evidence." Rule 49(a), SCRCP. A verdict form must never give the jury the option of reaching an outcome at odds with facts admitted in the pleadings or in open court. Lorick & Lowrance v. Julius H. Walker & Co., 153 S.C. 309, 150 S.E. 789, 792 (1929) ("Facts admitted by the pleadings must not be contradicted by the verdict" and matters submitted to jury should be limited to "those facts distinctly affirmed on the one side and negatived on the other").

Additionally, the verdict form must pose questions in a clear, comprehensible way. Sulton v. HealthSouth Corp., 400 S.C. 412, 419, 734 S.E.2d 641, 645 (2012) (finding verdict form's overall structure "confusing and prejudicial"). How a question is phrased matters, and the South Carolina Supreme Court has recognized a verdict form question "may be so defective in its

formulation that its submission results in a prejudicial effect which constitutes reversible error." S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007) (citing 9A Wright & Miller, *Federal Practice and Procedure*, Civil 2d § 2508, p. 193)). A question is defective and prejudicial if "[a]mbiguous, biased, misleading, or confusing." 9A Wright & Miller, *Federal Practice and Procedure*, Civil 2d § 2508, p. 193 n. 12 (citing Mattson v. Schultz, 145 F.3d 937 (7th Cir. 1998)). Taken together, these rules are designed to ensure jurors are presented with only the dispute they have been summoned to resolve and in a manner permitting them to convey a coherent verdict grounded in the evidence they received. Cf. Uphoff Figueroa v. Alejandro, 597 F.3d 423, 434 (1st Cir. 2010) (holding that, while verdict form text is a discretionary matter, the form must "present the case fairly and accurately"); Bombardier Recreational Prods., Inc. v. Arctic Cat Inc., 331 F. Supp. 3d 902 (D. Minn. 2018) (quoting Chlopek v. Fed. Ins. Co., 499 F.3d 692, 701 (7th Cir. 2007) (to determine whether trial court abused its discretion, consider whether the selected verdict form "accurately, adequately, and clearly state[s] the relevant issues to be decided")).

The verdict form the circuit court selected violated these rules. Prior to closing arguments, the circuit court presented counsel for both parties a proposed verdict form posing a preliminary question and a contingent secondary prompt. First, jurors would be asked, "Was [Clapp's] negligence the proximate cause of *any* of [Ms. Horne's] injuries?" (Verdict Form) (emphasis added). If the jury answered "Yes" to this question, it would then be required to address the following prompt: "As a result of [Clapp's] negligence, [Ms. Horne] suffered damages in the following amount:" (Verdict Form). Structuring the verdict form in this manner assumed the matters in dispute at trial were (1) whether Clapp's admitted negligence during the collision proximately caused Ms. Horne any loss; and (2) what portion of Ms. Horne's claimed losses were

causally related to the collision. Ms. Horne's counsel objected and submitted a proposal asking jurors to address a single prompt: "[Clapp's] admitted negligence was the proximate cause of the following damages." (Pla. Proposed Verdict Form). This version would focus the jury on the task of identifying which of the claimed damages were proximately related to the collision without the unnecessary preliminary inquiry from the circuit court's proposal.

Rejecting Ms. Horne's version and submitting the circuit court's proposal to the jury was an error of law because whether Clapp's negligence during the collision proximately caused *any* of Ms. Horne's claimed damages was not a matter contested at trial. This matter was removed from the realm of disputed issues when, at Clapp counsel's urging, the parties entered a stipulation on key facts. A stipulation is an "agreement, admission or concession made in judicial proceedings by the parties" or their attorneys. Porter v. S.C. Pub. Serv. Comm'n, 333 S.C. 12, 30, 507 S.E.2d 328, 337 (1998). Parties usually enter stipulations to make a trial more efficient by narrowing the issues and limiting the evidence each side must present. Greene v. Greene, 351 S.C. 329, 569 S.E.2d 393 (Ct. App. 2002) (quoting Black's Law Dictionary 1415 (6th ed 1990) (parties enter a stipulation to "obviate need for proof or to narrow [the] range of litigable issues")).

Clapp's counsel presented the parties' stipulation during his opening statement:

> we've stipulated, at least Kelsey stipulated that she was negligent causing the accident, and she -- and that that negligence was the cause for her to have -- for Ms. Horne to have about two and a half months of extra chiropractic treatment for problems of preexisting neck and back problems that Ms. Horne had, and that the expense of about $ 1,055 was caused by her negligence.

(Tr. 61, lines 20-25). The stipulation ended the parties' dispute as to whether Clapp breached a legal duty and the dispute over portions of the proximate cause and damages elements of Ms. Horne's negligence claim. Through the stipulation, Clapp was conceding:

1. Her driving on February 15, 2018 fell below the standard of a reasonable driver under the circumstances;

2. Her poor driving caused a collision between her car and Ms. Horne's;
3. The collision she caused directly and proximately led Ms. Horne to obtain medical services from a chiropractor over a period of several months;
4. The agreed-upon cost of those medical services was $ 1,055; and
5. Ms. Horne was entitled to recover $ 1,055 from Clapp as part of her negligence claim.

Entering a stipulation has serious implications for the parties and the court. Belue v. Fetner, 251 S.C. 600, 606, 164 S.E.2d 753, 755 (1968) ("When counsel enter into an agreed stipulation of fact as a basis for decision by the court, both sides will be bound by such agreed stipulation, and the court will not go beyond such stipulation to determine the facts upon which the case is to be decided"). Neither the parties nor the court may go beyond the stipulation to determine the facts. Independent Grain Dealers Marketing Ass'n, Inc. v. Beard, 284 S.C. 309, 312, 326 S.E.2d 169, 171 (Ct. App. 1985); Am. Sur. Co. v. Hamrick Mills, 194 S.C. 221, 9 S.E.2d 433, 438 (1940) ("the stipulations cannot be ignored but must be regarded to the extent that they admit or deny the facts alleged in the complaint").

That is not to say a stipulation is immutable. A party can attempt to abrogate a stipulation by either seeking written consent from other parties or asking the court to do so for good cause or in the interests of justice. Porter, 333 S.C. at 30-31, 507 S.E.2d at 337. However, a party is bound by a stipulation unless it asked for, and received, relief from its terms. Id. (citing Am. Sur. Co., 194 S.C. at 232, 9 S.E.2d at 438). Clapp never attempted to abrogate the stipulation published to the jury during her opening statement, and the causal connection between Clapp's poor driving and Ms. Horne's $ 1,055 became an established fact. Am. Sur. Co., 9 S.E.2d at 438 (quoting Brown v. Pechman, 55 S.C. 555, 33 S.E. 732, 735 (1899) ("Where neither of the parties has even asked to be relieved from the terms of the stipulations which they have formerly entered into, they must be held still bound by their agreement to admit the facts stated in the agreement"). Accordingly, the verdict form's first question was contrary to South Carolina law because, by asking whether

Clapp caused "any" damages, this question disregarded the stipulated fact that Clapp caused Ms. Horne to incur $ 1,055 in medical expenses.

Clapp has suggested that, despite the stipulation, events during the trial made her liability for Ms. Horne's chiropractor bills a genuine question for the jury. (Def.'s Mem. in Opp. to Mtn. for New Trial at 3-5). However, Clapp's trial conduct belies this argument. Clapp's attorney did not just announce the stipulation during opening statements, he unreservedly reaffirmed it during his closing argument. Ms. Horne's counsel had argued in his closing Ms. Horne's entitlement to $1,055 for the chiropractor expenses was undisputed. (Tr. 289, lines 14-15) ("The only part they do agree to is the $ 1,055"). Clapp's counsel did not object to that statement or refute it during his closing. Instead, Clapp's attorney made the following argument to jurors:

> We have stipulated that [Clapp] was negligent in causing the accident, and we've stipulated that that negligence caused [Ms. Horne] to have an injury to her back – her neck, and her back, and her arm, and it required her to go get treatment from the chiropractor, and that treatment went from four days after the accident [to] a little bit less than three months, two and a half months to the first of May, and the expenses for those treatments were $ 1,055. **In your award, include the $ 1,055**.

(Tr. 319, lines 1-9) (emphasis added). Nothing that happened during the substantive portion of the trial made Clapp any less sure that she was liable for Ms. Horne's chiropractor bills and that she owed Ms. Horne $ 1,055.

All of the witnesses, exhibits, or other evidence presented throughout the trial supported the stipulation. First, Ms. Horne told jurors what it was like inside her vehicle when Clapp struck her. Sitting at a dead stop, Ms. Horne's car was struck so hard from behind that it moved her entire car forward by at least half a car length. (Tr. 211, line 20 – 212, line 3). The force of the impact forced the back of Ms. Horne's car upward followed by a hard downward motion as the car

slammed back into the pavement. (Tr. 212, lines 6-9). Ms. Horne's seatbelt stopped her forward movement and forcefully pulled her back to the driver's seat. (Tr. 212, lines 10-11). Donald Horne, Ms. Horne's husband, inspected her vehicle a few hours after the collision. He testified that the hatchback was difficult to open but that, once inside, he saw the force of the collision had caused substantial frame damage to the vehicle. Photos of the mangled vehicle were also admitted into evidence. (Tr. 187, line 9, 22) (citing Pla. Exh. 5, 7). The sheer amount of damage made Mr. Horne worry about the severity of his wife's injuries from the collision. (Tr. 188, lines 3-13).

Ms. Horne consistently described for jurors how the collision harmed her. While she did not immediately feel severe pain, Ms. Horne attributed the delay to the shock of the collision. (Tr. 212, lines 14-18). Within 48 hours, she noticed soreness in her neck and pain in her lower back. (Tr. 212, lines 19-21). Ms. Horne started going to her chiropractor (Dr. Jessica Bradburn) more frequently to address her collision-related symptoms. (Tr. 212, lines 22-25). Dr. Bradburn also testified at trial both as Ms. Horne's treatment provider and as an expert in chiropractic medicine. (Tr. 108, lines 15-20). Dr. Bradburn acknowledged Ms. Horne was her patient prior to the collision for treatment of sciatic pain. (Tr. 117, lines 19-24). However, the post-collision treatment was not limited to sciatic issues but also to address pain in Ms. Horne's neck, upper back, and lower back. (Tr. 121, lines 11-13).

In her role as chiropractic medicine expert, Dr. Bradburn then testified Ms. Horne's presentation is exactly what would be expected under these circumstances. A rear-end collision forces the impacted vehicle's occupant forward and then suddenly backward when restrained by a seatbelt. (Tr. 115, lines 22-25). This creates a "whipping motion" to the body that causes swelling and inflammation around the joints. (Tr. 116, lines 1-9). For any person involved in this type of collision, Dr. Bradburn would expect to see just the type of neck and lower back issues Ms. Horne

experienced. (Tr. 121, lines 1-2). Moreover, it would not be unusual for the collision's deleterious effects to manifest a couple of days after the collision as they had for Ms. Horne. (Tr. 121, lines 8-10) ("it's going to take a couple of days before you'll feel all of those full effects"). Dr. Bradburn also reviewed her records for Ms. Horne's care during her testimony (Pla. Exh. 9) and described for jurors how she treated Ms. Horne for collision-related injuries through the middle of May 2018. (Tr. 126, lines 13-19). This care was effective, reasonable, and necessary to address the harms Ms. Horne suffered in the collision. (Tr. 126, line 20 – 127, line 16).

In light of this evidence, it is no surprise Clapp's attorney agreed to stipulate responsibility for Ms. Horne's chiropractic care. Any reasonable assessment of the evidence would have to conclude Clapp negligently caused the collision, the collision involved considerable force with substantial impact to Ms. Horne, and that Ms. Horne sought reasonable chiropractic care for pain she experienced after the collision that she did not suffer from beforehand. Clapp's attorney would further understand Ms. Horne's underlying sciatic issue and history of chiropractic care would not absolve Clapp from liability for collision-related injuries. See e.g. Raino v. Goodyear Tire & Rubber Co., 309 S.C. 255, 259, 422 S.E.2d 88, 100 (1992) ("The defendant takes the plaintiff as [s]he is found and the plaintiff is entitled to recover damages resulting from the aggravation of a pre-existing condition"). Thus, it is not reasonable for Clapp to argue the stipulation was somehow withdrawn during the trial or undermined by evidence presented as the trial progressed. Clapp's liability for the chiropractic care was just as plain when the jury received the case as it was when the stipulation was first announced. Clapp's counsel closing his presentation by telling jurors to award Ms. Horne money for the chiropractor bills is definitive proof the stipulation remained active and its pertinent facts continued to be established.

In sum, the circuit court erred as a matter of law in its formulation of the verdict form and in rejecting a proposed alternative from Ms. Horne that actually aligned with the issues in dispute. Contrary to South Carolina law, the circuit court submitted to jurors a verdict form built around an issue that had been settled by stipulation and further established by uncontested evidence at trial. Even Clapp's own attorney acknowledged multiple times on the record that Clapp's negligence proximately caused a portion of Ms. Horne's losses. In light of this legal error, Ms. Horne should be granted a new trial.

2. The circuit court erred in refusing to grant a new trial after the jury disregarded the court's instructions and returned a verdict foreclosed by stipulated facts and undisputed evidence.

In light of the stipulation and Clapp's in-trial admissions, the verdict form should have been limited to measuring the amount of damages Ms. Horne was entitled to recover. When the jury returned a verdict finding Ms. Horne suffered no collision-related losses, the circuit court erred again by denying Ms. Horne's motion for a new trial.

Pursuant to Rule 59, SCRCP, Ms. Horne moved for a new trial. The circuit court has authority to grant a new trial to correct legal errors and also if a verdict is contrary to the evidence. Both grounds for a new trial apply here. By finding Clapp did not cause "any" of Ms. Horne's alleged damages, the jury made a legal error requiring a new trial. Every jury has a duty to apply the law as instructed by the court. State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975) ("It is the duty of jurors to take the law from the court in the particular case on trial"); Towles v. Atl. Coast Line R. Co., 83 S.C. 501, 65 S.E. 638, 639 (1909) (stating "rule requiring the jury to render its verdict in accordance with the charge of the presiding judge"). A zero damages verdict shows this jury disregarded the circuit court's instructions on the effect of a stipulation. The jury was instructed that the stipulation Clapp's counsel announced during the trial was her "admission"

or "concession." (Tr. 335, lines 2-4). All of the admissions or concessions in the stipulation were "binding upon those who make them." (Tr. 335, lines 5-6). Crucially, the jury was charged that "[t]he Court and the jury must accept stipulations as binding upon the parties." (Tr. 335, lines 6-8). In practical terms, that meant that, for every fact included in the stipulation, the jury "will regard that fact as being conclusively proved." (Tr. 335, lines 8-11).

As discussed above, Clapp conceded in the stipulation that (1) she caused the collision; (2) Ms. Horne was required to obtain chiropractic care as a result of the collision; and (3) the cost of Ms. Horne's chiropractic care was $ 1,055. (Tr. 61, lines 20-25). The jury was required to regard all of these facts as conclusively proved against Clapp. The jury plainly failed to heed the circuit court's instructions. The jury could only answer "No" to Question No. 1 on the verdict form by disregarding at least one of these conclusively proved facts. Accordingly, the verdict was legally flawed, and the circuit court abused its discretion in denying Ms. Horne's motion for a new trial. Southeastern Mobile Homes, Inc. v. Walicki, 282 S.C. 298, 302, 317 S.E.2d 773, 775 (Ct. App. 1984) ("Where the jury renders a verdict in disregard of his charge, it is error for the judge not to grant a new trial").

Moreover, as this court has held, a trial court's duty "to see that justice is done" requires it to grant a new trial "if the evidence does not support the verdict." Ex Parte Travelers Home & Marine Ins. Co., 427 S.C. at 245, 830 S.E.2d at 721. South Carolina law imposes on a circuit court judge the duty to serve as a "thirteenth juror" who "possess[es] the veto power to the Nth degree" over a jury's verdict. Vinson, 324 S.C. at 402, 477 S.E.2d at 722 (citing Worrell v. S.C. Power Co., 186 S.C. 306, 313-14, 195 S.E. 638, 641 (1938)). A trial judge should use this power when it is evident justice is not served by the verdict. Sapp, 4052 S.C. at 513, 741 S.E.2d at 571. Awarding a new trial under the thirteenth juror doctrine is appropriate when the verdict was "contrary to the

fair preponderance of the evidence." Burke, 393 S.C. at 55, 710 S.E.2d at 88. A circuit court's refusal to award a new trial should be reversed on appeal when that decision was "wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law." S.C. State Hwy. Dep't v. Clarkson, 267 S.C. 121, 226 S.E.2d 696 (1976).

The circuit court's denial of Ms. Horne's motion for a new trial meets this standard. As discussed above, allowing a zero damages verdict to stand effectively undid the stipulation of liability for chiropractic expenses Clapp's counsel announced at the beginning of the trial. (Tr. 61, lines 20-25). That stipulation was binding and a verdict that contradicts it is not permitted by South Carolina law. Moreover, finding Ms. Horne suffered no damages from a clear liability read-end collision was not supported by any evidence at trial. Ms. Horne testified the collision involved substantial force and Mr. Horne (with the aid of pictures) described the frame damage from the impact. (Tr. 186-87; Tr. 211, line 20 – 212, line 9). Ms. Horne testified to new and different neck and low back pain she experienced after the collision and how a two month course of chiropractic care provided her relief. (Tr. 212, lines 19-25). Dr. Bradburn also described the care Ms. Horne received and, in her capacity as an expert witness, described how Ms. Horne's symptoms were typical for this form of collision and how all the care in question was necessary to address her symptoms. (Tr. 115-16; 121; 126, line 20 – 127, line 16). This testimony was further supported by records from Dr. Bradburn's office confirming $ 1,055 in bills Ms. Horne incurred for her chiropractic care. (Pla. Exh. 9).

Precedent shows this is precisely the type of situation where a new trial must be ordered. When liability is established and damages are proved, it is error to allow a contrary or insufficient verdict to stand. Toole v. Toole, 260 S.C. 235, 242, 195 S.E.2d 389, 392 (1973) (finding trial court erred in denying motion for new trial where liability was established and "uncontroverted facts

and circumstances . . . disclose . . . damages sustained . . . far in excess of the verdict). The current case is similar to Lane v. Gilbert Construction Co., Ltd., 383 S.C. 590, 599, 681 S.E.2d 879, 883 (2009), where the South Carolina Supreme Court affirmed that a new trial was warranted. In Lane, the jury awarded a premises liability plaintiff a small damage award that was less than his economic losses proved through uncontested evidence presented at trial. Id. at 598, 681 S.E.2d at 883 (discussing $ 75,000 verdict despite more than $ 90,000 in uncontested economic damages). As further support for granting a new trial, the Supreme Court cited defense counsel's statements during the trial acknowledging liability and responsibility for a portion of the plaintiff's losses. Id. at 599, 681 S.E.2d at 884 (noting defense counsel told jurors, "We are not contesting that [plaintiff] was injured" and "[h]e has undergone a lot of medical treatment"). As the attorney argued to jurors in Lane, the defense was focusing on contesting only a portion of the damages alleged. Lane shows that when a defendant launches a defense focusing on limiting (rather than opposing) a damages award, a verdict that comes in at less than the value of the damages the defendant conceded should not stand.

That principle supports a new trial here. Through a stipulation announced at the beginning of trial and in an argument at the end of trial, Clapp admitted breach of duty and admitted that breach proximately caused Ms. Horne to incur $ 1,055 in medical expenses. Clapp's attorney even explicitly told jurors Ms. Horne was entitled to a damages award in that amount. When the jury then returned a zero verdict, it acted contrary to the evidence and the parties' stipulation. The circuit court's ruling allowing this verdict to stand is at odds with South Carolina law. Accordingly, this court should set the jury's verdict aside and order a new trial. Vinson, 324 S.C. at 402, 477 S.E.2d at 722 (finding that a new trial is the appropriate remedy for the thirteenth juror doctrine because applying the doctrine means the trial is treated as if the jury never reached a verdict).

CONCLUSION

Based on the arguments above, Ms. Horne respectfully requests the court reverse the circuit court's ruling and grant a new trial. Per the parties' express and binding agreement, this was a conceded liability case by the time the trial began where the only contested issue was the amount, not the existence, of compensable damages. Both in crafting the verdict form and in considering Ms. Horne's post-trial motions, the circuit court disregarded the parties' stipulation, Clapp's in-trial admissions, and the uncontested evidence. A new trial is the only available remedy to address these errors of law.

Respectfully submitted,

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