

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Alex Kinlaw, Jr.  
Circuit Court Judge

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Case No. 2015-CP-10-02191  
Appellate Case Number 2023-000606

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Karrie Gurwood & Howard Gurwood ..... Respondents,

v.

GCA Services Group, Inc. & GCA Services Group of North Carolina, Inc. .... Petitioners.

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**BRIEF OF PETITIONERS IN SUPPORT OF  
WRIT FOR CERTIORARI**

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**Respondents**

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## **QUESTION PRESENTED FOR REVIEW**

- I. Did the Court of Appeals err in holding that the facts at trial supported a submission of gross neglect on the part of GCA to the jury?

## **STATEMENT OF THE CASE**

This appeal arises from a jury verdict in a suit brought by Karrie and Howard Gurwood (the “Respondents”) for negligence and loss of consortium (A. pp. 30-39). Karrie Gurwood alleged that she sustained injuries, including Complex Regional Pain Syndrome, “CRPS,” as a result of a slip and fall that occurred at Liberty Hill Academy, a school where she was employed, after the floors had been waxed. The Petitioners, collectively “GCA,” is a large janitorial services company contracted to provide those services at Liberty Hill Academy. GCA’s employee, Ms. Bonnie Every, waxed the floors prior to Mrs. Gurwood’s fall.

The case was tried beginning on April 22, 2019, and was given to the jury for consideration on April 26, 2019 (A. pp. 47-1128). The testimony was extensive, and a number of issues were disputed, including whether Ms. Every posted notices of the waxed floor, whether Mrs. Gurwood knew the floors were to be waxed before she arrived, whether she saw notices when she arrived, and the extent of Mrs. Gurwood’s claimed damages. During deliberations, the jury submitted three questions to the Court asking 1) for the charge on negligence; 2) asking whether Karrie Gurwood had filed a workers’ compensation claim; and 3) asking whether Karrie Gurwood would receive any recovery if she were found more than fifty percent (50%) negligent for her own injuries. (A. pp. 1105-1106). The Trial Court answered the questions by recharging the jury with the instruction for negligence, advising that whether a workers’ compensation claim had been filed was not material to their deliberations, and recharging them with the instruction

for comparative negligence, which indicated that any recovery would be barred if Karrie Gurwood was found to be more than 50% negligent. (A. pp. 1110-1120.)

After further deliberations, the jury returned a verdict and found GCA negligent and awarded Karrie Gurwood total damages of \$170,629.10, which represented her past medical bills (A. pp. 25-29). On the verdict form (A. pp. 22-23), the jury expressly declined to award Karrie Gurwood her damages for lost wages and benefits, declined to find in favor of Howard Gurwood's claims for lost consortium, and found that Karrie Gurwood was 50% at fault.

After the verdict was read, counsel for GCA asked the Trial Court to question the jury as to whether the jury had reduced their award to Karrie Gurwood by the percentage of Karrie Gurwood's fault (A. pp. 1122-1123). Without objection from Respondents' counsel, the Trial Court made the inquiry and the foreperson stated that the jury had not reduced the total damages awarded by 50%, explaining that the jury expected the Trial Court to reduce their award by 50% (A. pp. 1123-1124). The Trial Court advised that a 50% reduction in their award would result in a total award of \$85,314.55, which the foreperson advised was the total sum the jury intended to award Karrie Gurwood after taking into account her degree of fault. Judgment was then entered in the amount of \$85,314.55 (A. pp. 22).

On May 6, 2019, Respondents filed post-trial motions which were briefed by both Respondents and GCA. On or around June 5, 2019, the Trial Court denied the motions and requested that counsel for GCA prepare the order. On or around June 24, 2019, that order was circulated for review. On July 10, 2019, the Respondents notified the Trial Court that they would not submit a proposed order and on July 25, 2019, the Trial Court entered its order denying Respondents' post-trial motions. Respondents filed a notice of appeal on August 15, 2019 (A. pp. 4-21). On December 21, 2022, the Court of Appeals reversed and remanded the matter. *Karrie*

*Gurwood & Howard Gurwood v. GCA Services Group, Inc.*, Appellate Case No. 2019-001403 (Ct. App. December 21, 2022). The Court of Appeals reversed the Trial Court on the sole basis that the Trial Court had elected not to submit the issue of punitive damages to the jury. It then directed that the entire matter be remanded for a new trial. GCA then filed a Petition for Rehearing on January 17, 2023 (A. pp. 1669-1681), which was denied by Order dated March 17, 2023 (A. p. 1682).

GCA's Petition for Writ of Certiorari was filed on April 17, 2023. By Order dated February 7, 2024, this Court accepted certiorari as to Issue #1, which is:

- I. Did the Court of Appeals err in holding that the facts at trial supported a submission of gross neglect on the part of GCA to the jury?***

#### **STANDARD OF REVIEW**

“When reviewing a directed verdict, the Appellate Court will view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. The appellate court will reverse the circuit court’s ruling on a directed verdict motion only when there is no evidence to support the ruling or when the ruling is controlled by an error of law.” *Chalfant v. Carolinas Dermatology Group, P.A.*, 439 S.C. 372, 887 S.E.2d 1 (2023).<sup>1</sup>

#### **LEGAL ARGUMENT**

- I. The Court of Appeals Erroneously Concluded That the Facts at Trial Supported a Finding of Gross Neglect on the Part of GCA.***

After hearing the evidence in the case, the Trial Court ruled that the evidence did not support a finding of willful, wanton or reckless conduct on that part of GCA, and thus did not submit the issue of punitive damages to the jury (A. pp. 756-757). The Court of Appeals reversed the Trial Court’s decision not to submit the issue of punitive damages to the jury, erroneously

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<sup>1</sup> In the Petition filed April 17, 2023, the wrong standard of review was included. We have corrected that mistake here to reflect the standard of review that applies to this circumstance.

finding that the facts at trial, taken in the light most favorable to Gurwood, could have supported a finding of punitive damages.

In support, the Court of Appeals cited to certain facts from the trial, but, as it did in *Ralph v. McLaughlin*, 432 S.C. 640, 856 S.E.2d 154 (2021), the Court of Appeals erroneously concluded that the facts at trial could support a finding for punitive damages. To the contrary, as in *Ralph*, a review of the record leads to the opposite conclusion; that the facts at trial, as a matter of law, did not support submission of the issue of punitive damages to the jury.

In its review, the Court of Appeals recognized that to recover an award of punitive damages, the Respondents were required to prove that GCA was grossly negligent, by *clear and convincing evidence* in their actions. Punitive damages can be awarded “when a defendant’s acts have been willful, wanton or in reckless disregard of the rights of another.” *Fox v. Munnerlyn*, 283 S.C. 490, 493, 323 S.E.2d 68, 69 (Ct. App. 1984). “The purpose of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future.” *Wimberly v. Barr*, 359 S.C. 414, 423, 597 S.E.2d 853, 858 (Ct. App. 2004) (citing *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000)).

The submission of punitive damages to a jury, by law, requires greater scrutiny than simple negligence. South Carolina has adopted a statutory framework for punitive damages, §15-32-520, which calls for a higher burden of proof, clear and convincing evidence, in order to entitle a party to an award of punitive damages. S.C. Code Ann. § 15-32-520(D) (2011). “Clear and convincing evidence” has been defined as:

[That]degree of proof which will produce in the [fact finder] a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal.

*Satcher v. Satcher*, 351 S.C. 477, 483, 570 S.E.2d 535, 538 (Ct. App. 2002).

In recognition of the higher burden of proof, and the unique nature of punitive damages, §15-32-520(F) gives the trial court a gate-keeping role with respect to the issue of punitive damages. That section provides:

*If punitive damages are awarded, the trial court shall review the jury's decision, considering all relevant evidence, including the factors identified in subsection (E), to ensure that the award is not excessive or the result of passion or prejudice.*

The Trial Court ruled correctly that Respondents failed to introduce evidence that would have supported a punitive damages award. The evidence at trial established that this was a simple negligence case, with each party offering differing testimony on the two key issues related to liability. From a liability standpoint, the first issue in trial was whether or not Ms. Every placed signs warning of a wet or just waxed floor. She claims she did, while Mrs. Gurwood denied seeing any signs. Implicitly, the jury answered the first question “no” since they found GCA was negligent. The second issue was whether or not, regardless of the answer to the first question, Mrs. Gurwood was on notice of the wet, just waxed floors when she chose to encounter them. The jury answered the second question, “yes,” finding that Mrs. Gurwood and GCA were equally at fault.

In reversing the Trial Court, the Court of Appeals correctly recognized that there was conflicting testimony concerning whether or not wet wax signs were put up by Ms. Every, whether they were seen by Mrs. Gurwood and whether or not Mrs. Gurwood heard an announcement made by Ms. Jamme (the school principal) concerning the waxing that was to take place the next day (a weekend). Then, the Court of Appeals took those disputed facts in the light most favorable to Mrs. Gurwood, noting that Mrs. Gurwood testified at trial that she did not

see warning signs placed by Ms. Every, or hear announcements made by the school the day before by Ms. Jamme.

The holding by the Court of Appeals was in error because, even if the above facts are true, none of those facts support any inference of reckless conduct on the part of GCA. Instead, those facts merely relate to whether or not Mrs. Gurwood was on notice and was herself negligent. Mrs. Gurwood's lack of awareness does not support a finding of reckless conduct by GCA.

In reversing the Trial Court, the Court of Appeals also cited to the fact that Ms. Every (GCA's employee), (1) admitted waxed floors were a safety hazard and (2) that signage was important. However, while Ms. Every testified that waxed floors could be dangerous, she also testified that she placed signs warning of the waxed floors. Whether the signs were placed or not, Ms. Every testified that she was aware of the danger of waxed floors and placed signage to warn of that danger (A. pp. 213-300). No recklessness or conscious disregard of the safety of Mrs. Gurwood can be inferred from those facts. (Had Ms. Every testified she knew of the danger and, for some reason, intentionally, wantonly or recklessly ignored that risk, that evidence may have given rise to an inference that would support punitive damages. However, that was *not* the testimony at trial.) There is nothing from any of this testimony that would support a finding of recklessness, wantonness or willfulness by Ms. Every or GCA, especially not to a clear and convincing evidence standard.

The error by the Court of Appeals in this case is very similar to the error made by the Court of Appeals in *Ralph*. In that case, claims were brought against the McLaughlins by Ralph for wrongfully removing a drainage pipe. The Trial Court directed verdict on the Ralph's punitive damages claim, finding that the McLaughlins had relied on an easement in question in

that case, and that their actions to remove the drainage pipe did not “rise to the level of punitive damages.” *Id.*, 432 S.C. 640, 647, 856 S.E.2d 154,157 (2021). The trial judge’s ruling was overturned at the Court of Appeals, which held:

In ruling that a directed verdict was justified, the circuit court indicated it did not think the McLaughlin’s were acting recklessly or intentionally because it found the McLaughlin’s reasonably believed they had the right to remove the pipe. The court stressed that it did not “think [the McLaughlin’s were] acting malevolently, *certainly not to the level of clear and convincing ....*” (emphasis added). In so ruling, we find the circuit court invaded the jury’s province by improperly weighing the evidence.

The Supreme Court reviewed that case and found that the Court of Appeals applied the correct standard but that they had misconstrued the facts, just as the Court of Appeals has done in the case at hand. In reversing the Court of Appeals, the Supreme Court stated, “it is undisputed that over the course of six years, [the McLaughlin’s] took a series of good-faith steps in dealing with SIPOA and their neighbors in an attempt to resolve the drainage pipe dispute.” *Id.*, 432 S.C. 640,651, S.E.2d 154, 159 (2021). The court went on to say, “the suggestion that removing the drainage pipe under these circumstances established clear and convincing evidence of petitioners’ malicious intent to invade respondents’ right was not merely speculation, but absurd.” *Id.* 432 S.C. 640, 651, S.E.2d 154, 160 (2021).

As it did in the *Ralph* case, the Court of Appeals cited the standard for an award of punitive damages then simply misconstrued the evidence in the case as providing support for a punitive damages award. By only applying the standard of review applicable to a simple negligence claim to a decision not to submit the issue of punitive damages to the jury, the Court of Appeals treats the issue of punitive damages no differently than simple negligence. In this case, just as noted by the Supreme Court in *Ralph*, a review of the facts makes it crystal clear, just as it was to the Trial Judge, that this slip and fall case was not a punitive damages case

because there was no evidence in the record that would have supported a finding of willful, wanton or reckless conduct on the part of Ms. Every or GCA, which the jury's verdict also clearly illustrated.

### **CONCLUSION**

For the foregoing reasons, GCA respectfully requests that the Supreme Court reverse holding of the Court of Appeals in Unpublished Opinion 2022-UP-462 and hold that the Trial Court's granting of a directed verdict was not in error and affirm the Trial Court's decision.

Respectfully submitted,

*s/Robert T. Lyles, Jr.*

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