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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr.
Circuit Court Judge

Appellate Case Number 2023-001308

Jane E. Vohringer,..... Appellant,

v.

Robert C. Watford, ... Respondent.

APPELLANT'S FINAL REPLY BRIEF

HOPKINS LAW FIRM, LLC

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ARGUMENT

I. Contrary to Respondent's arguments, Appellant specifically objected to Respondent's expert witnesses' reliability.

In his initial brief, Respondent alleges that "[i]nitially, Appellant failed to object as to the reliability of the evidence supplied by Respondent's experts." (Resp. Br. 6-7). Respondent went on to state "Appellant's failure to object to the reliability of Mr. Paradiso's testimony constitutes a complete waiver." (Resp. Br. 7). Respondent's brief is as reliable as his expert witnesses'. In fact, Appellant filed a motion *in limine* specifically objecting to the reliability of Respondent's experts. (R. pp. 018 – 023). Additionally, Appellant repeated his objections at the time each witness was admitted. Therefore, contrary to Respondent's arguments, Appellant specifically objected to Respondent's expert witnesses' reliability.

II. Respondent cites no precedent to support the reliability of his experts' methods.

Incredibly, Respondent states that Mr. Paradiso "provided the jury with many exhibits showing his calculations and methodology." However, Respondent fails to cite anything in the Record where Mr. Paradiso did the same. In fact, the exhibits entered were simply graphs Mr. Paradiso claimed reflected his calculations. Repeatedly, Appellant's counsel requested his calculations and formulas to show the jury how he obtained his delta-v figures. Repeatedly, Mr. Paradiso failed to answer.

In fact, Respondent points out the exact issue where Mr. Paradiso's methodology failed – without showing the jury the starting speed in his delta-v calculation, his result, without more, essentially tells the jury the speed of the vehicles does not matter, because it is **only** the change in vehicle's speed that matters. (*See* Resp. Br. 10). But that is exactly

what Mr. Paradiso failed to provide. His “methodology” was not calculating the vehicles’ speeds; rather, it was looking at pictures of Appellant’s vehicle’s damage against damage from an IIHS crash test. Looking at those pictures, he estimated the damage to Appellant’s vehicle, and compared that to the known delta-v of the IIHS crash test. To specifically address quality control, Appellant’s counsel repeatedly asked Mr. Paradiso to tell the jury where the key figures for his data – certain vehicle structures – “failed” so that he could determine how Mr. Paradiso came up with his “estimated” force figure.

But all Mr. Paradiso knew was those structures “failed” at the measured distance in the IIHS crash test. In essence, instead of trying to determine how close his figure was to the true measure of when those structures may have failed – say, for example, 8 inches – Mr. Paradiso simply picked an energy figure he believed represented the 6 inches he measured in his own test.

More importantly, though, was that Mr. Paradiso could not rule out the possibility the windshield washer reservoir “failed” at, say, 6.1 inches. All he knew was it was not damaged at 6 inches, and “failed” at 17 inches. But certainly, it is easy to see that if the reservoir failed at 6.1 inches, and Mr. Paradiso substantially decreased his energy calculation because he only believed it failed at 17, that Mr. Paradiso’s calculations and measurements would not be reliable.

That is not reliability under the *Council* factors. The only measure to control the quality of the figure and ensure its reliability was Mr. Paradiso’s eye, and he provided no evidence that his method would result in consistently with recognized scientific laws and procedures. Respondent also failed to point the Court to any publication or peer review of that technique, or any prior publication of the method to the type of evidence involved

in this case. That is what is key – not that Mr. Paradiso repeatedly touted his own measurements and qualifications. For those reasons, Respondent's brief fails to point the Court to any testimony and/or evidence of Mr. Paradiso's testimony being reliable, and the trial court's admission of him should be reversed.

III. Respondent admits he never requested bifurcation.

The decision to bifurcate is not discretionary, and instead is mandated by S.C. Code Ann. § 15-32-520(A), which states that "[a]ll actions tried before a jury involving punitive damages, if requested by any Respondent against whom punitive damages are sought, must be conducted in a bifurcated manner before the same jury." Here, Respondent never requested bifurcation. Respondent fails to point the Court to anywhere in the record where he requested bifurcation. Nor does he address the Court's early termination of the trial. *See Sandel v. Cousins*, 266 S.C. 19, 221 S.E.2d 111 (1975) (citing *Jones v. Atlantic Coast Line R. Co.* 108 S.C. 217, 94 S.E. 490 (1917)).

IV. Respondent fails to address the undisputed medical evidence.

Respondent claims Appellant got what she wanted by forcing Respondent's counsel to answer the damages question. While that may be tongue-in-cheek, Respondent's counsel should know that does not permit him wide discretion to refer to evidence outside the record. However, his attempt at humor insinuates that is exactly what is permissible by counsel in this State during closing arguments. In fact, Respondent admits he merely "suggested" a number that seemed 'reasonable' to him. (Resp. Br. 15). The jury's request to see the emergency room bill was simply a coincidence since Respondent's counsel did not tell them the exact figure – just something close to the real thing.

Based on the foregoing, the jury's verdict was inadequate in light of the evidence presented at trial and was clearly influenced by opposing counsel's improper reference to evidence not in the record. Therefore, Appellant is entitled to a new trial nisi additur.

CONCLUSION

For the reasons stated, this Court should reverse the July 18, 2023 decision of the Court of Common Pleas, and remand this matter back to the Court of Common Pleas for an opinion consistent with these arguments.

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