

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENWOOD )

IN THE COURT OF COMMON PLEAS  
C.A. NO.: 2022-CP-24-00431

TRACY CAMPBELL and )  
DANIEL CAMPBELL, )

Plaintiffs, )

vs. )

BRIAN KEITH NEWMAN and )  
KIMBERLY NORMAN, )

Defendants. )

**ORDER DENYING PLAINTIFFS' MOTION  
FOR NEW TRIAL *NISI ADDITUR* OR NEW  
TRIAL ABSOLUTE**

**RECEIVED**

**Mar 28 2024**

**SC Court of Appeals**

This matter comes before the Court pursuant to Plaintiffs' Motion for a New Trial *Nisi Additur* or a New Trial Absolute. After having reviewed the Memorandums by the parties', hearing arguments from counsels and having recollected the occasion, this Court respectfully denies the Motions. There is no evidence in the record, nor is there any anecdotal evidence, showing that the jury's verdict in this case was inadequate.

**Motion for New Trial *Nisi Additur***

A trial judge may grant a new trial *nisi additur* when a jury's verdict is inadequate. *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d (1995). However, to grant such relief, the trial judge must state compelling reasons for invading the province of the jury. *Krepps v. Ausen*, 324 S.C. 597, 607, 479 S.E.2d 290, 295 (Ct. App. 1996). "When a party moves for a new trial based on challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 520, 431 S.E.2d 557, 558 (1993). The test employed by the Court in determining whether to set aside a verdict on the grounds of either excessiveness or inadequacy is whether the verdict is so shocking as to manifestly show the jury



was moved by considerations not found on the evidence and/or the instructions of the trial judge. *Toole v. Toole*, 260 S.C. 235, 195 S.E.2d 389 (1973). In the case at bar, the jury's verdict is not inadequate in light of issues related to proximate cause and the believability and credibility of the witnesses.

In this case, the jury sat for roughly two to three days listening to the evidence and arguments presented by the parties. The medical bills for co-plaintiff Tracy Campbell were \$57,272.52 and co-plaintiff Tracy Campbell did not lose any wages as she used sick time, disability, and there was no request for reimbursement for the sick time. While it is never possible to know for sure what the jury was thinking, it appears that, the jury did not believe that there was a valid claim for Loss of Consortium for co-plaintiff Daniel Campbell. The jury's verdict was \$50,000.00 awarded to co-plaintiff Tracy Campbell and no award to co-plaintiff Daniel Campbell for the Loss of Consortium. Plaintiffs claim that this verdict is inadequate because it did not award anything for co-plaintiff Tracy Campbell's pain and suffering, future pain and suffering, mental suffering or permanency or discounting those damages. This Court finds that the verdict is not grossly inadequate based on the testimony and evidence presented at trial. Furthermore, the verdict was not grossly inadequate or excessive so as to shock the conscience of this Court. Additionally, there is no indication that the verdict reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives.

Proximate cause and the believability and credibility of witnesses were questions of fact for the jury to decide in this case. The jury was called on to decide the believability and credibility of each witness that testified. It is reasonable to believe that the jury considered the total special damages claimed by the plaintiffs, the believability and credibility of plaintiffs' testimony, the credibility of co-plaintiff Tracy Campbell's expert testimony, the credibility of the co-defendant

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Brian Keith Newman, the pre-existing medical conditions and gap in co-plaintiff Tracy Campbell's medical treatment, to arrive at its verdict of \$50,000.00. The defense argued from the beginning of the trial that a substantial portion of the plaintiff's treatment costs were not related to this accident. Evidently, the jury agreed with this argument and proximate cause.

Regarding a punitive charge, the Court ruled, and continues to maintain, that insufficient evidence was presented by the plaintiffs that the defendant's actions at the time of this accident were "willful, wanton, or reckless". As such, the Court denied the plaintiff's request for a punitive charge and continues to maintain that not charging the jury on the punitive claim was proper.

In addition, the Court ruled, and continues to maintain, that other allegations of failing to allow other matters into evidence cited in the plaintiff's Memorandum for a New Trial were proper and clearly within the sole discretion of the trial judge.

Further, regarding the plaintiff's claim that the jury's verdict was insufficient regarding the plaintiff's Loss of Consortium claim appears to have been supported by the facts presented.

Taking all of the foregoing facts and circumstances into consideration, this Court finds that the jury's verdict was not inadequate or insufficient. Therefore, plaintiffs' Motion for a New Trial *Nisi Additur* is denied.

### **Motion for New Trial Absolute**

A trial court may grant a new trial; however, the jury's determination of damages is entitled to substantial deference. *Rush v. Blanchard*, 310 S.C. 375, 426 S.E.2d 802 (1993). This Court must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the Court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. *Krepps v. Ausen*,

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324 S.C. 597, 607, 479 S.E.2d 290, 295 (Ct. App. 1996). It is the duty of this Court to sustain verdicts when a logical reason for reconciling them can be found. *Daves v. Clearly*, 355 S.C. 216, 231, 584 S.E.2d 423, 430 (Ct. App. 2003). A jury's verdict should be affirmed if it is possible to do so and carry into effect the jury's clear intention. *Daves*, 355 S.C. at 234; 584 S.E.2d at 432. For the reasons stated above, this Court finds that jury's verdict was not grossly inadequate in light of issues related to proximate cause and the believability and credibility of the witnesses.

**NOW, THEREFORE**, the plaintiffs' Motion for a New Trial *Nisi Additur* and/or a New Trial Absolute is denied.

**AND IT IS SO ORDERED.**



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The Honorable Donald B. Hocker  
Circuit Court Judge  
Eighth Judicial Circuit

Greenwood, SC  
January 29, 2024

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