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SC Court of Appeals

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
Cassiopia Rhoads, Plaintiff,	)	Civil Action No.: 2020-CP-02-02238
vs.	)	
Aiken County Sheriff's Office, Defendant.	)	**ORDER RELATING TO POST-TRIAL MOTIONS**

This matter comes before the Court via post-trial motions filed by both parties. In accordance with S.C. Code Ann. § 15-35-400 and Rules 36, 37(c), and 68 of the South Carolina Rules of Civil Procedure, Plaintiff seeks an award of interest and costs stemming from her prior, unaccepted Offer of Judgment ("OOJ"), which was filed in this matter on March 31, 2022. In accordance with and Rule 37(c) of the South Carolina Rules of Civil Procedure and relating to requests to admit that the Defense denied, Plaintiff also requests the Defendant be directed to pay the expense Plaintiff incurred in having Dr. Edward C. O'Bryan testify at the trial of this case. As discussed below, Plaintiff's motions are granted.

Plaintiff's motion for the Court to take judicial notice of multiple occurrences under the South Carolina Tort Claims Act (TCA), S.C. Code Ann. §15-78-10 *et seq.*, and Defendant's motions for new trial and JNOV pursuant to Rules 50(b) and 59(a) SCRCP are denied.

Defendant's motions to reduce the verdict pursuant to the TCA cap on damages and for a set-off will be addressed via separate order.

I. <u>Plaintiff's Offer of Judgment</u>

On March 31, 2022, Plaintiff filed an Offer of Judgment to Defendant in the amount of $250,000.00. Defendant did not accept the Offer of Judgment. The case proceeded to trial the week of October 9, 2023. On October 13, 2023, an Aiken County jury rendered a verdict finding one or

more employees of the Defendant Aiken County Sheriff's Office had been grossly negligent and, through such acts and omissions, proximately caused injury to Plaintiff. The jury awarded $950,000.00 in actual damages. Thus, by a total of $700,000.00, the verdict vastly exceeded the Offer of Judgment that Plaintiff filed more than a year and half earlier.

In South Carolina, the authority for offers of judgment arises from both statutory law and the South Carolina Rules of Civil Procedure. S.C. Code Ann. § 15-35-400(B) provides:

> **Consequences of Non-Acceptance.** If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment;

Rule 68(b), SCRCP provides in relevant part:

> If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: .... (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment ....

Neither Rule 68, SCRCP nor S.C. Code Ann. § 15-35-400 address government entities at all, and the plain and unambiguous terms require costs and interest to be added to the verdict in this case. "There is a basic presumption that the legislature has knowledge of previous legislation as well as judicial decisions construing that legislation when later statutes are enacted concerning related subjects." Whitner v. State, 328 S.C. 1, 6 492 SE2d 777, 779 (1997). Further, "When statutory terms are clear and unambiguous on their face, there is no room for construction and courts must apply the statute according to its literal meaning." Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 SE2d 177, 179. (1994). "Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's

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operation." Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988); State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

Recently, in Garrison v. Target Corp., 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022) the Supreme Court found that both the rule and the statute expressly provide for a party to recover eight percent on the entire amount of the recovery. In reaching this decision, the Court recognized the unique posture of an offer of judgment and its underlying aims of promoting fairness and reasonable compromise without a trial. Id. Thereby, solidifying the administrative and mandatory nature of awarding the offer of judgment penalty in this context. Id.

In contrast to Defendant's argument, that "S.C. Code Ann. §15-35-400 is not applicable to Tort Claims Act cases," the Plaintiff presented the Court with a summary, taken from the online public indexes, demonstrating many of South Carolina's governmental entities, themselves, routinely file offers of judgment pursuant to S.C. Code Ann. §15-35-400 and Rule 68 SCRCP.

Further, the right of a party to such interest "is not affected by rights of discount or, offset claimed by the opposing party." Butler Contr., Inc. v. Court St., LLC, 369 S.C. 121, 134, 631 SE2d 252, 259. (2006). Therefore, any offset or reduction due to statutory cap on damages or offsets from the settling co-defendants does not affect the Plaintiff's right to OOJ interest. The interest is calculated on the verdict amount, but the amount of the judgment.

Plaintiff's Offer of Judgment to Defendant was filed on March 31, 2022, and expired on April 20, 2022, while the settlement with the medical defendants did not occur until mediation in July of 2023. Thus, at the time the Offer of Judgment expired, Defendant did not know that there would ever be a set-off and could not have factored the set-off into its decision to reject the offer of judgment. Additionally, Plaintiff did not have the benefit of any proceeds from the settlement with the medical defendants until many months later. Given that the plain language of Rule 68

and S.C. Code Ann. §15-35-400 speaks only to "the amount of the verdict or award," it would appear the design of both the rule and the statute is to encourage litigants to accept settlement offers and/or demands.

Pursuant to the aforementioned statute and the rule of civil procedure, Plaintiff is entitled to an award of eight percent (8%) interest on the $300,000 judgment (as discussed in a separate order, the judgment entered will reflect the cap set forth in the SCTCA), calculated from the time period running from March 31, 2022 to present, which equals **$37,478.40**. Plaintiff is also entitled to recover "administrative, filing, or other court costs" as provided in Rule 68 SCRCP, from March 31, 2022 to present. An itemization of Plaintiff's administrative, filing, or other court costs was attached as an exhibit to Plaintiff's motion and demonstrated this amount to total **$16,056.83**.

I find that the Plaintiff's motion for an award of interest and costs stemming from her April 8, 2022 filed *Offer of Judgment* is granted. The Court hereby awards **$53,535.23** in interest and costs (the sum of the aforementioned $37,478.40 and $16,056.83 amounts) be assessed to the Defendant, in addition to and separate and distinct from the final jury award following any set-off from other settling defendants and/or reduction pursuant to the caps set forth in the TCA.

II. Costs for Dr. O'Bryan's Testimony

Plaintiff moves this Court for an Order awarding reimbursement of the costs incurred in having to prove facts denied by the Defense in its response to two of Plaintiff's requests for admission (RFAs). More specifically, Plaintiff seeks an award of costs for having to bring Dr. Edward C. O'Bryan to trial to testify as to causation. Via RFAs submitted pursuant to Rule 36, SCRCP, Plaintiff asked the Defendant to admit facts speaking directly to causation, which the Defendant denied via responses dated November 29, 2021. Those requests and the Defense's responses were:

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> **RFA NO. 1:** Admit that, more likely than not and considering all of the information now available, Cassi Rhoads was suffering from an infectious mass on the right side of her head during at least some of the time of her detainment at the Aiken County Detention Center in May and early June of 2019.
>
> **RESPONSE #1:** Denied. The Plaintiff was diagnosed at Aiken Regional Medical Center with Osteomyelitis with subgaleal and epidural abscesses.
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> ---
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> **RFA NO. 6:** Admit that a delay in the diagnosis and treatment of an infectious mass on the right side of Cassi Rhoads' head proximately caused injury to Cassi.
>
> **RESPONSE #6:** Denied.

As a result of those denials, it was necessary for the Plaintiff to litigate causation and to present Dr. O'Bryan as an expert witness at trial. Dr. O'Bryan's trial testimony, which was uncontradicted, demonstrated the truth of the matters presented in both of the requests for admission cited above. This is directly supported by the jury's verdict, which specifically found that Defendant's gross negligence proximately caused the Plaintiff's injury. Having presided over the trial and the evidence presented, the Court finds that the verdict in Plaintiff's favor necessarily indicated the jury determined: (1) Plaintiff was suffering from an infectious mass on the side of her head during at least some of the time of her detainment at the Aiken County Detention Center in May and early June of 2019; and (2) a delay in the diagnosis and treatment of an infectious mass on the side of Plaintiff's head proximately caused injury.

Rule 37(c), SCRCP (*with emphasis added*) provides:

> **Expenses on Failure to Admit.** If a party fails to admit the genuineness of any document **or the truth of any matter as requested under Rule 36**, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. **The court shall make the order** unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the

failure to admit.

As an exhibit to her motion, Plaintiff presented an invoice from Dr. O'Bryan showing the Plaintiff having incurred a $6,000 expense in order to have Dr. O'Bryan testify at trial.[1] Having presided over the trial, thus being aware of Dr. O'Bryan's experience and education, and having seen the effectiveness of his testimony, I find Dr. O'Bryan's hourly rate of $400/hour and time spent in this matter to be fair, reasonable, and commiserate with his knowledge, experience, education, and the apparent time he put into his work as an expert witness in this matter. I find that the cost of his trial testimony (the $6,000 invoice) was a reasonable expense flowing from the Defendant's failure to admit the two above-cited requests to admit regarding causation. I also find that the Plaintiff sufficiently demonstrated the truth of the two requests for admission regarding causation.

I further find that, pursuant to Rule 37(c), SCRCP, the Plaintiff is entitled to an award reimbursing her for these expenses. As such, I find that the Plaintiff is entitled to an order directing the Defense to pay $6,000.00 to reimburse her the expense resulting from the Defendant's denial of the above requests for admission.

III. Judicial Notice of Multiple Occurrences

Plaintiff's motion for the Court to take judicial notice of multiple occurrences pursuant to the TCA is denied.

IV. Defendant's Motions for a New Trial and JNOV

Defendants motion for a judgment notwithstanding the verdict (JNOV) and/or new trial absolute pursuant to Rules 50(b) and 59(a), SCRCP are denied.

[1] In fact, Dr. O'Bryan's invoice totaled $8,042.60, but indicates that, as a courtesy, he reduced the fee charged down to $6,000.00.

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When a verdict is reached, the finding of the jury will not be disturbed unless the record fails to disclose any evidence which reasonably supports the jury's verdict. Hutson v. Cummins Carolinas, Inc., 280 S.C. 552, 556 314 SE2d 19, 22. (Ct. App. 1984).

"In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt." Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 429-430, 314 S.E.2d 439, 440. (1994).

After extensive oral argument from both sides, during trial, the Court ruled that a duty was owed the Plaintiff by the Defendant and subsequently charged the jury with that duty by explaining that "Aiken County Sheriff's Office has a duty to safely confine, supervise and maintain the custody of inmates," before further charging the jury on "Affirmative Defenses" and "Governmental Immunity," explaining to the jury that the Defendant was entitled to the affirmative defense of sovereign immunity and could only be held liable under the S.C. Tort Claims Act "for acts of gross negligence." *See* Charge to Jury, "Duty Owed to Plaintiff" and "Governmental Immunity." Those charges were based in part on S.C. Code Ann. §24-5-10 and S.C. Code Ann. §15-78-60(25). The high burden of proving gross negligence with regard to confining, supervising and maintaining the custody of inmates was thoroughly and properly explained to the jury.

Defendant's jail administrator contradicted Defendant's arguments about the duty Defendant owed the Plaintiff. The jail administrator testified that the Defendant would owe an inmate like the Plaintiff a duty to act, regardless of the inmate being treated by medical staff, if there was something external that was blatantly obvious.

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The Plaintiff presented evidence through multiple witnesses (many of whom were the Defendant's own employees/agents) and numerous exhibits, through which the jury could reasonably find that the Defendant had breached its duty to the Plaintiff in a grossly negligent manner.

IT IS SO ORDERED!

<judicial e-signature and date on page following>

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Aiken Common Pleas

Case Caption: Cassiopia Rhoads VS Southern Health Partners Inc , defendant, et al

Case Number: 2020CP0202238

Type: Order/Other

It is so ordered

Eugene C. Griffith, Jr. 2154

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