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.

REPLY BRIEF

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REPLY ARGUMENT

1. **Ms. Horne preserved her verdict and verdict form challenges by making specific, timely trial objections and following the Rule 59, SCRCP procedure for seeking a new trial.**

Clapp devotes over half of her argument to issue preservation, and three-fourths of that is allotted to challenges Ms. Horne does not even attempt. There is a recurring pattern in Clapp's preservation discussion. She recasts Ms. Horne's appeal as something that it is not and then chides Ms. Horne for not raising sooner a point she is not making now. Clapp's Argument 1(b) is a perfect example. Clapp insists Ms. Horne's verdict and verdict form arguments actually challenge the jury instructions, and the Court should not reach their merits because Ms. Horne did not object to the instructions. (Resp't Br. at 8-12). Clapp also claims Ms. Horne's pursuit of a new trial came too late by falsely labeling her appeal as a challenge to an "inconsistent" verdict. (Resp't Br. at 5-8). Clapp even raises a preservation challenge to Ms. Horne seeking relief under Rule 50(b), SCRCP, even though that rule appears nowhere in Ms. Horne's brief. (Resp't Br. at 17-18). The truth is Ms. Horne raised timely and specific objections to the disputed verdict form and followed Rule 59, SCRCP's provisions on the time and manner for seeking a new trial. In short, Clapp's arguments should be rejected because a respondent cannot manufacture a preservation issue by twisting her opponent's appeal into something that it is not.

   a. **The jury's flawed verdict was not internally "inconsistent," and Ms. Horne was not required to ask the circuit court to resubmit the matter to the jury.**

Clapp first argues Ms. Horne's pursuit of a new trial came too late because the jury had been dismissed before she filed her post-trial motion. (Resp't Br. at 6-8). However, Clapp overlooks the plain language of Rule 59, SCRCP, the rule governing new trials. That rule calls for a motion for a new trial to be filed "after the jury is discharged." Rule 59(b), SCRCP. The aggrieved party must act promptly after the jury is released but can, at the circuit court's discretion,

file a motion for new trial up to ten days after receipt of written notice of the entry of judgment. Id. Shortly after the verdict was entered on June 23, 2023, and the jury was excused from the courtroom, Ms. Horne's counsel requested ten days to file post-trial motions at a later date. (R. p. 352, lines 22-23). The circuit court granted that request. (R. p. 352, lines 24-25). Seven days later (June 30, 2023), Ms. Horne filed her motion for a new trial. (R. pp. 425-31). Therefore, Ms. Horne's challenge to the verdict was properly preserved as she assiduously adhered to Rule 59(b)'s provisions on the time and method for seeking a new trial.

There is one instance where a post-trial motion must be made before the jury is discharged. A party challenging a "facially inconsistent" verdict must make her motion before the jury is discharged. Stevens v. Allen, 336 S.C. 439, 449, 520 S.E.2d 625, 630 (Ct. App. 1999). This timing limitation is imposed as a practical matter because, when the verdict is inconsistent, the jury's meaning is unclear from its answers and that same jury must take further action to clarify its intentions. Ex Parte Travelers Home & Marine Ins. Co. v. Stringfellow, 427 S.C. 238, 242, 830 S.E.2d 718, 720 (Ct. App. 2019) (limiting requirement to file before jury's discharge to motions that "seek[] to correct or clarify an inconsistent verdict"). In other words, for facially inconsistent verdicts, the remedy an aggrieved party seeks is resubmission of the issue to the same jury and not a new trial.

"Facial inconsistency" covers a relatively narrow swath of jury verdicts where one of the jury's answers on a verdict form suggests one outcome and another answer would support a contrary outcome. For example, in Stevens, the jury answered one interrogatory by stating a defendant breached a legal duty and proximately caused the plaintiff's injury. 336 S.C. at 449, 520 S.E.2d at 630. Yet, the jury answered a later question by awarding the plaintiff zero damages from that defendant. Id. ("The jury found the negligence of the defendant proximately caused [the

plaintiff's] injuries, but failed to award any damages. This is facially inconsistent."). Similarly, in Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427, 428-29 (1995), a jury answered two questions in an inconsistent manner—they first found liability on a nuisance claim but then awarded the aggrieved property owner zero damages.

For the verdict in this case to be facially inconsistent, the jury would have needed to answer Question No. 1 in the affirmative and awarded zero damages in Question No. 2 or answered Question No. 1 in the negative while purporting to award damages in Question No. 2. Simply answering "no" to Question No. 1 and ending deliberations is not an inconsistent verdict. Ms. Horne does not challenge the verdict as being facially inconsistent but rather as being at odds with stipulated/admitted facts, the circuit court's jury instructions, and the evidence presented during trial. (R. pp. 428, 430-31) (App.'s Br. at 14-17). The remedy for those alleged errors is not resubmission but an entire new trial. Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("a trial court may grant a new trial if the judge determines the jury's verdict is contrary to the fair preponderance of the evidence"); 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").

In sum, Clapp's challenge to the timing of Ms. Horne's motion for new trial confuses the type of challenge she raises to the jury's verdict. A motion before the jury is discharged is required only for an "inconsistent" verdict that requires resubmission and further deliberations to decipher the jury's intention. Since Ms. Horne's challenges to the verdict are on different grounds, her

motion is governed by the unambiguous language of Rule 59(b), her June 30, 2023 motion for a new trial was timely, and the issue is preserved for this Court's review.[1]

b. Ms. Horne was not required to object to a jury charge her appeal does not challenge.

Clapp's second preservation argument takes a strange tack. She recasts Ms. Horne's appeal as a challenge to the circuit court's jury charge and then faults Ms. Horne for failing to raise this hypothetical argument below. (Resp't Br. at 8-12). But, Ms. Horne does not (and need not) challenge the jury charge to reach the errors in the circuit court's rulings. Accordingly, the Court should reject Clapp's attempt to twist Ms. Horne's appeal into an unpreserved issue.

Clapp argues the circuit court's negligence charge progressed from its initial proposal to final form in a way showing any stipulation did not cover Ms. Horne's chiropractor bills. Specifically, Clapp insists the circuit court's decision to remove the proposed charge's duty and breach discussion while retaining its causation and damages language meant the parties agreed the causal connection between those bills and the collision remained an issue for the jury to resolve. However, Clapp could only reach that conclusion by ignoring another crucial component of the charge.

In one of its last substantive charges before explaining the deliberation process, the circuit court instructed the jury as follows:

> A stipulation is an agreement, admission, or concession made in the judicial proceedings by the parties thereto, or their attorneys. Stipulations are binding upon those who make them a stipulation as an agreement, an understanding. The Court and the jury must accept stipulations as binding upon the parties. If counsel for the parties have stipulated to any fact, or any fact has been admitted by counsel, you

[1] Clapp notes Ms. Horne uses the phrase "plainly inconsistent" in her brief (Resp't Br. at 8) (quoting App. Br. at 4), but she fails to provide the full quote. That portion of Ms. Horne's brief argues the verdict is "plainly inconsistent *with all the evidence presented at trial*." (App. Br. at 4) (emphasis added). Arguing a verdict is not supported by the evidence is very different than the inherent, internal inconsistencies in the verdicts at issue in Stevens and Smith.

> will regard that fact as being conclusively proved as to the party or the parties making the stipulation or admission.

(R. p. 348, lines 2-11). As discussed previously (App.'s Br. at 2, 9-10) and in more detail below, Clapp's attorney announced a stipulation during his opening statement establishing (1) Clapp's negligence leading to the collision "was the cause . . . for Ms. Horne to have about two and a half months of extra chiropractic treatment" (2) Ms. Horne's expenses for that care totaled $ 1,055; and (3) those expenses were "caused by" Clapp's negligence. (R. p. 74, lines 20-25). The circuit court expressly instructed the jury to take each of these statements as "conclusively proved" and "binding" on Clapp for purposes of reaching its verdict.

Even Clapp acknowledges the negligence charge on which it relies must be read in context of the plain language in the stipulation charge. (Resp't Br. at 24) (quoting Keaton ex rel. Foster v. Greenville Hosp. Sys., 334 S.C. 488, 497, 514 S.E.2d 570, 575 (1999) (finding that an appellate court "must consider the court's jury charge as a whole . . ."). The negligence charge's conferral of causation and damages questions to the jury applied to all matters *except those covered by the stipulation*. The jury was not required or permitted to decide whether Clapp's errors caused Ms. Horne to incur the chiropractor bills or the total amount of those bills because those facts were "conclusively" established when Clapp's counsel entered a "binding" admission/stipulation during the trial.

Thus, when the jury charge is viewed as a whole, its negligence component did not cover the chiropractor bills because the stipulation charge instructed the jury to consider the cause of those bills as conclusively proved in Ms. Horne's favor. That means the jury charge was correct, and Ms. Horne was not required to object to it. The errors here were not in how the jury was charged but rather in how the remainder of Ms. Horne's damages claim was presented to the jury on the defective verdict form and in the circuit court's refusal to grant a new trial when the jury

defied its stipulation charge by failing to award Ms. Horne damages in the amount of the chiropractor bills Clapp admitted causing.

c. Ms. Horne's challenge to the verdict form was preserved by her unambiguous reference to stipulated chiropractor bills in her trial objections and in the proposed verdict form she submitted to the circuit court.

Clapp also errs in suggesting Ms. Horne's challenge to the verdict form on appeal differs from her objections at trial. (Resp't Br. at 12-16). Clapp offers only a clipped summation of Ms. Horne's objections[2]—indeed, the critical part of the objection begins just after Clapp stops the quote in her brief. (R. p. 280, lines 8-11). Ms. Horne sufficiently identified and preserved her verdict form challenge both in her verbal objections and in the verdict form proposal that she presented and the circuit court rejected.

South Carolina's error preservation rules state that an issue is preserved so long as an appellant's position on the matter is "reasonably clear" from her circuit court arguments. Lindsay v. Lindsay, 328 S.C. 329, 339, 491 S.E.2d 583, 589 (Ct. App. 1997) (citing Ramage v. Ramage, 283 S.C. 239, 322 S.E.2d 22 (Ct. App. 1984)). Issue preservation requirements will not be interpreted to "create a trap for the unwary." Clark v. Aiken Cnty. Gov't, 366 S.C. 102, 620 S.E.2d 99 (Ct. App. 2005) (quoting Elam v. S.C. Dep't of Transp., 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004)). Clapp argues Ms. Horne's only issue with the circuit court's proposed verdict form was that it failed to pose separate inquiries for each component of economic and noneconomic damages available under South Carolina law.

However, Ms. Horne twice raised concerns over how the circuit court's proposed form failed to account for the chiropractor bills Clapp admitted causing. Posing a more nuanced and expansive damages question was needed specifically because of these stipulated damages: "I think

[2] (Resp't Br. at 15) (citing R. p. 280, lines 6-8).

it's especially useful here because [Clapp has] stipulated to some damages, i.e. the chiropractor bill but not all economic damages." (R. p. 280, line 8-11). Moments later, Ms. Horne's attorney reaffirmed her objection when discussing the verdict form proposal he was submitting for the circuit court's consideration. (R. p. 281, lines 13-15) (advocating for his proposed form's handling of proximate cause "because [Clapp has] admitted some [damages] are and some aren't proximately caused by Clapp's errors). These two objections made it more than "reasonably clear" that Ms. Horne was challenging the verdict form for its failure to account for the damages Clapp admits causing. The notion that Ms. Horne's argument has changed from the lower court to this one is further rejected by the Ms. Horne's post-trial motion. (R. p. 429) (arguing that, by referencing "any" injuries, the verdict form "posed a question that had already been resolved through the stipulation's unambiguous terms").

Ms. Horne also sufficiently preserved the issue through the alternative verdict form proposal she submitted to the circuit court. Ms. Horne's proposal was markedly different from the form the circuit court chose to use. Ms. Horne's proposal reduced the number of prompts from two to one and eliminated the question as to whether "any" of Ms. Horne's claimed damages were proximately caused by Clapp's conduct. The form the circuit court chose posed an initial question that undermined the parties' stipulation and made it possible for the jury to stop deliberating without ever considering the monetary damages Clapp admitted causing. The single question in Ms. Horne's proposed form would not have caused such confusion and would have forced the jury to consider the monetary value of Ms. Horne's claim. Through her written submission and the

repeated on-the-record objections of her attorney, Ms. Horne adequately preserved her challenge to the verdict form.[3]

d. The absence of a directed verdict motion did not prevent Ms. Horne from moving for a new trial or from seeking relief under the thirteenth juror doctrine.

For her final preservation argument, Clapp again attempts to portray Ms. Horne's appeal as something that it is not. (Resp't Br. at 17-18). Citing Rule 50(b), SCRCP, Clapp argues a motion for judgment notwithstanding the verdict is not permitted unless the moving party first made a motion for directed verdict. Yet, Ms. Horne's appeal does not ask for judgment notwithstanding the verdict, and Rule 50(b) appears nowhere in her brief. Instead, Ms. Horne seeks a new trial under Rule 59 and the thirteenth juror doctrine.

Clapp can offer no authority to suggest a directed verdict motion was required to seek relief on these bases. Rule 59(a), SCRCP specifically states that a new trial in this case can be granted "for any of the reasons for which new trial has heretofore been granted" in South Carolina courts with no suggestion that a directed verdict motion is a prerequisite. The right to a new trial has previously been recognized on all grounds Ms. Horne cites here—(1) a verdict at odds with the evidence; (2) a defectively constructed verdict form; and (3) a verdict that defies the court's instructions. Sapp v. Wheeler, 402 S.C. 502, 513, 741 S.E.2d 565, 571 (Ct. App. 2013) (verdict contrary to evidence); 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) (defective verdict form); Southeastern Mobile Homes, 282 S.C. at 302,

[3] Clapp also defines a verdict form "defect" in an overly narrow way. (Resp't Br. at 16 n. 8) (quoting Campbell v. Robinson, 398 S.C. 12, 16, 26, 726 S.E.2d 221, 229 (Ct. App. 2012)). Clapp's Campbell citation again confuses the defective verdict form here with an internally inconsistent verdict like the one at issue in Stevens. As for the verdict form itself, a defect arises when the form is "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, 907-08 (2007).

317 S.E.2d at 775 (verdict that disregards court's instruction). The thirteen juror doctrine grants a trial judge authority to grant a new trial whenever he finds the evidence does not justify the verdict. Norton v. Norfolk S. Ry. Co., 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002).

In sum, Rule 50(b)'s provisions on directed verdict and judgments notwithstanding the verdict have no bearing on this appeal because Ms. Horne is not asking for judgment notwithstanding the verdict and does not in any way rely on Rule 50 for the relief she seeks.

2. The jury's verdict ignored the stipulation, Clapp's admissions, the court's instructions, and evidence linking Clapp's errors to Ms. Horne's chiropractor bills.

When Clapp finally addresses the merits, she ignores crucial statements her attorney made during trial. Under South Carolina law, those statements are outcome determinative in this appeal. Clapp's misguided parsing of witness testimony (Resp't Br. at 20-22) offers no explanation for the fact that Clapp's counsel still finished his case by telling jurors to award Ms. Horne damages. (R. p. 332, lines 8-9). Clapp's erroneous attempts to discount the stipulation as unclear or unknown to jurors (Resp't Br. at 27-29) cannot account for her own attorney's unambiguous publication of the stipulation's terms during his opening statement. (R. p. 74, lines 20-25). The natural conclusion from Clapp's failure to offer a defense or explanation for these statements is that she simply does not have one. Since there is no way to square what Clapp's attorneys told jurors with what she writes to this Court, she can offer no substantive defense of the circuit court's failure to order a new trial.[4]

[4] Clapp's brief discusses Ms. Horne's post-trial motions only in terms of the thirteenth juror doctrine. (Resp't Br. at 18 and n. 9). She fails to address Ms. Horne's motion under Rule 59, which allows for a new trial to be ordered for many different reasons. Rule 59(a), SCRCP (permitting new trial "for any of the reasons for which rehearings have heretofore been granted in the courts of this State"). Beyond just the evidentiary analysis that comprises the thirteenth juror doctrine, Ms. Horne also moved for a new trial because (1) the jury ignored the stipulation and Clapp's admission of responsibility for Ms. Horne's chiropractor bills; and (2) the jury ignored the court's

a. Clapp's responsibility for Ms. Horne's chiropractor bills was more than uncontested, it was admitted.

Clapp first defends the verdict by noting jurors are generally free to reject any witness's testimony, even if it is uncontested. (Resp't Br. at 19-20) (citing Black v. Hodge, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct. App. 1991)). Black is an odd citation for this proposition because it presented very different facts. Black built its holding around the notion that the motor vehicle collision it considered was "by all accounts, slight." Id. at 198, 410 S.E.2d at 595. Specifically, the Court recounted evidence showing the at-fault vehicle was traveling at less than 5 miles-per-hour at the time of the collision, and the impact was too minor to even knock dirt off the impacted car's bumper. Id. Here, Clapp was driving at 45 miles-per-hour right before she slammed into the back of Ms. Horne's car which had stopped for traffic in front of her. (R. p. 87, lines 5-12; R. p. 248, lines 18-21). Plus, while the Black collision was not even enough to dent a bumper, the force of Clapp's vehicle caused Ms. Horne's car to move upward and forward by nearly a full car length. (R. p. 224, line 20 – p. 225, line 3) (impact was so substantial that Ms. Horne's car nearly struck the vehicle i0n front of her). In Black, a police officer reported the impact was so slight that it didn't even look like a collision occurred. 306 S.C. at 198, 410 S.E.2d at 595. But, in this case, even an amateur could see the impact was severe enough to damage the frame of Ms. Horne's car. (R. p. 200, lines 9, 22); (R. pp. 377-80).

This Court has also cautioned against reading Black too broadly. Collins v. Bisson Moving & Storage, Inc., 332 S.C. 290, 504 S.E.2d 347 (Ct. App. 1998). The principle Clapp relies on from Black does not apply to collisions involving a "pretty hard" impact like the one at issue here. Id. at 302, 504 S.E.2d at 354. More importantly, Collins noted the big difference between a jury being

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explicit instruction to take as conclusively proved the fact Clapp caused Ms. Horne to incur expenses for chiropractic services. (R. pp. 425-31).

free to disbelieve witness testimony and a jury's duty to accept a party's concession of liability. Id. (citing Boozer v. Boozer, 300 S.C. 282, 387 S.E.2d 674 (Ct. App. 1988)). A party's admission during trial supports a verdict in the opponent's favor and may "procedurally bar" the party from contradicting its admission during appellate proceedings. Collins, 332 S.C. at 303, 504 S.E.2d at 355 (citing Southern Ry. Co. v. Routh, 161 S.C. 328, 159 S.E. 640 (1931)). Admissions by a party's attorney during trial are just as binding on the party as her own testimony. Collins, 332 S.C. at 303, 504 S.E.2d at 355 (citing Clark v. Clark, 271 S.C. 21, 244 S.E.2d 743 (1978)); see also CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 81, 716 S.E.2d 877, 885 (2011) ("A litigant cannot concede an issue at trial and then raise it on appeal"); TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 617, 503 S.E.2d 471, 474 (1998) ("An issue conceded in a lower court may not be argued on appeal").

Here, Clapp's attorney admitted all required elements to establish Ms. Horne's claim to recover for her chiropractor bills. (R. p. 74, lines 20-25) (stipulating Clapp's unreasonable driving "was the cause" for Ms. Horne "to have about two and a half months of extra chiropractic treatment" totaling $ 1,055). Thus, even if the jury was free to reject uncontested witness testimony, the admissions by Clapp's attorney were binding and controlling.

b. Clapp's closing argument admitted the evidence proved Clapp's responsibility for Ms. Horne's chiropractor bills.

There is a logical hole in the center of Clapp's argument that the evidence supported a defense verdict. (Resp't Br. at 20-22). Clapp's attorney disagrees with her. (R. p. 332, lines 8-9) ("In your award, include the $ 1,055").

That statement was made *after* all the evidence Clapp cites in her brief was presented to the jury. None of the evidence Clapp now claims in her favor made her attorney any less convinced that Ms. Horne should at least recover $ 1,055 for her chiropractor bills. If Clapp's counsel

believed there was any evidentiary basis for a defense verdict on this portion of Ms. Horne's claim, there would be no logical or ethical explanation for counsel urging jurors to give Ms. Horne the $1,055. Clapp's brief certainly does not offer an explanation. Instead, she chooses to ignore the admissions altogether.

Plus, as discussed in Ms. Horne's earlier brief (App. Br. at 11-13), the witnesses Clapp references actually supported the connection between the collision and Ms. Horne's chiropractor bills. Clapp argues Ms. Horne's testimony shows she was not injured in the collision and all chiropractor care was for preexisting injuries (Resp't Br. at 20-21) when in fact Ms. Horne testified to experiencing new and different neck/lower back pain in the days after the collision. (R. p. 225, lines 19-21). Clapp contends Mr. Horne's testimony suggests Ms. Horne's vehicle was largely undamaged in the collision (Resp't Br. at 21) when the reality is Mr. Horne told jurors he could barely open the hatchback to his wife's vehicle and further inspection showed substantial frame damage. (R. pp. 200-01).

Finally, there is something more pernicious in Clapp faulting Ms. Horne for not eliciting more evidence linking Clapp's errors to Ms. Horne's chiropractor bills. All of Clapp's strategic maneuvers during the trial signaled to Ms. Horne that she need not, should not, and even could not offer such evidence. After all, Ms. Horne had every reason to believe the matter was settled after Clapp's counsel announced the stipulation and its terms during opening statements. (R. pp. 74, lines 20-25). If Clapp's current argument were to prevail, it would signal to every future plaintiff that she must still present evidence on stipulated damages. That is exactly the opposite of what a stipulation is supposed to accomplish. Greene v. Greene, 351 S.C. 329, 336, 569 S.E.2d 393, 397 (Ct. App. 2002) (quoting Black's Law Dictionary 1415 (6th ed 1990) (stating that the "purpose of a stipulation is to 'obviate need for proof or to narrow [the] range of litigable issues'").

As the trial transcript shows, Clapp was the driving force for the stipulation, and she acted for the strategic purpose of preventing Ms. Horne from offering certain evidence during the trial. (R. p. 81). Clapp reasoned that preventing Ms. Horne from showing jurors Clapp was distracted by her cell phone prior to the collision was so strategically beneficial to her defense that it was worth conceding both a breach of duty and causation for a portion of the damages Ms. Horne claimed. That is the deal Clapp chose to make, and her brief is largely an effort to renege on it. She got the benefit of keeping some of the cell phone evidence from the jury but now wants to avoid the burden of the damages she admitted causing. The Court should not countenance such an inequitable proposition.

c. The jury refused to follow the court's instructions on stipulated and admitted facts.

One portion of Ms. Horne's Rule 59 motion sought a new trial based on the jury's failure to comply with the circuit court's charge on matters established by a stipulation or admitted by a party's attorney during the trial. (App. Br. at 14-17) (citing R. p. 348, lines 2-11). Clapp responds by boldly claiming "the verdict was entirely consistent with the [circuit] court's instructions." (Resp't Br. at 24). But, she never even addresses the stipulation/admission charge and cannot reconcile a defense verdict with that charge and her attorney's admissions.

A jury is duty bound to "take the law from the court" and "render its verdict in accordance with the charge[s]" received from the judge. State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975); Towles v. Atl. Coast Line R. Co., 83 S.C. 501, 65 S.E. 638, 639 (1909). In this case, Judge Hall charged that "the jury must accept stipulations as binding upon the parties," which meant each juror must "regard [each stipulated] fact as being conclusively proved." (R. p. 348, line 7-8, 10). The same duty applied to "any fact [that] has been admitted by counsel." (R. p. 348,

line 9). Clapp did not object to this charge at any point before or after it was given. If the jury had heeded these instructions, they could not have possibly reached the verdict entered in this case.

An instruction on stipulations and admissions was only given because Clapp's attorney had announced both at various points in the trial. Among the very first things counsel told jurors was the parties had reached a stipulation on Clapp's responsibility for the collision and the causal link between the collision and Ms. Horne's 2 ½ month course of chiropractor treatment. (R. p. 74, lines 20-25). Clapp's attorney bookended his presentation by reiterating the stipulation's terms and adding an admission. (R. p. 332, lines 1-9). To comply with Judge Hall's charge, the jury had to accept as conclusively proved that Clapp's conduct "was the cause for . . . Ms. Horne to have . . . extra chiropractic treatment" and a bill for that treatment in the amount of "$ 1,055 was caused by" Clapp's driving errors. (R. p. 74, line 22 – p. 75, line 1). Per the instructions, the jury was not permitted to reject Clapp counsel's admission that Ms. Horne was entitled to at least $ 1,055 in damages. (R. p. 332, lines 8-9). A verdict finding no causal connection between Clapp's conduct and "any" of Ms. Horne's claimed damages necessarily means the jury chose not to accept stipulated and admitted facts as it was required to do. (R. p. 1). There is no other logical way to read the verdict, and Clapp does not even attempt an alternative reading.

In short, Ms. Horne was entitled to a trial where the jury accepted the law as instructed and credited the admissions her opponent made in open court. In the unfortunate instance like this where a jury ignores the court's instructions, a new trial is required. Southeastern Mobile Homes, 282 S.C. at 302, 317 S.E.2d at 775.

d. The unambiguous, detailed, and on-the-record stipulation of Clapp's responsibility for Ms. Horne's chiropractor bills was bolstered by Clapp counsel's admission during closing arguments.

Clapp devotes just three pages of her brief to the stipulation, arguing mostly it was somehow too vague, uncertain, or undisclosed to the jury for Ms. Horne to rely on it. (Resp't Br. at 28-29). There is no support for these assertions in the law or in the trial transcript.

Clapp relies primarily on the requirements for parties' agreements stated in Rule 43(k), SCRCP. (Resp't Br. at 28). This provision renders agreements binding[5] if they are reduced to writing or "made in open court and noted upon the record." The latter option applies here. Clapp's counsel announced the stipulation, publishing it to the jury as follows:

> we've stipulated, at least [Clapp] 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.

(R. p. 74, lines 20-25). Despite this, Clapp insists the "precise terms of [the stipulation] are not contained in the trial transcript." (Resp't Br at 28 n. 16). She never explains what is missing from the stipulation as her attorney announced it. This announcement has all the necessary components to show the error in the jury's verdict. The parties were agreeing not just that Clapp's driving errors caused the collision but also that the collision caused at least some of Ms. Horne's damages. With these facts stipulated, the jury's answer to Verdict Form question 1 was improper.

[5] Clapp posits that stipulations have no binding effect in jury trials. (Resp't Br. at 27 n. 15). Not only does Clapp not offer any support for this proposition, her trial conduct refutes it. The circuit court expressly instructed jurors the law required them to accept stipulations as binding. (R. p. 348, lines 6-8) ("The Court *and the jury* must accept stipulations as binding upon the parties") (emphasis added). Clapp accepted the charge without objection. Her acquiescence is unsurprising since the charge language was taken verbatim from a charge book used in South Carolina courtrooms for generations. Ralph King Anderson, Jr.*, South Carolina Requests to Charge - Civil,* 2016, § 1-9.

Clapp goes on to argue the circuit court interpreted the stipulation to be limited to the duty and breach elements of Ms. Horne's negligence claim. (Resp't Br. at 28). The circuit court did not limit the stipulation as Clapp suggests, but, even if it had, Clapp claims this interpretation was permissible only by falsely arguing the parties did not present the stipulation's terms to the jury. (Resp't Br. at 28). Clapp counsel's statement above proves otherwise. In light of that statement, there was no interpreting for the circuit court to do and also no reasonable way to interpret the stipulation to exclude Clapp's responsibility for at least some of Ms. Horne's claimed damages.

Finally, even if the Court were to accept Clapp's flawed attempt to undermine the stipulation her attorney sought and then described in detail to the jury, the verdict would still be fatally flawed. That is because in addition to a stipulation, Ms. Horne's damages claim was supported by Clapp's admission during trial. After reiterating the stipulation during closing arguments, Clapp's attorney added an admission— "In your award, include the $ 1,055." (R. p. 332, lines 8-9). As discussed above, South Carolina law binds a party to her intra-trial admissions of liability whether made in her own testimony or through her attorney's statements to jurors. See supra at pp. 10-11. Admissions are not subject to Rule 43(k) or any of the other requirements on which Clapp attacks the stipulation, and admissions fell equally within the circuit court's instructions to consider certain facts "conclusively proved" by the evidence. (R. p. 348, lines 9-11). Thus, Clapp's unfounded attacks on the stipulation's formation and publication cannot save her from the plain language of her attorney's admissions.

CONCLUSION

Based on the arguments above and those in her earlier brief, Ms. Horne respectfully requests the Court reverse the circuit court's ruling. The original trial's outcome was marred by a verdict form posing a question foreclosed by the parties' stipulation and a jury failing to heed the

circuit court's instructions by ignoring what Clapp admitted to be true. Pursuant to the Rule 59, the thirteenth juror doctrine, and other South Carolina legal principles, Ms. Horne should be granted a new trial.

Respectfully submitted,

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May 14, 2024
Rock Hill, SC