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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Judge

Appellate Case No. 2023-000707

Deloris Campbell, ...Appellant,

v.

Cole B. Collins,.....Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES

I. Where negligence was admitted and the Respondent acknowledged he was liable for some damages to the Appellant, did the trial court err in failing to grant Appellant's motion for a new trial following a defense verdict?

STATEMENT OF THE CASE

This is an appeal of an order denying Appellant Deloris Campbell (hereinafter "Campbell")'s post-trial motion for a new trial. (R. pp. 1-3, 19-28.)

The Respondent, Cole B. Collins (hereinafter "Collins"), unlawfully drove into the back of Campbell's automobile. (R. p. 66 ln. 1 through p. 82 ln. 23.) As Collins later admitted, he was negligent in so doing, and his negligence caused Campbell physical injury. (R. p. 82 ln. 11-15, p. 218 ln. 4-5, p. 219 ln. 15-19, p. 221 ln. 8-9.)

Campbell filed suit against Collins for negligence on April 16, 2019. (R. pp. 9-12.) Collins answered on June 13, 2019. (R. pp. 13-18.) The case was stricken from the active docket by consent order filed July 7, 2021, and was restored by consent order filed November 9, 2021. Trial was begun on the week of January 23, 2023, but a mistrial was granted. (R. pp. 7-8.)

Trial was held on April 10-11, 2023. (R. p. 29.) At the trial, Collins admitted to his negligence and to his responsibility to pay for some damages suffered by Campbell. (R. p. 82 ln. 11-15, p. 218 ln. 4-5, p. 219 ln. 15-19, p. 221 ln. 8-9.) Collins disputed whether the car wreck (and, thus, his negligence) caused injury to Campbell's foot. (R. pp. ___; p. 54 ln. 16-19.) His counsel expressly told the jurors that his client was responsible for and willing to pay for some of the damages Campbell claimed. (R. p. 82 ln. 11-15.)

Campbell testified, as did her sister and her former work supervisor. (R. pp. 120-215.) Campbell also presented the testimony of three physicians, all of whose medical opinions were uncontradicted by other testimony. (R. pp. 87-119, 430-551.)

Collins, presented only one witness, himself. (R. pp. 216-26.) Collins admitted the wreck was his fault and accepted responsibility for it. (R. p. 218 ln. 4-5, p. 219 ln. 15-19, p.

221 ln. 8-9.) He deferred "to the experts" on the extent of the injuries to Campbell he caused. (R. p. 221 ln. 16-18, p. 224 ln. 2-4.)

The jury returned a defense verdict. (R. p. 6.) Campbell's counsel requested and the court granted 10 days for her to make post-trial motions. (R. p. 302 ln. 9-11.) Campbell moved for a new trial on April 20, 2023, citing the gross inadequacy of the verdict, asserting that the jury was obviously confused, and also calling upon the trial judge to exercise her power as the thirteenth juror. (R. pp. 19-28.) The lower court denied that motion, without a hearing, by order filed April 24, 2023. (R. pp. 1-3.)

This appeal followed.

STATEMENT OF FACTS

Collins negligently failed to brake or do anything else to avoid ramming his vehicle into Campbell's, and his liability was so obvious to him that he admitted it. (R. p. 82 ln. 11-15, p. 218 ln. 4-5, p. 219 ln. 15-19, p. 221 ln. 8-9.) He acknowledged that Campbell sustained some injury in the wreck he caused and that he was liable to her for those damages. (R. p. 82 ln. 11-15.)

Campbell was, quite understandably, confused about exactly where the parts of her body were placed during this unexpected, forceful collision. (R. pp. 120-85.) She had also had some unrelated foot pain before this wreck happened. (R. pp. 87-185, 430-551.) Because of those things, Collins contested whether his admitted negligence was the proximate cause of Campbell's foot injury. (R. p. 82 ln. 7-19.)

That question – whether Collins is liable for the injuries to Campbell's foot – was the real issue that was tried to the jury. (R. pp. 29-303.)

Despite Collins' admissions, the jury decided to find against Campbell completely. (R. p. 6.) That decision must have been the product of passion, caprice, or some other improper considerations. It could not have been based on the evidence presented in the trial. Perhaps the jury liked Collins, a polite young man serving his country in the military, a young man whose mother had died since the wreck involved in the case. (R. pp. 216-21.) Perhaps they viewed Campbell as greedy or as improperly trying to connect her foot injury to the wreck.

What the jury did not have in this admitted liability case was a factual record that could possibly support a total defense verdict, but that is the verdict they gave. (R. p. 6.)

STANDARD OF REVIEW

"When an order granting a new trial is before this Court, our review is limited to the consideration of whether evidence exists to support the trial court's order." Folkens v. Hunt, 300 S.C. 251, 255, 387 S.E.2d 265, 267 (1990); Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715, 722 (Ct. App. 1996).

> The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. In deciding whether to assess error to a court's denial of a motion for a new trial, we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party.

Krepps v. Ausen, 324 S.C. 597, 479 S.E.2d 290, 296 (Ct. App. 1996) (internal citations omitted).

> The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case. Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge's finding that justice has not prevailed. Similarly, the judge may grant a new trial if the verdict is inconsistent and

> reflects the jury's confusion. In ruling on a new trial motion, a trial judge has the discretionary power to grant a new trial absolute or nisi in a law case upon his disapproval of the verdict on factual grounds, and in this role he has been recognized and designated as the "thirteenth juror." Such discretion is founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict and the judge's view of them.

Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715, 722-23 (Ct. App. 1996) (internal citations and citation-related quotation marks omitted).

> A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. However, the jury's determination of damages is entitled to substantial deference. The trial judge 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. The failure of the trial judge to grant a new trial absolute in this situation amounts to an abuse of discretion and on appeal this Court will grant a new trial absolute.

Krepps, 479 S.E.2d at 295.

"A trial judge's refusal to grant a new trial absolute when the verdict is grossly inadequate or excessive is an abuse of discretion." Allstate Ins. Co. v. Durham, 314 S.C. 529, 431 S.E.2d 557, 558 (1993).

> [W]hen the verdict is so grossly excessive or inadequate that the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence, it becomes the duty of the trial judge and this Court to set aside the verdict absolutely.

Id.

"Not only does a trial judge have the discretion but also the duty to grant a new trial if the jury verdict is contrary to the fair preponderance of the evidence." Jessup v. Hansen, 289 S.C. 54, 56, 344 S.E.2d 618, 620 (Ct. App. 1986). "Where there is no evidence on which the

jury could have based their finding of actual damages, it is error for the court to refuse a motion for a new trial." Sparrow v. Toyota of Florence, Inc., 302 S.C. 418, 422, 396 S.E.2d 645, 648 (Ct. App. 1990).

ARGUMENT

I. The jury's defense verdict could not have been based on the facts in this admitted-liability, admitted-damages case.

The zero-dollar defense verdict in this admitted-liability, admitted-damages case "is grossly inadequate . . . 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, 479 S.E.2d at 295. We know the verdict is grossly, conscience-shockingly inadequate because it finds for the defendant and adjudges the plaintiff is entitled to nothing in an admitted-liability case in which the defendant conceded his tortious conduct caused the plaintiff to sustain some damages. (R. p. 6, p. 66 ln. 21-24, p. 82 ln. 11-15, p. 218 ln. 4-5, p. 219 ln. 15-19, p. 221 ln. 8-9.)

In Campbell's opening statement, her lawyer, without objection, told the jury this was a case in which the defendant admitted liability. (R. p. 66 ln. 21-24.) In response, defense counsel stated in Collins' opening that Campbell "recovered in two and a half months from her neck and back problems after this accident as documented in the medical records. And *Mr. Collins is prepared to pay for those two and a half months of treatment for temporary injuries*[,]" after which he contrasted those damages, for which he admitted liability, with the other damages Campbell claimed: "But he's not prepared to pay for that foot. He's not prepared to pay for her retirement and he's not prepared to pay for the hundreds of thousands of dollars that they're gonna ask you for at the end of this trial." (R. p. 82 ln. 11-19) (emphasis added).

Parties are bound by their lawyers' admissions to the court. In re Murdaugh, 436 S.C. 636, 638-39, 875 S.E.2d 58 (2022). This binding effect applies to admissions made in opening statements. Collins v. Bisson Moving & Storage, Inc., 332 S.C. 290, 303, 504 S.E.2d 347 (Ct. App. 1998). Collins admitted fault for the wreck. (R. p. 218 ln. 4-5, p. 219 ln. 15-19, p. 221 ln. 8-9.) In his opening statement, his lawyer admitted his liability for "two and a half months of treatment for temporary injuries." (R. p. 82 ln. 14-15.)

"When liability is admitted, as in this case, a Plaintiff is entitled to an award unless proof completely fails." Page v. Crisp, 303 S.C. 117, 118, 399 S.E.2d 161, 162 (Ct. App. 1990); accord Krepps, 479 S.E.2d at 296. "A cause of action accrues at the moment when the plaintiff has a legal right to sue on it[,]" and "the law presumes at least nominal damages at that point." Stephens v. Draffin, 327 S.C. 1, 4-5, 488 S.E.2d 307, 309 (1996). Negligence has "three elements: (1) a duty of care owed by the defendant; (2) a breach of that duty by negligent act or omission; and (3) damage proximately caused by the breach." Stevens v. Allen, 342 S.C. 47, 51, 536 S.E.2d 663 (2000). Accordingly, an admission of liability for negligence is an admission of the existence of that negligence's proximately caused damages. Id.; see Stephens, 327 S.C. at 4-5; Collins, 332 S.C. at 304; Page, 303 S.C. at 118.

Negligence was the cause of action tried here. (R. pp. 10-12, 29-303.) Campbell presented ample evidence of the existence (and extent) of damages: testimony of three doctors about medical injuries, treatment, and causation, along with Campbell's testimony about her pain and reduced mobility and her, her sister's, and her former supervisor's testimony about that pain's interference with Campbell's work and life. (R. pp. 87-215, 430-551.) Collins testified on both direct and cross-examination that he deferred to the experts – the doctors who testified – about the extent of Campbell's damages he caused. (R. p. 221 ln. 16-18, p. 224 ln.

2-4.) Proof of damages did not "completely fail[]." Page, 303 S.C. at 118. In his opening statement, he admitted liability for specific components of Campbell's damages. (R. p. 82 ln. 14-15.) There was a lot to back up Collins' concession that he was responsible for at least some of Campbell's damages.

What was within bounds for the jury was a verdict for the plaintiff for somewhere between the maximum of what the plaintiff claimed and the minimum set by the defendant: damages for "two and a half months of treatment for temporary injuries." (R. p. 82 ln. 14-15.) As Campbell's counsel below stated in the new trial motion, "[i]t is simply unfathomable that a jury could conclude that Plaintiff received no injury whatsoever in this collision." (R. p. 26.) Collins admitted that his negligence was the proximate cause of damages sustained by Campbell. (R. p. 82 ln. 14-15.) A defense verdict was impossible on the record presented – unless the jury disregarded the law and the facts and decided the case on some other basis.

The jury's verdict could not have been the product of the application of the law to the facts. That leaves the only available conclusion: that the verdict "was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives." Krepps, 479 S.E.2d at 295.

It was "the duty of the trial judge and [is the duty of] this Court to set aside the verdict absolutely." Allstate, 431 S.E.2d at 558. The lower court abused its discretion and erred in denying Campbell's motion for a new trial, and that decision should be reversed, with this court remanding for a new trial.

II. The verdict reached was shockingly inadequate.

In an admitted-liability, admitted-damages case, it is hard to see how a verdict could be more inadequate than a defense verdict. Our courts have consistently treated the rare zero-

dollar verdicts in negligence cases where liability was admitted or already established as so shockingly inadequate that the jury could only have been motivated by improper considerations, such that the plaintiff is entitled to a new trial. Stevens, 342 S.C. at 50-53; Krepps, 479 S.E.2d at 292, 295-97; Page, 303 S.C. at 118-19.

The defense verdict here – a zero-dollar verdict – was shockingly inadequate, as Collins had conceded his liability for some damages and Campbell presented evidence of extensive damages. (R. pp. 6, 19-28, p. 82 ln. 14-15, pp. 87-215, 430-551.) As discussed above, only improper considerations could have prompted such a verdict, as the evidence – even viewed in the light most favorable to Collins – cannot sustain it in light of Collins' conceded liability for some damages. (R. pp. 6, 19-28, p. 82 ln. 14-15, pp. 87-215, 430-551.)

This court should reverse and remand for a new trial.

III. The high threshold to require reversal has been met.

Under these circumstances, "it becomes the duty of the trial judge and this Court to set aside the verdict absolutely[,]" Allstate, 431 S.E.2d at 558, and "[t]he failure of the trial judge to grant a new trial absolute in this situation amounts to an abuse of discretion and on appeal this Court will grant a new trial absolute." Krepps, 479 S.E.2d at 295. As a matter of law, where liability and the existence of at least some damages proximately caused by the defendant's tort are admitted, a defense verdict cannot stand, and a plaintiff is entitled to a new trial. Stevens, 342 S.C. at 50-53; Krepps, 479 S.E.2d at 292, 295-97; Page, 303 S.C. at 118-19.

There is no way see the record here, even in the light most favorable to Collins, as one on which a defense verdict could be proper. Stevens, 342 S.C. at 50-53; Krepps, 479 S.E.2d

at 292, 295-97; Page, 303 S.C. at 118-19. Campbell is entitled to reversal and remand for a new trial. Allstate, 431 S.E.2d at 558; Krepps, 479 S.E.2d at 295.

CONCLUSION

On this set of facts, with liability and the existence of proximately caused damages admitted, Campbell is entitled to a new trial. It was an abuse of discretion for the lower court to deny her new trial motion. This court should reverse the lower court and remand this case for a new trial.

Respectfully submitted,

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CERTIFICATE OF COUNSEL
REGARDING COMPLIANCE WITH RULE 211(b), SCACR

I certify that the foregoing final brief complies with Rule 211(b), SCACR.

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I certify that I have served the foregoing final brief on the date given below by emailing it to opposing counsel at the addresses noted below.

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