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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2021-CP-18-01966

Deloris Campbell, ... Appellant,

v.

Cole B. Collins, ... Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial judge, who heard all the testimony, abuse her discretion in denying Plaintiff's motion for a New Trial *Nisi Additur* or New Trial Absolute based on grounds that "the verdict is contrary to the greater weight of the evidence; and the 'Thirteenth Jury Doctrine' mandates a new trial?"

II. Did Plaintiff preserve the issues of whether the jury's verdict was the result of "passion, caprice, prejudice, or some other influence outside the evidence" where the motion was based simply on "the verdict being contrary to the greater weight of the evidence" and argued the jury should have accepted the allegedly uncontradicted evidence of Plaintiff's doctors?

STATEMENT OF THE CASE

Plaintiff, the appellant in this matter, filed suit on April 16, 2019. The jury heard the case on April 10-11, 2023. Defendant, the respondent, admitted negligence and denied he was the proximate cause of Plaintiff's injuries. At the conclusion of testimony, the case was submitted to the jury with no objection to the jury charge or verdict form. The jury returned a defense verdict, finding Plaintiff had not proven Defendant proximately cause her injuries. Plaintiff was granted 10 days to file post-trial motions.

On April 20, 2023, Plaintiff filed a Motion for New Trial *Nisi Additur* or New Trial Absolute wherein she argued "the verdict is contrary to the greater weight of the evidence; and the 'Thirteenth Jury [sic] Doctrine' mandates a new trial." The gist of Plaintiff's position was jurors should have accepted "uncontroverted" testimony from her physicians and supervisor about causation of her alleged injuries and resignation. As noted below, all of this was substantially disputed. On April 24, 2023, the Court denied Plaintiff's motion, concluding the totality of evidence supported the jury's verdict. This appeal followed.

STANDARD OF REVIEW

This Court reviews the trial judge's denial of Plaintiff's Motion for New Trial Nisi Additur for abuse of discretion. *Todd v. Joyner*, 385 S.C. 509, 517, 685 S.E.2d 613, 618

(Ct. App. 2008), *aff'd*, 385 S.C. 421, 685 S.E.2d 595 (2009) (citing *O'Neal v. Bowles*, 314 S.C. 525, 527, 431 SE.2d 555, 556 (1993)). However, the Court gives significant deference to the jury's determination of damages. *Green v. Fritz*, 356 S.C. 566, 570, 590 S.E.2d 39, 41 (Ct. App. 2003); *see also Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000).

When evaluating a motion for new trial absolute, "[t]he verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision." *Wright v. Craft*, 372 S.C. 1, 36, 640 S.E.2d 486, 606 (Ct. App. 2006). "[I]t is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found." *Daves v. Cleary*, 355 S.C. 216, 231, 584 S.E.2d 423, 430 (Ct. App. 2003) (citing *Rhodes v. Winn-Dixie Greenville, Inc.*, 249 S.C. 526, 530, 155 S.E. 2d 308, 310 (1967)).

"On appeal from a jury verdict, the evidence and any inferences to be drawn therefrom must be viewed in the light most favorable to the respondent. *Elders v. Parker*, 286 S.C. 228, 230, 332 S.E.2d 563, 565 (Ct. App. 1995). "[The] review is limited to determining if there is any evidence which reasonably tends to support the verdict." *Id.* (internal citation omitted).

SUMMARY OF ARGUMENT

The trial judge, who heard the evidence firsthand and was able to evaluate the credibility of witnesses, did not err in denying Plaintiff's Motion for New Trial *Nisi Additur* or New Trial Absolute. Plaintiff's testimony and failure to disclose critical information to her treatment providers supported the jury's verdict that Defendant was not the proximate cause of her claimed damages. The record is replete with evidence supporting the jury's decision. Viewing evidence in the light most favorable to Defendant, this Court should

affirm the decision of the trial judge.

ARGUMENT

I. THE TRIAL JUDGE, WHO LISTENED TO ALL TESTIMONY, DID NOT ERR IN REFUSING TO GRANT A NEW TRIAL: PLAINTIFF'S IMPLAUSIBLE TESTIMONY AND FAILURE TO DISCLOSE CRITICAL INFORMATION TO HER TREATMENT PROVIDERS LED THE JURY TO DISCREDIT THE TESTIMONY OF PLAINTIFF AND HER WITNESSES.

While the decision whether to grant a new trial *nisi additur* is within the discretion of the trial judge, significant deference must be given the jury's determination of damages. *Green*, 356 S.C. at 570, 590 S.E.2d at 41; *see also Welch*, 342 S.C. at 303, 536 S.E.2d at 420 ("[T]he jury's determination of damages is entitled to substantial deference. The circuit Judge's decision [on a motion for new trial based on the alleged insufficiency of a jury's verdict] will not be disturbed on appeal unless it clearly appears the exercise of discretion was controlled by a manifest error of law.") (citations omitted). The trial judge must offer compelling reasons for granting the motion. *Id.* The denial of a motion for a new trial *nisi additur* is within the judge's discretion and will not be reversed on appeal absent an abuse of discretion. *Todd*, 385 S.C. at 517, 685 S.E.2d at 618 (citing *O'Neal*, 314 S.C. at 527, 431 S.E.2d at 556).

The standard for a new trial absolute is higher. "A new trial absolute should be granted only if the verdict is so grossly excessive [or deficient] that it shocks the conscience of the court and clearly indicates the amount of the verdict was the 'result of caprice, passion, prejudice, partiality, corruption, or other improper motives." *Wright*, 372 S.C. at 36, 640 S.E.2d at 505 (citation omitted). "To warrant a new trial, the verdict must be so grossly excessive [or inadequate] as to clearly indicate the influence of an improper motive on the jury. *Id.* (citation omitted). Moreover, "[w]hen a verdict falls within the range

of the evidence, the courts will not disturb it on the grounds of excessive" or inadequacy. *Id.* As with *nisi additur*, the decision of whether to grant a new trial absolute is "left to the sound discretion of the trial court and ordinarily will not be disturbed on appeal." *Harrison v. Bevilacqua*, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003) (citation omitted).

Plaintiff's brief cites *Page v. Crisp,* 303 S.C. 117, 399 S.E.2d 161 (Ct. App. 1990) and *Krepps v. Ausen,* 324 S.C. 597, 479 S.E.2d 290 (Ct. App. 1996) to support her position. Those cases hold a jury verdict "for Defendant" for zero dollars is internally inconsistent. The best discussion of the zero-verdict problem is found in a case not cited in Plaintiff's brief– *Stevens v. Allen*, 342 S.C. 47, 536 S.E.2d 663 (2000) – wherein our Supreme Court aligned itself with those states finding an award "for Defendant" for "zero dollars" is internally inconsistent.

But *Page*, *Krepps*, and *Stevens* are all entirely inapplicable to the present appeal. The present case was not a verdict for Plaintiff for "zero dollars." This case resulted in a verdict "for Defendant." This reflected the jury's decision that Plaintiff failed to meet her burdens of proof and persuasion. The more relevant precedents to the present case are *Black v. Hodge*, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991) and *Vinson v. Hartley*, 324 S.C. 389, 409, 477 S.E.2d 715, 725 (Ct. App. 1996). In those cases, this Court affirmed the jury's verdicts "for Defendant" because there were substantial questions about Plaintiff's credibility.

The *Vinson* court stated, "The fact that testimony is not contradicted directly does not render it undisputed…There remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation… 'If there is anything tending to create distrust in his [or her] truthfulness,

the question must be left to the jury.'" *Id.* at 410.

The arguments and citations to the record in the next several pages of this brief will point out the many inconsistencies and problems with Plaintiff's case which resulted in a jury verdict for Defendant and a denial of Plaintiff's post-trial motions.

a. There was ample evidence for the jury to doubt Plaintiff's credibility and infer Defendant was not the proximate cause of damages.

There was ample evidence for the Jury to call into question Plaintiff's credibility. There was testimony that Plaintiff told Defendant immediately, "Everybody was okay." (R. p. 218, lines 10-13). Plaintiff drove her van to a gas station nearby. (R. p. 219, lines 12-15). She stepped out (R. p. 133, lines 18-19), walked to the back of the van (R. p. 172, lines 20-21), walked to the front (R. p. 173, lines 1-2), and climbed back in the driver seat. (R. p. 173, lines 3-4). Defendant saw Plaintiff walk a complete circle around her van without problem. (R. p. 220, lines 3-5). But in her trial testimony, Plaintiff claimed she attempted to get out of the car to look at the damage but fell and "dropped to one knee" so hard she claimed she hurt her knee. (R. p. 133, lines 8-11). However, Plaintiff refused medical treatment (R. p. 173, lines 15-16), declined to leave with her sister (R. p. 173, lines 19-20), and opted to drive herself home. (R. p. 173, lines 23-24).

Plaintiff's implausible testimony led jurors to doubt her credibility. She testified, despite wearing a seatbelt (R. p. 169, lines 8-11), she struck her head on the "steering rod" and launched headfirst into the windshield. (R. p. 170, lines 2-4). Her own counsel redirected her to say, "[i]t wasn't the windshield." (R. p. 170, lines 14-23). Plaintiff testified her headrest was destroyed, and every seat was broken and "pinned [her] down." (R. p. 171, lines 14-20). However, jurors saw pictures of her van which showed otherwise. (R. p. 171, line 24-p. 172, line 5; pp. 304-07). Defendant never saw Plaintiff trapped in her

van. (R. p. 218, line 25-p. 219, line 2). He never saw broken car seats. (R. p. 218, lines 23-24).

Plaintiff testified she was confined to her room for 11 months (R. p. 174, lines 5-11), could not walk (R. p. 174, lines 16-17), and her sisters carried her everywhere. (R. p. 174, lines 18-19). However, in the days and weeks following the accident, the chiropractor noted she walked up a ramp (R. p. 092, line 25-p. 093, line 3), shopped at a store (R. p. 095, lines 16-18), emptied a van (R. p. 095, lines 19-20), wore normal shoes (R. p. 107, lines 8-11), vacuumed (R. p. 099, lines 12-14), made beds (R. p. 099, lines 15-17), did not wear a foot brace (R. p. 101, lines 18-20), drove again (R. p. 101, lines 21-24), vacuumed again (R. p. 102, lines 7-9), and went grocery shopping. (R. p. 102, lines 10-11).

Plaintiff claimed Defendant caused left foot surgery. She denied prior foot pain in her deposition. (R. p. 163, lines 4-15). Then jurors learned she had not told the truth in her deposition. She reported “almost unbearable” foot pain 40 days before the accident. (R. p. 161, lines 4-7). And she went to the emergency room for month-long calf pain 25 days before the accident. (R. p. 165, lines 4-7). Plaintiff reported foot swelling two days before the accident, despite taking three prescription medications to reduce swelling. (R. p. 167, line 22-p. 168, line 10).

Plaintiff claimed accident-related limitations caused her to resign, and ultimately retire, from work. However, there was ample evidence for jurors to infer Plaintiff had an ulterior motive to quit work, and that work itself had caused her physical limitations. She worked continuously since the 1970s. (R. p. 175, lines 24-25). She always worked two jobs. (R. p. 176, lines 1-2). She never called in sick. (R. p. 176, lines 5-6). She never took

vacation. (R. p. 176, lines 7-9). She could not recall taking leave for one day. (R. p. 176, lines 10-11). She was constantly on her feet. (R. p. 176, lines 12-13). She lifted and bended “back and forth” all day long. (R. p. 176, lines 18-19).

The work she did was painful. (R. p. 176, lines 20-21). It made her sore. (R. p. 176, lines 22-23). Once she worked so many hours an ambulance took her to the hospital. (R. p. 177, lines 7-9). Her work caused back pain. (R. p. 177, lines 10-11). Her work caused foot pain. (R. p. 177, lines 12-13). Plaintiff’s sister testified they would “limp around” with back and leg pain. (R. p. 189, lines 1-7; p. 195, line 25-p. 196, line 10). Her supervisor testified it was “really hard work.” (R. p. 210, lines 10-11). Her supervisor described their patients as “very heavy” and “combative.” (R. p. 210, lines 5-6).

Four years before the accident, Plaintiff lifted a patient and injured her back, which prompted her to see a spine surgeon. (R. p. 177, lines 14-23). Forty days before the accident, she worked all night (R. p. 178, lines 9-10), saw her doctor at 9 a.m. (R. p. 178, lines 6-8), complained of “almost unbearable” foot pain (R. p. 178, lines 11-12), and reported increased lifting at work. (R. p. 178, lines 13-15). Twenty-five days before the accident, she went to the emergency room for month-long calf pain. (R. p. 178, lines 11-12). Her employer had no record of these conditions. (R. p. 212, lines 9-23).

Plaintiff had a government job for over 30 years (R. p. 179, lines 4-5), was eligible for state-retirement benefits, (R. p. 179, lines 6-7) and had qualified for social security. (R. p. 179, lines 8-9). Less than three months after the accident, Plaintiff wrote she “resigns due to my disability” (R. p. 180, lines 4-6), which was the very same day her chiropractor noted “most symptoms resolved…left foot is the main concern.” (R. p. 112, lines 1-10). Plaintiff chose to resign after she saw a podiatrist twice. (R. p. 180, lines 12-

13). She had seen no medical doctors. (R. p. 180, lines 14-15). She had not had surgery or known the outcome of surgery. (R. p. 180, lines 18-19). She never returned to work again. (R. p. 179, lines 10-11). She never searched for a sedentary job. (R. p. 179, lines 12-13). A jury could have easily concluded she was interested in retiring and stretching her case to blame it on this accident.

b. There were ample reasons for the jury to doubt the expert opinions rendered in Plaintiff's case.

Plaintiff's failure to disclose critical information undermined the testimony of her medical providers' testimony. The chiropractor was unaware of Plaintiff's pre-existing conditions, except for Hepatitis-C. (R. p. 111, lines 12-14). He was unaware Plaintiff visited the emergency room twice within 40 days of the accident. (R. p. 109, line 23-p. 110, line 4). He was unaware she had back pain before the accident. (R. p. 110, lines 15-17). He was unaware she saw a spine surgeon before the accident. (R. p. 110, lines 15-17). He was unaware she had an MRI of her spine before the accident. (R. p. 110, lines 18-20). He was unaware she had a permanent disability rating before the accident. (R. p.110, line 24-p. 111, line 1).

Likewise, Plaintiff's omissions undermined her podiatrist's credibility. He testified "based on the information I had, this appeared more acute to me than chronic" (R. p. 542, line 20-p. 543, line 4) because "she did not make any mention of any of these previous ailments." (R. p. 543, lines 5-9).

Plaintiff never told her podiatrist she had "almost unbearable" foot pain 40 days before the accident (R. p. 530, lines 21-24), went to the emergency room for calf pain and swelling 25 days before the accident (R. p. 535, lines 11-13), a symptom of her foot condition (R. p. 533, lines 3-14), or that she had swelling two days before the accident.

(R. p. 537, lines 6-9).

The podiatrist told jurors the mechanism for her left foot injury was “eversion” against the brake pedal. (R. p. 505, line 22-p. 506, line 9). He testified about this mechanism despite recording nothing about the placement of Plaintiff’s foot or recalling any conversation about the same. (R. p. 516, lines 1-10). He testified about this mechanism despite the common-sense notion that one’s right foot is normally on the brake pedal. He testified about this mechanism despite Plaintiff’s own testimony that her right foot was in-fact on the brake pedal. (R. p. 168, lines 17-18). Per Dr. Speciale’s own testimony, Plaintiff fit the profile of the most common patient who develops this condition chronically: diabetic, hypertensive, women over the age of 40 years. (R. p. 523, line 5-p. 524, line 8). He testified if Plaintiff had not told the podiatrist about her accident, he would have deemed her foot injury “chronic.” (R. p. 543, lines 15-20). This clearly demonstrates there was no objective sign the foot injury was caused by trauma from the car accident. He further testified you would expect immediate pain with an acute foot injury. (R. p. 525, lines 9-13). However, there is no reference to foot pain in Plaintiff’s emergency room records.

Similarly, Plaintiff’s failure to disclose critical information undermined her anesthesiologist’s credibility. She never disclosed her job caused back pain. (R. p. 469, lines 8-15). She never disclosed a previous work injury. (R. p. 468, line 25-p. 469, line 1). She never disclosed radiating pain which prompted her to visit a spine surgeon four years before the accident. (R. p. 459, lines 7-16). She never disclosed the MRI study four years before the accident (R. p. 469, lines 5-7), which revealed disc protrusions, a fragment which “had broken off,” spinal stenosis, and facet arthropathy. (R. p. 465, line 23-p. 466,

line 12). Ultimately, the anesthesiologist diagnosed Plaintiff with the same condition which inflicted her spine four years before the accident. (R. p. 467, lines 8-12). He testified Plaintiff "had arthritis because she was 60 years old." (R. p. 459, lines 2-3). He told jurors Plaintiff's weight and labor-intensive occupation could accelerate the degenerative condition of her spine. (R. p. 463, lines 10-17). If Plaintiff never told him about the accident, he would have attributed her condition to "getting older." (R. p. 467, lines 5-7).

Jurors may have perceived the anesthesiologist's testimony was disingenuous. During a discovery deposition 12 days before trial, he had not seen Plaintiff in four years (R. p. 454, lines 13-15), and could not testify she sustained permanent injury. (R. p. 454, lines 6-13). Seven days before trial, Plaintiff suddenly returned for treatment. (R. p. 454, lines 16-23). His record of the encounter states, "I do not think her issues, at this time, are related to the 2018 motor vehicle accident." (R. p. 455, line 23-p. 456, line 3). Regardless, he related Plaintiff's ongoing neck and back pain to the accident. (R. p. 455, lines 19-22). When confronted with the inconsistency between his written record and testimony, he claimed he created the record minutes before the deposition "in the rush to try to get this thing done." (R. p. 457, line 8).

In this case, Plaintiff's failure to disclose critical information to her medical treatment providers, combined with her far-fetched testimony, led jurors to doubt her credibility and claim for damages. This also impacted and undermined the testimony of her treatment providers. The jury could have easily concluded their testimony was a case of "garbage in, garbage out." Or the jury could have just as easily concluded their testimony was not compelling.

c. The Trial Judge, who listed listened to all testimony, did not abuse her discretion in refusing to grant a new trial absolute under the

"thirteenth juror doctrine."

"South Carolina's thirteenth juror doctrine is so named because it entitles the trial judge to sit, in essence, as the thirteenth juror when he finds 'the evidence does not justify the verdict,' and then to grant a new trial based solely 'upon the facts.'" *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851 (2002) (quoting *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990)).

"An order denying a new trial on this theory will hardly ever be reversed." *Burke v. AnMed Health*, 393 S.C. 48, 55-56, 710 S.E.2d 84, 88 (Ct. App. 2011). "[T]o reverse the denial of a new trial motion under [the thirteenth juror doctrine,] we must, in essence, conclude that the moving party was entitled to a directed verdict at trial." *Parker v. Evening Post Publ. Co.*, 317 S.C. 236, 247, 452 S.E.2d 640, 646 (Ct. App. 2001). Review by an appellate court of the grant or denial of a new trial is "limited to consideration of whether evidence exists to support the trial court's order." *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009).

In this case, the trial judge considered the totality of evidence and declined to disturb the jury's verdict. There is no indication the doctrine was applied improperly. Therefore, this Court should find the trial judge did not abuse her discretion in refusing to grant a new trial under the thirteenth juror doctrine.

II. PLAINTIFF SHOULD BE LIMITED TO ARGUMENTS AND GROUNDS SET FORTH IN THEIR MOTION FOR NEW TRIAL *NISI ADDITUR* OR NEW TRIAL ABSOLUTE DATED APRIL 20, 2023.

The Court should not consider arguments outside the scope of Plaintiff's Motion for New Trial *Nisi Additur* or New Trial Absolute dated April 20, 2023, wherein she argued that "the verdict is contrary to the greater weight of the evidence; and the 'Thirteenth Jury

[sic] Doctrine' mandates a new trial."

Only issues which are preserved should be considered by the appellate court. *Atl. Coast Builders & Contrs., LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("If our review of the record establishes that an issue is not preserved, then we should not reach it."); *Long v. Dunlap*, 87 S.C. 8, 18, 68 S.E. 801, 804 (1910) ("[T]his Court will not consider any point which was not presented and considered below, unless it involves jurisdiction of the court.").

"The losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred." *I'On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). "This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments." *Id.*

"If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review." *Id.* (internal citations omitted) "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Id.* at 724-25 (*citing Brown v. Singletary*, 226 S.C. 482, 85 S.E.2d 738 (1955) (party may not neglect or ignore vices in the trial, then expect to assert those vices on appeal in case of disappointment at trial). However, an appellate court may affirm for any reason appearing in the record. *Kreutner v. David*, 320 S.C. 293, 465 S.E.2d 88, 90 (1995).

In this appeal, Plaintiff raises for the first time that Defendant's counsel bound

Defendant to the issue of proximate cause in his opening statement. This was not argued to the trial judge. Even if Plaintiff preserved this argument, it is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence. *Ex parte Morris*, 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006); *see also*, *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) (appellate courts repeatedly have held "that statements of fact appearing only in arguments of counsel will not be considered"); *S.C. Dept. of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("arguments made by counsel are not evidence"). Indeed, this jury was specifically told that what the lawyers said in their opening statement was not evidence. (R. p. 63, lines 22-23).

Further, Plaintiff's argument reflects an incorrect statement of what counsel said in opening statement. The actual statement was: "And Mr. Collins is *prepared to pay* for her temporary injury, right. It---you know, *this is their burden* of proof. They have the job of proving their case to you. That is not our job. You will hear that later. The judge will tell you that this is their burden to prove what they are claiming was caused by this accident." (R. p. 81, lines 20-25) (emphasis added).

During trial, Defendant denied causation entirely: "Q. Tell us what you are accepting responsibility for. A: The accident. Q: That's all? A: Yes." (R. p. 223, lines 19-23). Moreover, in typical fashion, the trial judge advised jurors that attorney comments were not evidence, that evidence consisted only of sworn testimony and exhibits, and that they were the sole judge of each witness's credibility. (R. p. 63, line 22-p. 64, line 20; p. 287, line 16-p. 288, line 9). Jurors were told they were not required to accept even uncontroverted testimony as "there remains the question of the inherent probability of the

testimony and the credibility of witnesses." (R. p. 289, lines 16-24).

CONCLUSION

Here, the jury did exactly what it was supposed to do: listen to the evidence, heed the judge's instructions, determine the credibility of witnesses, and return a verdict. Based on the precedent and principles set forth in the foregoing cases, the jury was well within its right to reject Plaintiff's testimony and case. And the trial judge who actually heard the testimony, was well within her right to deny a motion for a new trial or additur on the grounds set forth in the motion. Therefore, Defendant respectfully requests this Court affirm the decision below.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b) of the SC Appellate Court Rules with the only changes being references to the Record on Appeal and correction of typographical errors.

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