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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No.: 2023-001889
Case No. 2020-CP-23-01458

Beverly Taylor, Marvin Taylor, and Ada Alvarez, individually and on behalf of all similarly situated individuals,

Respondents,

v.

Raymond A. Wedlake a/k/a R. Allan Joy,

Appellant.

FINAL BRIEF OF RESPONDENTS

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October 3, 2024

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TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

Court Rules

Rule 208(b)(1), SCACR

SC Rule Civ. Pro. 50(b)

I. STATEMENT OF ISSUES ON APPEAL

Respondents ask that this Court deny Appellant's presented issues and affirm the rulings of the Circuit Court for any ground appearing on the record as provided by Rule 220(c).

II. STATEMENT OF THE CASE

On March 9, 2020, Respondents filed this lawsuit asserting abuse of judicial process by Appellant. The case was certified as a class action on December 28, 2020. A jury trial was held on November 27-30, 2023 before the Honorable Perry H. Gravely in the Court of Common Pleas for Greenville County, South Carolina. On November 30, 2023, the jury issued a verdict for Respondents in the amount of $375,000, and judgment in this amount was subsequently entered on December 1, 2023. Appellant submitted a Notice of Appeal on December 5, 2023.

III. STANDARD OF REVIEW AND APPLICABLE LAW

This Court must review the decisions of the trial court for abuse of discretion. "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Pittman,* 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007). "As we explained in *Morris*, if the record reflects the trial court "exercise[ed] its discretion according to law," we will almost always affirm the ruling." *State v. Wallace*, 440 S.C. 537, 543, 892 S.E.2d 310, 313 (2023), citing *Morris v. BB&T Corp.*, 438 S.C. 582 at 585-86, 885 S.E.2d 394 at 396 (2023); *see also State v. Gibbs*, 438 S.C. 542, 551-53, 885 S.E.2d 378, 383-84 (2023) (discussing in detail a trial court's exercise of discretion in ruling on the admissibility of evidence). "In other words, the abuse of discretion standard of review does not allow this court to reweigh the evidence or second-guess the trial court's assessment of witness credibility." *State v. Douglas*, 411 S.C. 307 at 316, 768 S.E.2d 232 at 237–38 (SC Ct. App. 2015).

"Our Supreme Court has repeatedly stated: 'The proper amounts to be rendered, as actual or punitive damages, are left, under our law, almost entirely to the trial jury and the trial judge.'" *Gasque v. Heublein, Inc.,* 281 S.C. 278, 287, 315 S.E.2d 556, 561 (Ct. App. 1984) (citing *Charles v. Texas Co.,* 199 S.C. 156, 18 S.E.2d 719, 729 (1942) as quoting from *Weeks v. Carolina Power & Light Co.,* 156 S.C. 158, 153 S.E. 119, 124 (1930)). Thus, the amount of damages, actual or punitive, remains largely within the discretion of the finder of fact, as reviewed by the trial judge. *Gamble v. Stevenson,* 305 S.C. 104, 406 S.E.2d 350 (1991). The trial judge is vested with considerable discretion over the amount of a punitive damages award, and this court's review is limited to correction of errors of law. *Welch v. Epstein,* 342 S.C. 279 at 305, 536 S.E.2d 408 at 421 (Ct. App. 2000). Moreover, the appellate court must affirm the circuit court's punitive damages finding if any evidence reasonably supports the court's factual findings. *Austin v. Specialty Transp. Servs., Inc.,* 358 S.C. 298, 314, 594 S.E.2d 867, 875 (Ct. App. 2004).

The amount of damages that "a jury might properly award ... is largely a matter of judgment based upon the facts and circumstances of each case." *Watson v. Wilkinson Trucking Co.*, 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964). "In determining the question, the facts must be viewed in the light most favorable to the plaintiff[,] and[ ] where the amount of a verdict bears a reasonable relationship to the character and extent of the injury sustained, it is not excessive." *Id.* Further, "the jury's determination of damages is entitled to substantial deference[,]" and the circuit court's decision on whether to grant a new trial based on the amount of the verdict "will not be disturbed on appeal unless it clearly appears the exercise of discretion was controlled by a manifest error of law." *Welch*, 342 S.C. at 303, 536 S.E.2d at 420.

"When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence."

Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002). "In essence, we must determine whether a verdict for a party opposing the motion would be reasonably possible under the facts as liberally construed in his favor." *Bultman v. Barber,* 277 S.C. 5, 7, 281 S.E.2d 791, 792 (1981). "If the evidence is susceptible to more than one reasonable inference, the case should be submitted to the jury." *Quesinberry v. Rouppasong,* 331 S.C. 589, 594, 503 S.E.2d 717, 720 (1998); *Watson v. Ford Motor Co.,* 389 S.C. 434, 455, 699 S.E.2d 169, 180 (2010) (stating an appellate court will reverse a trial court's ruling on a JNOV motion "only when there is no evidence to support the ruling or when the ruling is governed by an error of law").

"The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a 'manifest abuse of discretion accompanied by probable prejudice.'" *Burke v. Republic Parking Sys. Inc.*, 421 S.C. 553 at 558, 808 S.E.2d 626 at 628 (quoting *State v. Commander*, 396 S.C. 254, 262-63, 721 S.E.2d 413, 417 (2011)). "Determining whether prejudice exists 'depends on the circumstances[,]' and 'the materiality and prejudicial character of the error must be determined from its relationship to the entire case.' " *Id.* (quoting *State v. Taylor*, 333 S.C. 159, 172, 508 S.E.2d 870, 876 (1998)). "Prejudice in this context means 'there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or excluded evidence.' " *Id.* (quoting *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005)). *See State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) ("An appellate court will not reverse the trial [court]'s decision regarding a jury charge absent an abuse of discretion."); *id.* at 479, 697 S.E.2d at 583 ("To warrant reversal, a trial [court]'s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.").

Failure to give requested jury instructions is not prejudicial error when the instructions given afford the proper test for determining the issues. *See State v. Burkhart,* 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002).

The granting or denying of a motion for mistrial is also within the sound discretion of the trial judge. *Creighton v. Coligny Plaza Ltd. Partnership,* 334 S.C. 96, 118, 512 S.E.2d 510, 521 (Ct.App.1998). "A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons." *State v. Bantan*, 387 S.C. 412, 417, 692 S.E.2d 201, 203 (Ct. App. 2010) (quoting *State v. Patterson*, 337 S.C. 215, 227, 522 S.E.2d 845, 851 (Ct. App. 1999)). "Whether a mistrial is manifestly necessary is a fact specific inquiry. 'It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge.'" *Id.* (quoting *State v. Rowlands*, 343 S.C. 454, 457-58, 539 S.E.2d 717, 719 (Ct. App. 2000)). Absent an abuse of discretion, the decision of the trial judge will not be overturned on appeal. *Creighton,* 334 S.C. at 118, 512 S.E.2d at 521 (Ct. App. 1998). The burden is on the moving party to show not only error, but also the resulting prejudice. *Id. See also Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 202, 621 S.E.2d 363, 366–67 (Ct. App. 2005).

IV. ARGUMENT

Respondents brought this case to hold Appellant responsible for abusing the judicial process over the last seven years. He threatened—and followed through on—filing numerous cases, motions, and subpoenas in an effort to force his neighbors to either give in to his demands or defend themselves in court. In November of 2023, a jury considered the evidence presented by both parties and determined that Appellant was liable for abuse of judicial process. The jury

awarded Respondents $125,000 in actual damages and $250,000 in punitive damages. This appeal followed.[1]

In his first paragraph, Appellant reveals his true motive behind this appeal when he states, "the Jury got it wrong." (App. Br. p.3.) He does not like the verdict, so he has appealed to try to change the decision of the finders of fact. But that is not how our judicial system works. Disagreement with a jury verdict is not sufficient to overturn it. This Court is charged with reviewing the case for errors of law which Appellant preserved for consideration on appeal. This is not an opportunity for Appellant to re-try his case just because he did not like the outcome. And Appellant's challenges must be grounded in the record and may not be speculative.

A. Issue Preservation

"[F]ormer Chief Judge Alex Sanders famously wrote, '[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.'" *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 331 fn 4, 730 S.E.2d 282, 286 (2012), *citing Langley v. Boyter,* 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App.1984), *quashed on other grounds,* 286 S.C. 85, 332 S.E.2d 100 (1985). His point being that, in South Carolina, appeals must raise the issues to be decided. *Id*. In the absence of a presented and preserved exception, there is nothing properly before the court for it to decide. *See Evans v. Bruce,* 245 S.C. 42, 44, 138 S.E.2d 643, 643 (1964); *see also S.C. Dep't of Transp. v. First Carolina Corp. of S.C.,* 372 S.C. 295, 301–02, 641 S.E.2d 903, 907 (2007) (holding that to be preserved for appellate review, an issue must

[1] In his initial brief, Appellant has accused me (counsel for Respondents) personally of lying, engaging in bribery, intentionally misleading the Court, and a whole host of other evils. This personal attack on my character is inappropriate and the allegations entirely unfounded. (For example, Appellant asserts that a standard contingency fee arrangement constitutes bribery.) (App. Br. p.3.) I do not intend to address these personal insults further, as they are not relevant to the legal issues at hand, but wanted my denial of such allegations noted for the record.

have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity). "Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.,* 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). *See also Armstrong v. Collins*, 366 S.C. 204, 225, 621 S.E.2d 368, 378–79 (Ct. App. 2005) (holding the appellant's argument on appeal was not preserved because he argued a different ground before the circuit court).

Therefore, the South Carolina Appellate Court Rules are specific in what is required in an appellant's initial brief to set forth the issues to be decided. Rule 208(b)(1)(B), SCACR, requires inclusion of a "concise and direct [statement] as to each issue" presented for the court's review. Rule 208(b)(1)(F), SCACR, also requires inclusion of "[a] short conclusion stating the precise relief requested."

"Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal." Rule 208(b)(1)(B), SCACR. If the issue is not included in the statement of issues on appeal, it is unpreserved for appellate review. *See, e.g.*, *Brown v. Odom*, 425 S.C. 420, 436, 823 S.E.2d 183, 191 (Ct. App. 2019) (citing Rule 208(b)(1)(B) in determining the appellant did not preserve an issue which he failed to include in the statement of issues on appeal); *Allen v. Pinnacle Healthcare Sys., LLC*, 394 S.C. 268, 277, 715 S.E.2d 362, 367 (Ct. App. 2011) (declining to address two of appellants' arguments on their merits where the issues were not included in the sole statement of the issue on appeal); *Burris v. Propst Lumber & Logging, Inc.*, 396 S.C. 85, 96, 719 S.E.2d 695, 701 (Ct. App. 2011) (finding an argument

abandoned by appellant on two grounds where it was not listed in the statement of issues on appeal and had no supporting authority cited).

The appellate court is unable to decide issues which are not preserved and presented to it. *See, e.g., Brown*, 425 S.C. at 436, 823 S.E.2d at 191 (citing Rule 208(b)(1)(B), SCACR, in determining the appellant did not preserve an issue which he failed to include in the statement of issues on appeal).

B. Factual Background

During trial of the case, Appellant made a motion for directed verdict at the close of Respondents' case in chief. (Tr. 261:19-21.) This motion was denied. *Id*. At the close of all evidence, Judge Gravely asked Appellant if he had anything else to add and explicitly stated, "This is the time if you want to renew any motions." (R. p. 704, lines 11-16.) Appellant responded, "No motions, Your Honor." (R. p. 704, line 17.) SC Rule Civ. Pro. 50(b) states: **"**Whenever a motion for a directed verdict ***made at the close of all the evidence*** is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. ***A party who has moved for a directed verdict may*** move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict…" (emphasis added).

After the verdict was published, Appellant did not seek anything further before the jury was dismissed. (R. p. 779, lines 17-19.) When asked about any post-trial motions, Appellant stated, "So my motion will be for judgment notwithstanding the verdict that the amounts of these awards are simply not possible. I don't believe there's any evidence to support these magnitudes. It was a matter of record to the jury to decide to award these amounts." (R. p. 781, lines 16-21.) Judge Gravely properly noted that his role was to "determine was there evidence to

support the jury's verdict." (R. p. 782, lines 4-5.) The Court then noted that there was evidence in the record to support the actual damages finding of $125,000. (R. p. 782, lines 5-6; *see also* R. pp. 615-617 for admission of this evidence.) Next, Judge Gravely went through the three-factor test regarding the amount of punitive damages awarded. *See BMW of North America, Inc. v. Gore,* 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996). (R. p. 782, line 7 through 783, line 12). The Court concluded that the award of punitive damages in this case was appropriate. (R. p. 783, lines 9-14.) While Appellant maintained his objection, he did not present any new challenges to the legal basis for the ruling or assert any other legal theories for the Court's consideration. (R. p. 783, lines15-22.) The Circuit Court properly considered and applied the law in this case; thus, there is no abuse of discretion.

Next, Appellant stated, "I would like to make a motion for a mistrial. Because, with all due respect, items from my proposed charge to the jury were not charged to the jury. And in my perspective, none of the evidence placed before the jury would be consistent with their verdict and their awards." (R. p. 783, line 22 through 784, line 2.) The Court responded by denying the motion, explaining that what was presented by Appellant was not a proposed jury charge. (R. p. 784, lines 3-15; *see also* Court's Exhibit 4, R. p. 203.) Appellant again maintained his objection but did not present any other legal arguments or seek any clarification of the ruling. (R. p. 784, lines 16-19.) No further motions were raised. (R. p. 784, lines 16-19.)

C. Argument Regarding Issues on Appeal

The limited issues properly preserved for this Court's consideration do not constitute an abuse of judicial discretion or other error of law. The ruling of the Circuit Court should be affirmed, and each of Appellant's Issues on Appeal should be denied. Each Issue is addressed specifically below, with the letters corresponding to those in the presented Issues on Appeal.

A) Appellant has presented no basis for challenging the integrity of the jury as the finder of fact. He has not cited anything in the record that would support his contention, and did not preserve this issue at trial.

B) The Circuit Court did not abuse its discretion in rejecting Court's Exhibit 4 (R. p. 203) as purported proposed jury instructions, but instead properly instructed the jury as to the elements of the single claim submitted to them—Abuse of Process. A review of the Court's Exhibit 4 shows that what Appellant presented was not appropriate for a jury. The judge properly considered his requests and did not abuse his discretion in denying the same.

C) Appellant has presented no basis for challenging the jury's adherence to the law and did not preserve this issue at trial.

D) The Circuit Court did not abuse its discretion by entering Respondents' exhibits into evidence. There is nothing in Appellant's argue or citations to the record showing any abuse here, and without such evidence this Court cannot overturn the sound discretion of the trial court.

Even assuming the exhibits were irrelevant, Appellant cannot show that any prejudice resulted from their admission. These are court records and letters authored by Appellant. They are not inherently inflammatory. Appellant has not preserved any objections to the use of the exhibits. Further, Appellant was given the opportunity to provide his own testimony and arguments regarding the exhibits, and this was properly submitted to the jury as the trier of fact to determine the weight of the evidence.

E) Appellant has not preserved for appeal any challenge to standing.

F) The Circuit Court did not abuse its discretion by determining it was inappropriate to ask potential jurors the voir dire questions presented by Appellant in Court's Exhibit 1 (R. p. 201). Jurors take an oath and are required to comply with the law as it is given to them. The other items presented by Appellant do not relate to the claim of Abuse of Process at issue or the jurors' ability to serve in this particular matter. Further, Appellant made no motions indicating that jurors were improperly placed on the jury because these questions were not asked.

V. CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court AFFIRM the rulings of the Circuit Court in this matter and deny review of any issues not properly before this Court.

Respectfully submitted this 3rd day of October, 2024.

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PROOF OF SERVICE

I certify that I have served a copy of Respondents' Final Brief on Appellant by depositing a copy of it in the United States Mail, postage prepaid, on **October 3, 2024** addressed as follows:

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