

Patricia P McGougan et al
PLAINTIFF(S)

Richard F Frisch, M D et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court for a trial by jury on September 9-16, 2024. All issues have been tried and a verdict rendered in favor of the Defendants. The jury was polled and all jurors affirmed the verdict.

Representing the Plaintiffs are Daniel Luginbill, Esq. and Julia Flumian, Esq. Representing the Defendants Richard F. Frisch, M.D. and Southeastern Spine Institute are James Hood, Esq. and Brian Kern, Esq. Representing the Defendants Timothy E. West M.D. and Low Country Infectious Disease, P.A. are Todd Smyth, Esq. and Allie Maples, Esq.

The Court required post-trial motions. Defendants' counsel made no motions and are therefore waived. Plaintiffs' counsel moved for a New trial based on the thirteenth juror doctrine.


ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/26/2024 .

Brenda R Kline for Patricia P McGougan, Edgar McGougan



RECEIVED
Oct 09 2024
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

In South Carolina the thirteenth juror doctrine is a long-standing means by which a trial court may grant a new trial absolute. See *Folkens v. Hunt* 300 S.C. 251, 387 S.E. 2d 265 (1990). “The thirteenth juror doctrine entitles a trial court to act as a thirteenth juror when it finds the evidence does not justify the verdict and it may then grant a new trial based solely on the facts.” *Howard v. Roberson*, 376 S.C. 143, 153, 654 S.E.2d 877, 882 (Ct.App.2007) (citing *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002)).

In *Norton v. Norfolk Southern Railway Company*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002), the South Carolina Supreme Court explained, “the thirteenth juror doctrine is so named because it entitles a trial court to sit, in essence, as the thirteenth juror when [it] finds ‘the evidence does not justify the verdict,’ and then to grant a new trial based solely ‘upon the facts.’” (citing *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990)). Stated differently, a trial judge may grant a new trial under the thirteenth juror doctrine if the judge determines the verdict “is contrary to the fair preponderance of the evidence.” *Dent v. Redd* 270 S.C. 585, 243 S.E. 2d 460 (1978); see also *Vinson*, 324 S.C. at 404, 477 S.E. 2d at 722 (“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.”). “[T]he trial Judge is the thirteenth juror, possessing the veto power to the nth degree *Worrell v S.C. Power Co.*, 186 S.E. 638 (1938).

In the present case, this Court found there was ample evidence justifying the jury’s verdict. Accordingly, the Court denied the Plaintiff’s Motion to Invoke the Thirteenth Juror Doctrine. The Court further finds no basis to act as the Thirteenth Juror. Moreover, the Court finds the verdict is amply supported by the evidence, does not shock the conscience of the Court, and is not the result of caprice, passion, prejudice, partiality, corruption, or other improper motive. Based on the foregoing, the Plaintiff’s post trial motion premised on the Thirteenth Juror Doctrine is heard and Denied.



Charleston Common Pleas

Case Caption: Patricia P McGougan , plaintiff, et al VS Richard F Frisch M D ,
defendant, et al
Case Number: 2018CP1005675
Type: Order/Electronic Form 4

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128