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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas
Donald B. Hocker, Circuit Court Judge

Case No. 2022-CP-24-00431

Tracy Campbell and Daniel Campbell, ... Appellants,

v.

Brian Keith Newman and Kimberly Norman, ... Respondents.

INITIAL REPLY BRIEF OF APPELLANT

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I. The Trial Court Erred in Refusing to Charge the Jury on Punitive Damages

The trial judge should have charged the jury regarding punitive damages. Respondents contend there was no evidence of a "causative" violation of statute to justify the instruction on punitive damages. (Resp. Br. pp 5-8). Respondents completely ignore settled precedent that required the jury charge and, therefore, requires reversal.

Appellant argued that Respondent Newman's violation of a traffic regulation and the fact that Respondent Newman was driving under suspension (and had not had a driver's license or a driver's examination for over 25 years) supported a charge on punitive damages. (Tr. p. 36, ll. 13-17; p. 83, l. 22 - 84, l. 4; p. 194, ll. 10-19; p. 223, ll. 8-10; p. 225, ll. 15-20). Respondents argued the mere violation of a traffic law did not support a charge on punitive damages. The trial judge stated "violation of a statute in and of itself would not be the sole basis to ... allow punitive damages to go to the jury." (Tr. p. 84, ll. 5-10; p. 223, ll. 17-18). The trial judge declined to give a charge on punitive damages and, in effect, granted the defense motion for a directed verdict as to that issue. (Tr. p. 276, l. 14 - p. 279, l. 18).

The Supreme Court has consistently rejected the very argument Respondents made that the trial court accepted. *See, e.g., Fairchild v. South Carolina Dept. of Transp.*, 398 S.C. 90, 97-99, 727 S.E.2d 407, 411-412 (2012)

(discussing, among other cases, *Wise v. Broadway*, 315 S.C. 273, 433 S.E.2d 857 (1993)). The key is the "causative violation of an applicable statute" which is ordinarily "a question for the jury." *Fairchild*, at 99-100, 727 S.E.2d at 412. Respondents cites neither *Fairchild* nor *Wise* in their discussion of this issue in their brief.

Further, contrary to Respondents' contentions, there was evidence that Mr. Newman's violation of the traffic laws had a causal relation to the collision. Mr. Newman was driving too fast for conditions (S.C. Code Ann. § 56-5-1520(A) (2006)), following too closely (S.C. Code Ann. § 56-5-1930(A) (2006)) and he failed to keep an appropriate lookout, all violations of traffic laws. *Brown v. Howell*, 284 S.C. 605, 609, 327 S.E.2d 659, 661 (Ct. App. 1985). *See also* S.C. Code Ann. § 56-5-730 (2006) (unlawful to violate traffic code). Further, Mr. Newman repeatedly drove despite not having a driver's license (S.C. Code Ann. § 56-1-460 (2018)), and had not undergone an examination (including an eye exam, S.C. Code Ann. § 56-1-220 (2017)) at the highway department in nearly three decades. (Tr. p. 79, ll. 16-18). Mr. Newman was diagnosed with epilepsy at age seven. (Tr. p. 79, ll. 6-15). Despite knowing all of this he regularly got behind the wheel of a car and drove, causing another collision shortly after the one in this case, and getting stopped for DUS and DUI several times thereafter.

Mr. Newman admitted he was aware of the traffic laws and agreed they were "put into place for the protection of other people traveling on the highway." (Tr. p. 81, ll. 17-22). Where there is evidence of a violation of the traffic laws

under Title 56 of the South Carolina Code, the driver is guilty of negligence *per se* and the violation is evidence of recklessness so as to require a charge on punitive damages. *Fairchild*, at 103, 727 S.E.2d at 413. The trial judge's grant of a directed verdict for Respondents and the failure to permit the jury to consider punitive damages was both erroneous and prejudicial. This Court should reverse and remand for a new trial.

II. The Trial Court Erred in Refusing to Permit Evidence of Defendant Brian Newman's Past Conduct

Respondents indicate Appellants waived this issue below. (Respondents' Brief, p. 9) ("Appellant cannot now complain that the trial court erred in refusing to allow the testimony for the purpose of proving punitive damages when the trial court offered to allow such evidence, so long as it was otherwise admissible.") The Court should reject this contention.

By this point in the trial the trial judge had ruled that credibility was not an issue since this was an "admitted liability" or "uncontested liability" case. (Tr. p. 83, ll. 11-21; p. 86, l. 22 - p. 87, l. 6; p. 194, l. 2 - p. 200, l. 12; p. 216, ll. 13-19; p. 220, ll. 4-16). The trial judge had also made clear his view that punitive damages are not recoverable just because there is a "violation of a statute." (Tr. p. 84, ll. 5-10; Tr. p. 223, ll. 14-21). The trial judge permitted *in camera* questioning to which Respondent Newman responded "I don't recall" or "I don't remember" to nearly every question. (Tr. p. 200, l. 13 - p. 208, l. 25; p. 212, l. 24 - p. 216, l. 1).

Appellants were not required to harass the trial judge by parading the issue repeatedly before the trial judge to preserve the issue for appeal. *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals*, 414 S.C. 33, 60 n. 14, 777 S.E.2d 176, 190 n. 14 (2015); *Dunn v. Charleston Coca-Cola Bottling Co.*, 111 S.C. 43, 426 S.E.2d 756 (1993). The trial judge should have permitted Plaintiffs to examine Respondent Newman before the jury regarding his prior traffic violations and to impeach his feigned loss of memory and to support the element

of reprehensibility for punitive damages. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003) ("[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct," quoting *BMW of N. Am. v. Gore*, 517 U.S. 559, 575 (1996)).

The Court should reverse and remand for a new trial.

III. The Trial Court Erred in Refusing to Grant a New Trial Nisi Additur or a New Trial Absolute

Respondents contend the record sufficiently supports the trial court's decision to deny Appellants' motions for new trial *nisi additur* or new trial absolute. (Respondents' Brief, pp. 10-15). The Court should reject this contention.

As noted in the opening brief of Appellants, the evidence demonstrated Appellant Tracy Campbell underwent extensive medical treatment for injuries related to the wreck (outlined at Brief of Appellants pp. 11-14), medical expenses of $57,272.25 (Tr. p. 141, l. 25 - p. 142, l. 9), lost 6 weeks from work, and experienced residual and ongoing pain and suffering (outlined at Brief of Appellant pp. 14, 15)). Appellant Daniel Campbell testified regarding the impact Tracy's injuries had on his claim for consortium. (outlined at Brief of Appellant pp. 15-16). Yet the jury returned a verdict for Tracy for $50,000 and, although the jury found for Daniel, it awarded $0 in actual damages.

This was an "admitted" or "uncontested" liability case. The evidence in

the record demonstrated damages related to the collision that greatly exceeded the jury's verdict. In fact, the related medical bills alone exceeded the jury's award to Appellant Tracy Campbell of $50,000, and the trial court should not have accepted the jury's verdict for Daniel Campbell for $0. *See, e.g., Krepps v. Ausen*, 324 S.C. 597, 479 S.E.2d 290 (Ct. App. 1996) (in admitted liability case where jury returned verdict for mother in the amount of medical bills only and a verdict of "zero" for daughter, Court of Appeals held verdict could not stand and trial court should have either re-submitted the case or granted a new trial absolute); *Stevens v. Allen*, 336 S.C. 439, 520 S.E.2d 625 (Ct. App. 1999) (the court has the remedy of granting a new trial if the jury renders an inadequate or excessive verdict; a new trial is also warranted if the verdict is inconsistent).

This Court should reverse the trial court's denial of Appellants' motions for new trial *nisi additur* or new trial absolute and should remand the matter for further proceedings consistent with the Court's mandate.

CONCLUSION

For the reasons stated in this Reply Brief and Appellants' opening Brief the Court should reverse the rulings below and remand this matter for a new trial on actual and punitive damages.

Respectfully submitted,

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APPEAL FROM GREENWOOD COUNTY
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Appellate Case No. 2024-000511

Tracy Campbell and Daniel Campbell, ...Appellants,

v.

Brian Ketih Newman and Kimberly Norman, ...Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the Initial Reply Brief of Appellants to the Respondents as indicated herein below, by emailing a copy of the same on October 31, 2024, by address as follows:

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October 31, 2024

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Subject: Case No.: 2024-000511- Campbell v Newman- Initial Reply Brief of Appellant
Attachments: 2024.10.31- Initial Reply Brief of Appellant.pdf

Dear Counsel,

Please find enclosed the Initial Reply Brief of the Appellant, in the above referenced matter.

Thank you,
Meredith

BLUESTEIN ATTORNEYS
Listening. Lawyering. Leading.

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October 31, 2024

VIA EMAIL ONLY- ctappfilings@sccourts.org
The Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Tracy Campbell and Donald Campbell v. Brian Keith Newman and Kimberly Norman
Appellate Case No.: 2024-000511

Dear Ms. Kitchings,

Please find enclosed for filing the original Initial Reply Brief and Proof of Service, to the Respondents in reference to the above matter. A bound copy of this filing will be delivered to the South Carolina Court of Appeals, once it is completed at Columbia Printing & Graphics.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Meredith Brown
Legal Assistant to John S. Nichols
Bluestein Thompson Sullivan, LLC

/mb
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