THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Hon. B. Alex Hyman, Circuit Court Judge

Common Pleas Case No. 2020-CP-26-01169

Appellate Case No. 2024-001019

V.K., A MINOR, BY AND THROUGH HIS GUARDIAN AMBER KOPANSKI.

Appellants,

v.

LASHAUNA BAKER,

Respondent.

Initial Brief of Appellant

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1. Did the trial court err in denying a motion for new trial where the jury failed to award damages that even the defendant at trial admitted were appropriate?

STATEMENT OF THE CASE

This appeal concerns the denial of a new trial following a jury trial for personal injury.

I. The Pleadings

As relevant here, on March 1, 2017, Appellant V.K., a minor, by and through his guardian Amber Kopanski, filed a summons and complaint against LaShauna Baker in the Court of Common Pleas for Horry County alleging personal injuries from a car accident. [Summons & Complaint]. Ms. Baker denied liability. [Answer].

On March 4, 2019, the case was stricken from the roster pursuant to R. 40(j), SCRCP. [3/4/19 40(j) order].

The case was restored to the active docket on February 20, 2020, at which time it was assigned case number 2020-CP-26-01169. [2/2/20 Order Restoring Case].

II. The Jury Trial

On April 22-24, 2024, the Court of Common Pleas held a jury trial on V.K.'s claim. At trial, Ms. Baker conceded liability, making the only question one of damages. *E.g.*, [Tr. 59-60]. In closing argument, V.K.'s counsel requested a verdict of $2,509 in medical bills, plus $48,600 in pain and suffering. [Tr. 166]. The jury returned a defense verdict.

III. The Denial of the Motion to Alter or Amend

Appellant filed a timely motion for new trial on May 3, 2024. [5/3/2024]. It was denied without a hearing on June 4, 2024. [6/4/2024 Form 4].

IV. The Instant Notice of Appeal

On June 14, 2024, Appellant timely served his notice of appeal to this Court.

STATEMENT OF ADDITIONAL FACTS

I. The Trial

A. Opening Statements

In Opening Statements, defense counsel admitted that Ms. Baker was at fault for rear-ending the car where then 6-year-old V.K. was a passenger, making the only issue at trial one of damages. [Tr. 59-60]. As to "the value of this case [for damages]," the parties "differ[ed]." [Tr. 63]. Defense counsel advised that the jury's task would be to "put a fair and reasonable settlement number for this child—minor child that was involved in this accident…." [Tr. 63].

B. Evidence Admitted at the Jury Trial

1. Testimony of Amber Kopanski

Ms. Kopanski testified that on March 3, 2014, she was in her car with V.K., her six-year-old son in the back seat, when Ms. Baker rear ended them at a stoplight,

[Tr. 73-76], at a speed that she estimated to be more than 20 miles per hour, causing them to roll into the intersection (but not to hit any other cars). [Tr. 120].

Shortly after the accident, V.K. began complaining of stomach pain, which Ms. Kopanski initially treated with Tylenol. [Tr. 78-79]. He also began experiencing loss of appetite and frequent diarrhea, which eventually prompted Ms. Kopanski to take V.K. to the pediatrician on March 19, about two weeks after the accident. [Tr. 79-80]. At the pediatrician's office, she reported that he had stomachaches, diarrhea, bruising, and changes in his appetite and liquid intake. [Tr. 81]. In other words, the accident "changed completely [her] child" from his prior health state. [Tr. 81].

The pediatrician prescribed Miralax for stomachaches. [Tr. 82]. But Ms. Kopanski followed up with a doctor the following month because V.K. was still experiencing abdominal pains. [Tr. 83].

In April, a chiropractor also began treating V.K., to address lingering neck pain. [Tr. 84].

After V.K. continued to miss school in April, perhaps two weeks in total, Ms. Kopanski sought treatment for him at MUSC. [Tr. 85]. There, Ms. Kopanski reported V.K.'s pain in his lower abdomen, which was evidently severe enough to render him lethargic when compared to his pre-accident condition. [Tr. 86-87].

MUSC diagnosed V.K. with irritable bowel syndrome and constipation. [Tr. 90]. For the pain, MUSC prescribed Tylenol for V.K. [Tr. 90].

Over the course of four months after the accident, V.K. lost twelve pounds. [Tr. 91]. He experienced significant discomfort and did not want to play, as he had before the accident. [Tr. 91].

At trial, she testified that his symptoms finally abated in July 2015. [Tr. 91]. Although a record from MUSC indicated that she reported his recovery in September 2014, she testified that the date on that entry was incorrect. [Tr. 121].

In total, between the accident and July 2014, V.K. incurred $,2509 in actual medical expenses. [Pl. Ex. 2].

2. Testimony of Robin Bailey

V.K.'s grandmother, Robin Bailey, testified concerning V.K.'s injuries and pain after the accident. [Tr. 133]. She testified that she came to visit after the accident and stayed for about two weeks after Ms. Kopanski expressed concern about V.K. [Tr. 134]. She noticed that V.K. spent a great deal of time in the bathroom after complaining of stomachaches and was very lethargic. [Tr. 135]. He also reported pain. [Tr. 136].

Based on her observations, V.K. did not have stomach pain or lethargy prior to the accident. [Tr. 138]. During her visits in 2014 and 2015, however, he consistently had unusual lethargy and stomach issues. [Tr. 142-43].

3. Testimony of V.K.

V.K. testified that, because of his young age at the time of the accident and the ten years that had passed, he did not have a perfect recall of the events [Tr. 144-45]. He did, however, recall being in the car when it was rear-ended and then "jolting forward and then jolting backward" in his seat. [Tr. 145]. After the accident, he was "constantly in pain," usually about an "eight or seven" out of ten in his abdomen, and he experienced lethargy. [Tr. 145]. He also experienced bloody stools and constipation after the accident. [Tr. 147-48].

4. Testimony of Lashauna Baker

Ms. Baker admitted at trial that she hit the back of Ms. Kopanski's car but denied that it had pushed Ms. Kopanski's car out into the intersection. [Tr. 159]. When the police came to the scene, Ms. Kopanski declined medical care for V.K., who did not appear to Ms. Baker to have been in any obvious distress [Tr. 160-61].

C. V.K.'s Closing Argument

V.K.'s counsel asked the jury to return a verdict for the $2,509 in medical bills plus $100 a day in pain and suffering until V.K.'s post-accident constipation abated, 468 days after the accident. [Tr. 167].

D. Ms. Baker's Closing Argument

During closing argument, defense counsel admitted that a jury award for the medical bills and some pain and suffering for the accident itself was appropriate based upon the evidence:

> So in fairness, pay the medical bills. Reimburse this child's mom for the medicals incurred for that 2,500 bucks. A little bit of pain and suffering perhaps, not there at the scene, not for two weeks of no doctor's appointments….[The] fairest thing to do is, I think, if you provide the bills, you're covering the bases. If you give him some pain and suffering for whatever his neck went through and whatever may have been a seatbelt sign [sic], that's fine.

[Tr. 171]. Defense counsel only objected to awarding any pain and suffering associated with the constipation in the months after the accident because no medical expert testified as to its causation, even though its existence was not in dispute. [Tr. 169, 171].

II. The Denial of the Motion for New Trial.

A timely post-trial motion was filed. [Motion for New Trial at 3].

The trial judge denied the motion via a Form 4 order. [Form 4 Order Denying Motion for New Trial].

ARGUMENT

I. The Circuit Court Erred in Denying a New Trial Where the Jury Failed to Award Damages that Even the Defendant Conceded Were Appropriate.

A. Standard of Review

"The denial of new trial motions is within the discretion of the trial court, and absent an abuse of discretion, it will not be reversed on appeal" *Hunter v. Staples*, 335 S.C. 93, 106 (Ct. App. 1999) (citation omitted).

B. Argument

The circuit court is "obligated to see that justice is done—it is duty-bound to grant a new trial if the evidence does not support the verdict." *Ex parte Travelers Home & Marine Ins. Co.*, 427 S.C. 238, 244 (Ct. App. 2019) (citations omitted). The so-called thirteenth-juror doctrine grants a trial judge a "veto power to the n^{th} degree, and [the judge] it must be presumed, recognizes and appreciates his responsibility" under the law. *Worrell v. South Carolina Power Co.*, 186 S.C. 306, 313 (1938). That includes not only granting new trials when verdicts are excessive but also granting

new trials when the verdicts are inadequate. *E.g.*, *Toole v. Toole*, 260 S.C. 235, 239 (1973) ("[J]ustice as plainly forbids that the plaintiff should be denied what is his due, as that the defendant should pay what he ought not to be charged." (quotation omitted)). Because a new trial is granted or denied on the facts, "no purpose [on appeal] would be served by requiring the trial judge to make factual findings," but this Court will still reverse a decision as to whether to grant a new trial on thirteenth-juror grounds if the decision "is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law." *Folkens v. Hunt*, 300 S.C. 251, 254-55 (1990) (citation omitted).

While the thirteenth-juror doctrine imposes a duty upon the trial judge to grant a new trial upon a belief that the verdict was "merely inadequate or excessive," this Court has an independent power to order a new trial whenever the verdict is "grossly inadequate or excessive." *O'Neal v. Bowles*, 314 S.C. 525, 527 (1993) (emphasis omitted).

A jury's failure to award uncontested medical bills is grounds for a new trial. *See, e.g.*, *Patterson v. Reid*, 318 S.C. 183 (Ct. App. 1995) (affirming grant of new trial where damages were less than the undisputed medical bills). So, too, when a jury awards absolutely no pain and suffering, when their existence (although not its extent) was uncontested. *See, e.g.*, *Waring v. Johnson*, 341 S.C. 248 (Ct. App. 2000)

("The jury failed to consider Waring's pain and suffering in reaching its verdict. Waring visited numerous doctors for years after the accident, seeking relief from varying degrees of pain and discomfort…. Indubitably, Waring is entitled to an award for pain and suffering.").

It was, therefore, an abuse of discretion to deny a new trial below, either owing to a grossly inadequate or even a merely inadequate jury verdict. Because negligence had been admitted at trial, the only issue before the jury was that of damages. Even Ms. Baker acknowledged that an award equal to at least the medical bills was appropriate and that some award for pain and suffering was appropriate. [Tr. 171]. Yet, the jury here awarded nothing. That verdict was not justice on this record. The circuit judge's failure to perform his duty under the thirteenth-juror doctrine and grant a new trial was an abuse of discretion and must be reversed. *See, e.g.*, *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 531 (1993) ("Allstate presented undisputed evidence that it sustained damages of $35,651.74 as a result of Durham's breach of implied warranty. We find that the verdict of $160.20 is grossly inadequate and, therefore, hold that the trial judge abused his discretion in refusing to grant a new trial absolute.").

CONCLUSION

This Court should reverse the judgment below and grant a new trial.

Dated this 13th day of April, 2025

V.K., A MINOR, BY AND THROUGH HIS GUARDIAN AMBER KOPANSKI

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