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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2024-001298
Case No. 2022-CP-18-01601

Alfredo Rocha

Appellant,

v.

Harold J. Murdaugh Jr.

Respondent,

AND

Graciela Rocha

Appellant,

v.

Harold J. Murdaugh Jr.

Respondent.

FINAL REPLY BRIEF OF APPELLANT

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I. The trial court erred in failing to grant Appellants Alfredo and Graciela Rocha's motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial Absolute as to Proximate Cause and Damages.

First, respondent contends "the circuit court correctly held that there was not evidence presented to support a punitive damages jury charge". At the close of the case, the circuit court instructed the jury to consider punitive damages, and the verdict form included a section for punitive damages. (R. pp. 9-12).

South Carolina law requires drivers to adjust their speed and distance based upon conditions and hazards on the road. Failing to do so is a statutory violation. "The causative violation of a statute constitutes negligence *per se* and is evidence of recklessness and willfulness". Wise v. Broadway, 315 S.C. 273, 433 S.E.857 (1993). While "violation of a statute does not constitute recklessness, willfulness, and wantonness *per se*", it "is some evidence that the defendant acted recklessly, willfully, and wantonly". Wise v. Broadway, 315 S.C. 273, 276, 433 S.E.2d 857, 859 (1993). (citing Keel v. Seaboard Air Line Ry., 108 S.C. 390, 95 S.E. 64 (1918)).

Furthermore, "a trial judge has the authority and responsibility to grant a new trial when, in his judgment, the verdict of the jury is contrary to the fair preponderance of the evidence". Lee v. Kirby, 243 S.C. 185, 133 S.E.2d 127 (1963). When "the evidence is susceptible of only one reasonable inference, the question is no longer one for the jury but one of law for the Court". Fuller v. Bailey, 237 S.C. 573, 118 S.E.2d 340 (1961) (citing Green v. Bolen, 237 S.C. 1, 115 S.E.2d 667 (1960)).

South Carolina Courts have held "a factual question as to punitive damages is presented when there is evidence of a statutory violation." Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 594 S.E.2d 867, 875 (Ct. App. 2004) See also Wise v. Broadway, 315 S.C. 273, 433 S.E.2d

857 (1993). Punitive damages serve to 1) punish the defendant's reckless, willful, wanton, or malicious conduct; 2) deter similar conduct; and 3) compensate for the reckless or willful invasion of plaintiff's rights. Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 594 S.E.2d 867, 875 (Ct. App. 2004). The burden is on the plaintiff to prove punitive damages and "can only be awarded where the plaintiff proves by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights". Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 594 S.E.2d 867, 875 (Ct. App. 2004). (citing Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (1996); Lister v. NationsBank of Delaware, 329 S.C. 133, 494 S.E.2d 449 (Ct.App.1997)). Therefore, it is for the jury to decide whether a party has been reckless, willful, and wanton. Wise v. Broadway, 315 S.C. 273, 277, 433 S.E.2d 857, 859 (1993). (citing Ralls v. Saleeby, 178 S.C. 431, 182 S.E. 750 (1935)).

In Austin, supra. the court upheld the trial court's award of punitive damages, which found the defendant violated S.C. Code Ann. § 56-5-2330 and 2740 when he failed to stop and yield the right of way and struck plaintiff's vehicle. Moreover, in Wise, supra. when the defendant rear-ended the plaintiff's vehicle, the court ruled the trial judge erred when it granted the defendant's motion to strike punitive damages. Thus, when evidence of a statutory violation is presented at trial, the issue of punitive damages must be presented to the jury.

In this case, the jury found Respondent negligent, violating SC Code 56-5-3230 (Drivers Exercise Due Care), SC Code 56-5-2745 (Emerging From Alley, Driveway, or Building), and SC Code 56-5-3810(a) (Limitations on Backing), requiring the court to charge the jury as to punitive damages.

Next, Respondent argues there is sufficient evidence in the record to support the jury's verdict. However, the jury finding that the Respondent's negligence was not the proximate cause

of Appellant's injuries, is not a reasonable inference on the evidence presented. The only reasonable inference from the testimony and evidence show that Appellant, while walking close to the edge of the grass, sustained injuries to his entire body, including back, ribs, and leg.

Respondent did not see Appellant, Alfredo Rocha while backing (R. p. 15) but knew he "hurt" him somewhat… Respondent said "barely". (R. pp. 13-14). If Respondent did not "hit" Appellant there is no basis to have testified under oath that he "barely hurt" Appellant. If Respondent did not hurt Appellant at all, Respondent could have said that he did not hurt Appellant, not that he "barely hurt" him. The only way Respondent could "barely hurt" Appellant is if he actually hit Appellant. That Appellant happened to fall coincidentally exactly when the Respondent's car was backing out of the driveway cannot be sustained where Respondent testified he "barely hurt" Appellant. The evidence is overwhelming that Appellant's injury did not occur from a fall, because it would be too extreme a coincidence for Appellant to have fallen exactly when and at the exact place Respondent negligently backed out of his driveway, especially considering the Respondent testified he did not look in his rearview mirror, did not see the Appellant and he "barley hurt" him. Therefore, the only reasonable inference from the evidence shows Respondent's vehicle struck Appellant, Alfredo.

"It is well settled in this state that the trial judge has the authority and responsibility to grant a new trial when, in his judgment, the verdict of the jury is contrary to the fair preponderance of the evidence..." Taylor v. Devore, 253 S.C. 393, 395, 171 S.E.2d 158, 159 (1969). (citing Lee v. Kirby, 243 S.C. 185, 133 S.E.2d 127 (1963); Mack v. Frito-Lay et al., 243 S.C. 376, 133 S.E.2d 833 (1963).' Adams v. Duffie, 244 S.C. 365, 137 S.E.2d 276 (1964)). "A jury verdict should be upheld when it is possible to do so and carry into effect the jury's clear intention. However, when a verdict is so confused that the jury's intent is unclear, the safest and best course is to order a new

trial." Johnson v. Parker, 279 S.C. 132, 303 S.E.2d 95 (1983). See also Vinson v. Jackson, 327 S.C. 290, 491 S.E.2d 249 (1997). ("The verdict is internally inconsistent and unexplainable. Accordingly, the appropriate remedy on appeal is to grant a new trial.")

Based upon the above, the only "reasonable" inference to be drawn from the evidence at trial, by a preponderance of the evidence (more likely than not), is that Respondent struck Appellant with his vehicle. Despite evidence presented indicating violation of SC Code 56-5-3230 (Drivers Exercise Due Care), SC Code 56-5-2745 (Emerging From Alley, Driveway, or Building), and SC Code 56-5-3810(a) (Limitations on Backing), the jury concluded Respondent was negligent but the that such negligence did not proximately cause Appellants' damages.

The overwhelming evidence before the Court is that Respondent's negligence was the proximate cause of the damages to Appellant. Accordingly, given the jury findings that Respondent violated statutes, the jury's verdict is inconsistent with that finding. The Trial Court erred in denying Appellants' Motion for a New Trial on Proximate Cause and Damages Only, or New Trial Absolute. See, e.g., Tuten v. Joel, 410 S.C. 104, 116, 763 S.E.2d 54, 61 (S.C. Ct. App. 2014) ("Although proximate cause is ordinarily a jury question, the court may decide proximate cause as a matter of law when the evidence is susceptible to only one inference." (internal quotation marks and citation omitted)).

This verdict is inconsistent with the specific, uncontroverted facts presented at trial and indicates the jury was confused. Appellants submit that a new trial is mandated. Appellants' Post-Trial Motion for Judgment Notwithstanding the Verdict, or alternatively, a New Trial, should have been granted.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant Alfredo and Graciela Rocha respectfully requests that the Court reverse the post-trial order denying Plaintiff's Motion for Judgment Notwithstanding the Verdict, or alternatively, a New Trial as to Proximate Cause and Damages.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel for Appellants Alfredo and Graciela Rocha certifies that on April 21, 2025, he served the within Final Reply Brief of Appellants to Respondent Harold J. Murdaugh, Jr. by sending a copy by email and US mail to the following counsel listed below:

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VIA EMAIL AND US MAIL

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Re: Alfredo Rocha, Appellant v. Harold J. Murdaugh, Jr., Respondent
Graciela Rocha, Appellant v. Harold J. Murdaugh, Jr., Respondent
Appellate Case No. : 2024-001298

Dear Sir/Madam:

In accordance with the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules, please find enclosed for filing Final Reply Brief of Appellant in the above referenced matter. In accordance with this same order, I am hereby serving copies on all counsel of record by email and USPS.

With kind regards, I am

Sincerely,

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