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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

Case No. 2024-001019

V.K., a minor, by and through his Guardian Amber Kopanski, Appellants,

v.

Lashauna Baker,.....Respondent.

INITIAL BRIEF OF RESPONDENT

s/ Ashley Gwin

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in denying a motion for new trial where the jury returned a defense verdict despite defense counsel suggesting a verdict for the medical bills during closing argument?

FACTS

The Appellant filed the underlying action claiming injuries from an automobile accident that occurred in Horry County. [Complaint] The trial was held from April 22, 2024 to April 24, 2024 before the Honorable B. Alex Hyman. In closing arguments, Appellant's counsel requested that the jury return a verdict of \$2,509 in medical bills plus \$48,600 in pain and suffering. [Tr 166-7]. Respondent's counsel suggested that the jury return a verdict for the medical bills and "a little bit of pain and suffering, perhaps" [Tr 171] After deliberations, the jury returned a defense verdict. [Verdict Form]

Appellant filed a post-trial motion for a new trial, which was denied by the trial judge. [Motion for New Trial and Form 4 Denying Motion for New Trial] The Appellant then filed this appeal.

ARGUMENTS

I. The Circuit Court Properly Denied the Motion for New Trial

The Circuit Court properly denied the Appellant's motion for a new trial.

Legal Standard

“Motions for a new trial on the ground of inadequacy of the verdict are addressed to the sound discretion of the trial judge, subject to review on appeal as to whether there has been an abuse of discretion amounting to error of law.” *Patterson v Reid*, 318 S.C. 183, 185 citing *Toole v. Toole*, 260 S.C. 235, 195 S.E.2d 389 (1973).

Argument

The trial judge properly denied Appellant's Motion for a New Trial. The Appellant has not shown any error of law leading to the denial of that motion.

Even though liability was admitted at trial, the Appellant still had to prove that the Respondent caused the Appellant damages. A reasonable jury could infer that the accident did not cause Appellant damages. Ms. Kopanski admitted that VK did not seek medical treatment until March 19, nearly two weeks after the accident [Tr 80]. Furthermore, no medical doctor testified at trial to relate the alleged injuries to the accident.

The Appellant points to the arguments of counsel during closing argument to support her contention that the Respondent admitted that the jury should render a verdict in favor of the Appellant, and therefore, the Appellant should be granted a new trial. Opening statements and closing arguments are just that—statements and arguments of counsel, not evidence in the case.

“Arguments made by counsel are not evidence,” *South Carolina Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) and *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991) (“Arguments of counsel are also **not evidence.**”)

In Appellant’s Initial Brief, they argue that “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.” (App Brief 12, Tr. 171). However, that was Ms. Baker’s counsel simply suggesting possible verdicts during closing argument. Ms. Baker did not admit that VK was injured in this accident during the trial. [Tr. 156-163]

Baker testified that the Appellant’s mother told Baker that VK was not injured following the accident, and they all refused an ambulance. [Tr. 160] “They—she denied care. She said they were okay. Her son was okay. And they—they signed a waiver--we signed a waiver. Everybody was okay.” [Tr. 160] Ms. Baker admits liability, but nowhere in her testimony does she admit that the accident caused the Appellant any damages. [Tr. 156-163]

In fact, prior to opening statements, Judge Hyman correctly told the jury that “What attorneys say is not facts or evidence to be considered. It is simply their position. It is what they believe they will show through the facts and evidence. So again, I just remind you that what the attorneys say is not evidence. They are not here to testify.” [Tr. 51-52]

Because the statements of counsel are not evidence as to damages, and the Appellant has failed to show an error of law, the trial court properly denied Appellant’s Motion for a New Trial.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the Circuit Court.

Respectfully submitted,

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