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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

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 Reply Brief

Howard W. Anderson III (#100329)
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Appellant respectfully submits the following Reply.

Respondent does not dispute that defense counsel below expressly urged the jury to return a verdict that included payment of the medical bills and at least some pain and suffering. [Tr. 171 ("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…. 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.")]. Respondent defends the verdict on appeal, however, based upon a misunderstanding of the legal effect of defense counsel's concession below.

When an attorney drafts a complaint or an answer for the client, the attorney conclusively binds the client to the positions taken there. *E.g.*, *Elrod v. All*, 243 S.C. 425, 436 (1964) ("[T]he parties to an action are judicially concluded and bound by [their pleadings] unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader."). The same is true when an attorney takes a position during argument. *See, e.g.*, *In re Murdaugh*, 436 S.C. 636, 638 (2022) (holding that statement by party's counsel at a bond hearing was a binding judicial admission against the party). A party is bound not only by "clear and unambiguous admission of fact[s] made by a party's attorney" during proceedings, *id.* (quotation omitted), but also by

"intentional and unambiguous waivers that release the opposing party from its burden to prove the facts necessary to establish the waived conclusion of law." *Id.* (quotations omitted).

By the time of closing arguments below, the attorneys—on behalf of their respective clients—agreed that defendant had been negligent and that some damages should be awarded. They only disagreed as to whether the damages should be (1) medical bills plus nominal pain and suffering or else (2) medical bills plus significant pain and suffering. The jury, however, returned nothing, completely disregarding what they had been told. That was not justice. *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)). A new trial is, therefore, required.

CONCLUSION

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

Dated this 24th day of July, 2025

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

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Proof of Service

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I, a member of this Court's bar, certify that I emailed .pdf copies of this proof of service and Appellant's Initial Reply Brief to the following counsel of record on July 24, 2025:

S. Ashley Gwinn, Esq. (ashley.gwin@mgclaw.com)

Dated this 24th day of July, 2025

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