

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Troyce Mack,

Plaintiff,

vs.

Gregory Parker, As Special
Administrator of the Estate of David
Joseph Rudd and Delta Plumbing,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2019-CP-40-02129

ORDER ON POSTTRIAL MOTIONS

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AUG 11 2025

SC Court of Appeals

This matter was tried before a jury in Richland County beginning March 10, 2025 and ending March 13, 2025. The Plaintiff, Troyce Mack (Mack or Plaintiff), alleged that the deceased Defendant David Rudd (hereinafter Rudd or Defendant), negligently caused an automobile accident which resulted in injury.¹ Plaintiff also alleged that Defendant Rudd was an employee of Defendant Delta Plumbing and that Delta Plumbing was liable based on a theory of respondent superior. At the conclusion of the evidence, the jury returned a verdict finding Plaintiff and Defendant Rudd each 50% negligent for the accident and returned a total damages award of \$16,545.34.² The jury did not find that Rudd was acting within the scope of employment for Delta Plumbing and thus did not find Delta Plumbing to be liable in the matter. The Court allowed the parties ten (10) days to submit posttrial motions. The Plaintiff timely filed a Motion for New Trial Absolution and Motion for New Trial on March 21, 2025. Defendant

¹ As indicated by the caption, Gregory Parker served as the Special Administrator of the Estate of David Joseph Rudd was represented by Gregory Parker. Mr. Rudd was deposed prior to his death and portions of his videotaped deposition were shown to the jury.

² This amount represents damages for medical expenses of \$9,220.54, lost wages of \$5,584.80 and damages of \$1,740.00 for "loss of lifestyle."

Rudd filed a reply on March 25, 2025. The Court convened a hearing on June 2, 2025 at which time counsel for both parties appeared.

I. **Plaintiff's Motion for New Trial Absolute Based on Inadequacy of Damage Award**

Plaintiff argues that the jury's award of damages in this case was so inadequate that he should be allowed a new trial under the standard that the court "must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives." See *Howard v. Roberson*, 376 S.C. 143, 154, 654 S.E.2d 877, 883 (Ct. App. 2007). Plaintiff points to the evidence that he had a broken clavicle and some disfigurement as a result of the accident, as well as pain and suffering from his injuries. Using a verdict form that required an itemization of damages, the jury awarded Plaintiff zero dollars for these elements of his claim. Plaintiff asserts that his evidence of these damages was "uncontroverted and unopposed."

The Court declines to award a new trial based on the asserted ground for relief. Mr. Mack testified about the accident and his injuries in a thorough direct examination. The jury evaluated his testimony and reviewed the evidence introduced in support of his claim, to include a picture of the disfigurement to the clavicle area of his body. His wife also testified about Mr. Mack's injuries. Contrary to Plaintiff's assertions, however, there was evidence which challenged Plaintiff's damages. The defense conducted an extensive cross examination and elicited testimony from Plaintiff and his wife that Plaintiff's medical treatment was relatively limited, he recovered from his injuries quickly and, despite any lingering pain, Plaintiff was able to travel to New York relatively soon after the accident for a family trip. Moreover, the testimony established that Plaintiff has been able to resume many of the recreational activities engaged in prior to the accident. Finally, Plaintiff offered no testimony from any medical personnel regarding his injuries.

In *Chapman v. Upstate RV and Marine*, 364 S.C. 82, 610 S.E.2d 852 (Ct. App. 2005), the South Carolina Court of Appeals acknowledged the rule of law on new trials cited by Plaintiff but cautioned that "substantial deference should be given to a jury's determination of damages." This Court believes that the jury carefully evaluated the evidence before it and arrived at a

verdict that it believed was fair and just.³ The Court will not invade the jury's province by granting a new trial because of the amount of the damage award.⁴

II. Plaintiff's Motion for New Trial Based on Errors of Law.

(a) SC Code Ann. 56-5-6160

Plaintiff argues that allowing the jury to hear that Plaintiff had been given a traffic ticket for "driving too fast for conditions" as a result of the accident and that he was subsequently convicted of this offense was an error of law that warrants a new trial. S.C. Code Ann. 56-5-6160 provides that "[n]o evidence of conviction of any person for any violation of this chapter shall be admissible in any court in any civil action." Nevertheless, in *Addyman v. Specialties of Greenville, Inc.*, 273 S.C. 342, 347, 257 S.E2d 149, 151 (1979), where the Plaintiff was denied the ability to cross-examine a non-party driver of the at-fault vehicle about his traffic offense, our Supreme Court stated the following:

Appellant's exceptions specify error only in the lower court's refusal to allow introduction of the driver's plea to impeach his earlier testimony and do not contend for its admission as substantive evidence. In our view the literal language of s 56-5-6160 does not bar the use of this evidence to impeach the credibility of a witness, whether or not such witness is a party to the action.

Here, in a pretrial ruling on Plaintiff's Motion in Limine concerning Plaintiff's traffic offense, the Court excluded evidence of Plaintiff's traffic offense except for impeachment purposes. During trial, the Defendant raised the traffic conviction on cross examination for impeachment purposes and not as substantive evidence. Subsequently, during its deliberations, the jury asked to be reminded of the traffic conviction and the jury was brought into the courtroom for this purpose. At another session prompted by a subsequent question from the jury, the Court instructed the jury, at Plaintiff's request, that it was not to consider the traffic offense for any purpose other than its impact on Plaintiff's credibility. Given that Plaintiff's traffic

³ The jury was attentive throughout the presentation of evidence, arguments of counsel and jury instructions from the Court. The Court believes the jury fulfilled its responsibility to carefully weigh all of the evidence. There is simply no evidence that the jury was motivated by improper motive as suggested by Plaintiff or that it was confused in any way.

⁴ Furthermore, the Court declines to order a new trial based on the Thirteenth Juror Doctrine. See *S.C. Highway Dep't v. Townsend*, 263 S.C. 253, 285, 217 S.E.2d 778, 781 (1975).

conviction was used only for the purpose of impeachment, the Court declines to grant a new trial on this ground.

(b) **Expert witness testimony.**

The Plaintiff next argues that it was improper for the Court to allow Defendant's expert accident reconstructionist to use a corrected computer-aided design (CAD) as a demonstrative during his testimony when the corrected version of the CAD had not been disclosed to Plaintiff but a few minutes prior to the witness's testimony. The Plaintiff objected to the expert's use of this corrected demonstrative but the Court overruled the objection and gave Plaintiff a short period of time to review the demonstrative before testimony was allowed to proceed. As pointed out by the Defendant, however, the expert witness referenced this CAD during his testimony only for the amount of footage between the 45-mph traffic control sign and the accident site and he did not rely upon the CAD to establish the point of impact or the resting places of vehicles after impact. The witness relied much more heavily on a police video, which was consented to by both parties, to show the jury the basis of his calculations. Moreover, any errors in the original demonstrative were actually identified by Plaintiff in a pretrial deposition so the corrected version should not have been a surprise to the Plaintiff. Finally in this regard, the expert was subject to a thorough cross-examination exposing these issues and other perceived deficiencies in his testimony. Given the circumstances, the Court stands by its decision to allow use of the corrected CAD and does not believe the late disclosure of this demonstrative unduly prejudiced the Plaintiff.

BASED ON THE FOREGOING, the Plaintiff's Motion for New Trial Absolution and Motion for New Trial are DENIED.

AND IT IS SO ORDERED.

Honorable Milton G. Kimpson

_____, 2025

Columbia, South Carolina



Richland Common Pleas

Case Caption: Troyce Mack vs John Doe , defendant, et al
Case Number: 2019CP4002129
Type: Order/Other

IT IS SO ORDERED.

s/Milton G. Kimpson 2783