

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2011-202049

Jonathan Coleman and
Frances Coleman.....Appellants,

v.

James Edward Singleton.....Respondent.

INITIAL BRIEF OF RESPONDENT JAMES EDWARD SINGLETON

Phillip E. Reeves (S.C. Bar No. 4672)
Nicholas A. Farr (S.C. Bar No. 78769)
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Ste. 1200
P.O. Box 10589
Greenville, SC 29603
(864) 271-9580
(864) 271-7502 (facsimile)
preeves@gwblawfirm.com
nfarr@gwblawfirm.com

Attorneys for Respondent,
James Edward Singleton

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE APPELLANTS FAIL TO PRESERVE THE ISSUES ON WHICH THEY APPEAL SINCE THEY FAILED TO MAKE CONTEMPORANEOUS, SPECIFIC OBJECTIONS TO THE ADMISSION OF THE EVIDENCE?
- II. WAS THE TRIAL COURT'S ADMISSION OF PHOTOGRAPHS OF THE APPELLANTS' VEHICLE APPROPRIATE WHERE SUCH PHOTOGRAPHS WERE RELEVANT AND USED TO REBUT THE APPELLANTS' TESTIMONY?
- III. WAS THE TRIAL COURT'S ADMISSION OF EVIDENCE OF THE APPELLANTS' PRIOR MOTOR VEHICLE ACCIDENTS AND RELATED MEDICAL TREATMENT APPROPRIATE WHERE SUCH EVIDENCE WAS RELEVANT IN A PERSONAL INJURY ACTION AND BORE ON THE CREDIBILITY OF THE WITNESS?

STATEMENT OF THE CASE

This action was filed in the Court of Common Pleas in Anderson, South Carolina on June 29, 2009 by Jonathan Coleman and Frances Coleman. The Complaint asserted liability on the grounds of negligence and loss of consortium. (Compl. ¶¶ 4-11).

This matter arises out of a minor motor vehicle accident which occurred on August 7, 2007, in in the parking lot of the South Carolina Credit Union in Anderson, South Carolina. It involved a 1996 Honda Accord being operated by Mr. Coleman, one of the appellants, and a 2003 Dodge pickup truck being operated by Mr. Singleton. (Tr. p. 225). The accident occurred when Mr. Singleton was attempting to back out of his parking space. Mr. Singleton “rolled” his truck out of his parking space before stopping when he felt as if he had run over something with his rear tire. (Tr. pp. 230-231). He then got out of his truck and realized that he had backed into the appellant’s vehicle, leaving a hole in the appellant’s rear plastic bumper created by Mr. Singleton’s trailer hitch. (Tr. pp. 231, 235). According to Mr. Coleman, the accident “slammed” and “rocked” his car, causing him to be “jerked and jolted.” (Tr. pp. 51, 103, 121). As a result of the accident, the appellants alleged that Mr. Coleman injured his head, neck, and back and sustained medical bills in the amount of \$18,723.44. (Tr. pp. 57, 101). Ms. Coleman, who was not involved in the accident, claimed that she suffered a loss of consortium as a result of her husband’s injuries.

The trial of this matter was held before the Honorable J. Cordell Maddox, Jr. on April 18-20, 2011. The jury returned a verdict in favor of Mr. Singleton. The appellants subsequently moved for judgment notwithstanding the verdict and for a new trial absolute. The stated bases for their motion for a new trial were that (1) the investigating

officer improperly mentioned insurance; (2) the verdict was not justified given the admission of liability; and (3) the testimony of Dr. Thompson was improperly admitted. These post-trial motions were denied by order filed September 23, 2011. The Notice of Appeal was served on October 25, 2011.

ARGUMENT

The appellants' appeal is without merit for three reasons and should be dismissed. First, the appellants failed to preserve for this Court's review those issues on which they seek a new trial. Second, the trial court properly admitted photographs of the appellants' vehicle into evidence because the photographs were relevant and used to rebut the appellants' testimony. Third, the trial court properly admitted evidence of the appellants' prior motor vehicle accidents and subsequent treatment when such evidence was relevant in this personal injury action and used to contest the credibility of the appellant. Neither the admission of the photographs or the prior accidents constituted an abuse of discretion. Accordingly, the jury verdict in favor of Mr. Singleton should be affirmed.

I. **Appellants did not properly preserve their objections at trial and, therefore, their argument is not properly before this Court.**

The appellants are prohibited from arguing before the Court that the trial court erred in failing to grant motions *in limine* on evidentiary issues. A ruling *in limine* is not a final ruling on the admissibility of evidence. State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993); see also Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (1997). Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review. Id.

In the present case, the appellants moved *in limine* to exclude the evidence at issue; however, they made no contemporaneous objections to the admission of such

evidence nor did they raise error in the admission of the evidence in their motion for a new trial. Accordingly, the grounds for appeal were not preserved for appeal and, thus, the appellants' argument is not properly before this Court.

Moreover, even if the trial court's rulings on the appellants' motions *in limine* are considered final, the appellants did not preserve the grounds for objection they now present to this Court. An exception raised on appeal must be on the same ground as the corresponding objection in the trial court. Southern Realty and Const. Co., Inc. v. Bryan, 290 S.C. 302, 250 S.E.2d 194 (1986); see also Pike v. South Carolina Dept. of Transp., 332 S.C. 605, 506 S.E.2d 516 (1998) (holding that when defendant's only specific objection on the record was based on hearsay, defendant was not entitled to raise an argument based on prejudice on appeal). An objection to evidence on grounds that it is "prejudicial" or even "highly prejudicial," without more, does not preserve issue of admissibility. State v. Bostick, 307 S.C. 226, 414 S.E.2d 175 (1992).

At trial, the appellants moved *in limine* to exclude the photographs of the vehicle solely on the grounds that it was improper to associate the amount of property damage with the personal injury without a proper foundation. (Tr. pp. 20-21). They made no subsequent objection during trial nor did they assign any error to the admission of the photographs in their motion for a new trial. Now, on appeal, the appellants argue for the first time that the photographs were inadmissible due to (1) a lack of expert testimony and (2) the alleged failure of the photographs to depict the full extent of the property damage. (See Appellant's Init. Br. 4-7). Neither of these issues was ever raised, or even discussed, before the trial court. The appellants' sole objection was to the association between property damage and personal injuries – an argument never directly made at trial

by Mr. Singleton. Because issues of expert testimony and the alleged failure of the photographs to depict the full extent of the property damage were never raised before the trial court, those issues are not preserved and not properly before this Court.

Similarly, in regards to the admissibility of evidence regarding the prior accidents, the appellants moved *in limine* to exclude such evidence solely on the grounds that it is “more prejudicial than probative.” (Tr. p. 21). Again, an objection to evidence on grounds that it is “prejudicial” or even “highly prejudicial,” without more, does not preserve the issue of admissibility. Bostick at 229, 414 S.E.2d at 177. All evidence is meant to be prejudicial, see State v. Lee, 399 S.C. 521, 732 S.E.2d 225 (2012), and, thus, objections solely on prejudicial grounds do not properly preserve the issue for review.

Even though they presented only a “prejudicial” objection to the trial court, the appellants now raise on appeal that evidence of the prior motor vehicle accidents and subsequent medical records should not have been admitted because (1) the accidents occurred over ten (10) years prior and (2) there was no evidence of a continuing course of treatment. (See Appellants’ Init. Br. 8-10). Neither of these issues was raised by the appellants, or even discussed, before the trial court. In addition, neither of these issues was raised in the appellants’ post-trial motions. Accordingly, those issues are not preserved and not properly before this Court.

II. The Circuit Court properly admitted into evidence photographs of the Appellants’ vehicle.

The trial court properly admitted photographs of the appellants’ vehicle. The appellants contend that the photographs were inadmissible due to (1) a lack of expert testimony and (2) the alleged failure of the photographs to depict the full extent of the property damage and, thus, lacked a proper foundation. (See Appellants’ Init. Br. 4-7).

The appellants' objections, however, are misplaced and not based on the testimony elicited at trial. The admission or exclusion of evidence is a matter within the sound discretion of the trial court and absent clear abuse, will not be disturbed on appeal. Gamble v. International Paper Realty Corp., 323 S.C. 367, 373, 474 S.E.2d 438, 441 (1996). Photographs of the appellants' vehicle are relevant in a personal injury action, especially given the conflicting testimony regarding the severity of the impact. Accordingly, there was no abuse of discretion and the photographs were properly admitted.

A. Photographic evidence of vehicles involved in a motor vehicle accident is relevant in personal injury actions without expert testimony.

The crux of the appellants' objection to the admissibility of the vehicle photographs is that it is improper to correlate property damage to personal injuries without expert testimony. Despite the appellants' contentions, counsel for Mr. Singleton never made such an argument. Rather, defense counsel referred to the photographs in opening statement to illustrate the nature of the accident (Tr. p. 42) and requested in closing argument that the jury utilize its common sense. (Tr. p. 287). In actions involving personal injury, evidence depicting damage to the vehicles is relevant even without expert testimony.

The appellants have cited no authority which stands for the proposition they now wish to make. While there is no South Carolina authority on point, other jurisdictions have examined the issue and conclusively found that photographs showing little or no damage to the plaintiff's vehicle to be admissible. See Fronabarger v. Burns, 385 Ill.App.3d 560, 895 N.E.2d 1125 (2008) (holding that photographs of vehicles were relevant to nature and extent of plaintiff's injuries and were admissible without expert

testimony on the correlation between damage and injuries); Flores v. Gutierrez, 951 N.E.2d 632 (In. Ct. App. 2011) (finding that photograph showing minimal damage to plaintiffs vehicle was relevant to show relationship between car damage and plaintiff's alleged injury in absence of expert testimony to suggest that such a relationship could not exist); Accetta v. Provencal, 962 A.2d (R.I. 2009) (holding that admission, without expert testimony, of photographs taken of vehicles, which depicted little or no damage, was not error in negligence action); Brenman v. Demello, 191 N.J. 18, 921 A.2d 1110 (2007) (finding that trial court did not abuse its discretion when it permitted the admission of photographs without expert testimony when the cause or extent of plaintiff's injuries are at issue); Mason v. Lynch, 388 Md. 37, 878 A.2d 588 (2005) (holding that trial court did not abuse its discretion in admitting photographs as photographs are relevant to the issue of the extent of the plaintiff's injuries); Marron v. Stronstad, 123 P.3d 992 (2005) (photographs and an insurance appraisal were admissible in negligence action when such evidence was probative of the force with which accident occurred and the likelihood that it caused harm to plaintiff); see also Berndston v. Annino, 177 Conn. 41, 411 A.2d 36 (1979) (holding that trial court committed reversible error in excluding photographic evidence of plaintiff's vehicle when evidence was relevant to issue of causation of plaintiff's alleged injuries).

In addition to there being no authority in South Carolina to support the appellants' argument, it is also clear that the appellants' objections speak to the weight and not the admissibility of the evidence. If the appellants were concerned about the jury correlating the severity of the impact with the alleged injury, then they were free to offer evidence suggesting otherwise. The appellants had ample opportunity to cross-examine any

witness, including Mr. Singleton or the investigating officer, with respect to the photographs and to present evidence as to the severity of the appellant's alleged injuries. If the appellants believed that there was additional damage, then they could have presented evidence regarding such damage through photographs, mechanics, repair costs, or expert testimony. See, e.g. Accetta v. Provencal, 962 A.2d 56 (R.I. 2009) (stating that plaintiff's objections on similar grounds went to the weight and not the admissibility of the evidence). The jury is entitled to view all of the factual evidence in the case and make its decisions accordingly.

If the appellants contend that there is no correlation between the severity of impact and the nature of injuries and, therefore, photographs depicting minor damage are inadmissible without expert testimony, then the inverse must also be true. If there is no correlation between impact severity and injuries, then photographs of severely damaged vehicles would also be inadmissible without expert testimony based on the appellants' rationale. The logical conclusion to that argument is to require expert testimony in every motor vehicle accident case whenever the nature, course, and extent of the alleged personal injuries are at issue. That certainly is not the law in South Carolina.

B. Photographic evidence of the appellants' vehicle was relevant and bore on the issue of credibility

Photographs of the appellants' vehicle showing little or no property damage were relevant and bore directly on the issue of the appellants' credibility. Considerable latitude is allowed in the cross-examination of a witness to test his credibility. Martin v. Dunlap, 266 S.C. 230, 222 S.E.2d 8 (S.C. 1976). Mr. Coleman testified on numerous occasions regarding the severity of the impact. On direct examination, Mr. Coleman demonstratively stated that the "whole car rocked" and that Mr. Singleton "slammed"

into his car. (Tr. pp. 51:56, 70:20-22, 103:1-2). In addition, Mr. Coleman testified on cross-examination that he was “jerked and jolted” as a result of the impact. (Tr. pp. 121:1-3). Moreover, counsel for the appellants, in his opening statement, described the accident as a “smashing, ramming-type sensation.” (Tr. p. 37:15-17). Because of this testimony and statement by the appellants’ counsel, the true nature of the impact became directly at issue. If left with nothing other than the appellants’ testimony, the jury would be left to speculate as to the severity of the impact without adequate visualization of the facts. This made the photographs directly admissible on the issue of credibility.

The appellants cannot parse the evidence simply because such evidence will be prejudicial to their case. See Clark v. Cantrell, 332 S.C. 433, 504 S.E.2d 605 (Ct. App. 1998). The investigating officer testified that the photographs accurately reflected the damage he observed at the scene. (Tr. p. 206:6-8). Moreover, in reviewing the photographs and reflecting on his investigation, the officer testified that he observed no evidence of excessive speed, no evidence that the appellants’ vehicle “rocked,” and no evidence that the vehicle was “jolted.” (Tr. p. 208:6-23). Similarly, Mr. Singleton described the accident as extremely minor. (Tr. pp. 230-231). When Mr. Coleman testified contrary to this testimony, the photographs became directly relevant to his credibility and, thus, were admissible.

C. **Appellants’ objections regarding whether the photographs accurately depicted the damage to the vehicle go to the weight, rather than the admissibility, of the evidence**

The appellants’ objection to the admissibility of the photographs on the ground that they did not accurately depict the damage to the vehicle is misplaced for several reasons. First, despite the appellants’ contentions, the photographs accurately depicted

the damage to the vehicle. As discussed above, the investigating officer and Mr. Singleton testified that the photographs did accurately reflect the damage to the vehicle. (Tr. p. 206:6-8; 230-231). Photographs are sufficiently authenticated if a person familiar with what it depicts can testify that the photograph is a true representation. State v. Campbell, 259 S.C. 339 (191 S.E.2d 770 (Ct. App. 1972)). Because the officer was familiar with the scene through his investigation, the photographs were properly authenticated through his testimony.

Moreover, even though Mr. Coleman testified on direct examination that the accident created other damage, when shown the photograph on cross-examination and asked for the location of the other damage, he stated, "From the automobile accident that's it from what [Mr. Singleton] did that day." (Tr. p. 123: 5-11). Therefore, the appellants admitted that the photograph accurately reflected the damage.

Despite the appellants' testimony on direct examination, there is no evidence of any other damage to the vehicle. This is not a situation in which the respondent possessed two photographs, one depicting little damage and the other showing evidence of more severe damage. No photographs obtained through the discovery process or offered at trial depicted any other damage. The appellants presented no repair invoices or photographs depicting additional damage. The only evidence in the record is the appellants' testimony which was subsequently recanted on cross-examination. Because the appellant admitted that the vehicle was drivable despite his contention that the accident punctured a "shock absorber," that testimony lacks credibility. (Tr. p. 124:1-8, 12-14).

Second, in this case, appellants' objections go to the weight, rather than the admissibility, of the photographs. With conflicting testimony regarding the accuracy of the photographs, the appellants were free to offer alternative evidence supporting their contentions and leave the question for the jury. However, they failed to do so. If the appellants contend that the photographs did not accurately depict the damage, then they were free to make their case before the jury and let the jury decide. Having not done so, they cannot now argue that the admission of the photographs was an abuse of discretion.

III. The Circuit Court properly admitted evidence of the appellant's prior motor vehicle accidents and related medical treatment.

Evidence concerning Mr. Coleman's prior accidents and related medical treatment are directly relevant in a personal injury action in which proximate cause is at issue and, thus, were properly admitted into evidence by the trial court. In actions for injuries sustained in an automobile accident, a defendant is entitled to show fully the nature and extent of injuries received by the plaintiff in a prior accident. Jackson v. Banks Constr. Co., 229 S.C. 461, 93 S.E.2d 604 (S.C. 1956).

Here, the evidence at issue revealed that, in 1996, Mr. Coleman was involved in an accident in which he injured his back and neck, resulting in extended physical therapy. (Tr. pp. 106:9-12, 107:22-108:5). In 1998, he was involved in a second accident in which he injured his back and had headaches. (Tr. p. 111:10-17). Mr. Coleman alleged that as a result of the accident at issue, he sustained headaches and injured his neck, back and shoulder. (Tr. pp. 77:8-14, 79:8-16). Because the injuries complained of were substantially similar to those in prior accidents, it was proper to question the appellants regarding the prior accidents and the resulting treatment.

The appellants contend that evidence of the prior injuries should have been excluded because the defense did not put forward any evidence establishing a continued course of treatment. Again, a defendant is entitled to show fully the nature and extent of injuries received by the plaintiff in a prior accident. Jackson, at 464, 93 S.E.2d at 605. If the appellants contend that the prior injuries had fully healed prior to the accident at issue, then the question of the impact of those prior injuries should be placed in the hands of the jury. See Thompson v. Block's Inc., 309 F.2d 325 (4th Cir. 1962) (finding that it was not error for plaintiff to be asked on cross-examination about prior accidents and that the plaintiff suffered no prejudice because he testified that he suffered no injuries in prior accident). The same holds true here.

The evidence was also admissible to show prejudice and bias and to attack Mr. Coleman's credibility. Considerable latitude is allowed in the cross-examination of a witness to test his memory, bias, prejudice, interest, or credibility. Martin, at 234, 222 S.E.2d at 10. In doing so, a witness may be asked questions in reference to irrelevant matter or to prior statements contradictory to his testimony. Id.

On direct examination, Mr. Coleman was specifically asked about his prior accidents and any resulting injuries. (Tr. pp. 55:13-57:16). In response to those assertions, he testified that in the 1996 accident, he injured only his lower back. (Tr. p. 55:16-21). On cross-examination, however, he admitted that he had actually injured his neck and his head in addition to his lower back. (Tr. pp. 106:3-107:21). In addition, the appellant testified on cross-examination that his treatment following the 1996 accident "didn't last more than a week or two" and that he did not seek any treatment beyond those two weeks. (Tr. pp. 55:16-21; 56:1-8). Again, on cross-examination, he admitted

that his response was not entirely accurate, testifying that he had also undergone physical therapy and filed a lawsuit in 1997 arising out of the accident in which he alleged that he continued to have injuries which would last into the future. (Tr. pp. 107:22- 16).

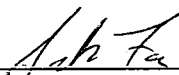
Also, Mr. Coleman testified that he injured only his lower back in the 1998 accident and received no more than a week or two of treatment. (Tr. pp. 56:9-57:3). On cross-examination, he was questioned about a medical record from Oconee Memorial Hospital arising out of that accident in which he noted back pain and headaches. (Tr. p. 111:3-23). Despite what the record indicated, he again denied having any head injury in the 1998 accident. (Tr. p. 112:6-16). Moreover, he admitted that he never told his treating physician about either of these prior accidents. (Tr. p. 115:2-11).

When Mr. Coleman testified on direct examination about these prior accidents and the resulting injuries, he opened the door to cross-examination about the accuracy of his testimony. State v. Doby, 273 S.C. 704, 258 S.E.2d 896 (S.C. 1979). The medical records and the inaccuracies of his testimony bore directly on the issue of his credibility and were well within the scope of permissible cross-examination. See SCRE 611(b) (a witness may be cross-examined on any matter relevant to any issue in the case, including credibility). Accordingly, the trial court properly admitted evidence of the appellants' prior motor vehicle accidents and related treatment and committed no abuse of discretion in doing so.

CONCLUSION

Based upon the foregoing authority and arguments, the judgment entered by the Circuit Court should be affirmed.

October 30, 2013



Phillip E. Reeves (S.C. Bar No. 4672)
Nicholas A. Farr (S.C. Bar No. 78769)
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Ste. 1200
P.O. Box 10589
Greenville, SC 29603
(864) 271-9580
(864) 271-7502 (facsimile)
preeves@gwblawfirm.com
nfarr@gwblawfirm.com

Attorneys for Respondent
James Edward Singleton