

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
L. B. WICKENSIMER

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2301971

Barbara Gaines

Joyce Ann Campbell

2013 SEP 19 P 3:40

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):
 - Rule 43(k), SCRPC (Settled);
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

9/19/2013

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 19th day of September, 2013, and a copy mailed first class or placed in the appropriate attorney's box on 19th day of September, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

John Robert Peace IV PO Box 8087 Greenville, SC
296048087

ATTORNEY(S) FOR THE PLAINTIFF(S)

Marcus Kirk McGarr Marcus K. McGarr, P.A. 108 Whitsett
Street Greenville, SC 29601

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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9/19/13

Marcus Kirk McGarr Marcus K. McGarr, P.A. 108 Whitsett Street Greenville, SC 29601

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Caroline Hiskell Mon Tues 8-5-13
April Herron Wed 8-7-13

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

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COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

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STATE OF SOUTH CAROLINA GREENVILLE CO. S.C. IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE
FILED-CLERK OF COURT
PAUL B. WICKENSIMER

2013 SEP 19 P 3:40 C.A. NO.: 2012-CP-23-1971

Barbara Gaines,

Plaintiff,

vs.

Joyce Ann Campbell,

Defendant.

ORDER

This matter comes before the Court pursuant to Plaintiff's Counsel's (herein after Peace) Motion for a new trial pursuant to SCRCR Rule 59. This motor vehicle accident case was called to trial before a jury on August 5, 2013. The Defendant admitted fault in causing the accident and, through her Counsel in Closing Argument, admitted the accident was the cause of injury to the Plaintiff. The dispute between the Parties revolved around the extent of the injuries and the amount of damages for which the Defendant should be held responsible.

On August 7, 2013, the jury returned a verdict for the Plaintiff in the amount of three thousand, nine hundred, forty-one dollars and no cents (\$3,941.00), which was the amount of the Emergency Room bill incurred by the Plaintiff; Counsel for Defendant (herein after McGarr) conceded owing only this amount to the Plaintiff. Plaintiff had sought compensation for the cost of spinal surgery and for other attendant personal injury damages. The stipulated total of Plaintiff's medical bills was \$77,966.56.

Plaintiff's New Trial Motion centered on the testimony of her two medical expert witnesses who each opined that this motor vehicle accident, more probably than not, to a reasonable degree of medical certainty, was the cause of injury to the Plaintiff which necessitated

the disputed spinal surgery. Both witnesses were presented at trial through the use of *de bene esse* video depositions. Defendant did not present any evidence to refute these experts and relied solely on McGarr's cross examination of the witnesses to contest the proximate cause issue. No objections were made at trial to the admission of either deposition and no objections were made at trial as to the content of either deposition.

However, this Court finds that much of McGarr's cross examination of Dr. Mina (Plaintiff's neurosurgeon who performed the surgery) was objectionable and should have been excluded. McGarr repeatedly and argumentatively questioned Dr. Mina about the veracity of other witnesses. Not only did McGarr continuously ask Dr. Mina to comment on the Plaintiff's credibility using collateral sources but McGarr went so far as to ask Dr. Mina if she was calling the Emergency Room Physicians "quacks". This questioning was in clear violation of South Carolina's long standing and basic rule prohibiting the "pitting" of witnesses.

Additionally, McGarr repeatedly requested Dr. Mina to state her opinion concerning the proximate cause of the injury which necessitated the surgery. McGarr asked Dr. Mina if it was "possible" for a disputed intervening event to have caused the necessity for surgery. Upon completion of Dr. Mina's deposition and after the jury was excused from the courtroom, the Court commented on the impropriety of both of these facets of the cross. McGarr adamantly stated that the form of his causation question was completely appropriate and that there was an abundance of case law to support his position. McGarr asserted that he was not required to use the more probably than not standard to obtain his version of proximate cause. The court broke for lunch and instructed McGarr to research and return, after lunch, with his supporting case law. McGarr brought no law in support of his position. McGarr continued to assert that his form of questioning concerning causation was legally correct, his rational being that he did not have the



burden of proof and was therefore not bound by the same rules as the Plaintiff. McGarr is incorrect. The law in South Carolina requires that opinion testimony by medical experts must be to a reasonable degree of medical certainty and more probably than not. There is no distinction made as to who the questioning party is.

This Court also finds that much of McGarr's cross examination of Dr. Harding (Plaintiff's primary care physician who referred Plaintiff to Dr. Mina) followed a similar pattern as that of Dr. Mina. McGarr repeatedly requested Dr. Harding to state her opinion concerning the proximate cause of the injury which necessitated the surgery. Again, McGarr continued to question Dr. Harding in a manner that does not follow the law that testimony by medical experts must be to a reasonable degree of medical certainty and more probably than not. Therefore, the questioning was objectionable and should have also been excluded.

McGarr also violated SCRPC Rule 43(i) in his closing argument. McGarr personally addressed and personally appealed to the jury in his closing remarks. Comments in McGarr's closing included: "...I know that my Greenville County jurors are going to be fair and decent to me." "And you're bright enough and have the brains enough to know that that's what I said on Monday." "And you guys are not so foolish or dumb." "When you heard the evidence yourself, are you guys just not bright enough to remember?" While these indiscretions were not objected to by Peace, the Court finds them to have prejudiced the outcome of the trial.

In *Vinson v. Hartley*, the Court of Appeals noted that "The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. 324 S.C. 389, 403, 477 S.E.2d 715, 722 (Ct. App. 1996)(citing *S.C. Highway Dept. v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975)). Considering the evidence and testimony offered at trial in

this case, this Court finds that the evidence does not support the jury's verdict. I am invoking the "Thirteenth Juror Doctrine". The only competent evidence admitted at trial requires a verdict that compensates the Plaintiff, at a minimum, for the medical bills and expenses incurred as a result of the spinal surgery. This Court finds an award of damages for only the emergency room bills in the value of \$3,941.00 is grossly inadequate and unsupported by the evidence in this case. Therefore, this Court grants Plaintiff's Motion for a New Trial Absolute.

AND IT IS SO ORDERED.

ER-C.W. de [Signature]
Judge

7/18, 2013