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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman
Circuit Court Judge
2019-CP-40-04185

Case No. 2024-000548

CRYSTAL GOODWIN AND
JAMES GOODWIN.....

Respondents,

v.

MIDLANDS ORTHOPEDICS AND
NEUROSURGERY AND
DR. THOMAS J. HOLBROOK, M.D.....Appellants.

FINAL REPLY BRIEF OF APPELLANTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES**Error! Bookmark not defined.**

INTRODUCTION 1

ARGUMENT..... 1

 A. The Order Below Confirms That The Trial Court Applied An Erroneous Legal Standard
 To Support Granting Respondent A New Trial Under The Thirteenth Juror Doctrine 1

 B. Thirteenth Juror Rulings Cannot Be Affirmed On Any Basis in South Carolina When The
 Trial Court Provides Reasons Which Underpin Its Ruling..... 4

CONCLUSION..... 5

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bailey v. Peacock</i> , 318 S.C. 13, 455 S.E.2d 690 (1995)	4
<i>Graham v. Whitaker</i> , 282 S.C. 393, 321 S.E.2d 40 (1984)	3
<i>Lane v. Gilbert Constr. Co.</i> , 383 S.C. 590, 681 S.E.2d 879 (2009)	1, 4
<i>Norton v. Norfolk Southern Railway Company</i> , 350 S.C. 473, 567 S.E.2d 851 (2002)	3, 4
<i>Rogers v. Norfolk S. Corp.</i> , 356 S.C. 85 (2003)	2
<i>Youmans v. S.C. Dep't of Transp.</i> , 380 S.C. 263, 670 S.E.2d 1 (Ct. App. 2008)	1, 4

INTRODUCTION

The Thirteenth Juror Doctrine grants the trial court certain powers when it determines the verdict is not supported by the evidence, not when it determines the verdict is not supported by her view of the law as applied to the evidence. Here, the trial court did not act as a thirteenth juror. Rather, the trial court took the case *away* from the jurors and supplanted *their* factual determinations with *her* legal conclusions. That is improper and reversal is warranted.

ARGUMENT

A. The Order Below Confirms That The Trial Court Applied An Erroneous Legal Standard To Support Granting Respondent A New Trial Under The Thirteenth Juror Doctrine

Respondents contend that Appellants' argument for reversal- that the thirteenth juror order was erroneously based on legal conclusions and the wrong standards- is not based on "anything within the Order." (Resp. Br. p. 9). Respondents' argument lacks merit. While certainly Appellants noted that the motion filed by Respondents was granted, and what the motion requested, the Order itself contains language making it erroneous as a matter of law.

When a trial court provides reasoning for granting a thirteenth juror doctrine motion for new trial, that reasoning is fully reviewed on appeal. *See Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597-600, 681 S.E.2d 879, 883-84 (2009) (reviewing the trial court's rationale for granting a new trial despite the fact the trial court granted the new trial under the thirteenth juror doctrine and was not required to provide any reasons for the outcome); *Youmans v. S.C. Dep't of Transp.*, 380 S.C. 263, 282, 287-88, 670 S.E.2d 1, 10, 13 (Ct. App. 2008) (holding that despite the discretion given the trial court by the thirteenth juror doctrine, it could not grant a new trial based on the brevity of the jury deliberations).

Here, the trial court's order must be reversed. The trial court improperly made legal conclusions and assessed the legal sufficiency of the evidence to underpin its thirteenth juror order as follows:

Witness testimony established the appropriate standard of care and that Appellants breached the standard of care. Further, the evidence demonstrated that as a proximate result of Appellants' conduct, Crystal (and, therefore, James) was obviously permanently injured – she is effectively paralyzed from the waist down, having lost all control of her lower body.

(Order Granting Motion for New Trial Under 13th Juror Doctrine, R. p. 1) (emphasis added). This reasoning sits plainly within the Order itself. It is an assessment of the *legal effect* of the evidence when applied to Respondents' *legal theories* and Appellants' *legal defenses*. By employing such reasoning, the trial court failed to act as the "thirteenth juror" based on the *facts*. By concluding that the Respondents' evidence established the essential four elements of their medical negligence claim, the trial court assessed the legal sufficiency, and legal impact, of the evidence. A JNOV motion requires a court to determine the sufficiency of the evidence, which is precisely what the trial court did below. *Rogers v. Norfolk S. Corp.*, 356 S.C. 85, 91 (2003). But this analysis does not support the granting of the thirteenth juror order.

Concluding that evidence of each essential element of a cause of action establishes a legal result contrary to the jury's verdict is not the exercise of a "thirteenth juror" vote on the facts. Further, the trial court in her order below highlighted her *intimate knowledge of the law* and grounded the ruling based on that intimate knowledge by rendering legal sufficiency rulings as to each essential element of Respondents' medical negligence case. The trial court's explanation that its "intimate knowledge of the applicable law" necessitates a new trial confirms that (an incorrect) legal analysis underpinned and overtook the case assessment. There is no legal sufficiency rationale applied by a trial court who steps into the role of the thirteenth juror. Instead, the trial judge must be *convinced* that "a new trial is

necessitated on the basis of the *facts* in the case.” *Graham v. Whitaker*, 282 S.C. 393, 401, 321 S.E.2d 40, 45 (1984) (emphasis added). Legal analysis is supposed to be out of the equation here, but the trial court placed it front and center below, including literally so, using the heading “Findings of Fact and ***Conclusions of Law***” (emphasis added) in the Order.

Respondent’s interpretation of *Norton v. Norfolk Southern Railway Company*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) is likewise off base. There, after a defense verdict, the trial court granted a new trial absolute in Respondents’ favor under the thirteenth juror doctrine. *Id.*, 350 S.C. at 476, 567 S.E.2d at 853. The problem was that the federal standard for granting a new trial- based on the “clear weight of the evidence” - should have applied because the action was brought under the federal FELA statute. *Id.*, 350 S.C. at 480, 567 S.E.2d at 855. Our Supreme Court concluded that the trial court erroneously applied the state-law thirteenth juror doctrine in granting the new trial, and failed to apply the correct federal standard. *Id.*, 350 S.C. at 481, 567 S.E.2d at 856. The Court ruled that such misapplication was consequential, stating “while the state and federal standards use some similar language, we do not believe the standards, compared on the whole, are substantially similar, or similar enough to be used interchangeably.” *Id.*, 350 S.C. at 478, 567 S.E.2d at 854. *Norton* thus stands for the proposition that the thirteenth juror powers are not without limit, and an incorrect use of those powers will be reversed.

Legal sufficiency and legal conclusion determinations are powers only courts have, but under the thirteenth juror doctrine, the trial judge must operate solely as a juror. The trial judge must determine, acting as the thirteenth juror, whether based on all factual evidence presented, the evidence justifies the verdict. If the trial judge concludes it does not, she need not give reasons and simply can grant the motion on the facts. If the trial judge instead provides reasons for the grant of a thirteenth juror doctrine motion, those reasons will be reviewed on appeal. If the trial judge did not use the enormous (and rarely invoked)

power as the thirteenth juror correctly, the appellate court will set that order aside and reinstate the verdict. This is clear based on the several cases doing so cited in Appellants' initial brief (e.g., *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995)(doctrine improperly invoked based on damages to award *additur*) *Lane, supra* (doctrine improperly based on short deliberations); *Norton, supra* (doctrine improperly based on inapplicable standard).

B. Thirteenth Juror Rulings Cannot Be Affirmed On Any Basis in South Carolina When The Trial Court Provides Reasons Which Underpin Its Ruling

Respondent argues that this Court “will be compelled to affirm the result regardless of if the trial court came to its conclusion the ‘right way’[.]” (Respondent’s Brief p. 20). Such is not accurate.

It is correct that this Court may generally affirm a judgment on the basis of any ground appearing in the record. This is referred to as an “additional sustaining ground” or the “right for any reason doctrine.” Those concepts do not apply here, or to certain other instances where only the trial judges, and not the appellate courts, have powers. Certain *nisi remittitur* or *nisi additur* powers, for example, exist only with the trial judge. Such is also the case with the exercise of the power of a thirteenth juror. The appellate court has no such power. As a result, this situation is among the few clear exceptions to the general “right for any reason” doctrine employed on appeal. Where the trial judge has provided reasoning for invoking its thirteenth juror powers, such reasoning is fully reviewed on appeal, and when legally incorrect in the way and/or for the reasons invoked, such order is reversed. *Lane*, 383 S.C. at 597-600, 681 S.E.2d at 883-84; *Youmans*, 380 S.C. at 282, 670 S.E.2d at 10-13. Because the reasoning underpinning the trial court’s order – which is in the order itself - confirms that the trial court applied legal standards and did not simply act as a juror and determine that the evidence did not justify the verdict, such error of law requires that the order be reversed and the jury’s verdict for Appellants be reinstated. *Norton*, 350 S.C. at 482, 567 S.E.2d at 856. Under its own precedent, this Court does not

ignore the trial court's reasoning and attempt to affirm on *any* basis, since such would render the carefully circumscribed exception to the right for any reason doctrine in thirteenth juror cases meaningless.

CONCLUSION

Based on the foregoing and Appellants' Initial Brief, the Court should reverse the trial court's order granting Respondents a new trial under the Thirteenth Juror Doctrine and remand the case with instructions to the trial court to reinstate the jury's verdict in favor of Appellants.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellants' final briefs comply with
Rule 211(b), SCACR.

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