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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Deidre L. Jefferson, Circuit Court Judge

Appellate Case No.: 2025-001314

M. Edward Wilson, Jr., Respondent,

v.

Marquee Limo Co., LLC and Paul Brown, Appellants,

APPELLANTS' INITIAL BRIEF

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I. STATEMENT OF THE ISSUES ON APPEAL

1) DID THE CIRCUIT COURT ERR IN DENYING APPELLANTS' MOTION FOR A NEW TRIAL WHERE THE COURT IMPROPERLY SUSTAINED AN OBJECTION DURING APPELLANTS' CLOSING ARGUMENT?

2) DID THE CIRCUIT COURT ERR IN DENYING APPELLANTS' MOTION FOR A NEW TRIAL WHERE THE JURY VERDICT WAS EXCESSIVE AND UNSUPPORTED BY THE EVIDENCE?

II. STATEMENT OF THE CASE

This lawsuit arises out of an incident that occurred on April 12, 2021, in Charleston, South Carolina. Appellant Paul Brown ("Mr. Brown") works for Appellant Marquee Limo ("Marquee Limo"). On the day of the accident, Mr. Brown was driving one of the Marquee Limo vehicles in downtown Charleston. Respondent M. Edward Wilson, Kr., M.D. ("Dr. Wilson") was attempting to cross the street at the intersection of Vanderhorst Street and Rutledge Avenue. As Dr. Wilson began to cross the street, the Marquee Limo turned. Mr. Brown struck Dr. Wilson with the Marquee Limo, resulting in injuries to Dr. Wilson.

Respondent filed his Summons and Complaint in the Charleston County Court of Common Pleas on June 17, 2022, against Marquee Limo. [Complaint]. The Complaint alleged causes of action for negligence. On July 11, 2022, Appellants filed their Answer. [Answer].

This matter went to trial on March 17, 2025, before the Honorable Judge Deidre L. Jefferson and concluded on March 19, 2025. The jury returned a verdict for Respondent Dr. Wilson, awarding him $3,350,000.00 in actual damages. [Verdict Form].

On March 28, 2025, Appellants filed a Motion for a New Trial. [Motion for a New Trial]. Appellants argued that the trial court erred by improperly instructing the jury on speculative damages and the requirement that damages be ascertainable with a reasonable degree of certainty.

On June 5, 2025, the trial court denied Appellants' Motion for a New Trial. [Order Denying Motion for New Trial].

On July 1, 2025, Appellants filed this Notice of Appeal.

III. STATEMENT OF THE FACTS

Dr. Wilson filed a lawsuit against Marquee Limo and Mr. Brown in connection with a motor vehicle accident that occurred on April 12, 2021. Dr. Wilson was injured when a Ford Expedition owned by Marquee Limo and operated by Mr. Brown struck him at a crosswalk near the Medical University of South Carolina. During trial, evidence was presented that Dr. Wilson's left femur was shattered, requiring surgery with hardware placement, physical therapy, and other medical treatment. [Transcript P. 238, lines 2-16].

At trial, Dr. Wilson presented evidence of past, present, and future pain, suffering, loss of enjoyment of life, physical impairment, and mental anguish. Dr. Wilson proffered exhibits including a video of the collision, operative notes, emergency department notes, and X-rays showing his injury before and after surgery from 2021 through 2024. Dr. Wilson testified about lost future income and retirement contributions due to early retirement. [Transcript P. 171, lines 6-17]. Dr. Wood, Dr. Wilson's economic expert, testified about Dr. Wilson's lost compensation in the amount of $3,222,674.00. [Transcript P. 242, lines 3-9].

The record does not support the jury's award or the trial court's decisions. Dr. Wilson did not present any evidence of medical bills or expert testimony regarding his expected career earnings. Further, evidence was improperly excluded about the Appellants' annual net income during closing arguments after it had been previously put into the record. [Transcript P. 343, lines 8-21].

During trial, Dr. Wilson's counsel presented evidence from Dr. Wood of loss of earning capacity. [Transcript P. 239, line 24 - P. 242, line 14]. Dr. Wilson presented no expert evidence supporting his position that he was likely to continue working as a pediatric ophthalmologist until he was at least 80. The majority of Dr. Wilson's damages hinge upon his alleged shortened career.

He claimed debilitating injuries that will force him to retire on December 31, 2025. [Transcript P. 238, lines 2-16]. If the Jury accepted these claims, then Dr. Wilson's award should have been higher. On the other hand, if the jury did not believe Dr. Wilson's injuries were severe enough to shorten his career, the economic damages presented in Dr. Wood's report were not supported, and Dr. Wilson's award should be substantially lower. Therefore, the logical conclusion is that the jury's award was based on speculation and not reasonably ascertainable damages.

IV. STANDARD OF REVIEW

Under the "thirteenth juror" doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. Gastineau v. Murphy, 323 S.C. 168, 473 S.E.2d 819, 827 (Ct.App.1996). The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996). When an order granting a new trial is before this Court, our review is limited to the consideration of whether evidence exists to support the trial court's order. South Carolina Department of Highways & Public Transportation v. Mooneyham, 275 S.C. 205, 269 S.E.2d 329 (1980).

The trial judge alone has the power to grant a new trial nisi when he finds the amount of the verdict to be merely inadequate or excessive. McCourt by and Through McCourt v. Abernathy, 318 S.C. 301, 457 S.E.2d 603 (1995). The denial of a motion for a new trial nisi is within the trial judge's discretion and will not be reversed on appeal absent an abuse of discretion. O'Neal v. Bowles, 314 S.C. 525, 431 S.E.2d 555 (1993). This Court has the duty to review the record and determine whether there has been an abuse of discretion amounting to an error of law. Bailey v. Peacock, 318 S.C. 13, 455 S.E.2d 690 (1995).

The appellate court may reverse the trial court's decision regarding jury instructions upon a showing of an abuse of discretion. Cole v. Raut, 378 S.C. 398, 663 S.E.2d 30 (2008); Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000); see also Keaton ex rel. Foster v. Greenville Hosp. Sys., 334 S.C. 488, 514S.E.2d 570 (1990) ("'In reviewing jury charges for error, [the appellate court] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial.). The appellant bears the burden of demonstrating the trial court's jury instructions were erroneous and prejudicial. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 658 S.E.2d 80(2008); see also Pittman v. Stevens, 364 S.C. 337, 613 S.E.2d 378 (2005).

The appellate court may reverse when trial defects result in such error that is "material and prejudicial." Visual Graphics Leasing Corp. v. Lucia, 311 S.C. 484, 429 S.E.2d 839 (Ct. App. 1993); *see also* Wells v. Halyard, 341 S.C. 234, 533 S.E.2d 341 (Ct. App. 2000); La Salle Bank Nat'l Ass'n v. Davidson, 386 S.C. 276, 688 S.E.2d 121 (2009). When the combination of such trial defects and errors are individually insignificant, the cumulative effect of each error may "prevent[]a party from receiving a fair trial." State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999); State v. Freeman, 319 S.C. 110, 459 S.E.2d 867 (Ct. App. 1995). But see Lynch v. Carolina Self Storage Centers, Inc., 409 S.C. 146, 760 S.E.2d 111 (Ct. App. 2014) (questioning whether cumulative error doctrine applies in civil cases).

V. ARGUMENT

A. The circuit court erred in denying Marquee Limo's motion for a new trial where the court improperly sustained an objection during Appellants' closing.

"Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge's finding that justice has not prevailed." Todd v. Owen Indus. Prods., Inc., 315 S.C. 34, 431 S.E.2d 596 (Ct.App.1993). Similarly, the judge may grant a new trial if the verdict is inconsistent and reflects the jury's confusion. Johnson v. Parker, 279 S.C. 132, 303 S.E.2d 95

(1983). Such discretion is "founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict and the judge's view of them." Fallon v. Rucks, 217 S.C. 180, 189, 60 S.E.2d 88, 92 (1950).

Here, during closing arguments, Appellants' counsel attempted to suggest a reasonable calculation of damages based on Marquee Limo's annual net income. [Transcript P. 343, lines 3-21]. Respondent objected to this, claiming that Appellants could not mention Marquee Limo's annual income because Respondent had dismissed his claims for punitive damages. This objection was sustained.

During trial, Respondent's counsel sought to elicit testimony regarding the annual net income of Marquee Limo. [Transcript P. 113, lines 24-25, P. 114, lines 1-5]. This evidence was admitted through the testimony of Michael Wise, one of the owners of Marquee Limo. It was appropriate for Appellants' counsel to make remarks about the annual net income of Marquee Limo due to the evidence having been introduced earlier in the trial by ***Respondent's counsel***. For the entirety of the trial, Respondent's counsel sought punitive damages and examined witnesses on issues related to punitive damages. As such, Appellants had the right to address these allegations even if Respondent chose to drop his claim for punitive damages just before closing arguments.

Second, Marquee Limo's annual net income was already evidence in the record. Therefore, Appellants were free to reference that evidence. As argued at the time of the objection, this information was not being offered to address an ability to pay, but as a practical foundation upon which the jury might reasonably base a verdict. This was no different than the Respondent suggesting a per diem amount of damages based on Appellant Marquee Limo's service rates – something Respondent's counsel did in both his opening statement and closing argument. [Transcript P. 58, lines 12-18; P. 303, lines 5-14]. Both methods are tied to Marquee Limo's

monetary income, but neither were offered to suggest Appellants' ability to pay was a consideration for the jury. As such, this objection was improperly sustained and unfairly prejudiced Appellants' ability to provide an alternative figure for the jury to consider as damages.

B. The circuit court erred in denying Marquee Limo's motion for a new trial where the jury verdict was excessive and unsupported by the evidence.

"When considering a motion for a new trial based on the inadequacy or excessiveness of the jury's verdict, the trial court must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." Elam v. S.C. Dept. of Transp., 602 S.E.2d 772, 778 (S.C. 2004). "A circuit court may grant a new trial absolute on the ground that the verdict is excessive or inadequate." Brinkley v. S.C. Dep't of Corr., 386 S.C. 182, 687 S.E.2d 54, 56 (Ct. App. 2009). "[W]hen the verdict indicates the jury was unduly liberal in determining damages, the trial court alone has the power to reduce the verdict by granting of a new trial nisi remitter." Allstate Ins. Co. v. Durham, 314 S.C. 529, 431 S.E.2d 557 (1993).

The majority of Respondent's damages hinge upon his allegedly shortened career. Respondent presented a loss of earning capacity report produced by Dr. Wood. [Transcript P. 241, lines 18-25; P. 242, lines 1-15]. Dr. Wood's opinions are based on the Respondent's claim that his career was shortened by ten (10) years and that he was forced to retire on December 31, 2025. [Transcript P. 237, lines 16-22]. Further, Dr. Wood's report included costs related to the care of Respondent's disabled son. [Transcript P. 240, lines 8-16]. Respondent Dr. Wilson also introduced evidence through Dr. McConnell of his impairment due to the accident. However, Dr. Wilson did not introduce evidence of any medical bills, and the record shows ***he continued to work without any loss of income for four years after the accident.***

Respondent cannot recover damages that are conjectural or speculative. *See Smith v. Wells*, 258 S.C. 316, 188 S.E.2d 470 (1972) (only such future or prospective damages may be recovered as the evidence renders it reasonably certain will of necessity result from the alleged injury) and *Ford v. A.A.A. Hwy. Express, Inc.*, 204 S.C. 433, 29 S.E.2d 760 (1944)(future or prospective damages must be confined to such as evidence renders it reasonably certain will result from original injury).

Respondent presented no expert evidence supporting his position that he was likely to continue working as a pediatric ophthalmologist until he was at least 80 years old. Dr. Wood calculated the loss of earning capacity report based on Respondent's personal belief of how long he would continue working, not on any scientific data or objective facts. This is purely speculative and insufficient evidence to support an award of actual damage.

In addition, during deliberations, the jury requested clarification about the use of the life expectancy table for noneconomic damage. The jury sent a note to the court asking, "Can you reiterate how life expectancy plays a role in the amount of noneconomic damages awarded?" [Transcript P. 370, line 1-5]. The trial court re-instructed, and stated:

THE COURT: If you find that the Plaintiff was permanently injured as a result of the Defendant's actions, you must then decide how, if at all, that injury will affect the rest of the Plaintiff's life.

> A person's life expectancy is determined by a life expectancy table, which is a part of the laws of the State of South Carolina. The life expectancy table is only an estimate of the probably average remaining length of life of all persons in our state of a given age.
>
> The Plaintiff is a 70-year-old male with a life expectancy of 13.32 years, according to the life expectancy table of South Carolina. This fact is to be considered by you, along with any other facts and circumstances in evidence bearing on the Plaintiff's life expectancy, including occupation, habits and health at the time of the injury in deciding the amount of damages, if any, to be awarded to the Plaintiff.

[Transcript P. 370, lines 16-25; P. 371, lines 1-8]. It is clear from the record that not only was there a lack of evidence to support the jury's award, but also, the jury was confused as to how to calculate future noneconomic.

Moreover, a plaintiff must prove that future damages are proximately caused by the accident and that they will occur with reasonable certainty and probability. See Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 148, 719 S.E.2d 703, 708 (Ct. App. 2011). The testimony and evidence showed that Dr. Wilson traveled often, walked between 10,000 and 19,000 steps a day, rode his bike, and generally lived his life after the accident as he had prior to it. [Transcript P. 336, lines 5-25]. Therefore, the evidence does not support the contention that the claimed future noneconomic damages were reasonably certain to occur as a result of the accident.

Further, the accident occurred on April 12, 2021, and Respondent was discharged by his treating physicians with zero restrictions by December of 2021. At the trial of this case in March of 2025, Respondent was still working without any loss of income, and no lost wages were claimed as part of his damages. Instead, the testimony was that Respondent planned to retire at the end of December 2025. The fact that Respondent continued to work for four years after the accident without any loss of income proves that Respondent's alleged lost earning capacity and lost future income is not ***reasonably certain to result in the future from the injury***. See Haltiwanger v. Barr, 258 S.C. 27, 32, 186 S.E.2d 819, 821 (1972)(Future damages are generally recoverable in personal injury actions as long as the damages are reasonably certain to result in the future from the injury). Here, that fact that Dr. Wilson continued to work for four years after the accident refutes the argument that his "early" retirement was caused by the accident.

Based on the foregoing, the trial court erred in denying Appellants' Motion for a New Trial.

I. CONCLUSION

The record does not support the jury's award, or the trial court's decisions. Dr. Wilson did not present any evidence of medical bills or expert testimony regarding his expected career earnings. Further, evidence was improperly excluded about the Appellants' annual net income during closing arguments after it had been previously put into the record. Accordingly, the trial court erred in denying Marquee Limo's Motion for Judgment Notwithstanding the Verdict, a Motion for New Trial Absolute, and Motion for New Trial and improperly found that the jury's verdict was reasonable based on the evidence presented. Therefore, Appellants respectfully request the trial court's June 5, 2025 Order denying the Motion for a New Trial be reversed and that the jury's verdict be vacated.

Respectfully submitted,

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