THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2024-001298
Case No. 2022-CP-18-01601

Alfredo Rocha

Appellant,

v.

Harold J. Murdaugh Jr.

Respondent,

AND

Graciela Rocha

Appellant,

v.

Harold J. Murdaugh Jr.

Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Did the lower court err in denying Appellants' motion for Judgment Notwithstanding the Verdict or in the alternative for a New Trial Absolute as to Proximate Cause and Damages because the verdict rendered was inconsistent as to proximate cause and indicates the jury was confused, the verdict is contrary to the weight of the evidence and the only way the jury could make the finding of no proximate cause was by drawing an unreasonable inference from the evidence, where the jury found that the Respondent was negligent by violation of SC Code 56-5-3230 (Drivers Exercise Due Care), SC Code 56-5-2745 (Emerging From Alley, Driveway, or Building), and SC Code 56-5-3810(a) (Limitations on Backing) but found no proximate cause between the negligence and Appellant Alfredo Rocha's injuries, even though Respondent admitted he "barely hurt" Appellant while backing out of the driveway.

STATEMENT OF CASE

The Appellant, Alfredo Rocha, while on a walk around 8:00 AM on October 5, 2020, was headed south on West Steele Drive in Dorchester County when the Respondent, who was operating his vehicle, suddenly and without warning backed his vehicle out of his driveway and at least, according to Respondent, barely hurt Appellant, knocking him to the ground. The Appellant suffered injuries to his neck, should, low back, ribs, hip, and leg.

This case was filed on August 3, 2021, in the Court of Common Pleas of Berkeley County, South Carolina. Respondent filed a Motion to Change Venue and Answer on September 13, 2021. A Consent Order to Change Venue was signed on October 22, 2021. Appellant brought this negligence action against Respondent for suddenly and without warning backing his vehicle out of his driveway and hitting Appellant, throwing him to the ground. As a result, Appellant suffered injuries to his back, ribs, and leg.

These matters were consolidated for discovery and trial purposes and tried April 8 through April 10, 2024, before this Court. At the conclusion of the trial, the jury found Respondent negligent but returned a verdict for Respondent. Alfredo and Graciela Rocha's post-trial motions were denied.

Alfredo and Graciela Rocha filed a timely appeal to this Court.

STANDARD OF REVIEW

The standard of review for questions of law is *de novo*. The appellate court "may reverse where the decision is affected by any error of law." Murphy v. Owens Corning, 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011). The appellate courts are "free to decide matters of law with no particular deference to the fact finder." Id. The appellate court's "task in reviewing a damages award is not to weigh the evidence, but to determine if there is any evidence to support the damages award". Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 594 S.E.2d 867 (Ct. App. 2004) See also Hutson v. Cummins Carolinas, Inc., 280 S.C. 552, 314 S.E.2d 19 (Ct.App.1984).

ARGUMENTS

I. The trial court erred in failing to grant Appellants Alfredo and Graciela Rocha's motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial Absolute as to Proximate Cause and Damages.

The dispute at this trial was whether the Respondent caused injury to the Appellant with his vehicle. The Respondent's negligence was decided by the jury in favor of the Appellant. The jury accepted Appellant's evidence showing that Respondent was negligent by violation of SC Code 56-5-3230 (Drivers Exercise Due Care), SC Code 56-5-2745 (Emerging From Alley, Driveway, or Building), and SC Code 56-5-3810(a) (Limitations on Backing). The evidence also showed that at the exact time Respondent was backing up, Appellant, while walking close to the edge of the grass at Respondent's driveway, sustained injuries to his entire body, including back, ribs, and leg. Appellant presented deposition testimony that Respondent's "rearview window was covered in dew" (R. p. 17) and Respondent "wasn't looking out the rearview mirror" (R. p. 15). Appellant further provided deposition testimony that "I [Defendant] barely hurt him [Plaintiff]" (R. pp. 13-14). Nevertheless, Respondent contended Appellant's injury resulted from a fall which very coincidentally occurred at the exact time Respondent was improperly backing out of his driveway at the exact same place Appellant was walking on the edge of the road right behind Respondent's driveway (R. p. 18).

In this case, the jury found that Respondent negligent, violating SC Code 56-5-3230 (Drivers Exercise Due Care), SC Code 56-5-2745 (Emerging From Alley, Driveway, or Building), and SC Code 56-5-3810(a) (Limitations on Backing). However, the jury finding that the Respondent's negligence was not the proximate cause of Appellant's injuries, is not a reasonable inference on the evidence presented. The only reasonable inference from the testimony and evidence show that Appellant, while walking close to the edge of the grass, sustained injuries to

his entire body, including back, ribs, and leg. Also, Respondent did not see Appellant, Alfredo Rocha while backing but knew he "hurt" him somewhat… Respondent said "barely". If Respondent did not "hit" Appellant there is no basis to have testified under oath that he "barely hurt" Appellant. If Respondent did not hurt Appellant at all, Respondent could have said that he did not hurt Appellant, not that he "barely hurt" him. The only way Respondent could "barely hurt" Appellant is if he actually hit Appellant. That Appellant happened to fall coincidentally exactly when the Respondent's car was backing out of the driveway cannot be sustained where Respondent testified he "barely hurt" Appellant. The evidence is overwhelming that Appellant's injury did not occur from a fall, because it would be too extreme a coincidence for Appellant to have fallen exactly when and at the exact place Respondent negligently backed out of his driveway, especially considering the Respondent testified he did not look in his rearview mirror, did not see the Appellant and he "barley hurt" him. Therefore, the only reasonable inference from the evidence shows Respondent's vehicle struck Appellant, Alfredo.

Appellants' daughter, Maria Rocha, also testified Alfredo arrived at her daughter's birthday party, sometime after the incident and observed bruising and cuts to Appellant's right side and legs (R. pp. 42-43, 45-46). Maria further testified her sister transported Alfredo to Trident Medical Center to receive treatment for his injuries (R. pp. 43-44, 46-47).

Alfredo further testified Respondent hit him with his vehicle and he felt pain as a result of the accident and a couple hours later he received treatment from Trident Medical Center (R. pp. 48-49). Appellant entered medical bills and records as Plaintiff's exhibit. The medical bills total $6,855.69. As further support for Appellant's claim, the medical records entered into evidence provide "patient states he was walking on the sidewalk. There was a car that was backing out of

their driveway, which subsequently struck the patient. He fell landing on his right side" (R. pp. 62,71).

Appellant, Graciela also testified the Respondent notified her via telephone of the accident. She arrived on scene and witnessed Alfredo in pain. Graciela placed Alfredo in her vehicle and transported Alfredo to their house where he was given over the counter medicine for pain. Alfredo later received treatment from Trident Medical Center. Alfredo and Graciela testified Alfredo sustained physical injury and incurred medical bills as a result of this accident.

Based upon the above, the only "reasonable" inference to be drawn from the evidence at trial, by a preponderance of the evidence (more likely than not), is that Respondent struck Appellant with his vehicle. Despite evidence presented indicating violation of SC Code 56-5-3230 (Drivers Exercise Due Care), SC Code 56-5-2745 (Emerging From Alley, Driveway, or Building), and SC Code 56-5-3810(a) (Limitations on Backing), the jury concluded Respondent was negligent but the that such negligence did not proximately cause Appellants' damages.

As to exercising due care, South Carolina Code provides:

> Notwithstanding other provisions of any local ordinance, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human-powered vehicle and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person.
>
> S.C. Code Ann. § 56-5-3230

As to emerging from driveways, South Carolina Code provides:

> The driver of a vehicle emerging from an alley, building, private road or driveway within a business or residential district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, road or driveway or, in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic.

S.C. Code Ann. § 56-5-2745

As to limitations on backing, South Carolina Code provides:

> No driver shall back a vehicle unless such movement can be made with safety and without interfering with other traffic.
>
> S.C. Code Ann. § 56-5-3810 (a)

South Carolina law requires drivers to adjust their speed and distance based upon conditions and hazards on the road. Failing to do so is a statutory violation. "The causative violation of a statute constitutes negligence *per se* and is evidence of recklessness and willfulness". Wise v. Broadway, 315 S.C. 273, 433 S.E.857 (1993). Furthermore, "a trial judge has the authority and responsibility to grant a new trial when, in his judgment, the verdict of the jury is contrary to the fair preponderance of the evidence". Lee v. Kirby, 243 S.C. 185, 186, 133 S.E.2d 127, 128 (1963). When "the evidence is susceptible of only one reasonable inference, the question is no longer one for the jury but one of law for the Court". Fuller v. Bailey, 237 S.C. 573, 580, 118 S.E.2d 340, 344 (1961) (citing Green v. Bolen, 237 S.C. 1, 115 S.E.2d 667 (1960)).

"It is well settled in this state that the trial judge has the authority and responsibility to grant a new trial when, in his judgment, the verdict of the jury is contrary to the fair preponderance of the evidence..."[1] Taylor v. Devore, 253 S.C. 393, 395, 171 S.E.2d 158, 159 (1969). (citing Lee v. Kirby, 243 S.C. 185, 133 S.E.2d 127 (1963); Mack v. Frito-Lay et al., 243 S.C. 376, 133 S.E.2d 833 (1963).' Adams v. Duffie, 244 S.C. 365, 137 S.E.2d 276 (1964)). "The law in South Carolina is clear that when a verdict in favor of a plaintiff is fully supported by the evidence on the issue of liability but the damages awarded are inadequate, a new trial may be ordered on the issue of

[1]Although Judge Goodstein did not grant Appellant's Motion for Judgment Notwithstanding the Verdict or in the alternative for a New Trial Absolute as to Proximate Cause and Damages, she did ask at the hearing for post-trial motion how can the Plaintiff get knocked down by a car and not have any damages. (R. pp. 5).

damages alone". S.C.R.C.P. 59(a). Cartin v. Keller Bldg. Prod. of Charleston, 299 S.C. 152, 153, 382 S.E.2d 922, 923 (1989). In McKibben v. Anthony, the trial court granted Plaintiff's motion for a new trial when the jury returned a verdict in the sum of $1.00 on the grounds of inadequacy of damages. McKibben v. Anthony, 185 S.C. 459, 194 S.E. 446, 447 (1937). In Cartin v. Keller Bldg. Prod. of Charleston, the Appellate Court reversed the Trial Court's denial of new trial absolute when "the plaintiff proved medical specials in excess of $7,000, provided testimony that he had sustained a 20% permanent physical impairment, and sought compensation for lost wages and pain and suffering. The jury found that the respondent had proved his entitlement to damages, but nevertheless awarded actual damages in the amount of one dollar". Cartin v. Keller Bldg. Prod. of Charleston, 299 S.C. 152, 154, 382 S.E.2d 922, 923 (1989).

In this case, the jury found that Respondent was negligent but that such negligence did not proximately cause Appellant's damages. The verdict is contrary to the specific, uncontroverted facts presented at trial and, thus, the jury was wrong regarding proximate cause. The Trial Court erred in denying Appellants' Post-Trial Motion for Judgment Notwithstanding the Verdict, or alternatively, a New Trial as to Proximate Cause and Damages. Thus, Appellants were entitled to JNOV as to proximate cause and damages, which the Trial Court denied.

Moreover, on the evidence before the Court, the jury's finding that Respondent breached the duty of care is also inconsistent with its findings that Respondent's negligence was not the proximate cause of Appellant's damages and reflects the jury's confusion. "Proximate cause is the efficient or direct cause; the thing that brings about the complained of injuries." McKnight v. S.C. Dept. of Corrections, 385 S.C. 380, 386, 684 S.E.2d 566, 569 (Ct. App. 2009). Proximate cause requires proof of 1) causation in fact and 2) legal cause. Oliver v. S.C. Dep't of Highways & Pub. Transp., 309 S.C. 313, 316, 422 S.E.2d 128, 130 (1992).

The overwhelming evidence before the Court is that Respondent's negligence was the proximate cause of the damages to Appellant. Accordingly, given the jury findings that Respondent violated statutes, the jury's verdict is inconsistent with that finding. The Trial Court erred in denying Appellants' Motion for a New Trial on Proximate Cause and Damages Only, or New Trial Absolute. See, e.g., Tuten v. Joel, 410 S.C. 104, 116, 763 S.E.2d 54, 61 (S.C. Ct. App. 2014) ("Although proximate cause is ordinarily a jury question, the court may decide proximate cause as a matter of law when the evidence is susceptible to only one inference." (internal quotation marks and citation omitted)). Alternatively, Plaintiff seeks a New Trial Absolute.

This verdict is inconsistent with the specific, uncontroverted facts presented at trial and indicates the jury was confused. Appellants submit that a new trial is mandated. Appellants' Post-Trial Motion for Judgment Notwithstanding the Verdict, or alternatively, a New Trial, should have been granted.

On the evidence before the Court, the jury's finding that Respondent was negligent is conclusive the jury found a violation of statue(s). The failure to submit the issue of punitive damages was error.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant Alfredo and Graciela Rocha respectfully requests that the Court reverse the post-trial order denying Plaintiff's Motion for Judgment Notwithstanding the Verdict, or alternatively, a New Trial as to Proximate Cause and Damages.

Respectfully submitted,

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April 21, 2025
Charleston, South Carolina

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CERTIFICATE OF SERVICE

The undersigned counsel for Appellants Alfredo and Graciela Rocha certifies that on April 21, 2025, he served the within Final Brief of Appellants to Respondent Harold J. Murdaugh, Jr. by sending a copy by email and US mail to the following counsel listed below:

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April 21, 2025

VIA EMAIL AND US MAIL

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Re: Alfredo Rocha, Appellant v. Harold J. Murdaugh, Jr., Respondent
Graciela Rocha, Appellant v. Harold J. Murdaugh, Jr., Respondent
Appellate Case No. : 2024-001298

Dear Sir/Madam:

In accordance with the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules, please find enclosed for filing Final Brief of Appellant in the above-referenced matter. In accordance with this same order, I am hereby serving copies on all counsel of record by email and USPS.

With kind regards, I am

Sincerely,

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