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SC Court of Appeals

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

Alfreda Rocha, Appellant,

v.

Harold J. Murdaugh, Jr., Respondent,

AND

Graciela Rocha, Appellant,

v.

Harold J. Murdaugh, Jr., Respondent.

FINAL BRIEF OF RESPONDENTS

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I. STATEMENT OF THE ISSUES ON APPEAL

- 1) DID THE CIRCUIT COURT CORRECTLY DENY APPELLANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR, IN THE ALTERNATIVE, A NEW TRIAL ABSOLUTE?

II. STATEMENT OF THE CASE

This lawsuit arises out of an automobile accident that occurred on or about October 5, 2020, in Dorchester County, whereby Respondent Harold Murdaugh, Jr. (“Murdaugh”) allegedly struck the Appellant while backing out of his driveway (the “Accident”). As a result of the Accident, Appellant suffered injuries to his neck, shoulder, lower back, ribs, hip, and leg.

Appellants filed their Summons and Complaint in the Berkeley County Court of Common Pleas on August 3, 2021 against Harold Murdaugh, Jr. [Complaint]. The Complaint alleges causes of action for negligence for Appellant Alfredo Rocha. Respondent filed a Motion to Change Venue and Answer on September 13, 2021. [Answer]. A Consent Order to Change Venue was signed on October 22, 2021. [Consent Order].

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. [R. pp. 9-11].

On April 19, 2024, Appellants filed a Motion for a New Trial Absolute and Motion for a New Trial based on the Thirteenth Juror Doctrine. [Motion for a New Trial]. In their Motion, Appellants argued that the verdict rendered is inconsistent to the proximate cause and indicates the jury was confused. [Motion for a New Trial]. On July 9, 2024, the trial court denied Appellants’ Motion. [R. pp. 1-2]. This appeal followed.

III. STATEMENT OF THE FACTS

The record supports the jury’s verdict and the trial court’s decisions. The verdict rendered was consistent with the evidence presented. The Appellant, Alfredo Rocha, was on a walk around 8:00 AM on October 5, 2020, headed south on West Steele Drive in Dorchester County. The Respondent, who was operating his motor vehicle, was backing his vehicle out of his driveway when he saw the Appellant on the ground behind the car. The Appellant alleges that the motor

vehicle knocked him to the ground. The Appellant suffered injuries to his neck, shoulder, lower back, ribs, hip, and leg. From the beginning, the defense argued that Alfredo Rocha's injuries were a result of him falling due to physical impairment from a previous accident.

In his testimony, Alfredo Rocha admitted that he had significant pre-existing medical issues due to an accident ten years prior. [R. p. 50]. In fact, Mr. Rocha testified that he suffered a brain injury from that accident and was told that he may never walk again. [R. p. 53 Line 7 – R. p. 54 Line 21]. Mr. Rocha admitted that he had two falls when walking since his accident ten years ago. [R. p. 55]. Mr. Rocha testified that he never walked in the dark due to his medical impairments. [R. p. 58]. Mrs. Graciela Rocha testified that her husband used a wheelchair due to the fear that he may fall. [R. p. 59]. She further admitted that he was put on permanent disability due to not being able to see or walk well enough. [R. p. 60].

Based on the jury's award, the jury agreed with the defense and returned a verdict that supported the defense's theory that Mr. Rocha fell due to pre-existing medical issues.

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).

V. ARGUMENT

A. The Circuit Court Correctly Held That There Was No Evidence Presented to Support a Punitive Damages Jury Charge.

“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).

To prevail in an action founded in negligence, the plaintiff must establish three essential elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately caused by a breach of duty. Newton v. South Carolina Pub. Rys. Comm'n, 312 S.C. 107, 439 S.E.2d 285 (Ct.App.1993). In a negligence action, the plaintiff must prove proximate cause. Rush v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993). “A negligent act or omission is a proximate cause of injury if, in a natural and continuous

sequence of events, it produces the injury, and without it, the injury would not have occurred.” Crolley v. Hutchins, 300 S.C. 355, 387 S.E.2d 716, 717 (Ct. App. 1989). Negligence is deemed to be the proximate cause of an injury when, without such negligence, the injury would not have occurred or could have been avoided. Hughes v. Children's Clinic, P. A., 269 S.C. 389, 237 S.E.2d 753 (1977). “Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge’s sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence.” Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715, 721 (Ct. App. 1996).

In Hartley, the plaintiff, Vinson, was injured as a result of a motor vehicle accident that was caused by Hartley. At trial, Hartley argued that Vinson did not indicate that he was hurt at the scene and did not seek medical treatment. In addition, Vinson alleged dental injuries but admitted that he did not hit his mouth or do anything during the accident that would have injured his teeth. It was established that the dental injuries being alleged did not occur until about a week after the accident. The jury deliberated and returned a verdict in favor of Hartley. Vinson then moved for JNOV and a new trial pursuant to the “Thirteenth Juror” doctrine.

On appeal, this Court held that the credibility of the witnesses was for the jury to determine, and a review of the record revealed there was sufficient evidence from which the jury could have reached a verdict in favor of Hartley. This Court reasoned that Vinson’s testimony related to his dental injuries showed that it could have been caused by something else. Further, this Court held that the jury could have concluded that the injuries suffered by Vinson were not caused by the accident at all. Lastly, this Court noted that there were certain inconsistencies in one of the witness’s testimony, which may have brought his credibility into question. This Court held “[s]implistically put, credibility of witnesses was for the jury to determine. The jury could have

determined the medical bills testified to by Vinson were not the result of the accident which gave rise to this suit.” Id. at 727.

Similarly, in Black v. Hodge, 306 S.C. 196, 410 S.E.2d 595 (Ct.App.1991), the plaintiff alleged injuries following a motor vehicle accident. At trial, there were no witnesses that directly contradicted the plaintiff’s testimony or the testifying doctor. Yet, the jury returned a verdict in favor of the defendant. This Court reasoned that “[t]here remains the question of the inherent probability of the testimony and the credibility of the witnesses or the interests of the witness in the result of litigation.” Id. at 726. This Court held that “[u]nder the circumstances, the jury had the right to find that she was not injured, and we do not have the right to second-guess the jury.” Id.

Here, there is substantial evidence in the record to support the jury’s verdict. First, evidence was presented that Mr. Rocha suffered a severe accident several years prior that left him with significant physical and mental limitations. [R. p. 51]. Mr. Rocha testified that the prior accident left him partially blind, deaf, and with a brain injury. [R. p. 53]. Mr. Rocha testified that he was prescribed a walking cane, wheelchair, and that doctors told him he may never walk again. [R. p. 53 Line 22 – R. p. 54 Line 21]. Further, Mrs. Rocha testified that her husband could not work after the prior accident due to his vision impairment, and was on disability because he could not walk well enough. [R. p. 195]. Therefore, there was ample evidence in the record which could have led a jury to believe that the prior accident was the cause of Mr. Rocha’s injuries. As such, like in Hartley, the testimony related to Mr. Rocha’s injuries showed that they could have been caused by something other than allegedly being struck by Mr. Murdaugh.

Moreover, there were several inconsistencies in Appellants' testimonies that could have led a jury to question the credibility of the witnesses. On direct examination, Mr. Rocha was asked questions regarding his testimony during his deposition, which he was able to answer. However, on cross-examination, Mr. Rocha testified that he did not recall his deposition and the testimony given. The trial court even pointed out Mr. Rocha's convenient inability to recall his deposition, stating "[m]y concern is that the witness answered questions from the deposition when you asked them, Mr. Howe, and now he has no memory of having his deposition taken. I cannot allow that." [R. p. 52]. In addition, Mrs. Rocha's testimony contained statements inconsistent with her testimony during her deposition. [R. p. 61].

Most importantly, Mr. Rocha testified that when it is dark it is easy to step into a hole or rough pavement, making him lose his balance. [R. p. 56]. Mr. Rocha testified that he does not want to be walking around outside when it is dark because it is hard to see what is on the ground. [R. p. 57]. Counsel for Mr. Murdaugh argued from the beginning that Mr. Rocha could have fallen, instead of being hit by Mr. Murdaugh. Mr. Rocha's testimony appeared to confirm that this was plausible. Therefore, like in Hodge, the jury weighed the probability of the testimony and the credibility of the witnesses, and had not only the right, but good reason, to find that Mr. Rocha's injuries were not proximately caused by the accident.

VI. CONCLUSION

The trial court properly denied the Campbells' Motion for a New Trial Absolute and Motion for New Trial *Nisi Additur* and properly found that the jury's verdict was reasonable based on the evidence presented. Therefore, Respondents respectfully request that the trial court's February 29, 2024 Order denying the Motion for a New Trial be affirmed and that the jury's verdict be upheld.

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Respectfully Submitted by:

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PROOF OF SERVICE

The undersigned attorneys hereby certify that a true copy of Respondents' Final Brief in the above-referenced case has been served upon counsel of record by electronic delivery, as set forth below:

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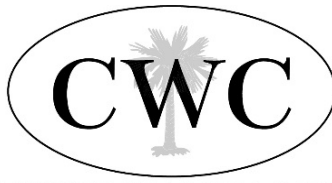
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Re: *Alfreda Rocha, Appellant v. Harold J. Murdaugh, Jr., Respondent*
Graciela Rocha, Appellant v. Harold J. Murdaugh, Jr., Respondent
Appellate Case No.: 2024-001298

Dear Ms. Kitchings:

Enclosed please find the original and one (1) bound copy of Respondent's Final Brief and Proof of Service for filing.

Thank you for your assistance with this matter. Should you have any questions or require further information, please do not hesitate to contact me.

Sincerely,

Clarkson, Walsh & Coulter, P.A.

s/Michelle N. Endemann

Michelle N. Endemann

MNE/tb

Enclosures

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