

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Gloria Minnick,

C/A NO. 2024-CP-40-03073

Plaintiff,

v.

**ORDER DENYING DEFENDANT FOREST
LAKE PLACE HORIZONTAL PROPERTY
REGIME'S POST-TRIAL MOTIONS**

Forest Lake Place Horizontal Property
Regime, and S&S Services Group, LLC,
d/b/a Community Association
Management Services (CAMS),

RECEIVED

Defendants.

Feb 23 2026

SC Court of Appeals

This case ended in a \$5 million jury verdict following a three-day trial where the jury rendered a split decision. The jury found in favor of Plaintiff Gloria Minnick against Defendant Forest Lake Place Horizontal Property Regime but returned a defense verdict for Defendant S&S Services Group, LLC, d/b/a Community Association Management Services (CAMS). The jury also apportioned comparative fault 51%-49% against Defendant, and judgment was entered against Defendant for \$2,550,000. Defendant timely filed a Motion for Judgment Notwithstanding the Verdict or in the alternative, a Motion for a New Trial. Plaintiff filed a memorandum in opposition to Defendant's motion.¹

I have carefully considered all arguments raised in the parties' post-trial briefings, as well as the evidence and the arguments presented by counsel for the parties during the trial that concluded with a jury verdict on August 28, 2025. Following a thorough review, and as set forth more fully below, Defendant's Motion for JNOV and Motion for a New Trial are denied.

¹ A Form 4 order was issued on December 10, 2025, which mistakenly referenced that Plaintiff did not file a memorandum in opposition to Defendant's post-trial motion. However, Plaintiff filed her memorandum on November 26, 2025, and both parties' filings were considered in rendering this Order.

FINDINGS AND CONCLUSIONS

Before addressing the legal arguments, it is helpful to summarize the testimony and evidence presented at trial in the light most favorable to Plaintiff. On September 10, 2022, Plaintiff tripped on a tree root within a commonly used pathway in her residential community at Forest Lake Place. The pathway was part of the property's common elements. Defendant was responsible for the maintenance and repair of this pathway. The jury heard testimony that at the time of the fall, the pathway had fallen into disrepair because of erosion, and that tree roots and other hazards jutted out from the pathway. The jury heard testimony that when it rained, the hazards on the pathway would become more pronounced, change, and evolve. The jury heard testimony that the pathway specifically adjoined and wrapped behind Plaintiff's building, that the majority of the community's residents utilized the pathway, and that those living in Plaintiff's building were required to use the pathway on at least a weekly basis to put out and return their garbage cans. The jury heard testimony that Plaintiff had a dog at the time of her fall, whom she walked daily. Given the property's composition, Plaintiff and other residents used this pathway to walk their pets. Plaintiff was on such a walk with her dog when she fell.

In the years prior to Plaintiff's fall, Defendant implemented a five-year plan to resolve critical maintenance projects in the common elements. Defendant imposed a special assessment to fund these projects, charging residents above and beyond their annual dues. The five-year plan expressly identified fixing the pathway where Plaintiff fell as a safety issue. During their respective testimony, Plaintiff and the president of Defendant's Board confirmed that monthly additional funds were paid by the residents toward these projects and that Plaintiff timely paid all assessments.

Despite plans and funds to fix the pathway, Plaintiff introduced evidence showing that Defendant failed to address the safety issues presented and allowed the pathway to remain in a hazardous state. The jury learned that from 2021 through June of 2022, Defendant discussed fixing the path during Board meetings, but no action was taken. Plaintiff testified that she attempted to maintain the pathway on her own with a mattock, a gardening tool similar to a pickaxe. Defendant introduced evidence through witness Marilyn Davis that the board asked Plaintiff to desist from this maintenance, insisting it was the board's responsibility. Plaintiff testified that she never observed any agents of the board performing maintenance on the path. The path remained in disrepair until September, 2022, when Plaintiff fell.

The jury also heard testimony from Erin Stickle, a CAMS' employee, that Defendant knew about the dangerous condition of the pathway where Plaintiff fell and knew it needed to be repaired. She also testified that she knew the pathway posed a tripping hazard in a community with many elderly residents.

The jury heard from Plaintiff and her daughter about Plaintiff's treatment, and debilitating injuries following the fall, and her long recovery, which prevented her from returning home for over eighteen months. Her treating physician, Dr. Christopher Goodman, detailed the fourteen surgeries and procedures Plaintiff underwent, including revision surgeries. Plaintiff testified that, following one such surgery, and due to post-surgical infection, she lived without a hip for over seven months. Plaintiff's daughter, Dianna Elliott recounted a time after Plaintiff's fall when Plaintiff's health quickly eroded over the span of several days and Ms. Elliott was concerned that her mother might die. Plaintiff presented evidence of her active lifestyle before the fall, where she frequently gardened and cleaned house for herself and others. Plaintiff also described her experience skydiving in the spring of 2024, just months before she fell. Plaintiff testified that since

the fall in 2022, she has been unable to walk without an assistive device. Plaintiff and her daughter confirmed that her medical bills exceeded \$2 million, and Dr. Goodman testified the treatment she received, including treatment for a chronic infection, was caused by her fall.

Defendant's theory of the case exclusively concerned whether the condition of the path was open and obvious, and Defendant did not challenge the necessity or extent of Plaintiff's injuries and overall damages. Plaintiff's medical records were introduced without objection.

Ultimately, the jury carefully considered the evidence, determined that Defendant was liable but that Defendant CAMS was not, and apportioned comparative fault. The jury's verdict was reasonable, amply supported by the evidence, and for the reasons set forth below, Defendant's post-trial motions are denied.

LEGAL STANDARD

When considering a motion for judgment notwithstanding the verdict, the trial judge must view the evidence and all inferences therefrom in the light most favorable to the non-moving party. *Horry Cnty. v. Laychur*, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (1993). If the evidence is susceptible of more than one reasonable inference, the case must be submitted to the jury. *Id.* A court considering JNOV does not have authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). The trial judge, when considering a JNOV motion, is concerned with the existence of evidence, not its weight. A JNOV motion must be denied when the evidence yields more than one inference or its inferences are in doubt. *Jinks v. Richland Cnty.*, 355 S.C. 341, 585 S.E.2d 281 (2003).

A trial judge's authority to grant a judgment notwithstanding the verdict is extremely limited. "The jury's verdict must be upheld unless no evidence reasonably supports the jury's

findings.” *Curcio*, 355 S.C. at 320, 585 S.E.2d at 274. A motion for JNOV is the renewal of a directed verdict motion and cannot raise grounds beyond those stated in the earlier motion. *See Roland v. Palmetto Hills*, 308 S.C. 283, 286, 417 S.E.2d 626, 628 (Ct. App. 1992).

To warrant a new trial, the moving party must show both that the trial court erred and that it suffered prejudice. *Whitfield v. Schimpf*, 444 S.C. 633, 654, 911 S.E.2d 310, 321 (2025). “Prejudice is a reasonable probability that the jury’s verdict was influenced by the challenged evidence or the lack thereof.” *Id.* Additionally, South Carolina’s “thirteenth juror” doctrine allows a trial court to grant a new trial only if the court finds, in its discretion, that the evidence does not justify the verdict. *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002).

I. Defendant’s motion for JNOV is denied.

Defendant seeks judgment notwithstanding the verdict on two grounds: (1) the open and obvious doctrine, and (2) a provision in the master deed that purports to disclaim liability. I am convinced that the evidence, taken as a whole and viewed through the appropriate lens—in the light most favorable to Plaintiff—amply supports the jury’s verdict. Therefore, Defendant’s JNOV motion is denied.

A. The open and obvious doctrine does not support JNOV.

1. Whether the hazardous condition was open and obvious was properly submitted to the jury.

Defendant contends that the hazardous condition of the pathway was open and obvious as a matter of law. Plaintiff maintains that whether the hazardous condition was open and obvious presented a question of fact that was properly submitted to the jury. Plaintiff presented substantial evidence that the root that caused her to trip was not an open and obvious condition. As Ms. Minnick testified: “I didn’t see the root but the root saw me.” Defendant’s community manager also testified that the condition of the path changed every time it rained. The jury heard evidence

that the path was in an area that suffered from erosion, which continually altered the condition of the path.

Further, Defendant did not submit special interrogatories to the jury to determine whether the jury found the defect to be latent or patent. Defendant's argument assumes that the condition was open and obvious, but there is no such determination in the record. Ultimately, whether the hazardous condition was open and obvious was a question of fact for the jury to determine.

In addition, Plaintiff also relies on case law holding that the issue of whether a hazardous condition was open and obvious should be submitted to the jury if a reasonable inference arises that the defendant should have anticipated the harm regardless of whether the defect was open and obvious. I agree with Plaintiff.

The South Carolina Supreme Court has held that whether a hazard is open and obvious is an issue for the jury to resolve when there is evidence supporting an inference that the defendant (1) should have anticipated the harm; or (2) that the invitee is likely to be distracted. *See e.g., Callender v. Charleston Doughnut Corp.*, 305 S.C. 123, 126, 406 S.E.2d 361, 363 (1991). In *Callender*, the Court adopted Section 343A of the Restatement (Second) of Torts and held:

The traditional "no duty to warn of the obvious" rule has been modified in many jurisdictions to hold that an owner is liable for injuries to an invitee, despite an open and obvious defect, if the owner should anticipate that the invitee will nevertheless encounter the condition, or that the invitee is likely to be distracted.

Id. at 125, 406 S.E.2d at 362.²

In *Callender*, a customer at a Krispy Kreme store was injured when he attempted to sit on a broken chair inside the store. The trial court gave a latent defect jury instruction, and the jury found in favor of the plaintiff. The court of appeals reversed, holding that there was no evidence

² During trial, Defendant stipulated that Plaintiff was an invitee. In so doing, Defendant acknowledged that Ms. Minnick was owed the highest duty of care recognized by South Carolina law.

to support the latent defect jury charge. The defendant then contended that because the defect was open and obvious, it was entitled to judgment as a matter of law.

The Supreme Court disagreed, ordered a new trial, and instructed the trial court to charge the jury on the rule established by section 343(A) of the Restatement. *Id.* at 126, 406 S.E.2d at 363. The Court found that because the store owner knew of the hazardous condition and that many customers were senior citizens, a jury could have determined that the store owner should have anticipated the harm. *Id.*

Critically, the Supreme Court in *Callender* rejected the defendant's contention that it was entitled to a directed verdict because the condition of the chair was open and obvious. Thus, simply because a defect may be open and obvious does not mean a defendant is entitled to a judgment in its favor as a matter of law. *See also, e.g., Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 331, 673 S.E.2d 801, 803 (2009) ("While a parking lot's state of disrepair may be considered open and obvious, a jury could determine that Respondent should have anticipated that such a condition may cause an invitee to fall and injure themselves."), *overruled on other grounds by Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023); *Callender*, 305 S.C. at 126, 406 S.E.2d at 363 (ordering a new trial with a jury instruction on Section 343A); *Padgett v. Colleton Cty.*, 383 S.C. 431, 438-439, 679 S.E.2d 533, 537 (Ct. App. 2009) (reversing directed verdict because a reasonable inference existed that the owner of a parking lot should have anticipated that invitees could be harmed by a pothole); *Creech v. South Carolina Wildlife & Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997) (holding that a dock without a guard rail on one side was an open and obvious condition, but that the defendant should have anticipated the harm).

Defendant further argues that, despite this controlling case law, it is entitled to JNOV because Plaintiff was on Defendant's board and admitted she knew about the roots on the path. In

support, Defendant relies on *Larimore v. Carolina Power & Light*, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000), but that case is distinguishable. In *Larimore*, the Court of Appeals determined a jury question did not exist because the defendant homeowner “had no knowledge of the defect’s existence, [and] it would be impossible for him to anticipate any harm that might result from it.” *Id.* at 447, 531 S.E.2d at 539. Here, Defendant knew the defect existed, and evidence supports the inference that Defendant should have anticipated the harm that might result.

Defendant also misconstrues the rule established in *Callander*, claiming that providing a warning in this case would have been redundant due to Plaintiff’s position on the Defendant’s board. An owner’s duty requires it “take other reasonable steps to protect [the invitee].” *Callander*, 305 S.C. at 126, 406 S.E.2d at 362-63. Thus, I find the duty is broader than a mere duty to warn of a defect. *See Davenport v. Cotton Hope Plantation Horizontal Prop. Regime*, 333 S.C. 71, 88, 508 S.E.2d 565, 574 (1998) (rejecting the property regime’s argument that it only had a duty to warn and instead holding the regime had a duty “to properly maintain the stairway”). In the instant case, not only did Defendant fail to take action to maintain and repair the path, but it also actively prevented plaintiff from doing so herself.

The jury heard evidence that the condition of the path changed every time it rained. The jury also reviewed evidence that demonstrated Defendant should have anticipated Plaintiff’s harm because the community comprised a majority of elderly residents, and Plaintiff and her neighbors regularly used the ill-maintained path. And, the jury was presented evidence that Defendant knew Plaintiff was likely to be distracted when she used the path, because she used it to roll her trash can to the driveway as Defendant required her to do and to walk her dog. For each of these independent reasons, the issue of whether the hazardous condition was open and obvious was properly submitted to the jury.

2. There is ample evidence to support the jury's verdict.

I find there is ample evidence supporting the jury's verdict in favor of Plaintiff in this case. For example, Ms. Stickle, an employee of Defendant CAMS who served as the association manager for Forest Lake Place, testified that both CAMS and Defendant knew about the dangerous condition of the pathway where Plaintiff fell and knew it required repair. Ms. Stickle testified she was concerned that tree roots on the path created a tripping hazard and that Defendant's board was concerned about the presence of tree roots on the path.

Further, the five-year plan implemented by Defendant, which was frequently referred to during the trial, identified fixing the path as a safety priority. Jurors also heard testimony that, due to its location, the pathway was unavoidable for those who lived in Ms. Minnick's building. Multiple witnesses testified that Ms. Minnick was walking her dog and that it was raining at the time of her fall, conditions which Defendant should have anticipated.

Defendant urges this Court to invalidate the jury's verdict based on *Pryor v. Nw. Apartments*, 321 S.C. 524, 529, 469 S.E.2d 630, 633 (Ct. App. 1996). That case, however, is distinguishable. In *Pryor*, a tenant tripped and fell in the common area of an apartment complex. The trial court granted summary judgment in favor of the defendants, and the court of appeals affirmed because the defendants "could not foresee [the tenant] would choose to walk on the mud and pine straw rather than taking an alternate route." *Id.* The tenant conceded that "she could have taken several alternate routes around the muddy area." *Id.* at 527, 469 S.E.2d at 632.

Unlike in *Pryor*, the jury heard testimony in this case that many senior citizens resided at Forest Lake Place, and the residents had no alternative but to use, including to comply with Defendant's bylaws regarding trash removal. Residents also frequently used the path for walking their dogs because the community lacked safer alternative pathways for residents with pets.

Taken as a whole and viewed in the light most favorable to the Plaintiff, I find that sufficient evidence exists that the tripping hazard was not open and obvious. But even if the tripping hazard were open and obvious, the evidence is sufficient to create reasonable inferences both that the Defendant should have anticipated the harm and independently, that Plaintiff was distracted. Thus, because evidence supports the jury's verdict, Defendant's motion for JNOV is denied.

B. The provision in the Master Deed disclaiming liability for injuries or damages arising out of latent defects in the common elements does not support granting JNOV.

Defendant argues in the alternative that if the hazardous condition of the property is not open and obvious, then the Master Deed immunizes Defendant from liability. Defendant points to a provision in the deed that purports to disclaim liability for injuries or damages arising from latent defects in the common elements. Because the evidence supports the inference that Defendant should have anticipated the harm and that Plaintiff was distracted, it is impossible to know whether the jury determined the hazardous condition was latent. Nevertheless, I address the issue out of an abundance of caution.

Defendant stipulated that Plaintiff was an invitee and was owed the highest duty of care, which includes a duty to properly maintain the subject premises. *Davenport*, 333 S.C. at 88, 508 S.E.2d at 574. The Master Deed expressly incorporates that duty (Paragraph 8(a) of the Master Deed, Def. Trial Ex. 10), but then attempts to disclaim all legal responsibility for Defendant's failure to fulfill its duty. Taken to its logical conclusion, Defendant argues that because a horizontal property regime can purportedly disclaim liability for injury to an invitee arising out of a latent defect, horizontal property regimes essentially enjoy immunity in premises liability lawsuits. Defendant's argument is not consistent with South Carolina law. *See Fisher v. Stevens*, 355 S.C. 290, 297, 584 S.E.2d 149, 153 (Ct. App. 2003) ("An exculpatory agreement will be held to

contravene public policy if it is so broad ‘that it would absolve [the defendant] from any injury to the [plaintiff] for any reason.’”) (quoting *Richards v. Richards*, 513 N.W.2d 118 (Wis. 1994)).

South Carolina law requires a horizontal property regime’s governing documents to specify the “care, upkeep and surveillance of the property and its general or limited common elements and services.” S.C. Code Ann. § 27-31-160. It is basic tort law that a horizontal property regime owes a duty of care to properly maintain the common elements. *Davenport*, 333 S.C. at 88, 508 S.E.2d at 574 (reaffirming that “a member of a condominium association, established pursuant to the Horizontal Property Act, may bring a tort action against the association for failing to properly maintain the common elements”). The Master Deed’s attempt to bar liability for Defendant’s failure to comply with the care and upkeep of the general elements violates the law and South Carolina public policy and is, therefore, unenforceable. As a result, while the *Callander* line of cases provides an independent ground to uphold the jury’s verdict regarding an open and obvious defect, even if the issue concerning the Master Deed were considered, it does not entitle Defendant to JNOV.

II. Defendant’s motion for a new trial is also denied.

Defendant alternatively contends that it suffered prejudicial errors that require invalidating the jury’s verdict and ordering a new trial. Defendant argues the Court committed reversible error by: (1) failing to exclude Plaintiff’s expert, (2) permitting Plaintiff’s expert to summarize the medical bills and opine on the total medical bills Plaintiff incurred, (3) admitting the medical records and bills into evidence, (4) excluding evidence of prior falls, and (5) allowing evidence of subsequent remedial measures. Finally, Defendant requests a new trial pursuant to the thirteenth juror doctrine. For the reasons set forth below, Defendant’s motion for a new trial is denied.

A. Plaintiff’s expert was properly allowed to testify.

Defendant maintains that the testimony of Plaintiff's expert, Christina Hedges, should have been excluded because, according to Defendant, Plaintiff failed to timely identify Ms. Hedges as an expert.

This issue was argued in detail during Defendant's motion *in limine*, in which both parties addressed the *Jumper* factors that govern whether to exclude a witness on timeliness grounds.

These factors are:

- (1) the type of witness involved;
- (2) the content of the evidence emanating from the proffered witness;
- (3) the nature of the failure or neglect or refusal to furnish the witness' name;
- (4) the degree of surprise to the other party, including the prior knowledge of the name of the witness; and
- (5) the prejudice to the opposing party.

Jumper v. Hawkins, 348 S.C. 142, 152, 558 S.E.2d 911, 916 (Ct. App. 2001).

Plaintiff offered Ms. Hedges, who is a registered nurse with extensive experience reviewing medical and billing records, as an expert witness for the limited purpose of summarizing Plaintiff's medical and billing records following her fall. Plaintiff identified Ms. Hedges as an expert on August 4, 2025, three weeks prior to trial. On August 6, 2025, Defendants issued a subpoena *duces tecum* to Ms. Hedges for her file. On August 12, 2025, Defendants noticed Ms. Hedges' deposition and elected to schedule the deposition for August 22, 2025, the Friday before trial.

During the month before trial, both parties were still conducting substantial discovery, including CAM's production of nearly 17,000 pages of Plaintiff's medical records on August 12, 2025—thirteen days before trial- taking multiple depositions, and both parties disclosing witnesses for the first time. While not dispositive, the parties never entered a scheduling order, nor was there a pre-trial order setting a deadline for witness disclosures.

Moreover, the substance of Ms. Hedges' testimony was reasonably known to Defendant at

the time of trial. The medical and billing records about which Ms. Hedges testified were in Defendant's possession before trial. Further, Plaintiff disclosed Ms. Hedges as an expert witness weeks prior to trial, Ms. Hedges produced documents in response to a subpoena prior to trial, and Defendant deposed Ms. Hedges before trial. Defendant highlights that Ms. Hedges' deposition occurred on the Friday before trial, but the timing of Defendant's notice of deposition was within Defendant's exclusive control and the record is clear that Ms. Hedges was disclosed three weeks prior to trial. Regardless, that is only one fact to be considered when determining whether to exclude an expert witness, which is a decision that should not be invoked lightly. *Barnette v. Adams Bros. Logging, Inc.*, 355 S.C. 588, 592, 586 S.E.2d 572, 574 (2003).

I also reject Defendant's claim that it suffered extreme prejudice by the timing of Plaintiff's disclosure of Ms. Hedges. Defendant previously argued that allowing Ms. Hedges to testify would cause Defendant prejudice were she to opine on new theories of liability. At trial, however, Ms. Hedges did not testify about a new theory of liability or offer any opinions on liability or causation. Rather, her testimony focused on summarizing the same medical records and bills that were in Defendant's possession for months before trial.

Even assuming in *arguendo* that it was erroneous to admit Ms. Hedges' testimony, the error was harmless. *See Whitfield v. Schimpf*, 444 S.C. 633, 654, 911 S.E.2d 310, 321 (2025) ("Prejudice is a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof."). Defendant chose not to cross-examine Ms. Hedges or Dr. Christopher Goodman, Plaintiff's treating physician, or to offer any evidence challenging the scope of medical care or amount of medical bills incurred by Plaintiff. Ms. Hedges merely summarized the content of Plaintiff's medical records and bills.

Further, Ms. Hedge's testimony was cumulative to other evidence presented at trial.

Plaintiff and her daughter confirmed that Plaintiff's medical bills exceeded \$2 million, which was consistent with Ms. Hedges' testimony. *See, e.g., McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 345, 468 S.E.2d 633, 636 (1996) (finding even if the trial court erred in admitting expert testimony, "it was harmless since it is merely cumulative to other evidence"); *S.C. Dep't of Highways & Pub. Transp. v. Galbreath*, 315 S.C. 82, 86, 431 S.E.2d 625, 628 (Ct. App. 1993) (noting even if a trial court's evidentiary ruling was error, "there is no reversible error where the testimony would have been cumulative"). Additionally, Plaintiff and her primary treating physician, Dr. Goodman, testified about the physical injuries Plaintiff suffered because of the fall and the fourteen surgeries and procedures she endured. Plaintiff testified she was unable to return to her home for eighteen months because of her extensive injuries, and that she cannot now walk without an assistive device. Thus, while Ms. Hedges testimony helped streamline the damages evidence for the jury as permitted by SCRE 611(a), it was largely cumulative of other evidence and not exhaustive of the evidence of damages presented at trial.

Based on the *Jumper* factors, I find Defendant has failed to establish that the decision to permit Ms. Hedges to testify was erroneous. The circumstances of Ms. Hedges' disclosure as an expert witness do not warrant exclusion of her testimony. *See, e.g., Bryson v. Bryson*, 378 S.C. 502, 509, 662 S.E.2d 611, 614 (Ct. App. 2008) (affirming exclusion of witness disclosed morning of trial because the other party had "an insufficient amount of time to adequately prepare...and eliminated the estate's opportunity to depose [the witness]"); *Moran v. Jones*, 281 S.C. 270, 276, 315 S.E.2d 136, 140 (Ct. App. 1984) (affirming the exclusion of witnesses where a party failed to identify them in his standard interrogatories, failed to comply with two court orders requiring witness disclosures, and only identified the witness on the first day of trial).

B. Ms. Hedges was properly permitted to summarize Plaintiff's medical damages.

In addition to arguing that it was error to allow Ms. Hedges to testify at all, Defendant argues that her testimony was inadmissible and requires a new trial. I disagree.

As previously noted, Ms. Hedges' testimony helped streamline the presentation of evidence for the jury rather than require Plaintiff to go through tens of thousands of medical records and bills page by page. South Carolina law discourages such a tedious approach, and Rule 611(a) of the South Carolina Rules of Evidence requires the trial court to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation *effective for the ascertainment of the truth*, (2) *avoid needless consumption of time*, and (3) protect witnesses from harassment or undue embarrassment." (emphasis added). Accordingly, Ms. Hedges' testimony is the kind of testimony routinely found in personal injury trials.

Rule 703, SCRE allows an expert to rely on evidence that is generally relied upon in the expert's field, and Ms. Hedges confirmed in her testimony that she regularly reviews and relied upon explanation of billing records in her evaluations. Ms. Hedges' summary of Plaintiff's medical records and bills was further admissible under Rule 1006, SCRE. The medical records and billing information—which filled six banker's boxes—qualified as voluminous, and the ultimate source of the evidence was admissible.

Defendant contends Ms. Hedges' testimony was inadmissible because the medical records and bills were not properly authenticated, there was no evidence the medical records were causally related and reasonably necessary, and the records contained hearsay. Defendant's argument is rejected because the medical records were admitted without objection and multiple witnesses, including Plaintiff, her daughter, and her treating physician, testified about the medical care Plaintiff received as a result of her fall. Thus, even if it were error to permit Ms. Hedges to

summarize the medical bills and records, Defendant fails to establish the requisite prejudice for a new trial.

C. Defendants failed to preserve any objection to the admissibility of plaintiff's medical records.

Plaintiff offered her medical records into evidence at trial, and they were admitted without objection. *Garrison v. Target Corp.*, 435 S.C. 566, 574 n.1, 869 S.E.2d 797, 802 (2022) (noting unobjected to evidence “becomes competent and cannot be disregarded” by a subsequent motion). Defendant cannot bootstrap an unpreserved issue into a motion for a new trial to avoid the clear failure to timely object. *State v. Lynn*, 277 S.C. 222, 226, 284 S.E.2d 786, 789 (1981) (finding that a failure to make the required contemporaneous objection waives the issue and may not be “bootstrapped” by a subsequent motion or request). Thus, Defendant has waived any objection to the admissibility of Plaintiff's medical records.

Additionally, Plaintiff confirmed that the summaries of her medical procedures and bills were accurate. As previously mentioned, Plaintiff testified about the medical treatment she received and informed the jury that her medical bills exceeded \$2 million. This testimony was reiterated by Plaintiff's daughter and Plaintiff's treating physician. As a result, even if this issue were considered, a new trial is not warranted because the medical records and bills were cumulative of other evidence presented at trial.

D. Evidence of prior falls was properly excluded.

Defendant moved *in limine* for a ruling preventing Plaintiff from offering evidence of prior falls by other residents in the common elements of Forest Lake Place. Defendant then argued it should be permitted to offer evidence regarding Plaintiff's prior falls. I granted Defendants' motion to prevent Plaintiff from introducing evidence of other falls on their premises and also granted Plaintiff's Motion to prevent Defendants from introducing evidence of other falls of Plaintiff. This

case was about Plaintiff's fall in September of 2022. Prior falls of Plaintiff or other residents were irrelevant, but even if relevant, the probative value of this evidence was substantially outweighed by the risk of confusing the issues and misleading the jury.

Defendant argues that evidence of Plaintiff's prior falls was relevant for impeachment purposes and that medical records from 2021 referenced Plaintiff suffering from balance issues. Defendant, however, never questioned Plaintiff about whether she suffered from balance issues, so there was nothing to impeach. Thus, Defendant's motion for a new trial based on this ground is denied.

E. Evidence of subsequent remedial measures was appropriately excluded.

Defendant claims that Rule 407, SCRE bars the introduction of evidence that *pre-dates* an event if that evidence is related to a measure undertaken following the event. Specifically, Defendant asserts that any discussions about paving the area or plans to pave the area, which date back several years before Plaintiff's fall, must be excluded as a subsequent remedial measure.

Defendant does not cite a single case supporting its interpretation of Rule 407. South Carolina cases analyzing Rule 407 all involve evidence that occurred *after* the event in question, which is consistent with the plain language of the rule. *See, e.g., Carson v. CSX Transp., Inc.*, 400 S.C. 221, 235, 734 S.E.2d 148, 155 (2012) (holding Rule 407 prohibited introduction of a photograph that showed CSX's post-accident clearing of vegetation); *Webb v. CSX Transp., Inc.*, 364 S.C. 639, 653, 615 S.E.2d 440, 448 (2005) (holding evidence of clear-cutting vegetation that occurred after a train accident was inadmissible). Plaintiff was not allowed to introduce evidence that the pathway was ultimately paved following her fall but was allowed to introduce evidence that Defendants had discussed paving the pathway prior to her fall. Evidence of subsequent remedial measures was properly excluded in this case, and Defendant's argument is wholly

without merit.

F. The jury's verdict is amply supported by the evidence and will not be set aside under the thirteenth juror doctrine.

South Carolina's "thirteenth juror" doctrine allows the trial court to grant a new trial if the court finds, in its discretion, that the evidence does not justify the verdict. *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002). I have no hesitation in concluding that ample evidence supports the jury's verdict.

The jury carefully considered the evidence presented in this case and rendered a split verdict, finding Defendant liable and Defendant CAMS not liable. Further, the jury assessed comparative fault against the Defendant and Plaintiff. There is no reason to conclude that the jury was inflamed or any improper basis motivated the verdict. Because Defendant's prior arguments in support of its motion for a new trial are rejected, and evidence supports the jury's verdict, Defendant's motion for a new trial pursuant to the thirteenth juror doctrine is denied.

CONCLUSION

For the reasons fully set forth above, Defendant's Motion for JNOV and for a new trial is denied.

The Honorable Christopher D. Taylor



Richland Common Pleas

Case Caption: Gloria Minnick vs Forest Lake Place Horizontal Property Regime ,
defendant, et al
Case Number: 2024CP4003073
Type: Order/JNOV

So Ordered

s/Christopher D. Taylor (#2795)