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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No.: 2025-002523

Charles Shabazz……...…….……Appellant,

v.

Brian Cox…….. Respondent.

REPLY BRIEF OF APPELLANT

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Appellant Charles Shabazz ("Appellant") hereby replies to the Initial Brief of Respondent Brian Cox ("Respondent").

ARGUMENTS

If Respondent's position were to be adopted by this Court, it would render written discovery meaningless in South Carolina. The impact of such a decision would permit civil litigants to strategically evade or intentionally misrepresent responses to written discovery without consequence. Respondent admits that discovery is ongoing but fails to consider this very argument necessarily required him to supplement his pleadings and written discovery to reflect a new legal contention. Allowing Respondent to take a position adverse to his pleadings and written discovery substantially deprived Appellant of his fundamental right to a fair trial.

I. THE TRIAL COURT ERRED IN ALLOWING RESPONDENT TO ARGUE COMPARATIVE NEGLIGENCE.

Respondent's central argument is that his Answer pled comparative fault as an affirmative defense and that this pleading, standing alone, entitled him to argue comparative negligence at trial. Respondent contends that he "affirmatively pled comparative negligence in his Answer filed on March 24, 2024, and reaffirmed this belief during Mr. Cox's deposition on November 21, 2024," and that Appellant was therefore "on notice of this defense for approximately nineteen (19) months before trial." This is the same pleading wherein Respondent affirmatively and conclusively conceded that Appellant maintained the absolute right of way. *See,* Complaint. Regardless, this argument conflates the initial pleading of a defense with the maintenance of that defense through discovery. Respondent did plead comparative negligence in his Answer. He then spent the next two years of litigation affirmatively representing, under oath, that he made no such contention.

Respondent's own supplemental answers to interrogatories asked him directly whether he contended that any person other than himself was responsible for the collision. His answer was

unequivocal: "Defendant does not make this contention." *See* Def.'s Supp. Ans. to Pl.'s Interrog. No. 30. That response was never amended. During the two years of litigation, Respondent supplemented his initial interrogatory responses twice and never amended his responses relevant here. The existence of a boilerplate affirmative defense in the Answer does not cure a subsequent sworn representation that the defense was not being pursued. The entire thrust of the discovery rules involves full and fair disclosure to prevent a trial from becoming a guessing game or one of surprise for either party. *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997). "Discovery is the quintessence of preparation for trial and, when discovery rights are trampled, prejudice must be presumed." *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 652, 579 S.E.2d 151, 158 (Ct. App. 2003). Rule 26(e), SCRCP does not authorize Respondent to discard a sworn interrogatory answer on the morning of trial; it obligates him to supplement that answer promptly when his position changes.

Respondent relies on *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991), for the proposition that discovery is deemed ongoing throughout trial and that the interrogatory answers therefore imposed no binding limitation. But *Baughman* does not permit a party to maintain a sworn denial of a contention throughout litigation and then reverse that position without any supplementation when trial begins. The prejudice to Appellant is precisely what the rules of discovery are designed to prevent. Had Respondent's contentions been properly disclosed in discovery, Appellant would have called the responding officer, Respondent's wife (who was a passenger in the vehicle and never disclosed as a witness), and potentially retained an accident reconstruction expert – none of which Appellant did because Respondent made no contention that Appellant contributed to the collision until trial.

Respondent also argues that Cox's deposition testimony placed Appellant on notice of the

comparative negligence argument. The deposition exchange Respondent cites reads: "Q: My client was responsible for the accident, is what you're – A: I guess, if that's what you want me to say." Dep. of Brian Cox, p. 32: 16-23. That hesitant, equivocal answer does not constitute affirmative notice that Respondent intended to argue the legal affirmative defense of comparative negligence at trial, particularly when supplemental interrogatory responses served after the deposition still stated that Respondent made no such contention.

Respondent further relies on *Gillespie v. Ford*, 222 S.C. 46, 71 S.E.2d 596 (1952), for the proposition that right-of-way status does not relieve a driver of all duty of care, and on *Stephens v. Draffin*, 327 S.C. 1, 488 S.E.2d 307 (1997), for the proposition that a defendant's admission of negligence does not foreclose comparative inquiry. But neither case speaks to the effect of a sworn interrogatory answer abandoning an affirmative defense. Further, reliance on these cases completely ignores Defendant's own testimony: but for his actions, the collision would not have occurred. (Tr. 110: 23-25). Respondent's problem is not merely that he admitted Appellant had the right of way – it is that he expressly represented under oath that he was making no contention Appellant caused or contributed to the accident. The general principle that comparative negligence is a jury question does not override a party's binding sworn representations in discovery. To hold otherwise renders discovery responses meaningless.

II. THE TRIAL COURT ERRED IN FAILING TO CHARGE THE LIFE EXPECTANCY TABLE.

Respondent argues that the life expectancy table was properly withheld because Dr. Murphy did not testify that Appellant's *specific* edema was permanent – she testified only that edema generally *can be* permanent. Respondent contends that "Dr. Murphy did not offer any testimony...that the edema that Mr. Shabazz claimed was permanent." But this standard is higher than South Carolina law requires. The charge of the life expectancy table does not require certainty

that the injury is permanent. Rather, the inquiry is whether the Appellant has set forth "some" evidence from which a reasonable inference could be drawn that a person suffered a permanent injury. *Gethers v. Bailey*, 306 S.C. 179, 410 S.E.2d 586 (Ct. App. 1991).

The combined evidence here surpasses that threshold. Dr. Murphy testified that edema can be permanent; that continued irritation to the ligament produces continued edema; that painful movements constitute such irritation; and that edema can cause long-term pain if it does not heal. Dep. of Tenley Murphy, MD, p. 13:14-23; 14:10-23. Appellant himself testified to ongoing pain in the two-and-a-half years since the collision. (Tr. 138:18-20). The trial court itself charged future damages. (Tr. 260:21-262:15). It is contradictory to charge the jury on future damages while simultaneously refusing to provide the tool – the life expectancy table – by which the jury evaluates such damages over the remainder of Appellant's life.

Respondent further argues that Appellant suffered no prejudice because the jury's award of $45,000, reduced to approximately $24,750 after apportionment, was "approximately $5,000 more than his medical damages." This argument trivializes the scope of Appellant's non-economic damages and ignores that the apportionment figure itself is a product of the trial court's errors. Appellant's evidence at trial established not merely past medical expenses, but loss of career, loss of residence, loss of the ability to play basketball, difficulty holding his daughter, and a substantially diminished quality of life – none of which is compensated by a net recovery of $24,750. An award that barely exceeds past medical expenses, with nothing meaningful for two-and-a-half years of pain, future suffering, and life disruption, demonstrates precisely the prejudice that results from withholding the life expectancy instruction.

III. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTIONS FOR NEW TRIAL *NISI ADDITUR* AND NEW TRIAL ABSOLUTE.

Respondent argues that the jury's 45% comparative fault apportionment is supported by conflicting inferences in the evidence, relying primarily on an alleged inconsistency in Appellant's trial testimony about when he changed lanes relative to the moment Cox pulled out. But the entire premise of this argument is undermined by Respondent's own admissions. Respondent admitted Appellant had the right of way. (Tr. 103:9-10). Respondent admitted he was required to yield to Appellant. (Tr. 103:11-13). Respondent admitted he did not see Appellant before the collision. (Tr. 104:5-8; 110:2; 114:2-3). Respondent admitted that if he hadn't broken the rules of the road, the collision would not have occurred. (Tr. 110:23-25). A driver who admits he did not see the approaching vehicle cannot offer competent evidence of that vehicle's comparative fault. Whatever the precise sequence of lawful lane changes, the collision was caused by Respondent pulling into the path of a vehicle he never saw. As the Supreme Court held in *Odom v. Steigerwald*, 260 S.C. 422, 427-28, 196 S.E.2d 635, 638 (1973), "[b]y driving his car directly into the path of plaintiff's vehicle when plaintiff was obviously so close to the intersection, [Respondent] created a trap from which plaintiff could not escape." The real cause, "the more immediate and efficient cause, was the improper driving conduct" of Respondent. Similarly, in *Crosby v. Sawyer*, 291 S.C. 474, 476, 354 S.E.2d 387, 388 (1987), the Supreme Court found that where a driver runs a stop sign and strikes a vehicle broadside, and there is no evidence that the approaching driver was traveling at an excessive rate of speed, negligence is established as a matter of law and the motion for directed verdict should have been granted. Respondent presented no accident reconstruction, no independent witness, and no objective evidence that Appellant was traveling at an excessive rate of speed or was otherwise negligent. A minor testimonial inconsistency about lawful lane-change sequence does not supply the missing evidence.

As to the adequacy of the verdict, Appellant presented uncontroverted evidence of $19,851.31 in medical expenses, along with testimony from Appellant, his partner, his mother, his grandfather, his current employer, and a friend about the collision's impact on every aspect of his daily life. *Waring v. Johnson* reaffirmed that where the jury fails to adequately account for a plaintiff's pain and suffering, a new trial *nisi additur* is the appropriate remedy. 341 S.C. 248, 260, 533 S.E.2d 906, 913 (Ct. App. 2000). A net recovery of approximately $24,750 – against a background of ongoing wrist pain, loss of employment, loss of housing, and an inability to engage in the activities that defined Appellant's prior life – does not adequately compensate Appellant, and the trial court abused its discretion in so finding.

CONCLUSION

For the reasons stated herein, this Court should reverse the trial court's denial of Appellant's motions for directed verdict, JNOV, new trial absolute, and, in the alternative, new trial *nisi additur*, and remand for a new trial on liability and damages or for such other relief as this Court deems just and proper.

Respectfully Submitted,

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