

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No.: 2026-000050

Dianne Cromwell as the Guardian Ad Litem for AY,
a minor under the age of Fourteen..... Appellant,
v.

The Oaks Horizontal Property Regime, Inc. and
Diamond Management, Inc., Respondents.

INITIAL BRIEF OF RESPONDENTS

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I. STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT CORRECTLY DENY APPELLANT'S MOTION FOR A NEW TRIAL?
- II. SHOULD THE JURY'S VERDICT BE UPHOLD?

III. STATEMENT OF THE CASE

This lawsuit arises out of a dog bite that occurred on November 4, 2020, when a dog named Toby, owned by John and Maggie Jolin, residents of The Oaks Horizontal Property Regime, bit A.Y., a minor child, when he was playing outside his home. As a result of the Accident, A.Y. allegedly suffered injuries both physical and emotional.

Appellant Dianne Cromwell (“Cromwell”), A.Y.’s mother, filed her Summons and Complaint in the Beaufort County Court of Common Pleas on January 20, 2021 against the dog’s owners, John and Maggie Jolin, alleging negligence. [Complaint]. On June 7, 2021, Cromwell added The Oaks Horizontal Property Regime (“The Oaks”) and its property manager, Diamond Management Inc. (“Diamond”), as defendants to the action. [Amended Complaint]. The Amended Complaint alleged causes of action for negligence, strict liability, and violations of the South Carolina Unfair Trade Practices Act against Respondents. *Id.* Respondents filed their Answer on August 10, 2021, denying liability and asserting affirmative defenses, such as lack of notice and lack of foreseeability. [Answer].

On December 15, 2023, Cromwell voluntarily dismissed the dog’s owners, John and Maggie Jolin, from the action. [Order, Dec. 15, 2023]. On June 19, 2025, Cromwell filed a motion to amend the complaint to remove all causes of action against Respondents except for her negligence claim. [Mot. to Amend, June 19, 2025]. The motion was granted by the circuit court prior to the commencement of trial. [Trial Transcript p. 103, lines 22 – 25].

The case was tried June 25, 2025 through June 26, 2025, before the Honorable Carmen T. Mullen. At the conclusion of the trial, the jury found that the Respondents were not liable for A.Y.’s injuries and entered a verdict in favor of the defense. [Verdict Form].

On July 5, 2025, Cromwell 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 her Motion, Cromwell argued that: (1) there was no evidence supporting that conclusion that Respondents warned of, mitigated, or eliminated the allegedly foreseeable risk that Toby would bite someone else in the common elements of The Oaks; (2) there was no evidence against Mr. Niepmann's testimony regarding notice of a prior bite, and (3) there was no evidence controverting the Respondents' internal policy which required the removal of any dog from the property that exhibited aggressive behavior. [Motion for a New Trial]. On December 10, 2025, the trial court denied Cromwell's Motion. [Order Denying Appellant's Motion for a New Trial]. This appeal followed.

IV. 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.

On November 4, 2020, John and Maggie Jolin's dog Toby escaped its residence. Upon escaping, the dog bit A.Y. while he was playing in the common elements at the Oaks. A.Y. suffered injuries to his ribs and leg. From the beginning, Respondents have argued defenses that there was lack of notice and lack of foreseeability.

At trial, Respondents presented testimony through Mr. Hawanczak that Respondents had no prior knowledge or notice of the dog bite that allegedly occurred several months prior to the incident at issue in this case. [Trial Transcript p. 323 lines 5-10]. Respondents provided further evidence that the companies' policy is to keep written documentation of any incidents and to pull camera footage if available. [Trial Transcript p. 324 line 18 – p. 325 line 1]. However, there was no documentation of any previous incident involving Toby. [Trial Transcript p. 323 line 18 – p. 324 line 7]. The Oaks had no notice of the prior dog bite incident.

The record supports the jury's verdict. Appellant argues that the jury should be forced to accept the testimony of Mr. Niepmann regarding notice to the property manager and that this testimony should result in an automatic verdict in favor of Appellant. There was competing testimony in regard to notice of the previous incident, including Mr. Hawanczak stating there was no written record or notification of the incident while Mr. Niepmann stated he immediately told Mr. Sanchez. [Trial Transcript p. 323 line 22 – p. 324 line 12; p. 279 line 20 – p. 280 line 6].

Additionally, evidence was introduced to show that this incident was unforeseeable and was the result of a dog escaping from John and Maggie Jolin's home – John and Maggie Jolin who were the owners of Toby and who were originally defendants in the suit but were dismissed prior to trial. The jury did not believe that Appellant presented evidence sufficient to show that Respondents were liable for A.P.'s injuries. Rather, the jury, the finder of fact and the weigher of the credibility of witnesses, came to the reasonable conclusion that the Respondents were not liable for this incident. Contrary to the Appellant's assertions, the jury is not required to accept Mr. Niepmann's testimony with regard to notice. Further, even if the jury did accept his testimony, they were not obligated on his testimony alone to find for Appellant.

V. 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 rest 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).

As the South Carolina Supreme Court stated in Wilder Corp. v. Wilke, it is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. in Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998), This principle was reaffirmed in Staubes v. City of Folly Beach, Herron v. Century BMC, and Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia. See Staubes v. City of Folly Beach, 339 S.C. 406, 529 S.E.2d 542 (2000), Herron v. Century BMW, 395 S.C. 461, 719 S.E.2d 640 (2011), and Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia, 409 S.C. 563, 83 S.Ct. 1703 (2014).

VI. ARGUMENT

A. The Trial Court Correctly Denied Appellant's Motion for a New Trial where the Jury Verdict was Supported by the Evidence and the verdict should be upheld.

i. Appellant's argument regarding Respondents' Opening Statement is not preserved for appeal.

Appellants attempt to argue that Respondents' opening statement about how the jury will hear from Mr. Sanchez is reason for the Appellate Court to overturn the jury's verdict. Under the rule articulated in State v. Dunbar, an issue must have been raised to and ruled upon by the trial court to be preserved for appellate review; issues not raised and ruled upon at the trial court level will not be considered on appeal. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003). At trial, Appellant did not raise the issue of Respondents opening statement nor request a curative instruction. As such, this argument has been waived. Hendrix v. Eastern Distribution, Inc., 320 S.C. 218, 464 S.E.2d 112 (1995).

If the Court is inclined to evaluate Appellant's argument even though it has not been properly preserved, the Appellant's argument that this opening statement is solely what molded the jury's deliberation still fails. During Respondents' opening statement, Respondents indicated

that Mr. Sanchez would testify that he had no knowledge of the Niepmann incident and that no one reported the incident to either of the Respondents. [Trial Transcript p. 111 lines 8-13]. While Mr. Sanchez did not testify at trial, Mr. Sanchez's supervisor, Michael Hawanczak, testified that he had never been told about the incident with Mr. Niepmann and that neither Respondent had any record of the incident. [Trial Transcript p. 317 line 6 – p. 5; p. 323 lines 5-10]. The Respondents produced this testimony through a different witness. They did not, as Appellant attempts to argue, offer their own opening statement as evidence with no corroboration.

ii. The verdict was supported by evidence showing that the Respondents did not have notice or foreseeability.

The jury had ample evidence to support a verdict finding the Respondents not liable for the Accident. The Appellants attempt to argue that there was no evidence that contradicted Mr. Niepmann's testimony, meaning the jury had to accept his testimony. In fact, the jury saw contradicting evidence of Mr. Niepmann's testimony through both Mr. Montgomery and Mr. Hawanczak. Even if there was no contradictory testimony, the jury is still within their right to come to their own conclusion about Mr. Niepmann's testimony and choose to disregard his statements.

Mr. Niepmann testified that the Jolin's dog bit him several months prior to the incident at issue in this case. [Trial Transcript p. 278 line 16 – p. 279 line 19]. Mr. Niepmann stated he approached Marco Sanchez about the incident but was adamant that he only wanted to know if the dog had his rabies vaccine. [Trial Transcript p. 279 line 20 – p. 280 line 6; Trial Transcript p. 282 line 6-17]. At no point during trial did Mr. Niepmann testify that he wished to report the dog as dangerous. Mr. Niepmann acknowledged that he had drafted no written documentation of the event, nor did he ever follow up with Mr. Sanchez about the incident. [Trial Transcript p. 286 lines 16-22; Trial Transcript p. 290 line 7 – p. 291 line 16].

Conversely, during the trial, Marco Sanchez's supervisor Michael Hawanczak testified that he was "not aware of any prior incident with Scott Niepmann prior to the Cromwell incident." [Trial Transcript p. 323 lines 8-10]. He further testified that there were no written documents which memorialized the incident with Toby and Scott Niepmann nor did Marco inform him of such an incident. [Trial Transcript p. 323 line 11-21]. Mr. Niepmann did not inform him of the incident. Mr. Hawanczak stated that normal practice when being informed of such an incident is to preserve the video footage and start the proper procedures regarding an aggressive dog. [Trial Transcript p. 326 line 16 – p. 327 line 1]. Despite Appellant's allegation that Mr. Sanchez did not keep records or report resident complaints, Mr. Hawanczak testified that it was regular policy to investigate and document the complaint. [Trial Transcript p. 331 line 18 – line 333 p. 7; Trial Transcript p. 326 line 16 – p. 327 line 1].

The Animal Control officer, A.J. Montgomery, stated when Toby bit Mr. Niepmann, it wasn't an attack, it was a "nipping at the front knee." [Trial Transcript p. 123 lines 20-22]. Further, Mr. Niepmann told Mr. Montgomery it was a simple incident and he didn't want anything involved. [Trial Transcript p. 125 lines 9-14]. Therefore, Mr. Montgomery did not write a citation for the Jolin's dog. [Trial Transcript p. 125 lines 7-14].

There are many ways a jury could have interpreted all testimony. While Mr. Niepmann testified he told the Respondents about the incident, Mr. Hawanczak testified that there was no documentation of the incident. Further, Mr. Hawanczak testified that the proper protocol would have been to formally document the incident and attempt to pull any camera footage from The Oaks. Mr. Hawanczak stated, however, that there was no documentation and no one ever spoke to him about the incident. Additionally, Mr. Niepmann testified and Mr. Montgomery confirmed that Mr. Niepmann did not want anything to happen to the dog and that the nip was small. A jury could

have reasonably inferred that no incident was memorialized because Mr. Niepmann himself did not believe this was an “attack” and it did not warrant labeling Toby as a dangerous dog. Therefore, the Respondents would not have been put on any notice for Toby’s “aggressive” behavior.

Even if the testimony of Mr. Niepmann was undisputed by any witness produced by the Respondents, the jury still has the exclusive right to evaluate each witness’ testimony and to determine the weight of such testimony. In State v. Smith, the South Carolina Supreme Court held that a jury may believe one witness and disbelieve another, may believe one portion of a witness’s testimony and disregard another portion, and that the jury must necessarily pass upon the credibility of witnesses. State v. Smith, 227 S.C. 400, 88 S.E.2d 345 (1955). The court further explained that in doing so, the jury may take into consideration the witnesses’ opportunities for observation and knowledge, any prejudice or bias they may have, their demeanor on the stand, and in fact anything which in the jury’s good judgment tends to show whether or not witnesses are telling the truth. Id. Similarly, in State v. Brisbon, the South Carolina Supreme Court confirmed that the jury is the sole judge of the credibility and believability of the witnesses who have testified, and that jurors may consider factors such as the witness’s demeanor, consistency of testimony, ability to know the facts testified to, and whether the witness had a reason to be biased or prejudiced. State v. Brisbon, 323 S.C. 324, 474 S.E.2d 433 (1996).

Additionally, the South Carolina Supreme Court has explicitly confirmed that a jury is not required to accept uncontradicted witness testimony, as credibility is a question for the jury. Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 694 S.E.2d 1 (2010). In Hoard, the court endorsed the principle from Black v. Hodge and Ross v. Paddy that even when testimony stands entirely uncontradicted, the jury retains the prerogative to disbelieve it. Black v. Hodge, 306 S.C. 196, 410 S.E.2d 595 (1991); Ross v. Paddy, 340 S.C. 428, 532 S.E.2d 612 (2000). When testimony is

actually contradicted by another witness, the jury's discretion to resolve that conflict is even more clearly established. Id.

Here, the jury has the absolute power to believe or disbelieve a witness's testimony. While Respondents argue that there was ample testimony to contradict Mr. Niepmann and the Plaintiff's theory of the case, the jury could have chosen to disbelieve Mr. Niepmann without a single contradictory piece of evidence.

Therefore, 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 the Respondents had no prior notice of danger and were not liable for the accident.

VII. CONCLUSION

The trial court properly denied Cromwell's Motion for a New Trial and properly found that the jury's verdict was reasonable based on the evidence presented. Therefore, Respondent respectfully requests that the trial court's December 10, 2025 Order denying the Motion for a New Trial be affirmed and that the jury's verdict be upheld.

Respectfully Submitted by:

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On this 28th day of August
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