THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2011-CP-04-03728

Galina S. Mitioglo, Appellant,

v.

William F. Voyles, Respondent.

FINAL BRIEF OF RESPONDENT

TURNER PADGET GRAHAM & LANEY, P.A.

January 23, 2014

Wilson. S. Sheldon
J. Adam Russell
200 East Broad Street, Suite 250
P.O. Box 1509 (29602)
Greenville, South Carolina 29601
Phone: (864) 552-4600
Fax: (864) 552-4620

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

1. **THE CIRCUIT COURT DID NOT ERR IN AFFIRMING THE MAGISTRATE'S COURT'S ORDER DENYING THE APPELLANT'S MOTION FOR A NEW TRIAL BECAUSE THE JURY'S VERDICT WAS SUPPORTED BY THE EVIDENCE AND WAS NOT ARBITRARY AND CAPRICIOUS**

2. **THE APPELLANT FAILED TO PRESERVE THE ISSUES FOR APPEAL**

STATEMENT OF THE CASE

This matter arose out of an automobile accident that occurred in the parking lot of a grocery store located in Anderson County. The Appellant filed a Complaint in the Anderson County Magistrate's Court on June 15, 2011, with that case bearing case number 2011-CV-04-10102020. (R. pp. 4-6). The case was tried by a jury before the Honorable James T. Busby, Jr., and the jury found each party to have been 50% at fault and further found that the Appellant suffered "$0" in damages. (R. p. 20). Thereafter, on October 19, 2011, the Appellant filed a Motion for New Trial (R. pp. 21-22), which was heard, and denied, on November 29, 2011. (Appendix p. 1).

On December 29, 2011, the Appellant filed a Notice of Civil Appeal in the Court of Common Pleas, appealing the Magistrate's Court's denial of her Motion for New Trial. (R. pp. 23-27). The appeal to the Court of Common Pleas was assigned case number 2011-04-CP-03728. (R. p. 23). On January 31, 2012, Judge Busby filed a Return as required by S.C. Code Ann. § 18-7-60. (R. p. 28; Appendix pp. 1-7). The Appeal was heard before the Honorable R. Lawton McIntosh who affirmed Judge Busby's Order by way of an Order entered on August 8, 2012. (R. pp. 29-30). On August 20, 2012, the Appellant filed a

Motion for Reconsideration of the August 8, 2012 Order. (R. pp. 31-34). An Order denying the Appellant's Motion for Reconsideration was entered on November 29, 2012. (R. pp. 1-2). It is from this Order that the Appellant now appeals.

FACTS

As set forth above, the underlying case was tried before a jury in the Anderson County Magistrate's Court on October 14, 2011. At trial, the Appellant testified that she was entering the parking lot of a grocery store and saw the Respondent backing out of a parking space. (Appendix p. 1). The Appellant further testified that she attempted to go around the Respondent's vehicle, but was unable to do so and collided with the Respondent's vehicle. (Appendix p. 1). The Respondent testified that he backed out slowly and was almost ready to begin moving forward when his vehicle was hit by the Appellant's vehicle. (Appendix p. 2).

As for her alleged damages, the Appellant testified that she was not injured at the scene, but later developed headaches and other ailments. (Appendix p. 1). Furthermore, the Appellant alleged that she received physical therapy and chiropractic treatment (for a period of over 7 months after the accident); however, she also testified that she did not seek treatment from a family doctor, even though she had access to such treatment as an employee of a school district. (Appendix p. 2). Furthermore, the Appellant testified that she did not pay for any of the treatment, and the medical records revealed that she began treatment with the chiropractor while still going to physical therapy. (Appendix p. 2).

Because the accident occurred in a private parking lot, the jury was charged that each party had a common law duty to keep their vehicles under control and to keep a proper

lookout. (Appendix pp. 6-7). The case was then submitted to the jury with a verdict form that first asked the jury to determine whether each party was negligent. (R. p. 20). Neither party objected to the verdict form. (Appendix pp. 1-3). Furthermore, the jury was asked to apportion liability between the parties and to determine what damages, if any, were suffered by the Appellant. (R. p. 20). The jury found that the accident was caused 50% by the actions of the Appellant and 50% by the actions of the Respondent. (R. p. 20). Furthermore, the jury found that the Appellant failed to prove any damages, stating that the Appellant's losses were "$0." (R. p. 20).

On October 19, 2011, the Appellant filed a Motion for New Trial in the Magistrate's Court. (R. pp. 21-22). The grounds for the Motion were that the "jury verdict [was] contrary to the weight of the evidence." (R. pp. 21-22). In support of the Motion, the Appellant listed facts that he believed supported his case. (R. pp. 21-22). At the hearing on the Appellant's Motion, Judge Busby found and concluded that the "jury had properly considered all evidence at trial." (Appendix p. 1). As such, the Motion was denied. (Appendix p. 1).

On December 29, 2011, the Appellant filed the instant action, which was an appeal of the Magistrate's Order denying her Motion for a New Trial. (R. pp. 23-27). This Notice was based on the same grounds as the Motion for New Trial; however, it included a new ground not previously raised—"that the jury found the Defendant 50% at fault, yet did not award the Plaintiff 50% of her damages." (R. pp. 23-27). The Appeal was heard before the Honorable R. Lawton McIntosh who affirmed Judge Busby's Order by way of an Order entered on August 8, 2012. (R. pp. 29-30).

Next, on August 20, 2012, the Appellant filed a Motion for Reconsideration[1], asking Judge McIntosh to reconsider his prior Order of August 8, 2012 affirming the Order of the Magistrate's Court. (R. pp. 31-34). In this Motion, the Appellant again argued factual issues presented at trial. (R. pp. 31-34).

STANDARD OF REVIEW

The question of granting a new trial on the grounds that the verdict is not supported by the evidence, or is excessive, arbitrary, and capricious, is left to the sound discretion of the trial Judge, who hears the evidence and sees the witnesses, and who is in a much better position than an Appellate Court to judge of the righteousness of verdicts. *South Carolina Dep't of Highways & Public Transp. v. Mooneyham*, 275 S.C. 205, 269 S.E.2d 329 (1980) The decision of the trial Judge in such cases will not be disturbed unless his discretion is clearly abused. *Id.* Moreover, a trial judge's order granting or denying a new trial upon the facts will not be disturbed unless his decision is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law. *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990) (citation omitted). In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law, and a factual finding of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings. *Townes Associates, Ltd. v. Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976).

[1] While styled as a Motion for Reconsideration, the text of the Motion requests a new trial in the Magistrate's Court and does not reference the August 8, 2012 Order, or any order for that matter, that the Appellant is asking

ARGUMENT

1. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION BECAUSE THE JURY'S VERDICT WAS SUPPORTED BY THE EVIDENCE AND WAS NOT ARBITRARY AND CAPRICIOUS

The Appellant submits two arguments in favor of her position: 1) that the jury's verdict was arbitrary and capricious, and 2) that she proved negligence beyond a preponderance of the evidence. Both arguments are equally without merit. Moreover, the Appellant's second argument, that she proved negligence beyond a preponderance of the evidence, improperly identifies the standard of review to be used by the Circuit Court in reviewing a lower court's denial of a motion for a new trial. Both arguments are discussed in more detail below.

Dealing first with the Appellant's argument that the jury's verdict was arbitrary and capricious, the Appellant has failed to identify any evidence to support this theory. Other than her own blanket assertions, she offers no evidence that the jury's verdict was arbitrary and capricious. Indeed, the Appellant essentially asserts that because she disagrees with the jury's verdict, the verdict "must have been based on evidenced outside the record [. . .]." Again, though, the Appellant offers no discussion or evidence as to what this outside evidence may have been.

As set forth above, a factual finding of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings. *Townes Associates, Ltd, supra* (emphasis added). At trial, there was ample evidence to

---

the Court to reconsider. Nevertheless, it appears that the Appellant was asking the Court to alter or amend the August 8, 2012 Order pursuant to Rule 59(e) SCRCP.

support the jury's verdict. First, the Respondent testified that he backed out of his space slowly and was almost prepared to go forward at the time of the accident. (Appendix pp. 1-3). Moreover, the Plaintiff testified that she saw the Defendant in the middle of the road just prior to the collision and that she tried to steer her vehicle around him. (Appendix pp. 1-3). This testimony certainly establishes an evidentiary basis to support the jury's verdict that the Appellant was partially at fault in causing the accident. Likewise, there is ample evidence to support the jury's finding that the Appellant suffered no damages as a result of the accident. The Appellant testified that she did not seek treatment from a primary care physician. (Appendix pp. 1-3). She also testified that she was not hurt at the scene. (Appendix pp. 1-3). Thus, there was evidentiary support for the jury's finding that the Appellant suffered no damages in the accident. Therefore, since there was an evidentiary basis for the jury's verdict, the Circuit Court properly affirmed the Order of the Magistrate's Court.

Next, the Appellant argues that the "Circuit Court erred when it failed to reverse the Magistrate Court's denial of Appellant's motion for a new trial based on the fact that negligence on the part of the Respondent was proven by a preponderance of [the] evidence." In support of this argument, the Appellant suggests that the Magistrate's Court should have applied the thirteenth juror doctrine to overturn the jury's verdict and grant the Appellant's Motion for New Trial. Further, the Appellant argues that the Magistrate's Court's failure to do so should have been reversed by the Circuit Court. This argument misconstrues the standard invoked by an appellate court in reviewing a trial judge's application (or, in this case, failure to apply) the doctrine.

The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990). This ruling has also been termed granting a new trial upon the facts. *Id.* A trial judge's order granting or denying a new trial upon the facts will not be disturbed unless his decision is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law. *Id.* Thus, the Circuit Court's role in this case was not, as the Appellant suggests, to weigh the evidence and reach its own verdict. Rather, the Circuit Court's role was limited to determining whether the verdict was wholly unsupported by the evidence. In this case, as discussed above, there is ample evidence to support the jury's verdict. Therefore, since at the very minimum, the verdict was supported by some evidence, the Circuit Court properly affirmed the Magistrate Court's Order denying the Appellant's Motion for New Trial.

2. THE PLAINTIFF FAILED TO PRESERVE THE ISSUES FOR APPEAL

Next, and perhaps more importantly, the Appellant has failed to preserve any of the issues she raises on appeal. First, the Appellant did not make a directed verdict motion at trial. Moreover, she did not object to the verdict form, nor did she argue that the verdict was inconsistent in her Motion for New Trial made before the Magistrate Court[2]. A directed verdict motion is a prerequisite to a motion for JNOV or a new trial motion on the ground the evidence does not support the verdict. *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*,

[2] The Appellant argued that the verdict was inconsistent in her Notice of Appeal. This issue was not raised to the Magistrate's Court and, indeed, Judge McIntosh acknowledged the same at the hearing on the Appellant's Motion to Reconsider, stating: "I'm curious, if the verdict of the jury was two fold; finding 50/50 liability or fault, rather, but then awarding no damages, would not you need to make a motion to the magistrate as to the issue of damages as well as to the issue of liability?" (R. p. 16, lines 17-21). Indeed, the Appellant's Motion for

399 S.C. 322, 732 S.E.2d 166 (2012). Thus, since the Appellant did not make a directed verdict motion, she could not properly bring a motion for a new trial. Likewise, assuming there were any problems with the jury verdict form, this issue was not preserved for appeal. By failing to object to a verdict form until after the verdict had been reached, a party fails to preserve any issue relating to the verdict form. *Gause v. Smithers*, 403 S.C. 140, 742 S.E.2d 644 (2013) (citing *Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 453 S.E.2d 908 (Ct.App. 1995)). Therefore, again, the Appellant could not challenge the jury verdict form. Since the Appellant did not preserve these issues for appeal, the Circuit Court properly affirmed the Magistrate Court's denial of the Appellant's Motion for a New Trial.

CONCLUSION

For the reasons stated above, the Respondent respectfully requests that this Court affirm the decision of the Circuit Court.

Respectfully submitted,

January 23, 2014

Wilson. S. Sheldon
J. Adam Russell
200 East Broad Street, Suite 250
P.O. Box 1509 (29602)
Greenville, South Carolina 29601
Phone: (864) 552-4600
Fax: (864) 552-4620

Attorneys for Respondent

New Trial made no reference to damages or an inconsistent verdict.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2011-CP-04-03728

Galina S. Mitioglo, Appellant,

v.

William F. Voyles, Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

TURNER PADGET GRAHAM & LANEY, P.A.

January 23, 2014

Wilson. S. Sheldon
J. Adam Russell
200 East Broad Street, Suite 250
P.O. Box 1509 (29602)
Greenville, South Carolina 29601
Phone: (864) 552-4600
Fax: (864) 552-4620

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case Nos. 2011-CP-04-03728, 2011-CV-04-10102020

Galina S. Mitioglo, Appellant,

v.

William F. Voyles, Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent's Final Brief and Appendix to the Record on Appeal by depositing a copy of same in the United States Mail, postage prepaid, on January 24, 2014, addressed to Appellant's attorney of record, Donald L. Smith, 122 North Main Street, Anderson, South Carolina 29621.

TURNER PADGET GRAHAM & LANEY, P.A.

January 24, 2014

Wilson. S. Sheldon
J. Adam Russell
200 East Broad Street, Suite 250
P.O. Box 1509 (29602)
Greenville, South Carolina 29601
Phone: (864) 552-4600
Fax: (864) 552-4620

Attorneys for Respondent