

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Galina S. Mitioglo,Appellant,

v.

William F. Voyles,Respondent.

RECORD ON APPEAL

Donald L. Smith, Esquire
122 N. Main Street
Anderson SC 29621
(864) 642-9284
Attorney for Appellant

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

~~Attorney for Respondent~~

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SC Court of Appeals

RECORD ON APEAL
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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON

Case No. 2011-CP-04-03728

Galisa S. Mitioglo,

Plaintiff,

vs.

William F. Voyles,

Defendant.

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

A TRUE COPY

NOV 29 2012

This matter came before me on October 29, 2012 by way of a hearing on the Plaintiff's

Motion for Reconsideration. Present at the hearing were Donald L. Smith, Esquire, counsel for the Plaintiff, and Wilson S. Sheldon, Esquire, counsel for the Defendant. This matter originally stems from an action filed by the Plaintiff in the Anderson County Magistrate's Court. The judgment of the Magistrate's Court was subsequently appealed to this Court by way of a Notice of Civil Appeal filed by the Plaintiff on December 29, 2011. After a hearing on the Plaintiff's Appeal, this Court affirmed the judgment entered by the Anderson County Magistrate's Court by way of an Order entered on August 8, 2012. Thereafter, on August 20, 2012, the Plaintiff filed this Motion for Reconsideration. The Plaintiff did not present any new arguments for this Court's consideration in his Motion. Therefore, as discussed below, I find and conclude that the Plaintiff's Motion for Reconsideration should be denied.

FINDINGS OF FACT AND CONCLUSION OF LAW

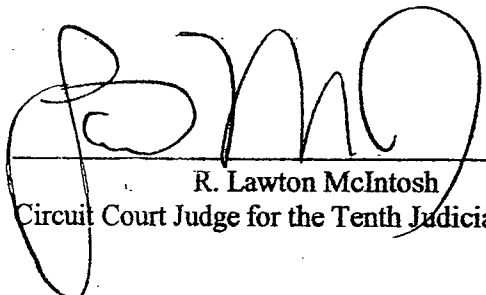
The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502-03 (2006). An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support. *Id.* at 551, 633 S.E.2d at 503.

In this case, I have carefully considered the arguments of counsel and the underlying ruling that the Plaintiff has asked me to reconsider. I find and conclude that this Court's prior ruling contained no error of law and was not based on factual conclusions that are without evidentiary support. Moreover, the Plaintiff has not presented any additional arguments.

THEREFORE, for the reasons set forth above, the Plaintiff's Motion for Reconsideration is denied.

IT IS SO ORDERED.

Dated: 11-27-17
Anderson, SC



R. Lawton McIntosh
Circuit Court Judge for the Tenth Judicial Circuit

CLERK'S OFFICE
NOV 29 AM 10:25
GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Galisa S. Mitiglo,

Plaintiff,

v.

William F. Voyles,

Defendant.

IN THE MAGISTRATE COURT

SUMMARY COURT

C.A. NO. 2011-CV-04- 2020

JUN 15, '11

SUMMONS

PM 2:35:22

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to the said Complaint on the Plaintiff's attorney at 210 N. Main Street, Suite 3, Anderson, South Carolina, 29621, within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.



DONALD L. SMITH (Bar #: 6699)

ATTORNEY FOR PLAINTIFF

210 N. Main Street

Suite 3

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Anderson, South Carolina

June 15, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
Galisa S. Mitiglo,

Plaintiff,

v.

William F. Voyles,

Defendant.

IN THE MAGISTRATE COURT

C.A. NO. 2011-CV-04-_____

COMPLAINT

The Plaintiff, complaining of the Defendant, alleges:

1. That Plaintiff Galina Mitiglo, was, at all times pertinent to this action, a citizen and resident of the County of Anderson, State of South Carolina.
2. That Defendant William F. Voyles, was, at all times pertinent to this action, a citizen and resident of the County of Abbeville, State of South Carolina.
3. That on or about May 28, 2009, the Plaintiff was traveling through the Aldi Grocery Store parking lot, in the County of Anderson, State of South Carolina.
4. That at that same time, the Defendant failed to yield the right of way, improperly backed up his vehicle, and collided with the the Plaintiff's vehicle
5. That this collision was so severe that Plaintiff suffered significant injuries to her head, neck, and back.
6. That the Defendant was reckless in the operation of his motor vehicle, which recklessness proximately caused the injuries to the Plaintiff, in that, without limit:
 - (a) Said Defendant knowingly, willfully, and wantonly disregarded avoidance of known and obvious risks relating to improperly backing up his vehicle and failing to yield the right of way;
 - (b) Said Defendant's behavior demonstrated a severe lack of concern for the safety of others;
 - (c) In-failing to maintain proper control of the vehicle;

- (d) In failing to properly equip the vehicle with adequate and safe brakes, or if so properly equipped, in failing to properly utilize them;
- (e) In failing to take evasive action in order to avoid colliding with the Plaintiff;
- (f) In not being mentally and physically alert to the impending dangers;
- (g) For failing to exercise the reasonable degree of care which a reasonable and prudent person would exercise under the same or similar circumstances; and,
- (h) In driving said vehicle in violation of the statutes, laws and regulations of the State of South Carolina.

All of which particulars are in direct violation of the statutory and common laws of the State of South Carolina and the Rules and Regulations promulgated by the South Carolina Department of Highways and Public Transportation.

7. That as a proximate result of the recklessness of the Defendant, Plaintiff, Galina Mitioglo was thrown about the vehicle and sustained significant injuries, pain and suffering, the expense of medical treatment, and other losses, for which she is informed and believes that she is entitled to judgment against the Defendant for her actual damages and punitive damages in reasonable amounts.

DAMAGES

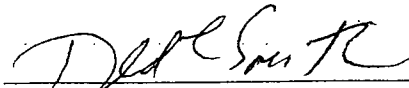
8. As the direct and proximate result of the Defendant's negligence and gross negligence, the Plaintiff sustained serious, painful injuries to her body and other damages including but not limited to:

- (a) Head injury;
- (b) Back injury;
- (c) Neck injury;
- (d) Past and present physical pain and suffering;
- (e) Past and present medical expenses; and,

All of which injuries and loss caused damage to the Plaintiff in an amount to be determined by this Court.

WHEREFORE, Plaintiff prays for judgment against Defendant for:

1. Actual and punitive damages in an amount to be determined by this Court.
2. Such other and further relief as the Court may deem just and proper.



DONALD L. SMITH (Bar #: 6699)

ATTORNEY FOR PLAINTIFF

210 N. Main Street

Suite 3

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Anderson, South Carolina

June 16, 2011

STATE OF SOUTH CAROLINA

IN THE MAGISTRATE'S COURT

COUNTY OF ANDERSON

Case No. 2011CV0410102020

Galisa S. Mitioglo,

Plaintiff,

vs.

William F. Voyles,

Defendant.

ANSWER
(Jury Trial Requested)

The Defendant, William F. Voyles, answering the Plaintiff's Complaint would show unto the Court as follows:

FOR A FIRST DEFENSE

1. He is without significant information to form a belief as to the allegations contained in Paragraph 1 of the Complaint.
2. He admits the allegations contained in Paragraph 2 of the Complaint.
3. He admits the allegations contained in Paragraph 3 of the Complaint.
4. He admits that an accident occurred between a vehicle being driven by the Plaintiff and vehicle being driven by this Defendant. He denies the remaining allegations contained in Paragraph 4 of the Complaint.
5. He denies the allegations contained in Paragraph 5 of the Complaint.
6. He denies the allegations contained in Paragraph 6 of the Complaint, including all sub-parts.
7. He denies the allegations contained in Paragraph 7 of the Complaint.

8. He denies each and every allegation set forth in the Complaint not specifically admitted.

FOR A SECOND DEFENSE

9. The Defendant reincorporates and realleges each and every paragraph set forth above in his Answer as if fully repeated herein.

10. The Defendant alleges that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the greater negligence and/or willfulness of the Plaintiff which exceeds the negligence and/or willfulness, if any, on the part of the Defendant, without which greater negligence and/or willfulness on the part of the Plaintiff, said alleged injury or damage would not have occurred or been sustained and for that reason, the Plaintiff is totally barred from recovery.

FOR A THIRD DEFENSE

11. The Defendant reincorporates and realleges each and every paragraph set forth above in his Answer as if fully repeated herein.

12. Alternatively, the Defendant alleges that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the negligence and/or willfulness of the Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of the Defendant, and for that reason the recovery of the Plaintiff, if any, shall be reduced in proportion to the amount of her negligence.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant prays that the Complaint be dismissed with costs.

TURNER, PADGET, GRAHAM & LANEY, P.A.

BY: WSS
Wilson S. Sheldon
200 E. Broad Street, Ste. 250 (29601)
P.O. Box 1509
Greenville, SC 29602
Direct Dial: 864-552-4603
Direct Fax: 864-282-5982

Attorneys for the Defendant,
William F. Voyles

Greenville, South Carolina

August 12, 2011

9

P R O C E E D I N G S

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THE COURT: All right. This is the case of Galina S. Mitiaglo. Is that right?

MR. SMITH: Mitiaglo, sir.

THE COURT: Versus William F. Voyles, Defendant. 2011-2728. It's referenced as an appeal from Magistrate's Court. Is that correct?

MR. SMITH: Yes, sir.

THE COURT: Okay. Mr. Smith, are you the moving party?

MR. SMITH: I am.

THE COURT: All right, sir. Glad to hear from you.

MR. SMITH: May it please the Court.

THE COURT: Yes, sir.

MR. SMITH: Your Honor, this is an accident claim which took place in the parking lot of Aldi's. My client was driving in the parking lot. The Defendant backed up at such a rate and at such a distance that it struck my client's vehicle. Now, the parking lot where the accident took place, the parking spaces weren't parallel to the path of the driving area, which indicates that the roadway in the middle that was used for travel was wide enough for cars going both ways. It wasn't angled one way like at the post office or like at Wal-Mart. The gentleman, I had him draw a picture where he hit her at and his marking indicated it was over halfway with regard to the travel area on the other side. So, he went over in my client's

GALINA S. MITAGLO VERSUS WILLIAM F. VOYLES

1 lane though there wasn't any markings to establish that.
2 Then, my client simply tried to speed up when she saw that
3 he started coming out of the parking space too fast and he
4 hit her at the back tire, showing that she almost got out
5 of the way. He said he was sorry. There is no question it
6 was his fault. Now, I don't know how you'd reach it
7 otherwise, however the jury found she was 50% at fault for
8 apparently driving. It's not supported by the evidence.
9 It's that simple. There is nothing that supports it was
10 her fault. As I said, he struck her and he did say she
11 tried to speed up to get away because he was going so fast
12 she knew he was going to hit her and, in fact, he did. It
13 was right back, just behind the rear tire, so she almost
14 got away, but he was going too fast and hit her and the
15 idea that he put an "x" on that side of the travel way
16 shows that he went too far when he backed up anyway. I
17 mean, he didn't need to go that far.

18 THE COURT: All right. So, this came up for trial
19 before a jury and the jury came back, according to the
20 return from the magistrate, that both parties were equally
21 at fault, which would still entitle the Plaintiff to
22 recover, but then also found no that no damages were
23 suffered.

24 MR. SMITH: Well, I don't believe -- I believe that's
25 what they found. I would also state that the Defendant was
26 a 75-year-old man from Abbeville County. My client is a

1 Russian immigrant who needed help from her daughter to
2 testify and I say that because, as I said, I don't believe
3 the evidence supports what was found, 50/50. I don't
4 understand. But more importantly, since we don't have a
5 real thing to point at as to her fault, we do have
6 something to show that it's likely not evidentiary that was
7 the source of their finding.

8 THE COURT: What would be the standard of review to be
9 reversed, to change a jury verdict?

10 MR. SMITH: It's my understanding that if the evidence
11 indicates that -- well, it's an overwhelming standard, sir.
12 Overwhelming evidence that -- there's no evidence to show
13 that it's 50/50.

14 THE COURT: All right. Mr. Sheldon?

15 MR. SHELDON: I think it would have to be arbitrary and
16 capricious and that's just not the facts here, Judge. The
17 testimony from the Defendant was that there was a lane.
18 Whether or not you could get two cars in there or not, but
19 he backed up three-fourths of the way almost out of the
20 space, actually got at an angle where his bumper hit the
21 back of her car. She testified, with the assistance of her
22 daughter, which I didn't object to so that the jury could
23 hear the testimony because he didn't have an interpreter
24 there, she testified that she came around the curve and saw
25 him backing up out of the space, thought that she could

1 scoot by him. That's when she sped up. That was the
2 testimony before the jury and they found that both parties
3 had a common law duty, because it was a private parking,
4 they both had a duty to keep a proper lookout and keep
5 their vehicle under proper control. They found that they
6 both contributed to the accident. We pled comparative
7 because of the facts. My fellow said as soon as he got out
8 she told him she saw him and tried to get around him. He
9 was in his 70s and I don't think he came out -- there
10 wasn't testimony that he was came out fast or at a high
11 rate of speed and so it wasn't a jury issue. There was no
12 motion for directed verdict as to negligence at the end of
13 the Plaintiff's case or the Defendant's case, so it was
14 submitted to the jury on comparative negligence. He then
15 filed a new trial motion with the magistrate and he found,
16 I think in the return, that this was a jury issue and that
17 the jury found 50/50 with no damage to the Plaintiff.

18 THE COURT: I was going to ask you that. Was the
19 verdict actually 50/50 a piece?

20 MR. SHELDON: Yes, sir.

21 THE COURT: Okay. So, arguably, with that being done,
22 the Plaintiff, if they were damaged, would be entitled to
23 collect at least 50% of the damages?

24 MR. SHELDON: If there were damages, yes, sir. But the
25 form that he submitted, which neither side objected to, had

1 a special interrogatory and so they had to go through those
2 questions before they got ---

3 THE COURT: If you don't find one, go to two?

4 MR. SHELDON: Yes, sir. And on the back of it. That's
5 why you ended up getting them to ask the question
6 separately on damages and they put zero, because the form
7 asked that in that manner and so it's not like they came
8 back and said, "We find for the Plaintiff, but zero
9 damages." They didn't find for the Plaintiff, basically,
10 and that's why we got that verdict and he didn't challenge
11 the jury verdict form or any of those findings even before
12 the magistrate. The first time that the 50/50, no damages,
13 was raised is before you now on his return. That wasn't a
14 part of the motion for a new trial from the magistrate, but
15 I don't thing the magistrate, because that's the way the
16 form read and no one took exception to the form and that's
17 what they found. They basically found she did not prove
18 her case on damages, regardless.

19 THE COURT: Okay.

20 MR. SHELDON: It was a pretty minor automobile accident
21 with minor damage to the rear of her car, so...

22 MR. SMITH: May it please the Court, the minor \$3000.00
23 damages.

24 THE COURT: All right. Just one second.

25 MR. SHELDON: Judge, if I could approach, I can hand up

1 an extra copy.

2 THE COURT: Give me one second, please. Go ahead.

3 What is it you want to do?

4 MR. SHELDON: I don't know if this is in the file or
5 not, but this is a copy of the motion for new trial that
6 was filed before the magistrate that he denied. (Mr.
7 Sheldon hands document to Judge McIntosh) It just shows
8 what he raised at that stage versus the appellate stage
9 that you are sitting on.

10 THE COURT: All right. Mr. Smith, in your motion for a
11 new trial ---

12 MR. SMITH: Yes, sir.

13 THE COURT: --- it looks like, the one I have, it's
14 dated October 19, 2011. Do you have that?

15 MR. SMITH: I'm certain I do. (Looks through
16 documents)

17 THE COURT: I'm curious, if the verdict of the jury was
18 two fold; finding 50/50 liability or fault, rather, but
19 then awarding no damages, would not you need to make a
20 motion to the magistrate as to the issue of damages as well
21 as to the issue of liability?

22 MR. SMITH: Your Honor, I would say that by showing an
23 arbitrary and capricious finding that the jury clearly was
24 not looking at the evidence. Anything they stated or found
25 other than the actual causation, the actual accident, is

1 irrelevant. I mean, they have already made a finding that
2 has nothing to do with what they saw. I mean, the man,
3 himself, put an "x" on her side of that road. There was no
4 angle to his backup. He had to back and turn, because
5 obviously, he can't back up.

6 THE COURT: What if the jury had denied the affirmative
7 defense contributed towards comparative negligence but
8 found zero damages? The result would be the same as what
9 we have here today, wouldn't it? Those are two different
10 findings and two different issues. Right?

11 MR. SMITH: Yes, sir, Your Honor, but arbitrary and
12 capricious indicates they are not doing what they are
13 supposed to do.

14 THE COURT: I don't think that's the right articulation
15 of that standard. I think, isn't the end result -- if they
16 aren't doing what they are supposed to or they made their
17 judgment based on improper motives or improper facts, that
18 doesn't mean they aren't doing what they are supposed to be
19 doing. They are supposed to reach a verdict.

20 MR. SMITH: Yes, sir. And, I mean, she went to the
21 chiropractor, she went to the physical therapist and they
22 are saying that she couldn't have got hurt, I guess, or
23 despite \$3000.00 worth of damages. I guess I could have
24 filed another motion, but I think this motion is all
25 encompassing, because if I can't have a new trial ---

1 THE COURT: Was the issue of personal injury the only
2 issue before them for damages or was there property damage
3 as well?

4 MR. SMITH: Oh, no, the property damage was paid.

5 THE COURT: It was paid?

6 MR. SMITH: Uh-huh.

7 THE COURT: Okay. All right. Anything further?

8 MR. SMITH: No, sir.

9 THE COURT: Thank you, guys. I'm going to take this
10 under advisement. I will let you know my decision.

11 MR. SHELDON: Thank you, sir.

12 MR. SMITH: Thank you, Your Honor.

THE COURT: All right. Thank you, guys.

(WHEREUPON, THE HEARING IN THE ABOVE-
ENTITLED MATTER WAS CONCLUDED.)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) CERTIFICATE

Be it known that I, the undersigned Jo Rice, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, before the Circuit Court for Anderson County, South Carolina, so given on July 30, 2013 to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand and seal this 21st day of May, 2013.



Jo Rice
Official Court Reporter

GALINA S. MITAGLO VERSUS WILLIAM F. VOYLES

VERDICT FORM

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
SUMMARY COURT

CIVIL CASE #: 2011-2020 DATE: 10-14-11

Att. Donald Smith

PLAINTIFF: Galisa S. Mitiglo
VS.

Att. Winston Sheldon
Wilson

DEFENDANT: William F. Voyles

1) Was the Defendant negligent? ☒ YES ☐ NO

2) Was the Defendant's negligence a proximate cause (direct cause) of the Plaintiff's losses? YES ☒ NO ☒ YES CC

3) Was the Plaintiff negligent? ☒ YES ☐ NO

SUMMARY COURT

4) Was the Plaintiff's negligence a proximate cause (direct cause) of his/her losses? ☒ YES ☐ NO

OCT 30, '13

5) If questions 1 and 2 are answered yes, state the amount of losses ^{for} by the Plaintiff \$ 0.

PM 4:50:55

6) If all above are answered yes, then of 100% - what percentage (%) was the cause of Defendant and what percentage (%) was the cause of the Plaintiff?

% of Defendant 50

% of Plaintiff 50

Total: 100%

FOREPERSON'S NAME (PRINT): Catherine Carpenter

FOREPERSON'S SIGNATURE: Catherine Carpenter

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
Galina S. Mitiglo,)
)
Plaintiff,)
)
vs.)
)
William F. Voyles,)
)
Defendant.)

IN THE MAGISTRATE COURT
TENTH JUDICIAL CIRCUIT

MOTION FOR NEW TRIAL

Case Number: 2011-CV-04-10102020

PM5:01:40

OCT 19 '11

**TO THE HONORABLE JAMES T. BUSBY, JR. AND WILSON S. SHELDON,
ATTORNEY FOR WILLIAM F. VOYLES:**

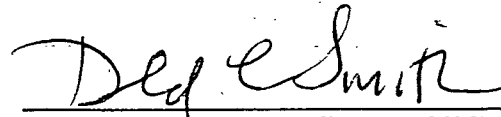
YOU WILL PLEASE TAKE NOTICE, that the Plaintiff, by and through her undersigned attorney will move on the ____ day of _____, 2011, at ____:____. M.; or as soon thereafter as counsel may be heard, before the Honorable James T. Busby, Jr., for the purpose of moving for a new trial in the above-referenced matter. This motion is based on the fact that the jury verdict is contrary to the weight of the evidence. The verdict contradicts the weight of the evidence in the following ways:

SUMMARY COURT

1. That the Defendant said that he was sorry for striking the Plaintiff immediately following the accident, as well as in trial.
2. That the Defendant clearly did not keep a proper look out and struck the Plaintiff.
3. That the Defendant's car struck the Plaintiff's car in the rear quarter panel, indicating that the Plaintiff had control of the "intersection", and had nearly passed.
4. That the Defendant made an X where the collision occurred that indicates that he backed up into the Plaintiff's "lane" of traffic and struck her.
5. That the Plaintiff clearly had the right of way.
6. That there is no evidence that indicates that the Plaintiff contributed to the

accident in anyway.

WHEREFORE, the Plaintiff respectfully requests that the Motion for a New Trial be granted based on the factors found herein.



DONALD L. SMITH (Bar #: 6699)

ATTORNEY FOR PLAINTIFF

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Anderson, South Carolina
October 19, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF

Anderson

GALINA S. MITCHELL

Plaintiff(s)

vs.

William F. Voyles

Defendant(s)

(Please Print)

Submitted By:

Donald L. Smith

Address:

122 N. MAIN ST.
ANDERSON SC 29621

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP-04-03728

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

6699
(864) 642-9284
(864) 642-9285
attorneydonal@attmail.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☒ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Donald L. Smith

Date:

12/29/11

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Galina S. Mitiglo

APPELLANT

VS.

William F. Voyles

RESPONDENT

Case Number: 2011-04-CP-03728
COMMON PLEAS CASE NUMBER

Case Number: 2011-CV-04-1012020
MAGISTRATE CIVIL CASE NUMBER

IN THE COURT OF COMMON PLEAS

NOTICE OF CIVIL APPEAL

The plaintiff/defendant (circle one), Galina S. Mitiglo, hereby gives notice of appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas, in the county of Anderson.

This notice of appeal is made subsequent to personal notice of the judgment which was received on the 29th day of November, 2011.

The appellant's exceptions to the judgment of the magistrate are set forth as follows:

1. That the Defendant said that he was sorry for striking the Plaintiff immediately following the accident, as well as in trial.
2. That the Defendant clearly did not keep a proper look out and struck the Plaintiff.
3. That the Defendant's car struck the Plaintiff's car in the rear quarter panel, indicating that the Plaintiff had control of the "intersection", and had nearly passed.
4. That the Defendant made an X where the collision occurred that indicates that he backed up into the Plaintiff's "lane" of traffic and struck her.
5. That the Plaintiff clearly had the right of way.
6. That there is no evidence that indicates that the Plaintiff contributed to the accident in anyway.
7. That the jury found the Defendant 50% at fault, yet did not award the Plaintiff 50% of her damages.
8. That the jury's findings were arbitrary and capricious and were not supported by the evidence presented at trial.

Dated:

December 29, 2011



Appellant (or his attorney)

SCCA/720 (Amended 8/1/2011)

25

FILED-CLERK'S OFFICE
ANDERSON SC
2011 DEC 29 P. 4: 01
SCHEDULED FOR
GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
Galina S. Mitioglo,)
Plaintiff,)
vs.)
William F. Voyles,)
Defendant.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

2011-CP-04-03728

CERTIFICATE OF SERVICE

Case Number: 2011-CV-04-10102020

THE UNDERSIGNED person deposes and says that he served a copy of a Notice of Appeal, and the related grounds, on The Honorable James Tillman Busby, Jr., the trial Judge, and Wilson S. Sheldon, Esquire, counsel for the Defendant, in this action, by placing copies thereof in envelopes addressed to the parties at the addresses shown below, which envelopes were sealed and postage thereon fully prepaid, and deposited in the United States Mail at Anderson, South Carolina, and that there is regular communication by the United States Mail between the place of mailing and the places addressed as follows:

Date: 12/29/11



Donald L. Smith
ATTORNEY OFFICE OF DONALD SMITH
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

MAILED TO:

The Honorable James Tillman Busby, Jr.
Magistrate Judge 10th Judicial Circuit
2404 N. Main St.
Anderson SC 29621

Wilson S. Sheldon, Esquire
Turner Padgett Graham & Laney P.A.
P O Box 1509
Greenville SC 29602

FILED-CLERK'S OFFICE
ANDERSON SC
JAN DEC 29 P 4 02
COMMON PLEAS AND
GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM ANDERSON COUNTY
MAGISTRATE COURT

James Tillman Busby, Jr., Magistrate Court Judge

Case No. 2011-CV-04-1012020

Galina S. Mitiglo,.....Appellant,

v.

William F. Voyles,.....Respondent.

NOTICE OF APPEAL

Donald L. Smith appeals the judgment of the Honorable James Tillman Busby, Jr., dated November 29, 2011. Appellant received written notice of entry of this judgment on November 29, 2011.

December 29, 2011.



Donald L. Smith, Esquire
ATTORNEY OFFICE OF DONALD SMITH
122 Main Street
Anderson, South Carolina 29621
Phone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Other Counsel of Record:

Wilson S. Sheldon, Esquire
Turner Padgett Graham & Laney P.A.
P O Box 1509
Greenville SC 29602

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
)

2011CV0410102020
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT
RETURN OF THE CIVIL APPEAL

Galisa S Mitioglo

PLAINTIFF(S)

Vs

William F Voyles

DEFENDANT(S)

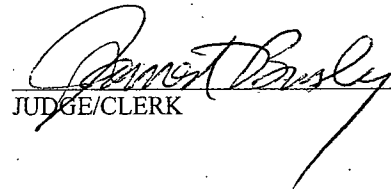
The attached documents comprise the case file of the Anderson Summary Court. As required by Section 18-7-60, SC Code of Laws, this file is transmitted to the Court of Common Pleas as the result of an appeal. The following documents are attached:

- ☒ Summons, Complaint and Proof of Service
- ☐ Pretrial Motions and Orders granting or denying
- ☒ Jury Strike Proceedings (if applicable)
- ☒ Trial proceedings, summary of trial
- ☒ Instructions given to jury or denied
- ☒ Order of Judgment signed by the Trial Judge
- ☒ Post-trial Motions and Orders granting or denying
- ☒ All papers and notices of hearings and trial
- ☒ Notice of Appeal and date filed with the Court
- ☒ Other (describe): CD

SUMMARY COURT

OCT 30, '13

PM4:50:48

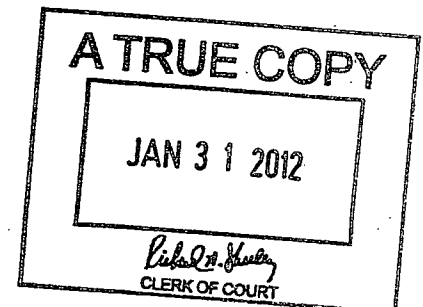

JUDGE/CLERK

Anderson Summary Court
2404 N. Main Street
Anderson, SC 29621
Phone: (864) 260-4156 Fax: (864) 260-4144

January 31, 2012

MV 78

28



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-04-03728

FILED - CLERK'S OFFICE
ANDERSON SC

Galina S. Mitiglo

William F. Voyles

2012 AUG -8 A 9:37

PLAINTIFF(S)

COMMON PLEAS AND
GENERAL SESSIONS

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Jury verdict from the Magistrate trial is affirmed.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge - R. Lawton McIntosh

SCRCP Form 4C (12/2011)

2155

Judge Code

Date

Page 1

For Clerk of Court Office Use Only

This judgment was entered on the 8th day of Aug, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 10th day of July, 2012 to attorneys of record or to parties (when appearing pro se) as follows: Aug

Donald Smith

210 North Main Street

Anderson, SC 29621

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Richard A. Shirley
CLERK OF COURT - Richard A. Shirley

Court Reporter:

FILED-CLERK'S OFFICE
ANDERSON SC
2012 AUG -8 A 9:37
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
Galina S. Mitioglo,)
)
Plaintiff,)
)
vs.)
)
William F. Voyles,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

MOTION FOR RECONSIDERATION

Case Number: 2011-CV-04-10102020

**TO THE HONORABLE R. LAWTON MCINTOSH AND WILSON S. SHELDON,
ATTORNEY FOR WILLIAM F. VOYLES:**

YOU WILL PLEASE TAKE NOTICE, that the Plaintiff, by and through her undersigned attorney will move on the ____ day of _____, 2012, at ____:____ M.; or as soon thereafter as counsel may be heard, before the Honorable R. Lawton McIntosh, for the purpose of moving for a new trial in the above-referenced matter. This motion is based on the Court's affirmation of a jury verdict that was contrary to the undisputable evidence. The verdict contradicts the weight of the evidence in the following ways:

1. That the Defendant said that he was sorry for striking the Plaintiff immediately following the accident, as well as in trial.
2. That the Defendant clearly did not keep a proper look out and struck the Plaintiff.
3. That the Defendant's car struck the Plaintiff's car in the rear quarter panel, indicating that the Plaintiff had control of the "intersection", and had nearly passed.
4. That the parking area was not in one direction and, therefore, there were two lanes in which to travel.
5. That the Defendant made an X where the collision occurred, which was on the other side of the imaginary center line for travel purposes.

6. That the Plaintiff had control of her lane, prior to the Defendant entering it.

7. That there is no evidence that indicates that the Plaintiff contributed to the accident in anyway.

There are four elements to the tort of negligence. The first element relates to a duty. The Defendant in this matter had a duty to society to drive his vehicle in a safe manner.

The second element of negligence is a breach of said duty. In this particular matter, the Defendant satisfied this element by attempting to back up his car without knowledge of what was behind him and/or crossing the imaginary center line of the parking lot into the Plaintiff's lane of traffic.

The third element requires that the negligence of the Defendant be the cause in fact for the damages sustained by the Plaintiff. The Defendant in this case did not see the Plaintiff traveling in the parking lot in her motor vehicle. There was absolutely no evidence presented that the Plaintiff was traveling in any way other than reasonably. On the same token, the Defendant himself placed an "X" where he struck the Plaintiff. It was in her lane of traffic. Moreover, the Defendant struck the Plaintiff in the rear quarter panel indicating that she nearly escaped the Defendant's blind reversal.

The fourth element requires that the Plaintiff suffer damages as a result of the Defendant's negligence. The Plaintiff testified that she incurred \$1,496.00 in costs from Shuey Physical Therapy. She also testified that she incurred \$2,734.00 in costs at the Wickiser Chiropractic Clinic. In addition, she suffered greater than \$2000.00 in damage to her motor vehicle. The Plaintiff satisfied the element of damages.

The Defendant told the Plaintiff that he was sorry on two separate occasions. Sorry means feeling regret. The Defendant felt regret of backing up despite an inability to see what

was behind him. The Defendant felt regret for crossing the imaginary center line and *backing* into the Plaintiff. The seventy-eight (78) year old Defendant from Abbeville understood his duty to drive safely while operating a motor vehicle in this state, yet admittedly breached said duty.

The Russian Plaintiff, who needed her daughter to aid in translation, had control of her lane while traveling in the parking lot. Despite this fact, the Defendant unknowingly backed into her. Clearly, if he would have been paying attention, he would have seen her. There is no evidence whatsoever to negate the belief that the Plaintiff was traveling in a reasonable manner in the parking lot.

The Court has a duty to ensure that the jury weighs the evidence presented in arriving at its decision(s). In this case, the jury found that the accident itself was the fault of both drivers on an equal basis. The jurors made this finding despite the fact that the Defendant said he was sorry on two different occasions over a year apart. They made this finding despite the fact that the Defendant drew a picture of the spot of the collision, which was in the Plaintiff's lane of traffic.

The jury found that the Plaintiff sustained no damages as a result of the accident. The Plaintiff has a duty to prove that she was damaged by the accident. She testified that the accident caused damage in excess of \$2,000.00 to her motor vehicle. She testified that she was treated by Shuey Physical Therapy and Wickiser Chiropractic Clinic to the tune of over \$4,000.00. In essence, the jury found that the physical therapist and chiropractor, who are both licensed by this state to practice their respective professions, were attempting to commit insurance fraud by receiving monies for non-injuries.

The jury's findings in this case were simply baseless. There is not a scintilla of evidence that supports the jury's findings. It is patently obvious that the findings were made as a result of passion or prejudice. Based on the jury's use of passion and prejudice to render its verdicts, it is

absolutely necessary for the Court to grant the Plaintiff a new trial so that the Plaintiff may have her case heard by a jury of her peers who recognize that passion and prejudice have no place in the court system.

WHEREFORE, the Plaintiff respectfully requests that the Motion for Reconsideration be granted based on the factors found herein.



DONALD L. SMITH (Bar #: 6699)
ATTORNEY FOR PLAINTIFF
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
August 20, 2012.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 25, 2013



Donald L. Smith

122 N. Main St.

Anderson, South Carolina 29621

(864) 642-9284

Attorney for Appellant

FORM 7
PROOF OF SERVICE

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. Mitiglo,

Appellant,

v.

William F. Voyles,

Respondent.

PROOF OF SERVICE

I certify that I have served the Motion to Reinstate, Record on Appeal, and Final Brief in the above-referenced matter case on Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on October 31, 2013, addressed to his attorney of record, Wilson S. Sheldon, 200 E. Broad St. #250 Greenville, South Carolina 29601.

October 31, 2013



Donald L. Smith (Bar #: 6699)

Attorney for Appellant

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

RECEIVED

NOV 07 2013

SC Court of Appeals