

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.

APPENDIX TO THE RECORD ON APPEAL

TURNER PADGET GRAHAM & LANEY, P.A.



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January 23, 2014

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JAN 31 2014

SC Court of Appeals

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Mitioglo VS Voyles

Case # 2011-2020

A TRUE COPY

JAN 31 2012

Richard D. Voyles
CLERK OF COURT

This case came to trial by jury before Anderson County Magistrate Jim Busby on October 14, 2011. The jury was an all female jury that had been selected by the plaintiff's attorney, Donald Smith, and by the defendant's attorney, Wilson Sheldon.

The jury decided that both parties were equally at fault and the plaintiff did not suffer any losses. The plaintiff's attorney, not agreeing with the decision, made a request for a new trial on October 19, 2011.

On November 29, 2011 the motion for a new trial was heard. No new evidence was presented and the court believing the jury had properly considered all evidence at trial, denied the motion. This appeal followed.

Summary of testimonies:

A. Plaintiff on direct by attorney Donald Smith

1. On May 28, 2009 plaintiff was entering the parking lot at Audi Groceries
2. Plaintiff saw defendant backing out of his parking space.
"He was in the middle of the drive"
3. Plaintiff tried to go around defendant but defendant's bumper of his pick-up struck plaintiff's car. Estimated damage was \$3500.00 and was near the gas tank and the trunk lid would not close.
4. Defendant stated he was sorry.
5. Plaintiff had no injury at the time, but later developed headaches, neck and back pain, and could not sleep so she took pills. Plaintiff did not know where to go for doctor's care.
5. Plaintiff went to physical therapist 1 or 2 times per week for treatments until the therapist's office moved to a new location. The cost of the treatments was \$1496.00.
7. Plaintiff then began going to a chiropractor and went more times to chiropractor than to physical therapist.
8. Plaintiff still has headaches and takes aspirin or advil and now wears glasses due to vision problems. The cost of chiropractic treatments was \$2734.00 totaling \$4230.00 for therapy and Chiropractic treatments

- Plaintiff had no treatment before this accident and has pain every day now.
9. Plaintiff could not get away from defendant so they hit.

B. Plaintiff on cross by attorney Wilson Sheldon

1. The accident occurred on May 28, 2009 @ 1:00 PM when plaintiff was going to shop at Audi. The plaintiff was coming around the curve in the parking lot and saw the defendant in the middle of the road.
2. If plaintiff had stopped, defendant would hit her so she tried to get by him. Defendant's bumper hung tire well of Plaintiff's car and pulled the fender out, causing damage to the rear quarter panel.
3. Plaintiff did not feel any pain at the accident and did not ask for any medical help. Plaintiff was not hurt and thought she would be ok.
4. Records indicate plaintiff's first visit to physical therapist was June 5, 09
5. Plaintiff did not pay her bills at therapist or chiropractor
6. Plaintiff went to physical therapist because she had no doctor even though as a district five school bus driver she must have medical exams. Plaintiff was referred to the physical therapist by her sister and by people that had been to him.
7. Plaintiff went to physical therapist seven times in June and was discharged on July 23, 09 as doing well.
8. Records show plaintiff started going to the chiropractor while still going to physical therapy and was released in December of 09 after 31 visits.
9. Plaintiff stated she did not go to both at the same time.

C. Plaintiff on Redirect

1. Plaintiff complained of headaches to physical therapist, then began going to chiropractor. The chiropractor helped with her headaches, but did not completely cure.

D. Plaintiff on Re-cross

1. The massages, the heat and cold packs by the chiropractor made plaintiff feel good.

E. Defendant on direct by attorney Wilson Sheldon

1. Defendant is a 71 year old widower from Abbeville. His sister lives near by and helps the defendant with housekeeping and shopping

2. On the day of the accident the defendant and his sister had finished grocery shopping at Audi and was leaving.
3. Defendant was backing out real slow, he and his sister were looking and did not see anyone. Defendant was almost ready to go forward when his pick-up was hit.
4. Defendant jumped out and asked plaintiff if she was hurt. His sister also asked plaintiff if she was hurt. Plaintiff stated she was not hurt. Defendant stated he was sorry.
5. Plaintiff tried to get around and driver's side bumper of defendant's pick-up went inside her fender pulling the fender outward.

F. Defendant on cross by attorney Donald Smith

1. Defendant did not see the plaintiff, his sister and him both looking did not see her. Defendant was almost completely stopped when the plaintiff went around and hung the defendant's bumper.
2. Defendant was barely moving backing up.
3. Defendant stated he did not strike the plaintiff, she hit him, and his bumper pulled plaintiff's fender out.
4. Plaintiff did not indicate she had any pain at all.
5. Defendant stated he was sorry.
6. Defendant had never met plaintiff before the wreck.
7. Defendant stated he was a responsible person and always pays his bills

G. Jury decision

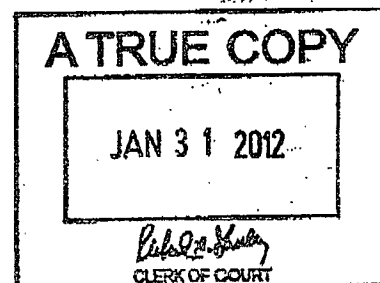
1. Both the plaintiff and the defendant were equally at fault.
2. The plaintiff did not prove any losses due to the collision.

Respectfully Submitted,


James T. Busby

Anderson County Magistrate

January 27, 2012



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

IN THE MAGISTRATE'S COURT

Case No. 2011CV0410102020

JURY CHARGE

DEFENDANT'S REQUEST TO CHARGE NO. 1

In order for the Plaintiff to recover for medical expenses, the Plaintiff must prove that such expenses were reasonably and necessarily incurred as a proximate result of the Defendant's negligence.

Sossamon v. Nationwide Mut. Ins. Co., 243 S.C. 552, 135 S.E.2d 87 (1964).

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

IN THE MAGISTRATE'S COURT

Case No. 2011CV0410102020

JURY CHARGE

DEFENDANT'S REQUEST TO CHARGE NO. 2

In order for the Plaintiff to recover, she must prove by a preponderance of the evidence that she was injured and that such injuries were proximately caused by the negligence of the Defendant. If you find that the Plaintiff was not injured as a proximate result of any negligence on the part of the Defendant, then your verdict must be in favor of the Defendant.

Black v. Hodge, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991).

STATE OF SOUTH CAROLINA)	IN THE MAGISTRATE'S COURT
)	
COUNTY OF ANDERSON)	Case No. 2011CV0410102020
)	
Galisa S. Mitioglo,)	
)	
Plaintiff,)	
)	
vs.)	JURY CHARGE
)	
William F. Voyles,)	
)	
Defendant.)	
)	

DEFENDANT'S REQUEST TO CHARGE NO. * 3

Duty to Keep a Proper Lookout

Members of the jury, the State of South Carolina recognizes what is called common law. The common law of this State governs and controls the operation of motor vehicles and motorcycles. The common law rules of the road require the operator of a motor vehicle to use the streets and highways with due care, with a due regard for the like use of such streets and highways by others; that is to say, the common law of this State requires the exercise of due care, that degree of care which would have been exercised by a person of ordinary reason and prudence, operating the same vehicle at the same time and place, under the same circumstances. This common law duty includes that of maintaining a proper lookout for other vehicles or pedestrians which may be upon the highway. It includes the duty to keep the vehicle under proper control. In fact, the common law duty to exercise due care runs through the entire spectrum and gamut of the operation of the vehicle.

It is the duty of every person using a public street or highway, whether as a pedestrian or as a driver of a vehicle, to exercise ordinary care at all times to avoid placing himself or others in danger and to use like care to avoid an accident from which an injury might result.

It is the duty of the person in charge of a motor vehicle to use reasonable care to have it in safe condition and properly equipped for operation so that it may be controlled and not be a source of danger to persons operating other vehicles on the highway. It is his duty to exercise such care in the inspection, maintenance and repair thereof as a reasonably prudent person would exercise under the same circumstances.

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CERTIFICATE OF COUNSEL AND COMPLIANCE

The undersigned hereby certifies that the Appendix to the Record on Appeal complies with Rule 211(b), SCACR.

Turner, Padgett Graham & Laney, P.A.



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February 14, 2014

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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

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