

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

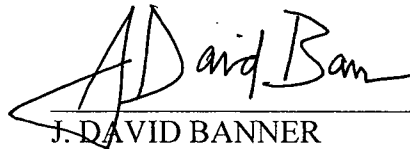
Case No. 2011-CP-33-598

Ashley Outing Appellant,

v.

Velmetria Chante Weeks Respondent.

RESPONDENT'S FINAL BRIEF



J. DAVID BANNER
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TABLE OF AUTHORITIES

Cases

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Burns v. Wannamaker, 281 S.C. 352, 315 S.E.2d 179 (Ct. App. 1984)

Stanford v. Cudd, 93 S.C. 367, 76 S.E. 986 (1913)

Statutes and Rules

§ 18-7-170 of the *Code of Laws of South Carolina* (1976, as amended)

STATEMENT OF THE FACTS

The incident giving rise to the underlying litigation involves an automobile accident which occurred on January 30, 2006 on Highway 76 in Marion, South Carolina. (*See Plaintiff's Complaint*). The Appellant was operating a four-door Ford sedan in a westerly direction and the Respondent was operating a four-door Ford sedan directly behind the Appellant. (*See Accident Report*). The Respondent was in the process of slowing down due to "stop and go" traffic and impacted the rear of the vehicle operated by the Appellant. The Appellant alleged bodily injuries as a result of the incident and filed the underlying action in the Magistrate's Court in Marion County on or about May 4, 2006. (*See Plaintiff's Complaint*).

STATEMENT OF THE CASE

The Appellant asserted a cause of action against the Respondent for injuries sustained as a result of the Respondent's alleged negligence. (*See Plaintiff's Complaint*). The case was ultimately called to trial on July 20, 2011 in front of a six panel jury presided over by Magistrate Jackie Hayes.

The Appellant presented medical bills of approximately \$1,100.00 which she alleged were related to the accident in issue. On cross-examination, the Appellant confirmed that there were no repairs necessary to the vehicle in which she was operating following the incident. The Appellant further confirmed that

she declined the need for EMS or treatment at the emergency room following the incident. The Appellant and Respondent both drove away from the scene of the incident and went to Francis Marion University where they were both enrolled in class at the time of this incident.

Photographs of the vehicles involved in the incident were admitted into evidence for the jury to factor into their deliberation.

The Respondent's primary argument at trial was that the incident in issue was not the proximate cause of the Plaintiff's alleged injuries and/or the alleged injuries were not reasonable based upon the minor incident. The Respondent further argued that an injured party is only entitled to recover such sums that are both and reasonable and necessary from the accident. The Respondent relied upon *Black v. Hodge*, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991) in the defense of the case. The Magistrate Court charged the jury on the inherent probability of the testimony and the credibility of the witnesses and their interests in the result of the litigation per the *Black v. Hodge* case.

After deliberation, the jury returned a verdict for the Respondent.

Following the trial, the Appellant filed a Notice of Appeal with the Circuit Court which was heard on April 22, 2013 by the Honorable D. Craig Brown. (*See Notice of Appeal*). After hearing oral argument from both parties, the Circuit Court affirmed the Magistrate's Court by Order dated May 16, 2013. (*See Order of Circuit Court*). This appeal follows.

ARGUMENT

The standard of review to be applied by a Circuit Court in an Appeal of a Magistrate's judgment is set forth in § 18-7-170 of the *Code of Laws of South Carolina* (1976, as amended) which provides as follows:

Upon hearing the appeal the Appellant Court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the Court may affirm or reverse the judgment of the Court below, in whole or in part, as to any or all the parties and for errors of law or fact.

The aforementioned statute confers authority upon the Circuit court to reverse a Magistrate's finding of fact when exercising appellant jurisdiction in an appeal from a Magistrate's judgment. *Hadfield v. Gilchrist*, 343 S.C. 88, 538, S.E.2d 268 (Ct. App. 2000) (citing *Burns v. Wannamaker*, 281 S.C. 352, 315 S.E.2d 179 (Ct. App. 1984)).

The standard of review for the Court of Appeals is noted to be more limited than that of the Circuit Court as referenced in the *Hadfield* opinion:

The Court of Appeals will presume that an affirmance by a Circuit Court of a Magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the Magistrate and there are no facts that show the affirmance was influenced by an error of law. *Id.*

It has been held that where the testimony is sufficient to sustain a judgment of the Magistrate's Court, and it is affirmed on appeal to the Circuit Court, this Court will assume the Circuit Court affirmed the judgment on the

merits, in the absence of facts showing the affirmance was controlled or affected by errors of law. *Stanford v. Cudd*, 93 S.C. 367, 76 S.E. 986 (1913).

In the matter at hand, the Circuit Court affirmed the jury's finding and the Magistrate's judgment in light of the fact that the testimony was sufficient to sustain the judgment. In a negligence case, the party asserting the cause of action must prove that there was a duty, breach, causation and injury to sustain a verdict. While the Respondent admitted "simple negligence" in regards to the actual circumstance surrounding the incident in issue, the Respondent hotly contested the proximate cause and alleged injuries of the Appellant. The Respondent relied upon well settled case law which was charged to the jury and arguments that the lack of physical damage to the Appellant's vehicle, her declining EMS and medical treatment immediately following the incident along with the fact that the Appellant was able to drive away from the accident scene was supporting evidence that the Appellant did not sustain an injury to sustain an award of damages

It is clear that the Circuit Court affirmed the Magistrate's judgment on sound and meritorious ground in making its ruling. As this Court has stated in numerous cases, it will presume an affirmance by a Circuit Court of a Magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the Magistrate. In the situation at hand, there is no evidence or

facts to suggest that the ruling by the Circuit Court for the decision by the jury should be overturned.

CONCLUSION

The Respondent respectfully requests that this Court affirm the Order of the Circuit Court.

A handwritten signature in cursive script that reads "I. David Banner". The signature is written in black ink and is positioned above a horizontal line.

I. DAVID BANNER

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December 31, 2013

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CERTIFICATE OF COMPLIANCE

I certify that Respondent's Final Brief complies with Rule 211(b) of the
Appellate Court Rules.

December 31, 2013



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PROOF OF SERVICE

I certify that I have served the Respondent's Final Brief on Appellant by depositing a copy of it in the United States Mail, postage prepaid, on December 31, 2013, addressed to her attorney of record, Everett H. Garner, Holler, Dennis, Corbett, Ormond, Plante & Garner, P. O. Box 11006, Columbia, SC 29211.

December 31, 2013



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