IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY

Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Civil Action No.: 09-CP-46-3103

Appellate Case No.: 2012-212327

Felecia Dicks Wilson.....Appellant,

vs.

Cedar Fair Entertainment Company
Cedar Fair, L.L.C. d/b/a Carowinds
Amusement Park.....Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This action arises out of Appellant,[1] Felecia Dicks Wilson's, alleged injury while a patron at Respondent's amusement park. On July 17, 2009, Appellant initiated this action by filing a Complaint against Cedar Fair Entertainment Company, Cedar Fair, LP d/b/a Carowinds Amusement Park ("Carowinds" or "Respondent") in the York County Court of Common Pleas, asserting a cause of action for negligence. **[R.pp.4-5]**.

Appellant's Complaint alleges that during a visit to Carowinds in July of 2006, she sustained "severe personal injuries" while attempting to exit the Wild Thornberry's Log Ride. **[Id.]**. Appellant contended Carowinds was negligent in, *inter alia*, failing to properly staff the ride, assist in her disembarkation, and failing to advise her of any present danger. **[Id.]**. Carowinds filed an Answer setting forth various defenses including a general denial, failure to state a claim, comparative negligence, and superseding/intervening causes having caused Appellant's injuries. **[R.pp.6-8]**.

This matter was tried by a jury in York County on May 15-16, 2012, with the jury finding in favor of Carowinds. **[R.p.3]**. Appellant filed a Notice of Appeal on June 20, 2012, and the instant appeal ensued.

STATEMENT OF THE FACTS

Appellant and her church selected Carowinds as the location for a youth group outing. **[R.p.104, lines 19-20]**. On July 20, 2006, the church group arrived at Carowinds. **[Id.]** Due to Appellant's prior disability, she chose to take the smaller children on the "little kiddie rides." **[R.p.104, lines 20-25]**. Appellant received a booklet from Carowinds which described each ride at the park and informed patrons of the

[1] Appellant is appearing *pro se* as she did at trial.

special entrances and exits for disabled persons located at each ride. **[R.p.105, lines 5-7]**. Appellant and her group of small children approached the Wild Thornberry's ride, which had its own such entrance for disabled persons. **[Id. at lines 7-10].** The Wild Thornberry's ride is a "log flume ride," traveling at "medium speed," where four or five people enter a log car which floats toward a lift. **[R.p.145, lines 7-10].** The log car then proceeds through a series of lifts and drops then finally coming down a hill and making a big splash before returning to the load/unload station. **[R.p.145, lines 7-15].** A rider would encounter speed changes, rapid direction changes, and expect to be "jostled around or skewed somewhat." **[R.p.145, line 16-p.146, line 8].**

Appellant contends that at the beginning of the ride, an attendant was present who assisted her in embarking the ride, including steadying the boat. **[R.p.105, lines 14-17].** According to Appellant, the ride itself was uneventful, but when she attempted to disembark the ride, she hurt herself. Specifically, Appellant alleges that as she was attempting to get off the ride, she placed her hand securely on the rail, with one foot on the platform and one foot still in the ride. **[Id. at lines 17-23]**. While in that "awkward position," another log car struck the log car Appellant was attempting to disembark, causing "a jarring or twisting to [her] back and leg." **[R.p.106, lines 7-14; p.126, lines 1-3]**. Appellant contends no attendant was present as she was injured, but one approached her shortly thereafter. **[Id. at lines 21-25]**. It is Appellant's position that an attendant should have been there assisting her, either informing her that another log car was coming behind hers, advising her of imminent danger, and/or monitoring the other log cars coming in. **[R.p.107, line 3-p.108, line 4].** Appellant completed an incident report, but declined to go to the hospital; instead, she opted to receive an ice pack, Ibuprofen,

and motorized cart, provided by Carowinds, for the rest of her visit. **[R.p.108, line 24-p.109, line 4].** Appellant spent the rest of the day at Carowinds. **[R.p.109, lines 5-6].**

On cross-examination, Appellant initially testified she had not ridden the Wild Thornberry's ride before; however, when confronted with her deposition testimony, she testified that she had, in fact, ridden the Wild Thornberry's ride on a previous occasion. **[R.p.116, line 24-p.118, line 11].** Further, Appellant testified she had also previously observed the log cars entering the loading and unloading station. **[R.p.118, lines 17-24].** Appellant also read another portion of her deposition testimony to refresh her memory that she had previously testified under oath that an attendant "just stabilized the log and was standing there. So I guess he was doing all that he could have at that point to assist me. I did [not] ask him to take me out of the log."[2] **[R.p.124, lines 5-18].**

The deposition testimony of Appellant's doctor, Doctor John Downey, was read to the jury. **[R.p.82, line 3-p.100, line 19].** Dr. Downey testified to his treatment of Appellant, to include her conditions of arthritis in her back and disk desiccation, which were present prior to her July 2006 injury at Carowinds. **[R.p.94, lines 11-19].**

Mr. Edward Bailey, who had worked for Carowinds for twenty-one operating seasons at the time of trial, testified on behalf of Carowinds. **[R.p.143, lines 6-11].** At the time of trial, Mr. Bailey served as Carowinds' Safety and Security Manager. **[Id. at line 13].** After describing the ride, Mr. Bailey also explained Carowinds' "Guide for Guests with Disabilities." Mr. Bailey explained that the guide contains a description of every ride in the park, including the type of ride and the type of movements and speeds one could expect on each ride. **[R.p.149, line 23-p.150, line 20].** Additionally, Mr.

[2] Although the transcript text states, "I did ask him to take me out of the log.;" **[R.p.124, lines 5-18]**, this appears to be a transcription error as Appellant's deposition testimony states, "I did not ask him to take me out of the log." **[R.pp.16-19].**

Bailey explained that the guide contained a rating system for each ride, with children's rides typically being a one or two, medium thrill rides and rollercoasters being three and four, and the Intimidator (one of the tallest, fastest, and longest rollercoasters in the Southeast) being five. **[R.p.150, line 21-p.132, line 2]**. Mr. Bailey testified that the Wild Thornberry's ride was rated as a three, which meant medium speed and side-to-side action, with changes in speed and direction requiring upper body control. **[R.p.151, line 23-p.152, line 4].** Mr. Bailey further identified the Training Manual for the Wild Thornberry's ride, which specifically instructs ride operators to "assist" riders upon disembarkation through verbal instructions as attendants are not permitted to touch the guests. **[R.p.151, lines 9-13; p.153, line 5-p.154, line 11].**

Mr. Bailey also testified to the contents of the incident report that was completed after Appellant's injury. According to the report, Appellant informed park personnel she had pain in her right hip and groin area, but made no mention of any back pain. **[R.p.159, lines 8-14].** In the report, Appellant further informed park personnel that she had ridden the ride "a few" times, with the date of her last ride the previous year, and that she refused an ambulance. **[R.p.160, lines 1-16]**. The report also indicates Appellant told park personnel "she heard the associate say something before the boat struck but was unable to hear or understand what he said;" thereby indicating an attendant was present at the time of the incident. **[R.p.161, lines 15-24].** Finally, Mr. Bailey testified regarding the signage which would have been outside of the Wild Thornberry's ride, to include its rating and instructions that "guests who require assistance must be accompanied by a responsible person who is able to provide that assistance." **[R.p.162, line 7-p.163, line 23].**

The judge charged the jury on negligence and assumption of the risk. **[R.p.206, line 20-p.213, line 23].** The jury returned a verdict in favor of Respondent. **[R.p.3;p. 221, lines 2-14].**

STANDARD OF REVIEW

"When reviewing a jury charge for alleged error, an appellate court must consider the charge as a whole in light of the evidence and issues presented at trial." Wells v. Halyard, 341 S.C. 234, 237, 533 S.E.2d 341, 343 (Ct. App. 2000) (citing Keaton ex rel. Foster v. Greenville Hosp. Sys., 334 S.C. 488, 514 S.E.2d 570 (1999)). "If the charge is reasonably free from error, isolated portions which might be misleading do not constitute reversible error." Id. Therefore, an "[a]lleged error is harmless if the appellate court determines beyond a reasonable doubt that the alleged error did not contribute to the verdict." Wells, at 237, 533 S.E.2d at 343 (citing State v. Kerr, 330 S.C. 132, 498 S.E.2d 212 (Ct. App. 1998)); see In re Care and Treatment of Canupp, 380 S.C. 611, 616, 671 S.E.2d 614, 616 (Ct. App. 2008).

ARGUMENT

I. The trial judge did not err in declining to charge the jury on comparative negligence.

Appellant argues the trial judge erred because the jury was not charged on comparative negligence, despite South Carolina's adoption of comparative negligence in Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991). Appellant's argument is without merit and should be rejected by this Court.

a. This issue is not preserved.

Appellant failed to preserve this issue for review on appeal because she did not

object to the jury charge at trial. "No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider the verdict, stating distinctly the matter to which he objects and the grounds for his objection." Rule 51, SCRCP; see Creech v. S.C. Wildlife and Marine Res. Dep't., 328 S.C. 24, 36, 491 S.E.2d 571 (1997) (holding a party fails to preserve for review the omission of a jury charge when the party fails to object to a jury instruction at trial); Belue v. City of Greenville, 226 S.C. 192, 84 S.E.2d 631 (1954) (refusing to consider on appeal a contention regarding the trial court's jury instruction that was not raised at trial); Sierra v. Skelton, 307 S.C. 217, 414 S.E.2d 169 (Ct. App. 1991) (finding where a party did not complain about the judge's failure to instruct the jury on an issue, the party cannot then complain on appeal about the lack of jury instruction).

At trial, the issue of comparative negligence was raised by Respondent, not Appellant, as a potential jury charge. In analyzing the charge, the trial judge stated that based on the evidence presented he did not see this as a comparative negligence case. **[R.p.188, line 10-p.189, line 14].** Appellant did not object or otherwise present comment that the judge was not going to charge the jury on comparative negligence. Accordingly, Appellant cannot now raise the denial to charge the jury on comparative negligence as an argument of her own. See McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004) (an appellant cannot raise an issue on appeal that was raised by respondent at trial, but on which appellant advanced no arguments to the trial court; the argument must have been raised by appellant in order for appellant to raise it on appeal).

Appellant had the opportunity to object to the charge on two occasions, but did

not. First, when the judge explained the verdict form he wished to use to both parties, the following colloquy occurred:

THE COURT: For the verdict form I basically have two possible forms of verdict. One would be we the jury unanimously find that the negligence of the defendant proximately caused the plaintiff's injuries and find for the plaintiff, Felicia [sic] Dicks Wilson in the amount of blank as to damages. Or we the jury find unanimously for the defendant in this case.

Mr. Thoensen: I don't have any objection to that.

Ms. Dicks Wilson: I don't have any objection.

[R.p.189, line 21-p.190, line 4]. Appellant did not object or request a verdict form applicable to comparative negligence—one showing percentages of fault assigned to each party—be used in this case. Second, after the parties were given a short break wherein the judge had instructed them to review the jury charges, the following colloquy occurred:

THE COURT: Have you had a chance to review the jury charge, ma'am?

Ms. Dicks Wilson: Yes sir.

THE COURT: Have you had a chance to review it, Mr. Thoensen?

Mr. Thoensen: I have.

THE COURT: Any changes or additions or corrections or anything?

. . .

Ms. Dicks Wilson: No sir.

THE COURT: Regarding the Court's charge?

Ms. Dicks Wilson: No sir.

[R.p.192, line 5-p.193, line 1]. Again, Appellant did not object or otherwise provide

comment as to a charge of comparative negligence. Accordingly, the judge charged the jury on negligence and assumption of the risk.

Appellant's failure to raise an objection to the absence of a comparative negligence charge means the issue is not preserved for this Court's review. Accordingly, this Court should find the trial judge did not err in declining to charge the jury on comparative negligence.

b. The trial judge correctly charged the jury based on the evidence adduced at trial and in accordance with current South Carolina law.

Even if Appellant had raised an objection and requested a charge as to comparative negligence, the trial judge did not err in declining to charge the jury on comparative negligence.

The trial judge is required to charge only the current and correct law of South Carolina. Canupp, at 616, 671 S.E.2d at 616; Wells at 237, 533 S.E.2d at 343. Additionally, "[t]he law to be charged to the jury is determined by the evidence presented at trial." Canupp, at 616, 671 S.E.2d at 616. As noted above, a jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. Canupp, at 616, 671 S.E.2d at 616; Wells at 237, 533 S.E.2d at 343 (citing Keaton at 497, 514 S.E.2d at 575)). Moreover, even if there is an error in the jury charge, the alleged error is harmless if the appellate court determines beyond a reasonable doubt that the alleged error did not contribute to the verdict. Wells at 237, 533 S.E.2d at 343.

South Carolina first adopted comparative negligence in 1991. See Nelson at 243, 399 S.E.2d at 783. Under comparative negligence, a "plaintiff in a negligence action may recover damages if his or her own negligence is not greater than that of the defendant."

Ross v. Paddy. 340 S.C. 428, 433, 532 S.E.2d 612, 614 (Ct. App. 2000). The plaintiff bears the burden of proof to establish the negligence of the defendant; but, the determination of the respective degree of negligence attributable to plaintiff and the defendant is a question left to the jury. Id. (citing Brown v. Smalls, 325 S.C. 547, 481 S.E.2d 444 (Ct. App. 1997)). Further, a plaintiff's conduct in assuming the risk can be made part of this state's comparative fault system. See Davenport v. Cotton Hope Plantation Horizontal Prop. Regime, 333 S.C. 71, 87-88, 508 S.E.2d 565, 573 (1998).

When Respondent requested a jury charge on comparative negligence, the trial judge ruled there had been no evidence of Plaintiff's negligence and if there were, his charge on assumption of the risk, discussed more fully below, subsumed any charge on comparative negligence. The trial judge's charge as to negligence is almost identical to Ralph King Anderson, Jr.'s Request to Charge as to negligence and adequately conveys the correct state of the law. Compare **R.p.207, line 11-p.210, line 8** with Thomasko v. Poole, 349 S.C. 7, 561 S.E.2d 597 (2002); Madison ex rel. Bryant v. Babcock Ctr. Inc., 371 S.C. 123, 638 S.E.2d 650 (2006); § 20-1 NEGLIGENCE – ELEMENTS, Anderson, S.C. Requests to Charge-Civil, § 20-1 (2009); and § 20-2 NEGLIGENCE – PROXIMATE CAUSE, Anderson, S.C. Requests to Charge-Civil § 20-2 (2009). Moreover, the charge on assumption of the risk is substantively similar to Anderson's Request to Charge on Comparative Negligence. Compare **R.p.210, lines 9-21** with Davenport at 71, 508 S.E.2d at 565 and § 23-8 COMPARATIVE NEGLIGENCE—ASSUMPTION OF THE RISK, Anderson, S.C. Requests to Charge-Civil § 23-8 (2009). Consequently, the trial judge charged the jury on the correct law of South Carolina based on the evidence presented at trial. Moreover, since assumption of the risk has been held

to be part of a comparative negligence analysis, arguably, the trial judge charged the jury on portions of the comparative negligence analysis relevant to the evidence presented at trial.

Finally, Appellant cannot establish she was prejudiced by the trial judge declining to charge the jury on comparative negligence. See Canupp ("To warrant reversal, a circuit courts [sic] refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant."); Stokes v. Spartanburg Reg'l Med. Ctr., 368 S.C. 515, 519, 629 S.E.2d 675, 678 (Ct. App. 2006) ("An erroneous jury charge will not result in a verdict being reversed unless the charge prejudiced the appellant's case."). Comparative negligence is an *affirmative defense* used to lessen a *defendant's* liability to the plaintiff. It is somewhat confusing that Appellant is claiming the trial judge was in error in not charging the jury that she, too, was negligent in what is alleged to have occurred at Carowinds. In essence, she is asking for relief which would further affirm the jury's verdict in favor of Carowinds and not herself. Therefore, even if there was error in the jury charge, Appellant cannot establish prejudice because a finding that she was also negligent in bringing about the injury would not have affected the jury's verdict in finding Carowinds not negligent.

Therefore, Appellant has not established that the trial judge erred in declining to charge the jury on all aspects of comparative negligence or that any alleged error was prejudicial.

II. The trial judge correctly charged the jury on assumption of the risk.

Appellant's short, conclusory argument as an assignment of error to the trial judge in charging the jury on assumption of the risk is also specious. At trial, Appellant

raised several questions regarding assumption of the risk in an apparent attempt to ascertain how Respondent could on one hand argue the ride was not dangerous and on the other hand contend that if it were dangerous, Appellant assumed the risk of the ride. **[R.p.134, line 17-p.135, line 22; p.215, line 17-p.218, line 7].** The trial judge explained to Appellant that this charge was an accurate statement of the law and was based on the evidence presented at trial. **[Id.]** Now, Appellant argues the trial judge erred in charging the jury on assumption of the risk, contending the jury "was made to believe upon the direction of the court that there was a known element of danger." (App.Br.p.3). Appellant further avers Respondent never raised an assumption of the risk defense, nor was there a discussion or claim that the ride was dangerous. **[Id.]** Appellant's arguments are without merit for several reasons.

a. Appellant has abandoned this issue.

Appellant has abandoned this argument for failing to cite any authority to support this issue. See Broom v. Jennifer J., 403 S.C. 96, 115, 742 S.E.2d 382 (2013) ("Issues raised in a brief not supported by authority may be deemed abandoned and not considered on appeal."); Transp. Ins. Co. and Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 432, 699 S.E.2d 687, 692 (2010) (finding an issue was abandoned when the party failed to cite any authority for its position); First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (issue deemed abandoned where petitioner failed to provide arguments or supporting authority for his assertion); Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) ("[S]hort conclusory statements without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.").

b. Assumption of the risk was a proper jury charge.

Even if Appellant had not abandoned this issue, the issue is still without merit. Appellant is incorrect in her contention that assumption of the risk was not raised during trial or that there was no mention of the ride being dangerous. The issue of the ride's dangerousness was raised by Appellant herself. First, Appellant's Complaint alleged Carowinds was negligent in "failing to advise of any present danger" and in "failing to warn [Appellant] when the [Respondent] became aware of a perilous situation." **[R.pp.4-5].** Second, during her direct testimony, Appellant stated someone "should have been there at the ride to assist with the existing [sic] even if it was only to say, **you know, there's danger**, you know, there's another log coming in." **[R.p.207, lines 12-16].** (emphasis added). Finally, in Appellant's closing argument, she recounted the allegations from her Complaint, including that Respondent failed to advise her of any present danger and created a perilous situation. **[R.p.195, lines 10-12; p.196, lines 1-3].** Additionally, the issue of comparative negligence, in which the assumption of the risk analysis has been subsumed, was raised in the Answer to Appellant's claims. **[R.pp.6-8].** Finally, evidence was adduced at trial that Appellant did in fact, assume the risk of her injury in riding this ride.

Prior to the adoption of comparative negligence, the doctrine of assumption of the risk acted as an absolute bar to recovery. See e.g. Hooper v. Columbia & Greenville R.R. Co., 21 S.C. 541, 547 (1884) (adoption of assumption of the risk in an employment context); Stogner v. Great Atlantic & Pacific Tea Co., 184 S.C. 406, 192 S.E. 406 (1937) (in an employment context, assumption of the risk is based on a theory of consent whereby the servant assumed those risks of employment that he knew or should have

known about). The doctrine evolved to be applicable to situations "where the facts proved show that the person against whom the doctrine of assumption of the risk is pleaded knew of the danger, appreciated it, and acquiesced therein." Smith v. Edwards, 186 S.C. 186, 195 S.E. 236 (1938). To establish the defense of assumption of the risk, the defendant must prove: (1) the plaintiff must have knowledge of the facts constituting a dangerous condition; (2) the plaintiff must know the condition was dangerous; (3) the plaintiff must appreciate the nature and extent of the danger; and (4) the plaintiff must voluntarily expose himself to the danger. Cole v. S.C. Elec. & Gas, Inc., 362 S.C. 445, 453-54, 608 S.E.2d 859, 863, 864 (2005); Davenport, at 79, 508 S.E.2d at 569.

However, once South Carolina adopted comparative negligence, "the absolute defense of assumption of risk [became] inconsistent with South Carolina's comparative negligence system" and the Supreme Court had to determine what, if any, aspects of the assumption of the risk doctrine survived. Davenport at 86, 508 S.E.2d at 573. The Court noted many other states distinguish between express and implied assumption of the risk, with implied assumption of the risk being even further subdivided into categories of "primary" and "secondary." Id. Express assumption of the risk occurs when the parties expressly agree in advance that the plaintiff will relieve the defendant of his or her legal duty toward the plaintiff. Id. Implied assumption of the risk arises when the plaintiff implicitly assumes known risks. Id. Thus, "[p]rimary implied assumption of the risk arises when the plaintiff impliedly assumes those risks that are inherent in a particular activity." Id.; Cole v. Boy Scouts of America, 397 S.C. 247, 252, 725 S.E.2d 476, 478 (2011). "Secondary implied assumption of the risk, on the other hand, arises when the plaintiff knowingly encounters a risk created by the defendant's negligence." Davenport

at 82; 508 S.E.2d at 571. The Court further found "express and implied assumption of the risk are compatible with comparative negligence." Id. Accordingly, our Supreme Court held "a plaintiff's conduct in assuming the risk can be made a part of our comparative fault system." Id. Therefore, "a plaintiff is not barred from recovery by the doctrine of assumption of risk unless the degree of fault arising therefrom is greater than the negligence of the defendant." Id.

The evidence adduced at trial reveals Appellant believed this ride to be dangerous, had the opportunity to observe the loading and unloading process of the ride, and that she had ridden the ride before on at least one other occasion and was therefore aware of the sensations associated with the ride. **[R.p.107, lines 12-16; p.118, line 5-p.119, line 4; p.146, lines 9-19].** Further, Appellant was provided with a guide from Carowinds informing her that Carowinds rated this ride not as a "kiddie ride," but as a medium-thrill ride with many changes in speed and height. **[R.p.149, line 23-p.152, line 4]**. Additionally, Carowinds placed warning signs at the entrance of the ride indicating this same information. **[R.p.162, line 7-p.163, line 23].** From this evidence, the jury could glean that Appellant knowingly encountered a risk created by Respondent.

Moreover, even if the jury charge on the particular issue of assumption of the risk was incorrect, when looking at the jury charge as a whole, the charge is reasonably free from error. See Wells at 237, 533 S.E.2d at 343. Additionally, any alleged error in the jury charge did not prejudice Appellant's case. The essential issue in this case, as presented by Appellant at trial, was whether Carowinds was negligent in failing to have an attendant present to assist her out of the ride or warn her of the dangerous condition. To Appellant, this failure of assistance and failure to warn was the proximate cause of the

damages she alleges she sustained. However, evidence was presented—via Appellant's own testimony and the incident report from the day of the accident—that there was an attendant present and that the attendant spoke to Appellant before she got out of the ride, but Appellant did not hear him. Further, it was demonstrated that, based on Carowinds' training manual, under Carowinds' policy, an attendant could not have physically assisted Appellant from the log car. The evidence before the jury was Appellant's contentions of wrongful behavior and Respondent's proof that such behavior did not happen or would have been against Carowinds' policy. With that evidence, the jury duly weighed the credibility of the witnesses and rendered a verdict as to Respondent's alleged negligence. Appellant has not demonstrated any error in these jury charges or that she was somehow prejudiced by the charges. This is especially true when Appellant's case-in-chief provided most of the evidence to support the assumption of the risk charge.

The trial judge charged the jury on the correct state of the law. Even if the charge regarding assumption of the risk were inaccurate, the jury charge as a whole substantially complied with the law. Accordingly, the trial judge did not err in charging the jury on assumption of the risk.

Conclusion

For the foregoing reasons, Respondent respectfully submits the trial judge did not commit any reversible errors during the trial of this case. Further, as to Appellant's request for $150,000.00 in actual pain, suffering, and punitive damages, same should be denied.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Appellant's Final Brief complies with Rule 211(b), SCACR.

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Proof of Service

I certify that I have served the ***Respondent's Final Brief*** upon the Appellant by depositing a copy of it in the United States Mail, postage prepaid, on May 7, 2014, to ***Felecia Dicks Wilson, Post Office Box 31562, Augusta Georgia, 30903-3051***

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