

STATE OF SOUTH CAROLINA ]  
COUNTY OF DILLON ]

IN THE COURT OF COMMON PLEAS  
FOURTH JUDICIAL CIRCUIT  
Docket No.: 2011-CP-17-460

Teri N. Jacobs, Jr., ]  
Plaintiff, ]

-vs-

Jerry W. Page and James ]  
Page, individually and d/b/a ]  
James Page Farms, ]  
Defendants. ]

**ORDER OF  
SPECIAL REFEREE**

Date of Hearing: May 14, 2014  
Special Referee: Jerry M. Angelo  
Plaintiff's Attorney: George Jebaily  
Defendant, Jerry W. Page's, Attorney: *Pro Se*

**FILED  
GWENT T. HYATT  
2014 JUN 13 AM 10:17  
CLERK OF COURT  
DILLON COUNTY**

This matter comes before me as Special Referee by appointment of the Honorable Paul M. Burch, subsequent to an Order of Default pursuant to §14-11-60 and §15-31-150 and Rule 51, South Carolina Rules of Civil Procedure. The Summons and Complaint were filed with the Dillon County Clerk of Court on November 18, 2011. The Defendant, Jerry W. Page, was personally served on December 3, 2011, as evidenced by the Affidavit of Service filed with the Court. By Order of Judge Burch, in his Order of February 1, 2012, this Defendant was found to be in default. Judge Burch referred the matter to the undersigned as Special Referee for a hearing on damages.

This case arises from an accident that occurred on November 21, 2008 in which one of the Defendant's cattle ran across Highway 55 and caused a collision with Plaintiff's automobile.

The hearing was scheduled for July 26, 2012 at the Jebaily Law Firm in Florence South Carolina. The Notice of Hearing on Damages was served on this Defendant and

he was present. At the time of the hearing, the co-defendant, James Page d/b/a James Page Farms, had not been served. The hearing was then continued until James Page was served.

The undersigned was then informed on February 18, 2014 that James Page was dismissed from this action without prejudice as evidenced by the Stipulation of Dismissal executed on February 18, 2014.

A second hearing on damages was scheduled for May 14, 2014 at the Jebaily Law Firm. The Notice of Hearing on Damages was served on the Defendant, Jerry W. Page, on March 25, 2014.

The hearing was scheduled to begin at 10:00 a.m. At that time, the undersigned inquired as to the Defendant's presence. The Defendant was not present nor had he contacted the Plaintiff's attorney, anyone at the Jebaily Law Firm or the Special Referee. The Court waited 15 minutes prior to beginning the default hearing. The Defendant finally made an appearance at approximately 10:35 a.m. He then participated in the proceedings.

Testimony was taken and documents were offered into evidence.

It should be noted that the Defendant, Jerry W. Page, was given every opportunity to have consulted with an attorney prior to the hearing and to have an attorney present with him at the hearing. He chose not to. In fact, he chose to participate in the hearing. He was given specific instructions by the Court with regard to what his role would be limited to and the fact that he would be held to the same standard as an attorney. He participated in the hearing up to the cross-examination of the second Plaintiff's witness, Tricia Jacobs, Plaintiff's mother. At that time the Defendant, during his cross-examination, indicated that he "wanted to stop". He asked about a trial. Once again the Court explained to him what the process was and that he

had already been found in default by Judge Burch. He did remain at the Jebaily Law Firm and did, in fact, participate in a second default hearing regarding a different Plaintiff, Jammie Anderson, in a similar accident involving one of Defendant's cattle that occurred on April 12, 2009.

### FINDINGS OF FACTS

After hearing testimony and reviewing the evidence offered, I make the following findings of fact:

1. This matter comes before me by Order of the Honorable Paul M. Burch subsequent to an Order of Default pursuant to §14-11-60 and §15-31-150, South Carolina Code of Laws (1976, as amended), and Rules 53 and 55(b)(2), South Carolina Rules of Civil Procedure.
2. Jurisdiction of this entire matter was vested in the Special Referee as of the date of the Order to determine any and all matters that might arise concerning this case thereafter. Jurisdiction and venue are proper.
3. The Defendant was notified of the hearing by United States Mail and was present at the hearing.
4. On November 21, 2008, the Plaintiff was unable to stop his vehicle and therefore was in a collision with a cow running across the road way. The cow belonged to the Defendant, Jerry W. Page. The Plaintiff's vehicle, a 1995 Cutlass Oldsmobile, was totaled with property damage estimated at \$2,800.00. The vehicle was sold for salvage for \$300.00.
5. Plaintiff was severely injured as a direct and proximate cause of the Defendant's negligence. Plaintiff was treated for his significant, traumatic injuries to his neck, back, right hand and shoulder.

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6. Plaintiff's medical procedures and treatments included the following:

Dillon County EMS -	\$ 579.08
McLeod Regional Medical Center Dillon Facility -	3,258.00
Florence Radiological Associates -	76.00
Dr. James Kelly -	255.00
Dr. John Stanton-	3,318.00
Dr. Rakesh Chokshi -	2,466.00
Lowes Physical Therapy -	1,625.00
Medications -	<u>46.00</u>
<b>Total -</b>	<b>\$11,643.08</b>

7. Dr. Chokshi, an orthopaedic surgeon, after reviewing tests and examining Plaintiff, recommended shoulder surgery for a torn shoulder muscle. Plaintiff was unable to have this surgery due to his inability to pay the estimated \$30,000.00. Plaintiff is still in need of surgery.

8. Plaintiff still suffers from neck, back and arm pain. In addition, he now has acquired a limp which has affected his gait.

9. Plaintiff is currently unable to work and has not been able to work since the date of the accident. At the time of the accident, Plaintiff was working 40 hours a week earning \$10.00 per hour.

10. Plaintiff's medical condition continues to deteriorate and now includes depression due to pain and inability to work and conduct his normal daily activities as he did before the accident.

11. Plaintiff is 33 years old with a life expectancy of 40.46 years.

12. Plaintiff sustained net property damage in the amount of \$2500.00.

13. Defendant, Jerry W. Page, has a long history of similar negligent behavior regarding his farm animals getting loose and causing property damage and accidents.

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The Court has in Plaintiff's Exhibit 3, twenty-six (26) Incident Reports dating from August 22, 2006 thru August 13, 2008. All of these incident reports deal with Defendant's farm animals getting loose and causing damage. They also clearly indicate that Defendant has no intentions of remedying this danger. It is apparent to this Court that punitive damages are in order after careful consideration of existing case law regarding the awarding of punitive damages. It is the hope of this Court that these punitive damages, otherwise known as exemplary damages, will actually deter the Defendant from further negligent behavior and act as an example to deter others. The Defendant will pay punitive damages in the amount ordered below.

### CONCLUSIONS OF LAW

The matter which is before this Court is governed by the general principals of common law negligence as exist in the State of South Carolina. Accordingly, there is well established case law to support an award of actual damages in this instance. Attention, therefore, is given to the issue of punitive damages.

It is well established in South Carolina law that punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrong-doer and others from committing like offenses in the future. This legal notion is established in *Gamble vs. Stevenson*, 406 S.E.2d 350, 305 S.C. 104 (S.C. 1991) and its progeny *i.e. Cook-N-Bull Steak House, Inc. Vs. Generali Insurance Company*, 466 S.E.2d 727, 321 S.C. 1 (S.C. 1996). The Court states clearly in *Gamble* citing *Haslip* that "we cannot say that the common law method for assessing punitive damages is so inherently unfair as to deny due process and be *per se* unconstitutional." The Court went further and noted there is no bright line mathematical test that can be drawn to determine punitive damages, but that an award of punitive damages should be

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sufficiently reasonable to withstand constitutional challenge. *Gamble* establishes three factors in reviewing punitive damage awards: the first deals with understanding the nature, purpose and basis for the award; second, post-trial procedures to scrutinize the award; and third, an appellate review process to insure that the award is reasonable and rational. The Court went further to state that each and every procedural protection may not be afforded to all Defendants in all cases. The *Gamble* Court noted that it was sufficient that the protections meet “general concerns of reasonableness” and “are followed by adequate guidance” from the Trial Court. The Supreme Court of South Carolina established in *Cook-N-Bull Steak House, Inc. Vs. Generali Insurance Company* that the Trial Court “may consider” factors as listed in *Gamble*, but is not required to do so.

This Court finds in the instant case that there is clear and convincing evidence that the damages sustained by the Plaintiff were caused by willful, wanton, reckless, careless and negligent action on the part of the Defendant and warrant an award of punitive damages. Specifically, the major findings of fact that contribute to and support the substantial punitive damage award are the numerous incident reports regarding Defendant’s continuing negligent behavior. These reports are replete with complaints about Defendant’s farm animals getting loose and damaging crops. The reports also indicate that various law enforcement individuals contacted the Defendant on numerous occasions about containing his farm animals. Law enforcement has taken pictures of Defendant’s farm animals on complainant’s land causing damage to crops. There is even one report regarding approximately forty (40) of Defendant’s cows in a neighbor’s yard, under her carport and on her back porch causing damage to her property, including her vehicle.

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In *Gamble*, the Court suggests eight (8) factors that may be reviewed in order to determine whether the Defendant's due process rights have been violated. The Court may consider the Defendant's degree of culpability. In the instance case the Court is convinced of the Defendant's culpability since it was Defendant's animal that got loose and caused Plaintiff's damages. Moreover, the numerous incident reports of Defendant's animals causing other property damage over a period of years indicate a reckless disregard for others' property and safety.

The Court may consider the duration of the conduct. As mentioned previously, the Court is aware of at least two years of consistent negligent behavior by the Defendant involving the containment of his farm animals in a secure setting. In other words, the accident on April 12, 2009, was certainly not an isolated incident.

The Court may also consider the Defendant's awareness or concealment. In this case, the Defendant was not only aware of his farm animals getting out of their confined space, but was constantly being confronted by neighbors and law enforcement regarding these dangerous conditions.

The Court may also consider the existence of similar past conduct. It goes without saying, in this instant case, that there is clear and convincing evidence of similar past conduct stretching over a period of at least two (2) years.

The Court may consider the likelihood that any award would deter the Defendant or others from like conduct. In this case, Defendant's continuing disregard for the safety of others and a continuing pattern of negligent behavior certainly warrants a punitive award in order to set an example not only to this Defendant but to others.

The Court may consider whether the award is reasonably related to the harm likely to result from such conduct. Again, in the instance case, the Court is confident

that the award is reasonable and reasonably related to the harm likely to result from such conduct as evidenced by the Defendant's continuous negligent behavior.

The Court may consider the Defendant's ability to pay. In this case, Plaintiff's exhibit 2 indicates that over and above whatever Defendant's net worth may be, he does receive yearly subsidies from the USDA that are substantial.

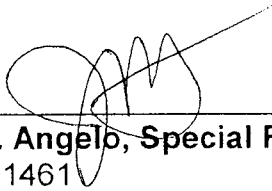
Based upon the foregoing findings of fact and conclusions of law, it is, therefore

**ORDERED, ADJUDICATED AND DECREED** that Plaintiff, Teri N. Jacobs, Jr., be and is hereby granted judgment against the Defendant, Jerry W. Page, in the amount of \$2,500.00 for property damage, \$30,000.00 for future medical costs, \$50,000.00 in future pain and suffering, \$60,000.00 in actual damages to Plaintiff's physical body and health, and \$115,200.00 in lost wages. The Court therefore awards the Plaintiff total actual damages in the amount of \$257,700.00. It is further

**ORDERED** that the Defendant, Jerry W. Page, pay punitive damages in the amount of \$100,000.00. The total judgment to Plaintiff is \$357,700.00. It is further

**ORDERED** that this decision be filed with the Dillon County Clerk of Court.

**AND IT IS SO ORDERED.**



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**Jerry M. Angelo, Special Referee**  
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June 11, 2014.