

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No.: 2014-001192

Laura Riley as Personal Representative of the Estate
of Benjamin Riley,.....Petitioner,

v.

Ford Motor Company,.....Respondent.

REPLY BRIEF OF PETITIONER.

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S.C. SUPREME COURT

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ARGUMENTS

Though the parties have addressed the issues on appeal in detail in their previous submissions, Petitioner Laura Riley, as Personal Representative of the Estate of Benjamin Riley, (the "Estate") submits this Reply Brief to briefly address Ford Motor Company's arguments.

I. The Trial Court's Underlying Order Granting New Trial *Nisi Additur* Was Within the Trial Court's Discretion and the Court of Appeals' Opinion Erodes the Historical Discretion of the Trial Court.

Like the Court of Appeals' flawed opinion, Ford's arguments fail to justify the Court of Appeals' intrusion into the discretionary power of the trial court to grant *nisi additur* where the trial court determined that the jury's award was merely inadequate and that compelling reasons existed to do so.

While Ford seeks to color the trial judge's decision as one informed only by emotion and simple disagreement, the record is clear that the trial judge did not grant *additur* on an emotional whim. Ford's argument suggests the trial court's discretionary analysis for *additur* was devoid of all reason, judgment, and intellectual review. To the contrary, the trial judge observed the evidence, heard the witnesses, presided over the case, and then permissibly determined that the jury's award was inadequate based on that evidence. Our appellate courts have long believed this to be an important function of the trial court when appellate review is held. "The trial judge, who heard the evidence and is more familiar with the evidentiary atmosphere at trial, possesses the better-informed view of the damages than this [the appellate] Court." *Krepps by Krepps v. Ausen*, 324 S.C. 597, 608, 470 S.E.2d 290, 295 (1996), quoting, *Rush v. Blanchard*, 310 S.C. 375, 426 S.E.2d 802 (1993).

Having the “better-informed view of the damages,” the trial judge found that the evidence of the damages suffered by the Estate was moving and emotional. The trial court also found the testimony to be compelling. This is entirely permissible. The court further found that the inadequate award failed to compensate the Estate for all elements of damages which were proven at trial by uncontested and uncontroverted testimony and evidence. Based on the evidence and the court’s view of the testimony, the trial court concluded that the jury’s award was inadequate. This too is entirely permissible.

By finding the jury’s award inadequate trial judge clearly did “disagree” with the jury’s award. That disagreement was the starting point for the analysis that followed in the trial court’s order and that order’s clear and sober discussion of the reasoning for granting the *additur*. The trial court’s stated compelling reasons for granting *additur* are consistent with the binding precedent before it. Having disagreed with the award and finding its merely inadequacy, the trial judge supported the grant of *additur* with numerous “compelling reasons.” Contrary to Ford’s arguments, the Order does not merely list the elements of damages.

Let it be clear, while “compelling reasons” are required and the law of this case, the Estate certainly argues that the “compelling reasons” analysis is a vague concept for which the Bench and Bar have not had the benefit of any real analysis or guidance. The order entered by this trial court complies with all of the previous precedent and that precedent revealed no reason to reverse the trial court on this issue. The trial judge, based upon the evidence, had wide discretion to rule as he did and that discretion was not abused. The trial court in no way invaded the province of the jury as the Court of Appeals

and Ford seem to be so concerned about. The trial court followed the law of this state and permissibly granted *additur*.

If this trial judge committed an abuse of discretion in granting *additur*, what act, or failure, of the trial judge constitutes such abuse? It cannot be the “mere disagreement” with the jury’s verdict as stated by the Court of Appeals. Logically, every *additur* analysis ever undertaken by a trial judge has required that judge to determine whether they agree or disagree with the jury’s award. Did the trial judge fail to provide “compelling reasons” to grant *additur*? Close reading of all of the *additur* cases in this state and analysis of the trial court’s order do not disclose any case that this trial court ran afoul of.

If – in fact – the compelling reasons stated in the trial court’s order here are not compelling in the judgment of our Appellate Courts, then the Bench and the Bar of this state need guidance. If the well-reasoned analysis of the trial court does not pass muster, then the Bench and Bar need direction as to what, then, might constitute “compelling reasons.” If allowed to stand, the Opinion below will erode the historic discretion of our trial courts to grant post-trial relief.

CONCLUSION

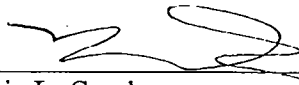
The Opinion below should be reversed and respectfully, this Court should find that the trial court did not abuse its discretion in trebling the amount of damages awarded by the jury.

Finally, as to the Court of Appeals reallocation of the Estate’s settlement with the at-fault driver, this precedent will chill potential settlements between parties. Such chilling effect runs counter to the policy of this state which promotes the settlement of

disputes. Arms length settlements which are based on proven evidence and damages should not be tampered with on appeal.

The Opinion below deserves serious scrutiny by this Court because the Court of Appeals overstepped the bounds of precedent and policy in arriving at its decision on both issues addressed.

Respectfully submitted,



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PROOF OF SERVICE

I, the undersigned, of the law firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., attorneys for the Petitioner, do hereby certify that I have served all counsel in this action with the copy of the Petitioner's Reply Brief in the above matter by mailing a copy of the same by United States Mail, postage prepaid, to the following:

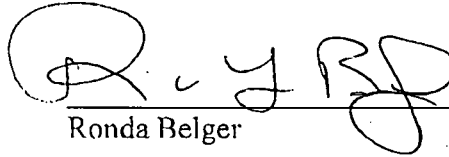
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A handwritten signature in black ink, appearing to read 'Ronda Belger', is written over a horizontal line. The signature is stylized and cursive.

December 15, 2014
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RE: Laura Riley as PR of the Estate of Benjamin Riley v. Ford Motor Company;
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Dear Mr. Shearouse:

Enclosed please find one original, unbound copy and fifteen (15) bound copies of Petitioner's Reply Brief in the above-referenced matter. Please file the original and return a clocked copy of the extra copy in the self-addressed stamped envelope I have also enclosed our Proof of Service and a copy of the same to be returned along with the brief.

By copy of this letter to counsel of record, we are serving the same upon them.

With kind regards, I remain

Sincerely,



Matthew V. Creech

Enclosures: as stated

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