

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP4203846

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MAR 27 2015

SC Court of Appeals

Paula Rose

Charles Homer Rose II

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

R. Ruth Kelly
Circuit Court Judge

2165

Judge Code

27 Jan 2015
Date

For Clerk of Court Office Use Only

A CERTIFIED COPY

M. Hope Blalock
CLERK OF COURT
SPARTANBURG COUNTY
BY: *Carroll M.D.C.*
DATED *2/27/15*

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
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A CERTIFIED COPY

M Hope Blansky
CLERK OF COURT
SPARTANBURG COUNTY
BY: *Carrie J. M.D.C.*

DATED *2/27/15*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Paula Rose,)
)
 Plaintiff)
)
)
)
 Charles Homer Rose, III,)
)
)
)
 _____)
 Defendant.)

IN THE COURT OF COMMON PLEAS

FINAL ORDER ON DEFENDANT'S
 MOTION TO SET ASIDE DEFAULT
 AND PLAINTIFF'S
 MOTION FOR DAMAGES
 CA NO.: 2014-CP-42-3846

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SC Court of Appeals

This matter came before the Court following an entry of default upon Plaintiff's Motion for Damages and Defendant's Motion to Set Aside/Enlargement. After hearing significant arguments on the law as well as two days of testimony, the Court finds as follows:

I. DEFAULT

The Summons and Complaint in this matter were duly served on the Defendant Charles Homer Rose, III on October 6, 2014. The appropriate affidavits of default were submitted to the court and default was entered pursuant to S.C.R.Civ.P. 55(a) on or about December 19th, 2014. A damages hearing was scheduled for January 21st, 2015. Mr. Rose failed to file any responsive pleading until January 20th, 2015 when he filed an Answer and a Motion to Set Aside the Default.

Motions to set aside any default are governed by Rule 55(c) of the South Carolina Rules of Civil Procedure. This is a less stringent rule than Rule 60. In considering a 55(c) motion, courts have more discretion and are more lenient than a 60(b) motion. Eli A. Poliakoff, *Setting Aside Entries of Default: South Carolina Should Require a Reason*, 54 S.C. L. Rev. 477, 478. "Court deadlines and rules serve important social goals, and a party should not be permitted to flout them with impunity. Respect for judicial guidelines and judicial economy and efficiency suggest a more stringent

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interpretation of good cause..." *Id.* at 480. Rule 55(c) also sets forth a "good cause" requirement. Good cause requires the "moving party to provide an explanation for the default or to give reasons why vacation of the default entry would serve the interests of justice." *Id.* at 484. Here, there is no reasonable explanation as to why the defendant, Mr. Rose, did not file an answer until one-hundred and seven (107) days after he was served. "The threat of judgment by default serves as an incentive to observe and follow court rules." *Id.* at 480. Mr. Rose knowingly, intelligently, and voluntarily did not file an answer.

Mr. Rose alleged that he had a medical condition that prohibited him from answering but this condition did not arise until near the end of the time the complaint was due. Further, the condition appeared to have resolved by early December and yet another six or so weeks went by before any answer was filed. The Court is not persuaded that Defendant's allegations constitute good cause.

Mr. Rose alleged that his attorneys had obtained an extension to answer. Rule 6(b) of the SCRCR requires any enlargement of time to be in writing. There is no evidence of any writing regarding an extension before the Court. Therefore, Mr. Rose was in default thirty one (31) days after he was served. Mr. Rose did not seek to get out of default from Plaintiff's counsel. The Court is not persuaded that Defendant's allegations constitute good cause.

Mr. Rose alleged that he could not afford counsel during the time the answer was due. During this time, Mr. Rose was represented by legal counsel in other litigation but did not retain an attorney for this matter even after consulting with one. Mr. Rose has in excess of \$3.8 million dollars in assets in a trust, of which he is the beneficiary. He has received approximately \$146,000 a year for the last three years as beneficiary of the trust. Additionally, the Defendant receives retirement and social security income; has some equity in his home, and at the time of the allegations in the complaint he was employed with the South Carolina Highway Patrol as a State Trooper. There is no

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meaningful or persuasive argument that Mr. Rose lacked the resources to hire an attorney. Indeed he was represented by two attorneys during parts of the damages hearing on January 21st, 2015. Mr. Rose made an informed decision not to retain counsel. He did not consult with other attorneys or file any pro se answer. At his peril, he refused to participate. The Court is not persuaded that Defendant's allegations constitute good cause.

Mr. Rose alleged that he thought the Plaintiff was dismissing the matter. The relationship between Mr. and Mrs. Rose is complicated to say the least. The text messages provided to the Court do little to uncomplicate the factual picture. At the end of the day, the two are embroiled in a contentious divorce and if Mr. Rose thought Mrs. Rose was going to drop this action then he should have contacted Mrs. Rose's counsel to confirm. Mr. Rose never did any such thing. The Court is not persuaded that Defendant's allegations constitute good cause.

Counsel for Mr. Rose urged the Court to review the case of *Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct.App.1987). The Court has reviewed *Ricks* and there are marked distinctions that render that decision inapposite to the case at bar. Specifically, the Defendant in *Ricks* filed her answer only eleven (11) days after the entry of default; some sixty (60) plus days earlier than Mr. Rose. Further, the Defendant in *Ricks* had good cause for the delay as she acted diligently but due to a series of unfortunate events including bankruptcy of her insurance agent and a broken down vehicle was a few days late. Mr. Rose did not act diligently and did not file his motion to set aside until January 21, 2015; 75 days after the entry of default.

For these reasons, the Defendant's motion to set aside the default/for enlargement of time is denied.

II. DAMAGES

It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the allegations against it and to have conceded liability. *Roche v. Young Bms., Inc.* of

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Florence, 318 S.C. 207, 210, 456 S.E.2d 897, 900 (1995). Accordingly, the following allegations in the Complaint are deemed admitted by the Defendants:

- On or about September 18, 2014, Mr. Rose committed assault and battery against Mrs. Rose. Mr. Rose, with force and violence, inflicted bodily harm on the Mrs. Rose when he unlawfully struck her repeatedly in the head with a handheld police radio. Mr. Rose committed these acts with intention of bringing about harm to the Mrs. Rose in a rude, insolent, and/or revengeful way.
- Mrs. Rose had to seek immediate medical care and treatment for the injuries and damages sustained as a result of being struck in the head repeatedly by Mr. Rose with a handheld police radio.
- Mrs. Rose will continue to need additional medical care and treatment, both physically and emotionally, as a result of this incident.
- The assault and battery acts of Mr. Rose proximately caused Mrs. Rose substantial physical and emotional damages.

The following facts were established through testimony/evidence:

- Mrs. Rose was treated for injuries to her head, face, and ear on September 18th and 19th at Spartanburg Regional Hospital.
- The total medical bills were \$5,018.00.
- Due to the incident with Mr. Rose, Mrs. Rose has been diagnosed with post-traumatic stress disorder, and exacerbation of her severe depression by Dr. Todd Morton.
- Dr. Morton's expert psychological opinion was that Mrs. Rose would require \$7,400.00 in future medical treatment, over the next calendar year, exclusive of any additional issues, emotional events, or hospitalizations.
- Mrs. Rose has significant pain, scarring, and emotional instability because of the incident with Mr. Rose.

Defendant called no witnesses to dispute any of these facts and only stipulated to some testimony that Mr. Rose would testify to if he took the stand, which he did not. Included in the stipulation was that Defendant had a net worth in excess of \$3.8 million dollars.

Based on the foregoing, the Court finds actual and compensatory damages in the amount of \$37,254.00

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Based on the following, the Court also finds that punitive damages in the amount of \$111,762.00 are appropriate. This amounts to three times the actual damages found appropriate by the Court.

There are eight factors that a Court is to consider when determining the amount of punitive damages. They are set forth in *Gamble v. Stevenson*, 405 S.E.2d 350, 354 (1991) as follows:

- (1) defendant's degree of culpability;
- (2) duration of the conduct;
- (3) defendant's awareness or concealment;
- (4) the existence of similar past conduct;
- (5) likelihood the award will deter the defendant or others from like conduct;
- (6) whether the award is reasonably related to the harm likely to result from such conduct;
- (7) defendant's ability to pay; and
- (8) other factors deemed appropriate.

The trial court need only make findings as to those factors that are relevant to the individual case. *Id.* ("The trial court is not required to make a finding of fact for each *Gamble* factor to uphold a punitive damages award.").

a. Defendant's degree of culpability

The Defendant is clearly culpable for the injury to the Plaintiff; which was an intentional act to inflict harm. Defendant bragged about evading punishment for the incident on his Facebook page. The Plaintiff was seriously injured. Defendant's culpability weighs in favor of a significant punitive damages finding.

b. Defendant's awareness or concealment

The evidence included a Facebook posting from Defendant in which one could infer that Defendant was boasting about striking Plaintiff and not suffering any consequences. No evidence or testimony was elicited to dispute that this posting was made by Defendant or that the posting related to Plaintiff. This indicates an awareness of wrongdoing by Defendant.

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Further, there was testimony and circumstantial evidence in the form of pictures indicating that Defendant attempted to conceal his involvement in injury to Plaintiff by removing and attempting to clean Plaintiff's blood off the shirt he was wearing at the time of the altercation.

c. The existence of similar past conduct

The Plaintiff introduced documentation that Defendant was previously involved in a divorce in which Defendant's previous spouse made allegations of physical cruelty by Defendant. No evidence or testimony was introduced by Defendant to dispute this allegation.

d. Defendant's ability to pay

The defendant stipulated to a net worth of over \$3.8 million. He is paid from various sources in excess of \$180,000.00 per year. He has equity in a home. The \$111,762.00 punitive damages award in this case amounts to less than 3% (2.9% exactly) of Defendants total net worth and less than one year of his trust income. The ratio of punitive to actual damages is likewise limited as it is only three times the actual damages award. Given Defendant's intent to harm, this ratio could have been much larger because in such a case there is no statutory limit on punitive damages per S.C. Code Sections 15-32-510, et seq.

e. Other relevant factors

In addition to the factors enumerated above, the Court was entitled to consider that the defendant never accepted responsibility for his actions and has never offered a word of apology. See *Smith v. Smith*, 9 S.E.2d 584, 591 (S.C. 1940) (finding relevant, in a slander case, the refusal of the publisher to correct the defamatory statement or to apologize). The Defendant made no attempt to cure the wrong committed or mitigate the plaintiff's anxiety over the incident. The Court would not mean to suggest that the award somehow legally rests on the remorsefulness or lack thereof of the defendant, although it is a legitimate consideration, see *Smith*, 9 S.E.2d at 591. But, these

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considerations certainly inform the Court's view as to issues of the defendant's culpability, malice, and indifference.

For the reasons set forth above and the presence in varying degrees of the Gamble factors, the Court is comfortable that the punitive damages award is justified under South Carolina law.

III. CONCLUSION

Based on the admitted allegations, the documents received into evidence, and the testimony of Plaintiff supporting the allegations, the Court finds that the Plaintiff is entitled to a compensatory damages recovery of \$37,254.00 and punitive damages in the amount of \$111,762.00.

IT IS THEREFORE ORDERED that Plaintiff shall have judgment against Charles Homer Rose, III in the total amount of ONE HUNDRED FOURTY NINE THOUSAND AND SIXTEEN DOLLARS (\$149,016.00).

This the 24 day of February 2015, at Columbia, SC

R. Keith Kelly

Hon. R. Keith Kelly,
Chief Administrative Judge
7th Judicial Circuit

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M. Hope Blockley
CLERK OF COURT
SPARTANBURG COUNTY
BY: C. W. Jones D.C.
DATED 2/27/15

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