

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

RECEIVED
MAY 04 2015
SC Court of Appeals

Ashley Outing Appellant,

v.

Velmetria Chante Weeks Respondent.

RESPONDENT'S RETURN TO APPELLANT'S
PETITION FOR REHEARING



J. DAVID BANNER
Aiken, Bridges, Elliott, Tyler &
Saleeby, P. A.
P. O. Drawer 1931
Florence, South Carolina 29503
(843) 669-8787
Attorney for the Respondent

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TABLE OF AUTHORITIES

Cases

Hadfield v. Gilchrist, 343 S.C. 88, 538, S.E.2d 268 (Ct. App. 2000)

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)

A & I, Inc. v. Gore, 366 S.C. 233, 239, 621 S.E.2d 383, 386 (Ct. App. 2005)

Price v. Pickens County, 308 S.C. 64, 67, 416 S.E.2d 666, 668 (Ct. App. 1992)

Statutes and Rules

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

Pursuant to the request of the South Carolina Court of Appeals, the Respondent hereby submits her original Return to the Appellant's Petition for Rehearing.

PROCEDURAL HISTORY

The Appellant asserted a cause of action for negligence against the Respondent for alleged injuries sustained in an automobile accident which occurred on January 30, 2006 on Highway 76 in Marion, South Carolina. The case was tried before a six (6) panel jury presided over by Magistrate Jackie Hayes on July 20, 2011. After submission of the case to the jury, a verdict was returned 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. After hearing oral argument from both parties, the Circuit Court affirmed the Magistrate's Court by Order dated May 16, 2013.

Thereafter, the Appellant filed an Appeal with this Honorable Court and submitted a Final Brief on January 10, 2014. The Respondent filed her Final Brief on December 31, 2013. This Court affirmed the Circuit Court's ruling on March 18, 2015.

ARGUMENT

The standard of review to be applied by a Circuit Court in an appeal of the 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 effect 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 standard of review for the Court of Appeals is noted to be more limited than that of the Circuit Court. *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 *Hadfield* opinion provides as follows:

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.

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 effected 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 there was no error of law. 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 Honorable 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. The Appellant has not offered any evidence or proven any facts to suggest that the ruling by the Circuit Court for the decision by the jury should be overturned.

As this Court appropriately cited in its per curium opinion, "where the Circuit Court has affirmed the Magistrate Court decision, this Court looks to whether the Circuit Court Order is controlled by an error of law or is unsupported by the facts." *A & I, Inc. v. Gore*, 366 S.C. 233, 239, 621 S.E.2d 383, 386 (Ct.

App. 2005). Further, as this Court cited, the burden is on the Appellant to provide a sufficient record such that this Court can make an intelligent review. *Price v. Pickens County*, 308 S.C. 64, 67, 416 S.E.2d 666, 668 (Ct. App. 1992).

The Appellant has failed to provide any evidence to even remotely suggest that the Circuit Court's Order was controlled by an error of law or unsupported by the facts in the case. Further, the Appellant's Petition for Rehearing fails to provide any specific facts or error of law that was not already suggested in its original appeal. Therefore, this Court has nothing new to review or decide and should stand by its original holding.

CONCLUSION

As such, the Respondent respectfully requests that this Court deny the Appellant's Petition for Rehearing and reaffirm its per curiam Order filed on March 18, 2015.



J. DAVID BANNER
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April 29, 2015

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,

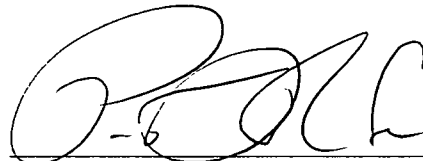
v.

Velmetria Chante Weeks Respondent.

CERTIFICATE OF COMPLIANCE

I certify that Respondent's Return to Appellant's Petition for Rehearing
complies with Rule 211(b) of the Appellate Court Rules.

April 29, 2015



J. DAVID BANNER
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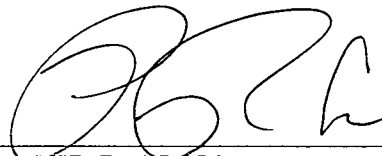
v.

Velmetria Chante Weeks Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent's Return to Appellant's Petition for Rehearing on Appellant by depositing a copy of it in the United States Mail, postage prepaid, on April 29, 2015, addressed to her attorney of record, Everett H. Garner, Holler, Dennis, Corbett, Ormond, Plante & Garner, P. O. Box 11006, Columbia, SC 29211.

April 29, 2015



J. DAVID BANNER
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May 1, 2015

• Certified Mediator/Arbitrator
+ Also Admitted District of Columbia

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Ashlie Outing vs. Velmetria Chante Weeks
Case No. 2011-CP-33-598
AB File No. 27893

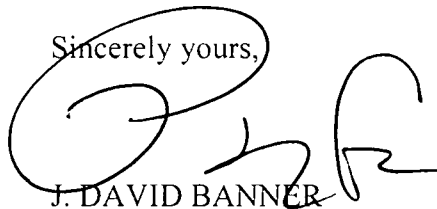
Dear Ms. Kitchings:

Please find enclosed one original and six (6) copies (bound) of the Respondent's Return to Appellant's Petition for Rehearing in regards to the above referenced matter. Also enclosed is the Proof of Service of the Return and Certificate complying with Rule 211(b) of the Appellate Court Rules.

Should you have any questions or need anything further, please do not hesitate to contact me.

With kind regards, I am

Sincerely yours,



J. DAVID BANNER

JDB/dal
Encs.

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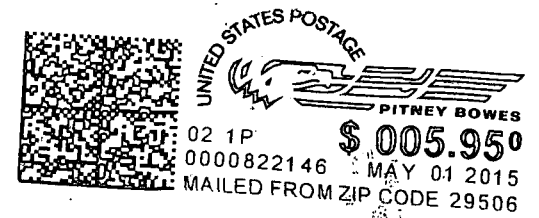
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May 1, 2015

Page 2

cc: Everett Hope Garner, Esquire
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Enc.



First Class Mail

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SC Court of Appeals

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To:
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
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Label 107R, July 2013