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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHESTER COUNTY
Court of Common Pleas
Sixth Circuit Court

J. Ernest Kinard, Jr., Chief Administrative Judge

Case No. 2013- 002677
Appellate Case No: 2015- 001126
Unpublished Opinion No. 2015-UP-127

T. B. Patterson, Jr., Petitioner,

v.

Justo Carmona Ortega, Respondent.

APPENDIX

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Attorney for Appellant, *Pro Se*

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Attorneys for Respondent

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas
Sixth Circuit Court

J. Ernest Kinard, Jr., Chief Administrative Judge

Case No. 2013-002677

T. B. Patterson, Jr., Appellant,

v.

Justo P. Carmona Ortega, Respondent.

RECORD ON APPEAL

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INDEX

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH CIRCUIT COURT
COUNTY OF CHESTER	)	C/A NUMBER: 2013-CP-12-00267

T.B Patterson, Jr.,

Appellant,

vs.

Justo Carmona Ortega,

Respondent.

FINAL ORDER

This matter was heard on July 7, 2012, on appeal from a bench trial before the Honorable Yale Zamore in Great Falls, South Carolina that was held on April 12, 2013. Following trial on May 15, 2013, Judge Zamore issued an order finding for the Plaintiff in the amount of $706.39. Following that order, on June 12, 2013, the Plaintiff (hereinafter "Appellant") filed this appeal, alleging that the trial order in this matter failed to utilize the proper measure of damages both as to the loss of use of his vehicle and the loss of time dealing with the consequences of the accident. Having heard the arguments of Appellant and Respondent at the hearing of this matter, and after considering the Briefs of both parties and the Final Order of Judge Zamore, along with his findings of fact and conclusions of law, I uphold the decision of the magistrate court and deny the Appellants request for relief.

IT IS SO ORDERED.

J. Ernest Kinard, Jr.
Chief Administrative Judge
For the Sixth Circuit

9/14, 2013
Camden, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH CIRCUIT COURT
COUNTY OF CHESTER	)	C/A NUMBER: 2013-CP-12-00267

T.B Patterson, Jr.,

Appellant,

vs.

Justo Carmona Ortega,

Respondent.

PROPOSED ORDER

This matter was heard on July 7, 2012, on appeal from a bench trial before the Honorabl Yale Zamore in Great Falls, South Carolina that was held on April 12, 2013. Following trial o May 15, 2013, Judge Zamore issued an order finding for the Plaintiff in the amount of 706.3 Following that order, on June 12, 2013, the Plaintiff (hereinafter "Appellant") filed this appea alleging that the trial order in this matter failed to utilize the proper measure of damages both a to the loss of use of his vehicle and the loss of time dealing with the consequences of th accident. Having heard the arguments of Appellant and Respondent at the hearing of this matte and after considering the Briefs of both parties and the Final Order of Judge Zamore, along witl his findings of fact and conclusions of law, I uphold the decision of the magistrate court an deny the Appellants request for relief.

IT IS SO ORDERED.

J. Ernest Kinard, Jr.
Chief Administrative Judge
For the Sixth Circuit

7/24, 2013
Camden, South Carolina

STATE OF SOUTH CAROLINA)	
)	IN THE MAGISTRATES COURT
COUNTY OF CHESTER)	Case No.: 2013-CP-12-00267
	2012CV1210100749
T.B. Patterson, Jr.,)	
)	
Plaintiff,)	
)	
-vs-)	MAGISTRATE'S RETURN ON APPEAL
)	
Justo P. Carmona Ortega,)	
)	
Defendant.)	
)	

The above-referenced matter was heard in a Bench proceedi before me in Great Falls on April 12, 2013. Following the tria the Court took the case under advisement and issued a Judgme and Final Order signed by me on May 15, 2013 and clocked on M 16, 2013. Attested copies of the Court's 7-page Judgment a Final Order were made and mailed by USPS with appropria postage that day. An attested copy of that same Judgment a Final Order is attached hereto and incorporated herein reference. As the Judgment and Final Order serve as a comple and comprehensive record of the evidence, the proceedings, a the Court's reasoning and judgment, only brief supplement information is now required. It should be noted that at no ti and in no manner did the Plaintiff cite or present to the Cou any authority for his position that "loss of use" alone, with tangible proximate damages is compensable. Similarly, at time and in no manner did the Plaintiff cite or present to t

4.5. #1

Court any authority for his position that his time, at the ra
of $300.00 per hour should be compensated when no tangib
proximate damages were demonstrated.

Respectfully submitted,

YALE ZAMOON
Chester County Magistrate

June 26, 2013

Great Falls, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE MAGISTRATES COURT
COUNTY OF CHESTER	)	Case No. 2012CV1210100749
		RECEIVED
T.B. Patterson, Jr.,	)	2013 MAY 16 PM 4 08
	)	
Plaintiff,	)	CHESTER COUNTY
	)	MAGISTRATE OFFICE
-vs-	)	JUDGMENT AND FINAL ORDER
	)	CHESTER, SC 29706
Justo P. Carmona Ortega,	)	
	)	
Defendant.	)	
	)	

This matter came before me for a Bench Trial upon the merits in Great Falls on April 12, 2013. The Plaintiff appeared and represented himself. The Defendant did not appear but his legal counsel, Michael Traynham, was present and represented Mr. Ortega. The case was originally set for Jury Trial before Judge Underwood but at that time, during Jury Selection, Judge Underwood dismissed the panel and directed that the case be rescheduled. Subsequently, the Action was transferred to this Court and a pre-trial conference was conducted at which time both parties appeared along with a Spanish language translator for the Defendant. Ultimately, the parties decided to waive Jury Trial in favor of a bench proceeding before this Court. Prior to the commencement of the within proceedings, the Court inquired of those present. The Jury Trial waiver was ratified. Defense Counsel admitted liability in behalf of the Defendant and waived his presence for this proceeding. No issues were

Attest: A True Copy of the Original

Magistrate for Chester County

raised concerning any defects as to notice to the parties an the Court notes that the scheduling for April 12, 2013 was wit the consent and at the request of both sides. The partie indicated that there had been sufficient time for settlemen discussions and settlement was not possible. Finally, bot sides indicated that there was nothing the Court could do tha might facilitate settlement and that they were ready to proce with trial.

Other than the Plaintiff who was representing himself n other witnesses were present and none testified. A moto vehicle accident had occurred in Lancaster County in which th vehicle being driven by the Defendant caused the Plaintiff t run off the road. Jurisdiction and venue in Chester County wa not challenged by the Defense. Out of an abundance of cautio the Court notes that the Defendant resides in Chester Count such that this Court does have jurisdiction of the subjec matter and this venue is proper.

The Plaintiff's vehicle was damaged during the course o the accident, which damage included a broken window tha apparently shattered. Shards of glass were found in th Plaintiff's vehicle and on the Plaintiff's person. Th Plaintiff's vehicle was damaged and the Plaintiff personall sustained minor cuts and scratches. As liability was not i issue, the only thing for the Court to determine was th

allowable uncompensated damages sustained by the Plaintiff. The Plaintiff seeks compensation for the loss of use of his vehicle while it was being repaired and for lost time from his work. No claim was advanced for medical treatment or pain and suffering for injuries sustained.

The Plaintiff testified that he was without his vehicle for three weeks and two days. The Court received into evidence without objection Plaintiff's Exhibit 1 consisting of two pages. The first page is a vehicle leasing form by Enterprise Leasing Company. The second is a receipt showing total billing in the amount of $526.39. Both show a period from September 24, 2009 to October 1, 2009, constituting one-week's rental cost. The receipt lists a 2009 Chevrolet Tahoe with a date and time out of September 24, 2009 at 1:41 P.M. with a date and time in of October 1, 2009 at 11:57 A.M. I note that this exhibit was the only one submitted by the Plaintiff. The vehicle itself was repaired at the expense of sources attributable to the Defendant such that no amount is specifically prayed for this.

The Plaintiff is an attorney licensed in South Carolina and engaged in solo practice in Lancaster, which is his County of Residence. In addition to loss of use of his vehicle while it was being repaired, he seeks compensation for time lost from his law practice. The Plaintiff testified that he charges his clients $300.00 per hour and he elaborated so as to demonstrate

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uncompensated time amounting to 16 hours and 25 minutes not counting the time invested in this trial. The breakdown included various activities involved in procuring repairs to his vehicle and arranging for a substitute vehicle, the Chevrolet Tahoe subject to his claim for loss of use of his own vehicle. It appears that the initial repair had to be re-done in part as the first replacement window was defective. No affidavit or other written itemization of time was submitted by the Plaintiff to supplement his testimony in this regard. The Plaintiff repeatedly referred to this lost time as time spent doing the Defendant's work.

On cross-examination the Defendant conceded his only actual out-of-pocket expense was the one-week rental of the Chevrolet Tahoe in the amount of $526.39. The remaining claim for loss of use was based upon the quoted rental expense for the replacement vehicle for the remaining period but does not appear to have actually been incurred. He based his claim for lost time upon his hourly rate but did concede that he completed all his work in hand. The Plaintiff has a home office and did not quantify any overhead expenses, let alone any wasted or lost proximately resulting from this accident. He was unable to specify any case or cases or work he failed to obtain as a proximate result of this accident. No letters or statements complaining about his unavailability to clients or potential clients were submitted by

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the Plaintiff so as to substantiate his claim for lost time with a demonstration of actual lost business.

The Plaintiff's total claim for loss of use of his vehicle for three weeks and two days was based upon three times $526.39 plus two times the daily rental amount of $98.55, which comes to a total of $1,579.17 plus $197.10, or a grand total of $1,776.27. His total claim for lost time which he verbally itemized was 16 hours and 25 minutes at $300.00 per hour for a total of $4,800.00 plus $125.00 for a grand total of $4,925.00. Of course, the Plaintiff sought the costs of this Action, which amounts to $80.00 such that his total claim before the Court stands at $1,776.27 plus $4,925.00 plus $80.00 for a grand total of $6,781.27. The Complaint, drafted by the Plaintiff, does not seek such additional compensation as the Court may deem just and proper although it does pray for total judgment in the amount of $7,500.00 plus costs, or $7,580.00. The Defense rested its case upon the completion of its cross-examination of the Plaintiff and the Court gave both sides leave for final argumentation, whereupon the record was closed and the matter was taken under advisement.

The Defendant having admitted and accepted liability and having already repaired the Plaintiff's vehicle, remains liable only for additional uncompensated allowable damages proximately caused by the accident. The Plaintiff has demonstrated he spent

$526.39 for a replacement vehicle for one week and he paic $80.00 in Court Costs. I find him entitled to this.

The term "loss of use" regarding the Plaintiff's vehicle while it was being repaired was clearly sustained by him and it was proximately caused by the accident. However, the record before the Court substantiates only the expense for a replacement vehicle for one week and not for the entire time for the repairs. It is fundamental that the Plaintiff needs to prove his claimed damages, not merely as to category and reality, but as to amount. In this regard, the Plaintiff has proven an amount equal to one-week's rental expense for a replacement vehicle but nothing more. There is no way to reliably quantify "loss of use" as a general circumstance under these conditions. Similarly, the Plaintiff has claimed $300.00 per hour for his time but has not proven any tangible and quantifiable losses sustained as a result. These factors appear to fall into the general category of inconvenience. The Court has broad discretion but must be cautious not to abuse it. Accordingly, justice and fairness suggest a token award should be granted to the Plaintiff for these intangibles because they do exist and would not but for the accident. However, any amount beyond that would constitute an abuse of discretion in the Court's eyes. It seems reasonable to restrict these token damages to $100.00. Thus the total award to the Plaintif

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should be $526.39 plus $80.00 plus $100.00 for a grand total o $706.39. Now, therefore, it is

ORDERED that Judgment be, and the same is hereby, awarde to the Plaintiff in the amount of $706.39.

AND IT IS SO ORDERED.

YALE ZAMORE
Chester County Magistrate

Great Falls, South Carolina

May 15, 2013

2012CV1210100749

CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA)	
)	IN THE MAGISTRATE'S COURT
COUNTY OF CHESTER)	
)	
T. B. PATTERSON, JR.)	
PLAINTIFF)	
P.O. BOX 340)	
STREET ADDRESS)	
LANCASTER, SC 29721-0340)	
CITY, STATE ZIP)	
803-286-6999)	
TELEPHONE)	
VS.)	COMPLAINT
JUSTO P. CARMONA ORTEGA)	
DEFENDANT(S))	
1698 CANAL ROAD)	
STREET ADDRESS)	
CATAWBA, SC 29704)	
CITY, STATE ZIP)	
803-235-2375)	
TELEPHONE)	

I, T. B. Patterson, Jr, the plaintiff in this civil action do make the following claims:

1. I believe the defendant, Justo P. Carmona Ortega, is a resident of Chester County, and resides at 1698 Canal Road, Catawba, SC, and this Complaint is properly filed in Chester County.

2. I make this complaint on the following:

On September 21, 2009, approximately three miles west of Lancaster, South Carolina, on South Carolina Highway 9 in Lancaster County, Mr. Carmona Ortega,driving a pickup truck toward Lancaster, made a lane change without checking for traffic and in violation of my right-of-way. I was forced off of the road and my truck was damaged by a collision with a sign; I lost the use of it for twenty-three days as a result. In addition, I lost approximately ten hours of work time. The truck has been repaired and those costs have been paid. I have not been reimbursed for my loss of use or my lost work time. The loss of use, based on the only comparable vehicle I could rent, was $2,076.27; my lost time, before beginning this action, was ten hours, and my normal rate is $300.00 per hour; I expect to lose at least five more hours because of this action.

3. I believe, because of the above information, that I am entitled to and do request a judgment for $\underline{\$7,500.00}$, ~~including~~ any costs resulting in this action.

I state under penalty of perjury that the above is correct and truthful, except those based on my information and belief.

Dated: September 10, 2012

Signature of Plaintiff (or his attorney)

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	
COUNTY OF CHESTER	)	CA No.: 2012CV1210100749

T.B Patterson, Jr.,

Plaintiff,

vs.

Justo Carmona Ortega,

Defendant.

ANSWER ON BEHALF OF DEFENDANT

Jury Trial Demanded

Defendant, by and through his undersigned attorney, answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in the Plaintiff's Complaint not hereinafter specifically admitted is denied, and strict proof is demanded thereof.

2. The Defendant admits the allegations of Paragraph One (1) of the Complaint.

3. The Defendant is without knowledge sufficient to admit or deny the allegations of Paragraph Two (2) of the Complaint and deny the same.

4. The Defendant denies the allegations contained in Paragraph Three (3) of the Complaint, and denies that the Plaintiff is entitled to any recovery whatsoever.

FOR A SECOND DEFENSE

5. Any injuries and damages sustained by the Plaintiff as set forth in the Complaint, upon information and belief, were due to and caused by the sole negligence, recklessness, willfulness and wantonness of the Plaintiff in one or more of the following particulars:

a. In failing to maintain a proper lookout;

b. In failing to maintain proper control of his vehicle;

c. In failing to maneuver his vehicle to avoid contact with any objects or animals in the roadway;

d. In operating a vehicle with faulty equipment;

e. In failing to use brakes properly;

f. In driving at a speed that was too fast for conditions then and there existing;

g. In failing to observe the road and traffic conditions then and there existing;

h. In failing to exercise that degree of care and caution which a reasonable and prudent person would have exercised under the same or similar circumstances;

i. In failing to take evasive action; and

j. In additional particulars that may be revealed during discovery and/or in the evidence at trial.

All in violation of statutes and laws of the State of South Carolina, and by reason thereof, the Plaintiff is not entitled to recover from the Defendant.

FOR A THIRD DEFENSE

6. Any injuries and damages as were allegedly sustained by the Plaintiff at the time and place alleged in the Complaint, if any, upon information and belief, were due to and proximately caused by the negligence, recklessness, willfulness and wantonness of the Plaintiff, which contributed more than fifty (50%) percent to cause the accident and the Plaintiff's resulting injuries and damages, if any, in one or more of the following particulars as heretofore set forth in the Second Defense stated above, which allegations are realleged and incorporated herein by reference, and therefore the Defendant has no liability to the Plaintiff.

FOR A FOURTH DEFENSE

7. Even assuming the Defendant was careless, negligent, grossly negligent, willful, wanton or reckless in any respect, which is expressly denied, and even if any such conduct on his part operated as a greater than fifty (50%) cause of the accident and the Plaintiff's resulting injuries and damages, if any, which is also expressly denied, the Defendant is entitled to a determination as to the percentage which the Plaintiff's negligent, grossly negligent, reckless and willful conduct contributed to this accident and to a reduction of any amount awarded to them by an amount equal to the percentage of their own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A FIFTH DEFENSE

8. All risks and dangers, if any, connected with the accident referred to in the Complaint, were open, obvious and apparent and were known to or should have been known to the Plaintiff, and the Plaintiff was perfectly competent to judge the safety and risk arising out of or connected with operating a motorcycle, which risk was assumed and appreciated by the Plaintiff and for which the Defendant is not liable, and therefore, the Defendant affirmatively pleads assumption of the risk on the part of the Plaintiffs as a complete bar and defense to this action.

FOR A SIXTH DEFENSE

9. Any injury or damage sustained by the Plaintiff as a result of the matter alleged in the Complaint, upon information and belief, could not be avoided, and the Defendant pleads an unavoidable accident as a complete bar and defense to this action.

FOR A SEVENTH DEFENSE

10. Any injuries and damages sustained by the Plaintiff arising out of the incident referred to in the Complaint, resulted solely, upon information and belief, from the sole acts and omissions of a third party, which sole acts or omissions or intervening acts or omissions were the proximate cause of any injuries or damages sustained by the Plaintiffs, and therefore the Defendant has no liability to the Plaintiff, and the Complaint should be dismissed with prejudice.

FOR AN EIGTH DEFENSE

11. The Defendant is informed and believes the Plaintiff had the last clear chance to avoid the accident and therefore plead the last clear chance as a defense to the Plaintiff's cause of action.

FOR A NINTH DEFENSE

12. To the extent that the Plaintiff is seeking punitive damages, the provisions of the United States and the South Carolina Constitutions bar any claim on behalf of the Plaintiff for punitive damages.

13. That Plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3, of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees

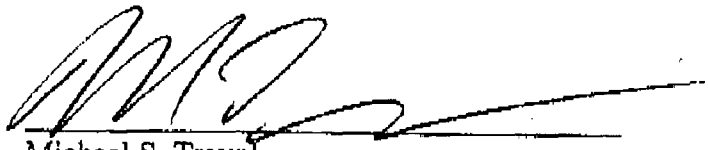
14. That Plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

15. That the Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, in that the amount of punitive damages is based upon the wealth of the Defendant.

16. That the Plaintiff's claim for punitive damages violates the Federal doctrine of separation of powers and Article 1, Section 8 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

WHEREFORE, having fully answered the Complaint, the Defendant demands that the Complaint of the Plaintiff be dismissed, with costs, and for such other and further relief as this Court deems just and proper.

HOWSER, NEWMAN & BESLEY, L.L.C.

BY: 

Michael S. Traynham
1508 Washington Street
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Columbia, South Carolina 29211
(803) 758-6000
ATTORNEY FOR DEFENDANT

October 12, 2012

2012CV1210100749
CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)
)
T. B. PATTERSON, JR.)
APPELLANT)
)
VS.)
)
JUSTO P. CARMONA ORTEGA)
RESPONDENT)

IN THE MAGISTRATE'S COURT

IN THE COURT OF COMMON PLEAS

NOTICE OF CIVIL APPEAL

The plaintiff, T. B. Patterson, Jr., hereby gives notice of appeal from the judgment of th magistrate's court in the above action, to the Circuit Court of Common Pleas, in the county c Chester.

This notice of appeal is made subsequent to personal notice of the judgment which wa received on the 25th day of May, 2013.

The appellant's exceptions to the judgment of the magistrate are set forth as follows:

The magistrate court failed to utilize the proper measure of damages, both as to the los of use of my vehicle while it was being repaired and my loss of time dealing with th consequences of the accident.

The court received in evidence a receipt for one week's rental along with the rent agreement that included details as to the rental cost for a daily rate and a weekly rate of the onl comparable vehicle I could find within a reasonable distance, from which the court correctl calculated my claim for twenty-three days of lost use at $1,776.27; however, the court instea measured damages by the out-of-pocket expense for the one week I actually rented a vehicle, i

the amount of $526.39, and awarded no compensation for the other sixteen days of loss of use stating that there was "no way to reliably quantify 'loss of use' as a general circumstance unde these conditions." This calculation of damages for my loss of use failed to make me whole; th proper measure of damages for loss of use is the fair market rental value of a comparable vehicl for the entire period of the loss of use. The actual out-of-pocket cost for the rental vehicle for week, together with the daily rate shown on the rental agreement, established a proper basis fo the calculation of the total loss of use compensation due. The damaged vehicle was not availabl for use for twenty-three days; there is no justification for limiting loss of use compensation to th out-of-pocket amount for one week of rental replacement.

Likewise, there is not a basis for the court's token award of compensation for loss c work time. The court noted that the time spent by me in dealing with the consequences of th accident, sixteen hours and twenty-five minutes, established by my sworn testimony, at m hourly rate of $300.00 at that time would amount to $4,925.00, and then awarded an amount c $100.00, calling it a "token" to compensate me for inconvenience. The court noted that the tim lost did not include time in the trial of the matter (which would have taken the claim well ove the jurisdictional limit of the court). The court ignored my loss of time, apparently on the basi that I had not failed to obtain any work, had not failed to complete any other work, and had nc demonstrated any other lost business. Thus, the court treated the loss of time as not worthy c compensation. The only measure an attorney typically has for his compensation is the time h spends working. When that time is taken from him, it is gone forever, just as certainly as if it ha been cash. For the magistrate's court to deny compensation for the time I lost as an attorney a the result of an accident on the basis that I did not fail in my other duties was a complete failur

of the that court to place me in the position in which I would have been had the accident no occurred, an accident for which the defendant admitted liability.

The court failed to compensate me properly for my losses by using an improper set o calculations and assumptions. This court should modify the award to grant me $1,776.27 for los of use of my vehicle, $5,723.73 for my lost time (maximizing the amount for lost time to th jurisdictional limit), $80.00 for costs in the magistrate's court, and my costs on this appeal.

Dated: June 12, 2013

T. B. Patterson, Jr., Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of this notice was delivered by electronic mail to Mr. Michae S. Traynham, 1508 Washington Street, P.O. Box 12009, Columbia, South Carolina 29211, o June 12, 2013.

T. B. Patterson, Jr.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH CIRCUIT COURT
COUNTY OF CHESTER	)	C/A NUMBER: 2013-CP-12-00267

T.B Patterson, Jr.,

Appellant,

vs.

Justo Carmona Ortega,

Respondent.

RESPONDENT'S BRIEF ON APPEAL

This matter was heard in a bench trial before the Honorable Yale Zamore in Great Falls South Carolina on April 12, 2013. Following trial on May 15, 2013, Judge Zamore issued ar order finding for the Plaintiff in the amount of $706.39. Following that order, on June 12, 2013 the Plaintiff (hereinafter "Appellant") filed this appeal, alleging that the trial order in this matte failed to utilize the proper measure of damages both as to the loss of use of his vehicle and the loss of time dealing with the consequences of the accident. Judge Zamore's Return on Appeal was filed with this court on July 9, 2013. The Respondent provides this separate brief for the convenience of the court and to reassert the legal authority and arguments made on behalf the Respondent at the trial of this matter.

BRIEF STATEMENT OF FACTS

As noted in the Final Order of this matter, liability for the underlying accident was undisputed at trial. Appellant's vehicle was damaged after running off the road to avoid a collision with Respondent. At trial, Appellant argued for damages based on lost use of his

vehicle, and lost time, which he asserts should be compensated at his standard civil attorney rat of $300.00 per hour.

Appellant testified he was without his vehicle for twenty-three days, at least part of whic was attributable to defective repairs by the auto shop Appellant selected. Those repairs had to b redone. Appellant calculated his lost use based on the daily rental rate for a comparable vehicl (Appellant's vehicle was a Chevrolet Suburban; the rental vehicle was a Chevrolet Tahoe) for th twenty-three day period, or $1776.27. His actual out-of-pocket rental expense was $526.39, sinc he only rented a replacement vehicle for a single week.

Appellant testified that he had spent 16 hours and 25 minutes of his time, (exclusive o time spent at trial) in dealing with the consequences of the accident – i.e. dealing with repairs picking up his vehicle, speaking with insurance adjusters, cleaning out the vehicle following th accident, preparing for trial, etc.). He calculated this "lost time" at a value of $4,925.00 based o the above-cited hourly rate.

As reported in Judge Zamore's final order and return, Appellant failed to provide an evidence of lost business, lost business opportunities, or even detrimental effect on existing clients. Appellant similarly failed to cite or offer a single legal authority in support of either hi lost use or lost time claims.

STANDARD ON APPEAL

A Circuit Court, hearing an appeal from a Magistrates Court, may make its own findin of fact. See A&I, Inc. v. Gore, 366 S.C. 233, 239, 621 S.E.2d 383, 386 (Ct. App. 2005) (citin S.C. Code Annotated Section 18-7-170).

ARGUMENT

As a preliminary matter, we note that Appellant failed in his Notice of Appeal to cite single legal authority in support of his assertion that the Magistrate Judge made an error of law i calculating damages. This failure compounds the issues presented by Appellant's failure t provide any authority at trial in his original argument for these damages. Such conclusor arguments, unsupported by precedent or statute, are generally deemed abandoned on appeal. Se Judy v. Judy, 384 S.C. 634, 644, 682 S.E.2d 836, 841 (Ct. App. 2009); See also Mulherin Howell v. Cobb,362 S.C. 588, 600, 608 S.E.2d 587, 593–94 (Ct. App. 2005)(finding part abandoned an issue on appeal due to failure to cite any supporting authority and making onl conclusory arguments). Nonetheless, we address the merits of Appellants contentions below.

Appellant first contends the trial court erred in calculating his loss of use, and that th court should have awarded loss of use for the entire time he was without his vehicle, and nc merely the actual out of pocket expense of renting a vehicle for a week. As the court noted in th Final Order for this matter, at least part of the time Appellant was without a vehicle wa attributable to faulty workmanship and repairs which had to be re-performed by the auto sho Appellant selected. Although not expressly stated, the trial court could reasonably hav concluded that this period of time was not proximately related to the underlying accident. Wha the court did expressly conclude was that Appellant "has proven an amount equal to one-week' rental expense for a replacement vehicle but nothing more."

A Plaintiff's burden to prove his damages is not lessened because fault for an underlyin accident is conceded. See Jackson v. Midlands Human Resources Center, 296 S.C. 526, 529, 37 S.C. 505, 506 (Ct. App. 1988) ("In a default case, the plaintiff must prove by competent evidenc the amount of his damages, and such proof must be made by a preponderance of the evidence."

Although not strictly applicable to this Court's review of a magistrate's decision, Rule 22 SCACR is instructive in advising that an appellate court may affirm any ruling, order, decisio or judgment upon any ground(s) appearing in the Record on Appeal. As the record indicates, th Appellant failed to meet his burden of proving damages beyond those awarded by the trial cour This finding should be upheld.

Appellant further asserts that he is entitled to compensation for his lost time dealing wit the consequences of this accident, asserting that "the only measure an attorney typically has fc his compensation is the time he spends working." In this, Appellant not only failed to assert an legal authority at trial or on appeal, but he also argues squarely against precedent. As argued b Respondent at trial, our Supreme Court has previously determined that:

> Where the rights, or asserted rights, of parties are in conflict, it is inevitable that eac party desiring to protect his rights must give time and attention to that end. To do so i not generally an element of damage[.]

See Rimer v. State Farm Mut. Auto. Ins. Co., 248 S.C. 18, 27, 148 S.E.2d 742, 746 (1966). Se also Pricket v. A&B Elec. Service, Inc., 280 S.C. 123, 125, 311 S.E.2d 402, 403 (Ct. App. 1984) Absent discernible, tangible lost earnings, this is the law of the land. Prickett at 125, 311 S.E.2 at 403. Appellant's contention that his time spent dealing with the everyday headaches followin an accident are compensable in the absence of evidence of a discrete loss is utterly withou merit.[1]

[1] Respondent argued a secondary argument at trial against the "lost time" damages" which will not be repeated in this Return in its entirety. In sum, this argument contends that Appellant failed to mitigate his damages, either by having someone compensable at less than $300 per hour handle his various accident-related errands or by hiring an attorney to represent him in this lawsuit who, on a contingency basis, would have been compensated no more than $2500 - significantly less than the compensation for lost time sought by the Appellant. This argument was made principally to illustrate the public policy concerns in recognizing the type of damages prayed for by Appellant.

CONCLUSION

Based on the foregoing, the Respondent respectfully requests this court affirm the Final Order of the magistrate in this matter and for such other relief as the court deems appropriate.

Respectfully Submitted,

HOWSER, NEWMAN & BESLEY, L.L.C.

BY: _____

Michael S. Traynham
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29211
(803) 758-6000
ATTORNEY FOR DEFENDANT

July 12, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH CIRCUIT COURT
COUNTY OF CHESTER	)	C/A NUMBER: 2013-CP-12-00267

T.B Patterson,

Plaintiffs,

vs.

Justo Carmona,

Defendant.

CERTIFICATE OF SERVICE

I, the undersigned employee of Howser, Newman & Besley, L.L.C., attorney for the Defendant, do hereby certify that I have served the foregoing **Respondent's Brief on Appeal** in the above-captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, with the return address clearly visible, postage prepaid, addressed to the attorney(s) of record as indicated below:

PRO SE PLAINTIFF:
T.B. Patterson, Esquire
P.O. Box 340
Lancaster, SC 29721

Diane Crutchfield

July 12, 2013

	IN THE COURT OF COMMON PLEAS SIXTH CIRCUIT COURT
STATE OF SOUTH CAROLINA)	C/A NUMBER 2013-CP-12-00267
COUNTY OF CHESTER)	
T. B. PATTERSON, JR.)	APPELLANT'S BRIEF ON APPEAL
APPELLANT)	
VS.)	
JUST0 P. CARMONA ORTEGA)	
RESPONDENT)	

The appellant hereby submits his brief on appeal in response to the return of th magistrate's court and the respondent's brief on appeal.

As stated in the notice of appeal filed previously, the magistrate court failed to utilize th proper measure of damages, both as to the loss of use of my vehicle while it was being repaire and my loss of time dealing with the consequences of the accident.

CORRECTION OF STATEMENT OF FACTS

The respondent, in the "brief statement of facts," incorrectly stated that I based my loss o use on the daily rental rate of the comparable vehicle; the damages were calculated at the week rate for the three full weeks, and at the daily rate for the additional two days (three times $526.3 plus two times $98.55, for a total of $1,776.27. The respondent also misstated that part of th twenty-three day loss of use period was caused by "defective repairs" that had to be re-done; th reason for the twenty-third day of loss of use was to replace a defective window originally use in the repairs (which was a salvage window as required by the respondent's insurer).

ARGUMENT

LOSS OF USE DAMAGES

While the court noted in its judgment and final order on page three that I submitted contract (that included rates for hourly and daily rental as well, plus tax rates) and a receipt for one-week rental of a Chevrolet Tahoe (the one most similar to my Chevrolet Suburban) and th I testified that I was without the use of my Suburban for twenty-three days in total due to th repairs necessitated by the damage to the truck caused by the accident for which the responder admitted liability, it, on page six, stated that I had proved only the "amount equal to one-week' rental expense for a replacement vehicle but nothing more." It then stated that "There is no wa to reliably quantify 'loss of use' as a general circumstance under these conditions."

Our Supreme Court held long ago that "As bearing on the question of the value of the us of the property of which the owner was deprived, the **rental value or expense of hiring substitute for that of which he was deprived is a pertinent consideration**." *Coleman Levkoff*, 128 S.C. 487, 491, 122 S.E. 875, _____ (1924) (emphasis added). Citing that cas sixty years later, the Court of Appeals noted that a daily rental was a proper measure of loss c use (a stipulated rental value). *Hutson v. Cummins Carolinas, Inc.*, 280 S.C. 552, 314 S.E.2d 1 (Ct.App. 1984). In *Newman v. Brown et al.*, 228 S.C. 472, 476, 90 S.E.2d 649, _____ (1955), th Supreme Court also cited *Coleman, supra*, in approving the charge of the trial court that include the following:

> Now in addition to that, you could award **a reasonable sum of money to compensate the owner of the automobile for the loss of the use of her automobile** for a reasonable length of time during which it would have taken her to have the same repaired. (Emphasis added).

In addition, Ralph King Anderson, Jr., *South Carolina Requests to Charge—Civil*, 2009, § 13-1 Damages—Automobile—Negligence Cause of Action, in discussing loss of use, specifies th

"In other words, recovery for loss of use based on customary rental charges is allowable eve though a substitute is not rented. Rental value is the amount for which the property in questio could have been rented on the market."

The magistrate made a fundamental misapplication of the law of South Carolina b deeming "loss of use" the same as incurred expense. The loss of use I suffered as a result of th accident was established by my sworn, uncontested testimony that I was deprived of the use c my vehicle for twenty-three days; the value of that loss of use was properly demonstrated by th contract for the rental expense for a comparable replacement vehicle. The magistrate awarde only one week of loss of use instead of the three weeks and two days actual loss of use; the los of use award should have been $1,776.27.

The contentions of the magistrate and the respondent that I offered no authority c precedent for my claim for loss of use damages, while correct in a technical sense, ar inaccurate. At all times I insisted that my loss was measured by the time I was deprived of th use of my vehicle, not by the amount of time I had a substitute vehicle; that is the law of Sout Carolina, and neither the magistrate nor the respondent have shown any basis for disregarding it

LOSS OF INCOME DAMAGES

The respondent argued that there is precedent to deny any damages to me for my los time in dealing with the accident and its aftermath, citing *Rimer v. State Farm Mut. Auto In. Co.*, 248 S.C. 18, 148 S.E.2d 742 (1966); his brief even provided a quote, but omitted the fin portion (in boldface below):

> Where the rights, or asserted rights, of parties are in conflict, it is inevitable that each party desiring to protect his rights must give time and attention to that end. To do so is not generally an element of damage, **although it may be in some situations where loss of earnings is involved, which is not the case here.**

The omission in the quote changes the whole import of the cite. In this case, I had lost incon and testified to establish it. The sixteen hours and twenty-five minutes that the accident took o of my time available for work should have been compensated in a damages award for loss income at my then-standard rate of $300.00 per hour.

Instead, the magistrate awarded an amount of $100.00, calling it a "token" to compensa me for inconvenience. The court ignored my loss of time. Had I been an hourly employee at a business and able to produce time records from that employment demonstrating that I had tak time off in order to deal with the repairs to my truck, there would be little argument that I w not entitled to compensation for the lost income. The fact that I am self-employed should n preclude my claim for compensation. I am accustomed to keep my time, in minutes, when I a working on cases for my clients; I kept my time for dealing with the accident just as if I we working for someone else, yielding my claim for a loss of income.

Loss of income is a standard element of damages in any negligence action. See Ral King Anderson, Jr., *South Carolina Requests to Charge—Civil*, 2009, § 13-3, Damages-Elements of Actual Damage in Negligence Cases. It is such an obvious element that there is n any expanded explanation of it included in the charges, while the loss of earning capacit medical bills, loss of consortium, mental anguish, pain and suffering, and many others a discussed at length. While the amount I should have been awarded might have been a point argument, there is no basis for the magistrate's complete denial of compensation for the time lost to the accident from which this matter arose.

The magistrate created additional criteria for proving loss of income that cannot l justified. For instance, the last sentence of his return noted "Similarly, at no time and in manner did the Plaintiff cite or present to the Court any authority for his position that his time, the rate of $300.00 per hour should be compensated when no tangible proximate damages we

demonstrated." That makes no sense; loss of income is never a "tangible" item. If the magistra meant that there was no personal injury that prevented my working, he created a requirement o of thin air; there is no precedent or authority for such a criterion. On pages four and five of h judgment and final order, the magistrate went through a laundry list of things I did not have show in justifying his ruling: I completed all my work in hand; I had a home office and did n quantify any overhead expenses; I did not show any wasted or lost (sic) proximately resultin from the accident; I was unable to specify any case or work I failed to obtain as a proxima result of the accident; and I submitted no letters or statements from clients about m unavailability to demonstrate actual lost business. There is no precedent or authority for the cou to require any of these as a prerequisite for qualifying for lost income. More importantly, none those things are really relevant to the issue of whether my lost time is compensable. The firs that I completed all my work in hand seemed to suggest that I could not present a claim for an loss of income unless I could show that I was unable to meet my obligations to do my work f my clients; the fourth, that I showed no case or work that I did not obtain because of th accident, imposed a requirement that I show a lost opportunity to have lost time; the fif suggested that I needed to submit hearsay evidence from clients unhappy with my unavailabilit in order to justify a claim for lost income. The lack of demonstrated overhead has nothing to d with loss of income; overhead is an expense of business operations that can be relevant to loss c a contract, but not to a loss of income on the basis of lost time.

My testimony of the time this accident cost me was not challenged on any factual basi nor was there any suggestion that I exaggerated or misstated the time. The magistrate shoul have granted me judgment for my lost income caused by the accident if I was to be made who after the accident caused by the negligence of the respondent.

Both the magistrate and the respondent argued that I did not cite any precedent o authority for my position that I was entited to compensation for the time I lost because of th accident. As I noted at the beginning of this section, the only authority cited by respondent w misstated to eliminate the implication that my position is the correct one. In fact, neither th respondent nor I could find any South Carolina authority directly on point, except the ve general duty of the courts to make a tort victim whole.

CONCLUSION

The magistrate failed to award a judgment that would compensate me for my losses ar did so on the bases of incorrect interpretations of South Carolina law. This court should modi the award to grant me $1,776.27 for loss of use of my vehicle, $5,723.73 for my lost tin (maximizing the amount for lost time to the jurisdictional limit), $80.00 for costs in th magistrate's court, and my costs on this appeal, $150.00.

T. B. Patterson, Jr.
Pro Se
P.O. Box 340
Lancaster, South Carolina 29721-0340
803-286-6999/Fax 888-258-2976
patterson@tbpattersonjrpa.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of this notice was delivered by electronic mail to Mr. Micha S. Traynham, 1508 Washington Street, P.O. Box 12009, Columbia, South Carolina 29211, c July 16, 2013.

T. B. Patterson, Jr.

STATE OF SOUTH CAROLINA

----------x

T.B. PATTERSON, JR.,

Appellant,

Case No.

-against-

2013-CP-12-00267

JUSTO CARMONA ORTEGA,

Respondent.

----------x

July 17, 2013

Chester, S.C.

B E F O R E:

HONORABLE J. ERNEST KINARD, JR.

A P P E A R A N E S:

T.B. PATTERSON, JR., Esquire

Attorney for the Appellant

MICHEAL S. TRAYNHAM, Esquire

Attorney for the Respondent

Aileen Butler

Official Court Reporter

THE COURT: Patterson verses Traynham. Okay. Who is doing what?

MR. PATTERSON: Yes, Your Honor I am not sure exactly what the procedures you follow for an appeal from Magistrate's Court.

I was told it was all done on the record. Do you want argument? Do you want a chance to read the stuff or what would you prefer.

THE COURT: Well, I represent to you and everybody that has been around, I am a speed reader, so I have read your brief you filed this morning.

MR. PATTERSON: Thank you, Your Honor.

THE COURT: That is all I read so far. Now I have Respondent's brief that was filed July 15th.

Okay. What is your position? I read your brief.

MR. TRAYNHAM: Respondent's position?

THE COURT: Yes.

MR. TRAYNHAM: All right, Your Honor if it please the Court do you have a copy of Judge Zamore's judgement and Final Order in this matter? I don't know if that is in front of Your Honor at this time.

THE COURT: All right.

MR. TRAYNHAM: I will hand that up along with his return.

THE COURT: I got a copy of one from May 15th.

MR. PATTERSON: His return included a copy of Final judgment and Order.

MR. TRAYNHAM: So your copy has a copy of the Final Order.

THE COURT: Yes.

MR. TRAYNHAM: All right. Respondent's position is essentially this. There is no question about liability in this case. We conceded that for purposes of trial. This accident was caused by Mr. Ortega. He was driving negligently and as a result Mr. Patterson ran off the road. The fact of liability has been conceded doesn't change the plaintiff's burden at trial for proving causation and the measure of any recoverable damages.

Mr. Patterson has sought two basic types of damages. Loss of use on the vehicle and loss of time is how we described it and how Judge Zamore described it. Your Honor, I will not stand here and pretend I am an extremely experienced attorney who has been around for decades, but I have handled a couple of car accident cases and I have handled a lot of car accident cases that involved loss of wages and I never handled a claim whether from a pro se plaintiff or a represented party where they were seeking damages for loss time unaccompanied by provable loss wages. Which is exactly

what we have here and exactly why Judge Zamore ruled against that measure of damages. We sited a decision Rymer (phonetics) vs State Farm, and I did receive a copy of Mr. Patterson's brief just this morning. I haven't have time to prepare any kind of a concerted legal research response to that brief, but he does take issue that we don't go far enough into that Rymer vs. State Farm decision. It does say that time spent by a party in defending their rights is generally not a recoverable element of damages accept in those areas where there is a provable loss of earnings. But Judge Zamore has found in his Final Order that there weren't proven loss earnings here. He tries to you say it is not fair that someone who is in an hourly wage position or salaried position would be able to recover for loss earnings but he as a solo practitioner can't do the same. Well, Your Honor, the difference is a person in an hourly position or a salaried position can prove beyond that preponderance of the evidence standard that they by missing time from work would have received a wage or hourly payment. Mr. Patterson had the opportunity at trial to prove that he lost some discernable, definable, tangible amount money, or business and earnings and failed to do so which is why Judge Zamore found against him. And I will also point

out that Mr. Patterson failed to point out in the next paragraph of the Rymer decision specifically addresses the issue of attorney fees which is precisely what Mr. Patterson is seeking here. His time as compensation at his hourly attorney civil rate of $300 an hour for defending -- or pursuing this claim is for all intents and purposes his own attorney fees. Those are not recoverable under any circumstances unless provided by case law or statute. He can't provide any authority for that.

That is my position on the loss time portion of things.

THE COURT: All right.

MR. TRAYNHAM: In terms of the loss use if Your Honor if it pleases the Court I will address that very briefly, Your Honor.

THE COURT: If you'll feel better you can address it.

MR. TRAYNHAM: Well, I will sit down, Your Honor, I think you probably heard enough from me at this point.

THE COURT: All right. Mr. Patterson.

MR. PATTERSON: Yes, sir. On the loss of use, you already read the brief, I think it is clear that Judge Zamore didn't follow the law of South Carolina or any other place.

The loss of use is not equivalent to funds expended. It is equivalent to the time you lost your vehicle and that was 23 days and it comes to the sums that are listed both in the judgement and then in my brief as well.

THE COURT: Well, it looks like he should have given you a little more money but I am not going to reverse it. It is just like trying it in front of a jury. They don't have to give you what you testified to.

MR. PATTERSON: If I might finish Your Honor.

THE COURT: I'll let you finish.

MR. PATTERSON: On the loss of use the law requires that I be given, and the jury instructions in the State and every decision in the Court entitles me to compensation. Judge Zamore specifically gave me only out of pocket and that is not the correct measure of damages Your Honor. I went to small claims court hoping for a little measure of justice after all the time and effort they put me through to get anywhere, but I didn't even get the law and that is what I am asking this Court to do is at least impose that part of it.

Now, as far as the loss time - -

THE COURT: All I can do is send it back down and then he will give you ten more dollars and you will be

right back here again.

MR. PATTERSON: Well, Your Honor, I thought you could actually - -

THE COURT: I am sorry it's a fact question. You say you lost $300 an hour. He can just say -- he can find that you didn't do that.

MR. PATTERSON: Well then, that would be appropriate, Your Honor, but he can't do it on the basis of improper factors. He has got to look at it straight up and say no, you didn't spend this time, or no, you are not entitled to compensation.

THE COURT: The fact that his Order does that, I'm sorry.

MR. PATTERSON: Okay, but the loss of use part of it he just flat missed and the case is fully developed and you can award that, I think, plus my costs.

THE COURT: What kind of cost are you talking about?

MR. PATTERSON: Well, he awarded the $80 in costs and then $150 cost here.

THE COURT: What kind of law do you practice.

MR. PATTERSON: I am a sole practitioner, so pretty much everything except bankruptcy.

THE COURT: Where do you practice?

MR. PATTERSON: Lancaster. And most of my cases

most of my work in South Carolina has been appointed criminal and I do personnel injury work.

THE COURT: I have been chief judge there all year I have been chief judge there before. I have been there a lot and I have never seen you. That's all.

MR. PATTERSON: Yes, sir. Most of my work in Lancaster has been appointed criminal work and we have seen each other there. You may not remember me. I tend to -- obviously I get the leftovers from the public defender and then the other work that I do is in -- I came from Arkansas, so I still got clients that are all over the States. I got one client in particular that I represent all over the United States because he has got a national service company and I spend a lot of time with that, and then the other work I have done has been a couple -- I had a couple - - well, I had a wrongful arrest in Kershaw. I represented him in.

THE COURT: Property damage cases are the worst ones we deal with and there is not enough money involved for an attorney to get involved.

MR. PATTERSON: That is exactly right.

THE COURT: And you can't get compensated for your time in pursuing it.

MR. PATTERSON: Now, that is not what I asked for. I asked for the time I lost because of the accident, not

doing legal work, but because of the accident. There is a difference, Your Honor.

THE COURT: I understand you differentiated that but the magistrate didn't find that. He found just like everybody else. You didn't lose any more than anybody in the normal circumstances would have.

MR. PATTERSON: But, Your Honor, the criteria he expressed which stated in his Order were wrong and they were wrong for the reasons I already gone through, but in particular there is no requirement for me to lose money. I lost time, which is my money. That is all I got. I am like every other person in the world. I got what is it, like 168 hours in a week and they take 16 of them. They taken that much time and money from me regardless of where I choose to spend it. Judge Zamore said I hadn't specified that I lost a particular case or I didn't get my work done. Judge Zamore was saying for that purpose that I had to commit malpractice or default in my obligations. The fact that I found the time, I made the time, still didn't detract from the fact that I had time taken from my work producing and income producing efforts taken away for this thing that was not my fault. I am not being made whole in any fashion.

THE COURT: You don't ever get whole in a wreck case where there is property damage. Nobody has ever

been made whole. Forget about it. I have been doing it over 25 years. Property damages, nobody ever gets whole. There is no way to get whole.

MR. PATTERSON: I could at least get whole in my loss of use, Your Honor. That is the law.

THE COURT: He said you didn't convince him that pre-existing problems didn't cause part of that. I am paraphrasing what he said..

MR. PATTERSON: No, that is not in there, Your Honor. You misread that.

THE COURT: Well, the Magistrate made more findings then they normally make. He said you didn't convince him you lost anything other than income.

MR. PATTERSON: That was the wages part of it or the lost income part of it.

I am saying that while that is arguable and subject to interpretation I think he has got it wrong, but the part about the loss of use he absolutely got wrong. He awarded the out of pocket only and that is not the measure of damages required under South Carolina Law. That you can fix without sending it back to the judge. You can enter the Order in fact imposes the correct amount for the loss of use by the law.

THE COURT: I think I just going to deny you. Sorry.

His Order is much better than most. He makes all kinds of findings in there.

MR. PATTERSON: Your Honor, verbiage doesn't justify.

THE COURT: Yes, but he addresses them. Most Magistrates don't. They would have just said, I find for the plaintiff $720. He went to the trouble saying why he didn't order you -- give you $300 per hour.

MR. PATTERSON: I don't accept that he is right --

THE COURT: I understand.

MR. PATTERSON: -- that he is right in any fashion on the loss of use. You know, he has taken a per se rule that a self-employed attorney can't be compensated for the time he loses is what that is creating.

THE COURT: That is what you are saying. That is not necessarily so, But in this case he made enough factual findings to be sustained.

If he had ruled for you on all you wanted I mean I would have left it like it was.

MR. PATTERSON: Well, Your Honor, if he had ruled for me on all I wanted I wouldn't be up here.

THE COURT: I understand that.

MR. PATTERSON: On the other hand if he had also given me the appropriate measure for my loss of use I would have probably not been up here either because that

is not arguable. That is the law of South Carolina. That is the law of every place in the land and right now I am left with -- I still haven't been compensated. That is what has brought this whole lawsuit by in first place. Obviously I wasn't dealing with Mr. Carmona Ortega. He appeared a couple of times. He has got an insurance company. That is why there is a lawyer here and that insurance company ran me through the hoops and made jump over all their little rails and they wouldn't help me get a car when I had to travel and so I rented a car that was comparable and then they didn't want to compensate that. And so that created this whole thing and basically they are walking away without ever meeting their legal obligations. Any of them. And that is what is frustrating at this point.

THE COURT: I understand your frustration, but I am not going to alter it. All right.

MR. TRAYNHAM: Your Honor, I don't want to beat a dead horse but in anticipation of possible further appeal may I make one or two points on the record?

THE COURT: You can prepare an Order.

MR. TRAYNHAM: All right. I will do that, Your Honor. Thank you.

THE COURT: You can't put anything in the Order that is not in your brief.

MR. TRAYNHAM: Very well, Your Honor.

THE COURT: Send it to Camden, self-addressed stamped envelope.

MR. PATTERSON: Explain to me the process, of the Order, Your Honor, and what you anticipate it will contain.

THE COURT: He will copy you with it. If you object to anything in it just write it.

MR. PATTERSON: I am going to be traveling starting Friday.

THE COURT: Good.

MR. PATTERSON: And so if I can have maybe two weeks after I get it from him.

THE COURT: You can do that. I will be at the beach with my kids and grandkids next week.

MR. PATTERSON: Thank you, Your Honor.

THE COURT: And with a heavy heart, this is not something I will be thinking about and researching while I am down there.

MR. PATTERSON: I didn't expect anything different.

THE COURT: Once I get the Order you can object to it.

MR. PATTERSON: Thank you.

MR. TRAYNHAM: Thank you, Your Honor.

MR. PATTERSON: May we be excused?

THE COURT: Sure.

(END OF TRANSCRIPT)

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Chester County, South Carolina, on the 17th day of July, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 30, 2013

Aileen Butler

enterprise

OWNER OF VEHICLE: ENTERPRISE LEASING COMPANY - SOUTHEAST
BRANCH ADDRESS: 801 GOLD HILL RD., FORT MILL, SC. 29707 (803) 548-7966

Mo 7:30 AM - 6:00 PM TU 7:30 AM - 6:00 PM
WE 7:30 AM - 6:00 PM TH 7:30 AM - 6:00 PM
FR 7:30 AM - 6:00 PM SA 9:00 AM - 12:00 PM
SU CLOSED

53WSCSPR09 PAGE 1 of 4
REF# 6EZCS0

RENTAL TYPE: RETAIL | SOURCE #: RETAIL REN | LD #: 295 | RENTAL AGREEMENT NO. D 382343

09/24/2009 1:41 PM

RENTER: PATTERSON THURMAN

START CHARGES IF DIFFERENT

ORIGINAL VEHICLE

COLOR	LICENSE NO.
SILVE	TEMP
MODEL	ECAR#
TAHO	2867M6
MILE-AGE IN	11863
MILE-AGE OUT	11793
DRIVEN	AAA

CONDITION AND FUEL LEVEL AGREED TO: RENTER

NO DAMAGE

FUEL OUT E 1/8 1/4 3/8 1/2 5/8 3/4 7/8 F (No Gasoline Refunds)
FUEL IN E 1/8 1/4 3/8 1/2 5/8 3/4 7/8 F

BILL TO: N COMPANY
ATTN: PHONE EXT.
REFERENCE NUMBER:

ADDITIONAL AUTHORIZED DRIVER(S) - EXCEPT AS REQUIRED BY LAW, NONE PERMITTED WITHOUT OWNER'S WRITTEN APPROVAL.
I REQUEST OWNER'S PERMISSION TO ALLOW: NO OTHER DRIVERS PERMITTED

WHO IS UNDER MY CONTROL AND DIRECTION TO DRIVE VEHICLE FOR ME AND ON MY BEHALF. I AM RESPONSIBLE FOR THEIR ACTS WHILE THEY ARE DRIVING, AND FOR FULFILLING TERMS AND CONDITIONS OF THIS RENTAL AGREEMENT (AGREEMENT). USE OF VEHICLE BY AN UNAUTHORIZED DRIVER WILL AFFECT MY LIABILITY AND RIGHTS UNDER THIS AGREEMENT.
RENTER: X

PERMISSION GRANTED TO OPERATE VEHICLE ONLY IN THE STATE OF RENTAL AND THE FOLLOWING STATE(S):
SC/GA/AL/NC
OPERATION IN ANY OTHER STATE OR COUNTRY WILL AFFECT YOUR LIABILITY AND RIGHTS UNDER THIS AGREEMENT.

OPTIONAL PRODUCTS NOTICE: WE OFFER FOR AN ADDITIONAL CHARGE THE FOLLOWING OPTIONAL PRODUCTS: DAMAGE WAIVER; PERSONAL ACCIDENT INSURANCE; ROADSIDE ASSISTANCE PROTECTION AND SUPPLEMENTAL LIABILITY PROTECTION. YOU MAY HAVE INSURANCE POLICIES IN PLACE THAT ALREADY PROVIDE THE COVERAGE BEING OFFERED. BEFORE DECIDING WHETHER TO PURCHASE ANY OF THESE PRODUCTS, YOU SHOULD DETERMINE WHETHER YOUR PERSONAL INSURANCE OR CREDIT CARD PROVIDES YOU COVERAGE DURING THE RENTAL PERIOD. THE PURCHASE OF ANY OF THESE OPTIONAL PRODUCTS IS NOT REQUIRED TO RENT VEHICLE.
RENTER:

RENTER DECLINES OPTIONAL DAMAGE WAIVER (DW) AND ASSUMES DAMAGE RESPONSIBILITY. SEE PAGE 2, PARAGRAPH 6. RENTER: X Declines DW	RENTER ACCEPTS OPTIONAL DAMAGE WAIVER (DW) AT FEE SHOWN IN COLUMN TO RIGHT. SEE OPTIONAL PRODUCTS NOTICE TO LEFT AND PAGE 3, PARAGRAPH 16. DW IS NOT INSURANCE. RENTER: X Accepts DW
RENTER DECLINES OPTIONAL PERSONAL ACCIDENT INSURANCE (PAI). SEE PAGE 2, PARAGRAPH 9. RENTER: X Declines PAI	RENTER ACCEPTS OPTIONAL PERSONAL ACCIDENT INSURANCE (PAI) AT FEE SHOWN IN COLUMN TO RIGHT. SEE OPTIONAL PRODUCTS NOTICE TO LEFT AND PAGE 3, PARAGRAPH 18. RENTER: X Accepts PAI
RENTER DECLINES OPTIONAL SUPPLEMENTAL LIABILITY PROTECTION (SLP). SEE PAGE 2, PARAGRAPH 7. RENTER: X Declines SLP	RENTER ACCEPTS OPTIONAL SUPPLEMENTAL LIABILITY PROTECTION (SLP) AT FEE SHOWN IN COLUMN TO RIGHT. SEE OPTIONAL PRODUCTS NOTICE TO LEFT AND PAGE 3, PARAGRAPH 17. RENTER: X Accepts SLP

ACKNOWLEDGMENT OF THE ENTIRE AGREEMENT, WHICH CONSISTS OF PAGES 1 THROUGH 4.
I HAVE READ AND AGREE TO THE TERMS AND CONDITIONS ON PAGES 1 THROUGH 4 OF THIS AGREEMENT AND BY MY SIGNATURE BELOW I AM THE "RENTER" UNDER THIS AGREEMENT. BY SIGNING BELOW, I AM AUTHORIZING OWNER TO PROCESS CHARGES ON MY CREDIT CARD(S) AND/OR DEBIT CARD(S) FOR ADVANCE DEPOSITS, INCREMENTAL AUTHORIZATIONS/DEPOSITS, AND CHARGES INCURRED, AS WELL AS PAYMENTS REFUSED BY A THIRD PARTY TO WHOM BILLING WAS DIRECTED. I CERTIFY THAT THE DRIVERS LICENSE(S) PRESENTED IS CURRENTLY VALID AND IS NOT SUSPENDED, EXPIRED, REVOKED, CANCELLED OR SURRENDERED.

RENTER: X DATE 09/24/2009
OWNER REP X EMPL. # E790BV

REPLACEMENT VEHICLE

COLOR	LICENSE NO.
MODEL	ECAR#
MILE-AGE IN	
MILE-AGE OUT	
DRIVEN	

CONDITION AND FUEL LEVEL AGREED TO: RENTER

NO DAMAGE

FUEL OUT E 1/8 1/4 3/8 1/2 5/8 3/4 7/8 F (No Gasoline Refunds)
FUEL IN E 1/8 1/4 3/8 1/2 5/8 3/4 7/8 F

I WILL RETURN CAR BY:

DATE	TIME
10/01/2009	1:30 PM

DEPOSIT(S):

AMOUNT	PAID BY
$626.39	xxxxxxxxxxxx8704 09/24/2009

ADDITIONAL INFORMATION

VEHICLE $24.75/HOUR
~~$87.99/DAY~~
$449.99/WEEK

NO CHARGE MILEAGE

FUEL CHARGE $3.80/GALLON

~~SALES TAX 7.00%~~
SC RENTAL SURCHARGE 5.00%

TOTAL CHARGES	
DEPOSITS	
REFUNDS	
AMOUNT DUE	

CLOSED BY

PAID BY	CASH	CHECK	CHAR
RECEIPT OF CASH REFUND	DATE	AMOUNT	RECEIVED

OWNER IS AN AFFILIATE OF ENTERPRISE RENT-A-CAR COMPANY, WHICH OWNS ALL RIGHTS TO ENTERPRISE NAMES AND MARKS.

~~$626.39~~ $626.39

ENTERPRISE LEASING COMPANY - SOUTHEAST, 597 LANCASTER BYPASS EAST, LANCASTER, SC 297204726 (803) 286-5322

RENTAL AGREEMENT 362343
REF# 62ZCS0

RENTER
PATTERSON, THURMAN

DATE & TIME OUT
09/24/2009 01:41 PM
DATE & TIME IN
10/01/2009 11:57 AM

BILLING CYCLE
24-HOUR

VEH #1 2009 CHEV TAHO 2LT2
VIN# 1GNEC23389R242839
LIC# TEMP
MILES DRIVEN 1245

SUMMARY OF CHARGES

Charge Description	Date	Quantity	Per	Rate	Total
TIME & DISTANCE	09/24 - 10/01	1	WEEK	$469.99	$469.99
REFUELING CHARGE	09/24 - 10/01				$0.00
			Subtotal:		**$469.99**
Taxes & Surcharges					
SC RENTAL SURCHARGE	09/24 - 10/01			5%	$23.50
SC SALES TAX	09/24 - 10/01			7%	$32.90
			Total Charges:		**$526.39**

Total Amount Due **$0.00**

PAYMENT INFORMATION

AMOUNT PAID	TYPE	CREDIT CARD NUMBER
$526.39	Visa	XXXXXXXXXXXX8706 PENDING

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 1, 2014

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas
Sixth Circuit Court
J. Ernest Kinard, Jr., Chief Administrative Judge

Case No. 2013- 002677

T. B. Patterson, Jr., Appellant,

v.

Justo P. Carmona Ortega, Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the court of common pleas err in upholding the magistrate's refusal to award complete relief for loss of use of his vehicle to appellant?

2. Did the court of common pleas err in upholding the magistrate's refusal to award any sum for lost income to appellant?

STATEMENT OF THE CASE

Please note that the appellant is an attorney appearing *pro se* who has chosen to use the third person to discuss the issues in the case.

The parties were involved in a motor vehicle accident on September 21, 2009, in Lancaster County, South Carolina, where the appellant resided; the respondent was a resident of Chester County. The appellant filed a complaint in tort for negligence in the Magistrate's Court of Chester County, on September 10, 2012, seeking damages for the loss of use of his vehicle and for loss of income, requesting $7,500.00 plus costs; the respondent's answer was filed on October 15, 2012, alleging multiple defenses. After the respondent admitted liability, both parties waived jury trial, and respondent waived his personal appearance, the Honorable Yale Zamore, Chester County Magistrate, heard the issue of damages in a bench trial on April 12, 2013. Judge Zamore filed his judgment and final order on May 16, 2013, awarding $526.39 for the rental expense for a replacement vehicle for one week while denying any compensation for the other sixteen days of loss of use of appellant's vehicle during repairs, $100.00 for a "token award" for inconvenience, while denying entirely appellant's claim for $4,925.00 for time lost from

his work as an attorney, at $300.00 per hour, and $80.00 costs. The total award was $706.39.

Appellant filed his notice of appeal in the Magistrate Court of Chester County and in the Court of Common Pleas of Chester County on June 13, 2013; it requested that the court modify the order of the magistrate court to award appellant the compensation due for his entire loss of use, in the amount of $1,776.27, and $5,723.73 for his billable time lost (maximizing the amount to the jurisdictional limit of the magistrate court), together with his costs in the magistrate and common pleas courts, $80.00 and $150.00 respectively. Respondent served his brief on appeal on July 12, 2013; appellant served his brief on appeal on July 16, 2013; and the Honorable J. Ernest Kinard, Jr., Chief Administrative Judge of the Court of Common Pleas of Chester County heard the appeal on July 17, 2013. Judge Kinard, noting that he had read the brief of appellant, invited the respondent to state his position, and permitted the parties to argue at length. He denied any relief from the order of the magistrate.

A final order, which stated the findings of the court and denied the appellant's request for relief, was signed by Judge Kinard on September 14, 2013; it was filed by the Clerk of Court, Chester County, on September 23, 2013. Appellant served his notice of appeal of Judge Kinard's decision on December 12, 2013, after receipt of copies of the filed final judgment that were mailed to him on November 11, 2013, and November 13, 2013, and subsequently filed it and proof of service in the Court of Appeals and in the Court of Common Pleas of Chester County.

ARGUMENT

1.

THE COURT OF COMMON PLEAS ERRED IN UPHOLDING THE MAGISTRATE'S REFUSAL TO AWARD COMPLETE RELIEF FOR LOSS OF USE OF HIS VEHICLE TO APPELLANT.

The magistrate failed to award appellant the full measure of damages to which he was entitled for the loss of use of his vehicle while it was being repaired after an accident for which respondent admitted liability. He ignored the standard for proof of loss of use damages and instead awarded out-of-pocket expenses for a replacement vehicle rented for only part of the time the vehicle of appellant was not available to him. When that was argued to the court of common pleas and the correct standard noted, the judge refused to grant any relief. The magistrate court erred in failing to assess the damages for loss of use properly and the court of common pleas erred in refusing to correct that error or reverse to have that error corrected by the magistrate.

The appellant sued respondent for loss of use of his vehicle and lost income resulting from a motor vehicle accident that occurred on September 21, 2009 (complaint, September 10, 2012; R. 13); the respondent admitted liability and the matter was submitted to the Honorable Yale Zamore, Magistrate, Chester County at a bench trial (magistrate's judgment, May 16, 2013, page 1; R. 6). The respondent waived his appearance, but was represented by counsel (magistrate's judgment, May 16, 2013, page 1; R. 6); the only witness was appellant, an attorney appearing *pro se* (magistrate's judgment, May 16, 2013, pages 2 and 3; R. 7 and 8). At the conclusion of the trial, the judge took the matter under advisement (magistrate's judgment, May 16, 2013, page 5;

R. 10), and issued his ruling on May 15, 2013; the written judgment was recorded on May 16, 2013.

In its judgment, the court noted that appellant testified that he was without the use of his vehicle for three weeks and two days, and entered into evidence a copy of a vehicle leasing form from Enterprise Leasing Company with a receipt showing a total billing in the amount of $526.39 for one week's use of a 2009 Chevrolet Tahoe. (Magistrate's judgment, May 16, 2013, page 3; R. 8; Plaintiff's exhibit, April 12, 2013; R. 50 and 51). The court noted that one day of loss of use was caused by the necessity to replace the defective window first used by the repair shop; the judgment then noted that the only out-of-pocket expense was the rental for one week of the replacement vehicle and that the remaining claim, for a total of $1,776.27 (three weeks at $526.39 plus two days at $98.55) was based upon that quoted rental expense "but that does not appear to have actually been incurred."

After a finding that "[Appellant] has demonstrated he spent $526.39 for a replacement vehicle for one week and he paid $80.00 in court costs," the judge stated that, "I find him entitled to this." (Magistrate's judgment, May 16, 2013, pages 5 and 6; R. 10 and 11). The court then elaborated on the decision, stating that [Appellant] clearly sustained the loss of use while his vehicle was being repaired and that it was proximately caused by the accident, but went on to add that "the record before the court substantiates only the expense for a replacement vehicle for one week and not for the entire time for the repairs." It further stated that [Appellant] had proved "an amount equal to one-week's rental expense but nothing more," adding that, "There was no way to reliably quantify

'loss of use' as a general circumstance under these conditions." (Magistrate's judgment, May 16, 2013, page 6; R. 11).

The magistrate was mistaken in his view of the standard to measure the damages for loss of use. Our Supreme Court held long ago that "As bearing on the question of the value of the use of the property of which the owner was deprived, the **rental value or expense of hiring a substitute for that of which he was deprived is a pertinent consideration**." *Coleman v. Levkoff*, 128 S.C. 487, 491, 122 S.E. 875, _____ (1924) (emphasis added). Citing that case sixty years later, this court noted that a daily rental was a proper measure of loss of use (a stipulated rental value). *Hutson v. Cummins Carolinas, Inc.*, 280 S.C. 552, 314 S.E.2d 19 (Ct.App. 1984). In *Newman v. Brown et al.*, 228 S.C. 472, 476, 90 S.E.2d 649, _____ (1955), the Supreme Court also cited *Coleman, supra*, in approving the charge of the trial court that included the following:

> Now in addition to that, you could award **a reasonable sum of money to compensate the owner of the automobile for the loss of the use of her automobile** for a reasonable length of time during which it would have taken her to have the same repaired. (Emphasis added).

In addition, Ralph King Anderson, Jr., *South Carolina Requests to Charge—Civil*, 2009, § 13-14, Damages—Automobile—Negligence Cause of Action, in discussing loss of use, specifies that "In other words, recovery for loss of use based on customary rental charges is allowable even though a substitute is not rented. Rental value is the amount for which the property in question could have been rented on the market."

These arguments were presented to the Honorable J. Ernest Kinard, Jr., Chief Administrative Judge for the Court of Common Pleas of Chester County, by brief (appellant's brief, July 16, 2013, pages 2 and 3; R. 30 and 31) and by argument (transcript, July 17, 2013, pages 6, 7, and 10; R. 40, 41, and 44) at the appeal hearing

before him on July 17, 2013. The judge stated, "Well, it looks like he should have given you a little more money but I am not going to reverse it. It is just like trying it in front of a jury. They don't have to give you what you testified to." (Transcript, July 17, 2013, page 6; R. 40). Appellant made additional argument to and had discussion with the court, but the judge said that there was nothing he could do (transcript, July 17, 2013, pages 6, 7, 8, and 10; R. 40, 41, 42, and 44); when appellant argued that the loss of use damages was fully developed and the court could award the proper measure of damages for that plus costs (transcript, July 17, 2013, page 7; R. 41), the judge diverted the discussion to the costs ($80.00 in magistrate court and $150.00 for the appeal), and then questioned appellant about what type of law he practiced and where (transcript, July 17, 2013, page 7; R. 41), and then concluded that he had never seen appellant, even though he had been to Lancaster as chief judge a lot (transcript, July 17, 2013, page 8; R. 42). After appellant objected that he was not being made whole in any fashion and continued that the court could correct the loss of use damages error of the magistrate, the judge stated, "I think I['m] just going to deny you. Sorry." (Transcript, July 17, 2013, page 10; R. 44).

The magistrate failed to utilize the proper standard under South Carolina law for the loss of use damages in this matter and the court of common pleas refused to correct that error. This court should reverse the judgment of the court of common pleas and direct entry of judgment in the amount of $1,776.27, for loss of use, together with costs of $80.00 in the magistrate court and $150.00 in the court of common pleas.

2.

THE COURT OF COMMON PLEAS ERRED IN UPHOLDING THE MAGISTRATE'S REFUSAL TO AWARD ANY SUM FOR LOST INCOME TO APPELLANT.

The magistrate refused to award appellant any damages for his time lost from work caused by the motor vehicle accident for which respondent admitted liability. In doing so, he appeared to apply a standard to measure damages that he created which would make it impossible for a self-employed attorney to be eligible for compensation absent malpractice or malfeasance; that apparent standard would make it difficult if not impossible for any self-employed person to quantify damages without having failed to fulfill his obligations or commitments. The court of common pleas declined to examine any of the stated reasons for the denial of damages for time lost and to require the magistrate court to assess damages for lost income properly, apparently on the basis that the case was a "property damage case." Both the magistrate and the court of common pleas failed to assess damages in a proper manner and this court should reverse the judgment and return it to the courts below for an assessment of lost income damages in accordance with South Carolina law.

After stating that [Appellant] testified to the loss of sixteen hours and twenty-five minutes and his hourly rate was $300.00, for a total claim of lost income in the amount of $4,925.00, the magistrate noted that [Appellant] conceded that he had completed all his "work in hand," (magistrate's judgment, May 16, 2013, page 4; R. 9) was unable to specify any cases or work he failed to obtain, and presented no letters complaining about unavailability from clients or potential clients to substantiate his claim for lost time with a demonstration of actual lost business. (Magistrate's judgment, May 16, 2013, pages 4 and

5; R. 9 and 10). The magistrate then stated that "[Appellant] has claimed $300.00 per hour for his time but has not proven any tangible and quantifiable losses sustained as a result. These factors appear to fall into the general category of inconvenience." (Magistrate's judgment, May 16, 2013, page 6; R. 11). The magistrate stated a token award should be made, and set the amount of "token damages" at $100.00. (Magistrate's judgment, May 16, 2013, page 6; R. 11).

While the court of common pleas characterized the action as a "property case" (transcript, July 17, 2013, page 8; R. 42), it was a tort case for negligence: respondent caused a motor vehicle accident through his negligent operation of his truck and admitted liability. The task before both the magistrate and the court of common pleas was to assess damages. Both refused to do so.

To recover from a defendant on a claim for negligence, a plaintiff is required to show (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from that breach. *Carolina Chloride, Inc. v. Richland County*, 394 S.C. 154, 714 S.E.2d 869 (2011); *Tanner v. Florence County Treasurer*, 336 S.C. 552, 561, 521 S.E.2d 153, 158 (1999); *Andrews v. Piedmont Air Lines*, 297 S.C. 367, 377 S.E.2d 127 (Ct.App. 1989); *South Carolina Insurance Company v. James C. Greene & Co.*, 290 S.C. 171, 348 S.E.2d 617 (Ct. App. 1986). In this instance, respondent admitted liability, so that the court needed only to determine the proper measure of damages, as the magistrate noted. (Magistrate's judgment, May 16, 2013, pages 2 and 3; R. 7 and 8).

Generally, the measure of damages in a tort case is "the amount needed to compensate the plaintiff for the losses proximately caused by the defendant's wrong so

that the plaintiff will be in the same position he would have been in if there had been no wrongful injury." *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 312, 594 S.E.2d 867, 874 (Ct.App.2004); see also *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000) ("The goal [of compensatory damages] is to restore the injured party to the same position he or she was in before the wrongful injury occurred."); *Haselden v. Davis*, 353 S.C. 481, 486, 579 S.E.2d 293, 296 (2003) (Burnett, J., dissenting). *Turpin v. Lowther*, 404 S.C. 581, 745 S.E.2d 397 (Ct.App. 2013).

The magistrate noted that appellant testified that he had lost sixteen hours and twenty-five minutes of available work time because of the accident caused by the respondent and that his standard rate at the time was $300.00 per hour (magistrate's judgment, May 16, 2013, page 2 and 3; R. 7 and 8); appellant valued that lost time at $4,925.00 (magistrate's judgment, May 16, 2013, page 5; R. 10). But the magistrate did not regard that as sufficient to establish a compensable loss. Instead, he cited several things that appellant did not do, most of which would have established malpractice or malfeasance on the part of a practicing attorney; the rest had no relevance to a determination of the value of time lost. (Magistrate's judgment, May 16, 2013, pages 4 and 6; R. 9 and 11). Whatever the basis he used, the magistrate decided the value of the appellant's lost time was nothing, stating "the [Appellant] has claimed $300.00 per hour for his time but has not proven any tangible and quantifiable losses sustained as a result." (Magistrate's judgment, May 16, 2013, page 6; R. 11).

Appellant, a self-employed attorney, had only his time and his hourly charge to measure the value of his time. That would have been sufficient for any plaintiff who was an hourly employee of another: his lost income would be measured by the time he missed

from work times his hourly wages. The fact that appellant was self-employed should not prevent his recovering his lost income in the same or a similar manner. In this case, both the magistrate and the court of common pleas refused to place any value on the time appellant lost from work and to compensate him for that loss. This court should reverse the decision of the court of common pleas ratifying the magistrate's judgment and either direct the entry of a verdict for the $4,925.00 appellant sought or remand the matter to the courts below for a determination of the value of the time lost by the appellant using the proper criteria for measuring that loss.

CONCLUSION

The court should reverse the decision of the court of common pleas with directions to enter a judgment in the amount of $6,931.27, comprising $1,776.27 for the loss of use of his vehicle and $4,925.00 for the time he lost from productive work due to the accident caused by the respondent, with the filing fees of $80.00 and $150.00 in the courts below, or, in the alternative, remand the matter with instructions for the courts below to determine the amounts owed to appellant using the proper criteria established by the law of South Carolina. In addition, the court should award appellant his costs and attorney's fees in this matter.

Respectfully submitted,

May 19, 2014

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(803) 286-6999
Attorney for Appellant (*Pro se*)

CERTIFICATE OF SERVICE

In accordance with the provisions of Rule 208(a)(1) SCACR, I hereby certify that a copy of this final brief was mailed to Mr. Michael S. Traynham and Mr. George V. Hanna, IV, Post Office Box 12009, Columbia, South Carolina 29211-2009, on May 19, 2014.

T. B. Patterson, Jr.

CERTIFICATE OF COUNSEL

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

May 19, 2014

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2013-CP-32-00267

T. B. Patterson, Jr.,

Appellant,

vs.

Justo Carmona Ortega,

Respondent,

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. **The Circuit Court Was Correct In Upholding The Decision Of The Magistrate Court.**

   A. The Circuit Court's Decision Regarding Loss Of Use Was Not Controlled By An Error Of Law And Is Supported By The Facts

   B. The Circuit Court's Decision Regarding Loss Of Income Was Not Controlled By An Error Of Law And Is Supported By The Facts

STATEMENT OF THE CASE

The Appellant, T.B. Patterson, Jr. (hereinafter "Patterson"), commenced this action against Respondent, Justo P. Carmona Ortega (hereinafter "Ortega") in the Chester County Magistrate Court on September 10, 2012. R. pp. 13 - 14. The Complaint sought damages for loss of use and loss of income arising out of an automobile accident. Ortega filed an Answer on October 15, 2012. R. pp. 15 – 19.

A bench trial was held before the Honorable Yale Zamore, Chester County Magistrate, on April 12, 2013, in Great Falls. After taking the matter under advisement, Judge Zamore issued an Order finding for the Patterson in the amount of $706.39. R. pp. 6 – 12. Thereafter, Patterson filed a Notice of Appeal to the Circuit Court. R. pp. 20 – 22. Magistrate Zamore filed a Return. R. pp. 4 – 5. Ortega filed a brief in response to the appeal. R. 23 – 28. Patterson filed a brief in support of his appeal. R. pp. 29 – 34. The appeal was heard by the Honorable J. Ernest Kinard on July 17, 2013. Judge Kinard ultimately upheld the decision of the Magistrate. R. p. 3. This appeal followed.

STATEMENT OF FACTS

This matter arises out of an automobile accident on September 21, 2009 in Lancaster, SC. R. pp. 13. Liability for the accident was not disputed and the only issue for

trial was the allowable amount of uncompensated damages sustained by Patterson. R. pp. 7 – 8.

Patterson testified he was without his vehicle for twenty-three days, at least part of which was attributable to defective repairs by the auto shop Appellant selected. Those repairs had to be redone. R. pp. 8 – 9. Patterson calculated his lost use based on the daily rental rate for a comparable vehicle (Patterson's vehicle was a Chevrolet Suburban; the rental vehicle was a Chevrolet Tahoe) for the twenty-three day period, or $1776.27. R. p. 8. His actual out-of-pocket rental expense was $526.39, since he only rented a replacement vehicle for a single week. R. p. 9.

Patterson testified that he spent 16 hours and 25 minutes of his time, (exclusive of time spent at trial) dealing with the consequences of the accident – i.e. dealing with repairs, picking up his vehicle, speaking with insurance adjusters, cleaning out the vehicle following the accident, preparing for trial, etc.). He calculated this "lost time" at a value of $4,925.00 based on his standard civil attorney rate of $300.00 per hour. R. pp. 8 – 10. However, Patterson failed to provide any evidence of lost business, lost business opportunities, or even detrimental effect on existing clients. R. pp. 9 – 11.

ARGUMENT

1. The Circuit Court Was Correct In Upholding The Decision Of The Magistrate Court.

When reviewing an appeal from the Circuit Court of an affirmance of a Magistrate Court's Order, the Appellate Court must sustain the ruling of the Circuit Court unless it was controlled by an error of law or was unsupported by the facts. Hadfield v. Gilchrist, 343 S.C. 88, 538 S.E.2d 268 (Ct.App. 2000).

A. The Circuit Court's Decision Regarding Loss Of Use Was Not Controlled By An Error Of Law And Is Supported By The Facts

Patterson appears to argue that both the decision of the Magistrate Court and the affirmance of that decision by the Circuit Court were controlled by an error of law because he was not awarded loss of use damages for the entire time claimed. This is not the law in South Carolina, and Patterson has failed to cite a single authority that supports his claim he is somehow entitled to the entire time claimed. Rather, Patterson cites the correct rule of law, which states that a Plaintiff is entitled to recover "for the loss of the use of her automobile for a *reasonable length of time. . .*" Newman v. Brown, 228 S.C. 472, 476, 90 S.E.2d 649, 651 (1955) (emphasis added). This is the rule of law followed by the Magistrate Court and the Circuit Court.

The record shows that Patterson submitted into evidence a receipt for a rental vehicle for a period of one week at a cost of $526.39. R. p. 8. Further, the record shows that Patterson conceded that the one week rental was his only out-of-pocket expense related to loss of use. R. p. 9. Clearly there is evidence in the record to support the Circuit Court's decision to affirm the Magistrate's award as to loss of use.

B. The Circuit Court's Decision Regarding Loss Of Income Was Not Controlled By An Error Of Law And Is Supported By The Facts

Patterson appears to argue that both the decision of the Magistrate Court and the affirmance of that decision by the Circuit Court were controlled by an error of law because he was not awarded damages for his alleged loss of income while dealing with the consequences of the accident. Not only has Patterson failed to cite any legal authority to support this proposition other than some general cites to the law of negligence, but he

also argues squarely against precedent. The South Carolina Supreme Court has previously determined that:

> Where the rights, or asserted rights, of parties are in conflict, it is inevitable that each party desiring to protect his rights must give time and attention to that end. To do so is not generally an element of damage[.]

See Rimer v. State Farm Mut. Auto. Ins. Co., 248 S.C. 18, 27, 148 S.E.2d 742, 746 (1966). See also Pricket v. A&B Elec. Service, Inc., 280 S.C. 123, 125, 311 S.E.2d 402, 403 (Ct. App. 1984). Absent discernible, tangible lost earnings, this is the law of the land. Prickett at 125, 311 S.E.2d at 403. Patterson's contention that his time spent dealing with the everyday headaches following an accident are compensable in the absence of evidence of a discrete loss is without merit.

In addition, the record shows that Patterson failed to submit any tangible evidence of any lost earnings. Rather the record shows that Patterson conceded he completed all of his work, that Patterson could not specify any case or other work he failed to obtain as a proximate result of this accident and that there was no detrimental effect on any existing clients as a proximate result of this accident. R. pp. 9 – 11. Clearly there is evidence in the record to support the Circuit Court's decision to affirm the Magistrate's refusal to award damages for the alleged loss of income.

CONCLUSION

The Circuit Court properly upheld the decision of the Magistrate Court. As to the loss of use issue, the record clearly demonstrates that the Circuit Court utilized the correct rule of law as South Carolina law only requires that a plaintiff be compensated for a reasonable length of time for any alleged loss of use. Furthermore, the record shows

that the decision was supported by the facts in that Patterson admitted that his only out of pocket expenses were the one-week rental awarded by the Court.

As to the alleged loss of income issue, the record again demonstrates that the Circuit Court followed the correct rule of law in that South Carolina law does not allow for the recovery of lost income for the time spent dealing with the consequences of an accident, absent evidence of a tangible and discrete loss. In addition, the record contains ample evidence to support the decision to deny an award for this alleged element of damage because Patterson admitted that he completed all of his work, could not point to an specific lost business opportunities and conceded that there was not detrimental effect on any of his clients.

Therefore, for the foregoing reasons Respondent respectfully requests that the Court uphold the Circuit Court's affirmance of the Magistrate Court and dismiss this Appeal. In addition, the Respondent would ask the Court to affirm for any other reason appearing in the record as provided by Rule 220(c).

HOWSER, NEWMAN & BESLEY, L.L.C.

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Attorneys for Respondent

May 12, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2013-CP-32-00267

T. B. Patterson, Jr..

Appellant,

vs.

Justa P. Carmona Ortega,

Respondent,

CERTIFICATE OF COMPLIANCE WITH RULE 211(b)

I hereby certify that this Final Brief complies with Rule 211(b) in that it contains only corrections to obvious typographical errors.

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May 12, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2013-CP-32-00267

T. B. Patterson, Jr..

Appellant,

vs.

Justa P. Carmona Ortega,

Respondent,

PROOF OF SERVICE

I hereby certify that I served one copy of the **FINAL BRIEF OF RESPONDENT,** by depositing it in the United States Mail, postage prepaid, on May 13, 2014, addressed to the Pro Se Appellant, as follows:

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas
Sixth Circuit Court
J. Ernest Kinard, Jr., Chief Administrative Judge

Case No. 2013- 002677

T. B. Patterson, Jr., Appellant,

v.

Justo P. Carmona Ortega, Respondent.

FINAL REPLY BRIEF OF APPELLANT

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STATEMENT OF THE FACTS

The respondent included a Statement of the Facts section in his brief; this responds to that statement.

The respondent characterized the loss of use as twenty-three days, stating that "some of which was attributable to defective repairs by the auto shop Appellant selected," and referenced the "Judgment and Final Order (May 16, 2013)." (Respondent's initial brief, April 1, 2014, page 2, lines 5-7). The problem was a defective part, the

window (magistrate's judgment, May 16, 2013, page 4, lines 6 and 7); respondent made the same misstatement of fact in his brief on appeal to the Court of Common Pleas (respondent's brief on appeal, July 11, 2013, page 2, lines 3-4; R. 24).

ARGUMENT

1.

THE COURT OF COMMON PLEAS ERRED IN UPHOLDING THE MAGISTRATE'S REFUSAL TO AWARD COMPLETE RELIEF FOR LOSS OF USE OF HIS VEHICLE TO APPELLANT.

The respondent argued that the magistrate did not make an error of law that would control the disposition of the loss-of-use compensation issue and that the evidence in the record supports the decision of the magistrate and of the circuit court. The respondent continued that appellant had cited no authority for the proposition that he was entitled to loss of use for the entire time claimed. (Respondent's initial brief, April 1, 2014, page 3).

In quoting the brief of appellant, respondent made an elision that he then uses to argue that appellant was only entitled to compensation for loss of use of his vehicle for a "reasonable length of time." (Respondent's initial brief, page 3). The Supreme Court actually approved a trial court's instruction, in *Newman v. Brown et al.*, 228 S.C. 472, 476, 90 S.E.2d 649, _____ (1955), as follows:

> Now in addition to that, you could award a reasonable sum of money to compensate the owner of the automobile for the loss of the use of her automobile for a reasonable length of time **during which it would have taken her to have the same repaired**. (Emphasis added).

The damages for loss of use of a damaged vehicle are calculated on the basis of the rental value of a replacement vehicle for the reasonable period that it takes to repair it, not for an abstract "reasonable time." There is nothing anywhere in the record that

suggests the length of time for the repairs of appellant's vehicle was unreasonable. The respondent is trying to confuse the goal and rationale for compensation with the measure of damages: appellant is entitled to the compensation in the amount of the loss of use of his vehicle due to the accident (so as to put him, as nearly as possible, in the position he would have been had the accident not occurred), and those damages are measured by the rental value of a replacement vehicle for the time it took to repair the vehicle, unless the time for repair is unreasonable. That is the holding of the cases and the standard announced in Mr. Anderson's *South Carolina Requests to Charge* that appellant cited in his brief: *Coleman v. Levkoff*, 128 S.C. 487, 491, 122 S.E. 875, _____ (1924); *Hutson v. Cummins Carolinas, Inc.*, 280 S.C. 552, 314 S.E.2d 19 (Ct.App. 1984); *Newman v. Brown et al.*, 228 S.C. 472, 476, 90 S.E.2d 649, _____ (1955); and Ralph King Anderson, Jr., *South Carolina Requests to Charge—Civil*, 2009, § 13-14, Damages—Automobile—Negligence Cause of Action. The Supreme Court also made this clear, citing *Coleman* and *Newman* in response to the claim of appellant that the verdict was excessive as follows:

> Respondent testified that he was out of the use of his car while it was being repaired from December 23, 1953, to February 20, 1954, a total of fifty-eight days; that during this period he had the limited use of a used car, said car being loaned to him by a third party without charge under the condition that it was not to be driven out of town. There was testimony that the rental value of a car in the Town of St. George at that time was $5 per day. Dr. Scott also testified that he would not have accepted $2,000 for the automobile at the time of the accident, and a garage man testified that the value of the car after the accident was $650, which deducted from $2,000 = $1350; and $5 per day for 58 days = $290, which added to $1350 totals $1640, the amount of the verdict, which was for actual damages only.
>
> In the instant case there is no showing that under the circumstances the time required to repair the car was unreasonable. *Coleman v. Levkoff*, 128 S.C. 487,122 S.E. 875; *Newman v. Brown*, 228 S.C. 472,90 S.E.2d 649; and there is no merit in the contention that the

> rental value of the car used was not a proper element of damages because it was furnished gratis by a party other than appellants.

Scott v. Southern Rwy. Co., 231 S.C. 28, pp. 33-34, 97 S.E.2d 73, _____ (1957).

The error of law made by the magistrate and upheld in the circuit court was that he found that appellant clearly sustained the loss of use while his vehicle was being repaired and that it was proximately caused by the accident, but held that "the record before the court substantiates only the expense for a replacement vehicle for one week and not for the entire time for the repairs." It further stated that appellant had proved "an amount equal to one-week's rental expense but nothing more," adding that, "There was no way to reliably quantify 'loss of use' as a general circumstance under these conditions." (Magistrate's judgment, May 16, 2013, page 6; R. 11).

In short, the magistrate held that the proof that met the standards enunciated in the appellate decisions noted above was not competent to prove the amount due to appellant and erred by failing to compensate appellant for the loss appellant sustained as a result of the accident. The court of common pleas refused to correct the error.

This court should reverse the judgment of the court of common pleas and direct entry of judgment in the amount of $1,776.27, for loss of use, together with costs of $80.00 in the magistrate court and $150.00 in the court of common pleas.

2.

THE COURT OF COMMON PLEAS ERRED IN UPHOLDING THE MAGISTRATE'S REFUSAL TO AWARD ANY SUM FOR LOST INCOME TO APPELLANT.

The respondent argued that there is precedent to deny any damages to appellant for his lost time in dealing with the accident and its aftermath, citing *Rimer v. State Farm Mut. Auto Ins. Co.*, 248 S.C. 18, 148 S.E.2d 742 (1966); the brief even provided a quote,

but, as in his cite from *Newman*, above, omitted the final portion (included in boldface below):

> Where the rights, or asserted rights, of parties are in conflict, it is inevitable that each party desiring to protect his rights must give time and attention to that end. To do so is not generally an element of damage, **although it may be in some situations where loss of earnings is involved, which is not the case here.**

The omission in the quote changes the whole import of the cite. In this case, appellant had lost income and testified to establish it. The holding in *Pricket v. A & B Elec. Service, Inc.*, 280 S.C. 123, 311 S.E.2d 402 (Ct.App. 1984), essentially repeating the holding of *Rimer*, is likewise inapt. The sixteen hours and twenty-five minutes that the accident took out of time time available for work should have been compensated in a damages award for loss of income at his then-standard rate of $300.00 per hour.

The magistrate noted that appellant testified to the loss of sixteen hours and twenty-five minutes and that his hourly rate was $300.00, for a total claim of lost income in the amount of $4,925.00 (magistrate's judgment, May 16, 2013, page 4; R. 9), but then stated that "[Appellant] has claimed $300.00 per hour for his time but has not proven any tangible and quantifiable losses sustained as a result." (Magistrate's judgment, May 16, 2013, page 6; R. 11). The respondent echoed that "tangible" failure, as to both lost earnings and evidence of lost earnings. (Respondent's initial brief, page 4). Appellant testified under oath, was subjected to cross-examination, and provided specific testimony as to time lost and normal hourly rates. While not "tangible," in the sense that it can be seen in a physical form, the evidence appellant presented to the magistrate court was specific, detailed, and precise; it clearly provided a basis to calculate damages in this case.

The duty of both the magistrate and the court of common pleas was to assess damages in this tort case with admitted liability, but both refused to do so. This court should reverse the decision of the court of common pleas ratifying the magistrate's judgment and either direct the entry of a verdict for the $4,925.00 appellant sought or remand the matter to the courts below for a determination of the value of the time lost by the appellant using the proper criteria for measuring that loss.

CONCLUSION

The court should reverse the decision of the court of common pleas with directions to enter a judgment in the amount of $6,931.27, comprising $1,776.27 for the loss of use of his vehicle and $4,925.00 for the time he lost from productive work due to the accident caused by the respondent, with the filing fees of $80.00 and $150.00 in the courts below, or, in the alternative, remand the matter with instructions for the courts below to determine the amounts owed to appellant using the proper criteria established by the law of South Carolina. In addition, the court should award appellant his costs and attorney's fees in this matter.

Respectfully submitted,

May 19, 2014

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CERTIFICATE OF SERVICE

In accordance with the provisions of Rule 208(a)(3) SCACR, I hereby certify that a copy of this brief was mailed to Mr. Michael S. Traynham and Mr. George V. Hanna, IV, Post Office Box 12009, Columbia, South Carolina 29211-2009, on May 19, 2014.

T. B. Patterson, Jr.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.

May 19, 2014

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

T. B. Patterson, Jr., Appellant,

v.

Justo Carmona Ortega, Respondent.

Appellate Case No. 2013-002677

Appeal From Chester County
J. Ernest Kinard, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-127
Submitted February 1, 2015 – Filed March 11, 2015

AFFIRMED

T. B. Patterson, Jr., of Lancaster, *pro se*.

George Verner Hanna, IV, and Michael Smoak Traynham, both of Howser, Newman & Besley, L.L.C., of Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *A & I, Inc. v. Gore*, 366 S.C. 233, 239, 621 S.E.2d 383, 386 (Ct. App. 2005) ("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." (internal quotation marks omitted)); *Hadfield v.*

Gilchrist, 343 S.C. 88, 94, 538 S.E.2d 268, 271 (Ct. App. 2000) (stating unless this court finds an error of law, it will affirm the circuit court's holding if any facts support its decision); *Bailey v. Segars*, 346 S.C. 359, 366, 550 S.E.2d 910, 913 (Ct. App. 2001) (stating that in a cause of action for negligence, the plaintiff is required to prove damages proximately resulting from the defendant's breach of duty); *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 312, 594 S.E.2d 867, 874 (Ct. App. 2004) ("The basic measure of actual damages is the amount needed to compensate the plaintiff for the losses proximately caused by the defendant's wrong so that the plaintiff will be in the same position he would have been in if there had been no wrongful injury."); *Minter v. GOCT, Inc.*, 322 S.C. 525, 528, 473 S.E.2d 67, 70 (Ct. App. 1996) ("[T]he general rule for recovery of damages . . . requires that the evidence should be such as to enable the factfinder to determine the amount of the damages with reasonable certainty.").

AFFIRMED.[1]

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas
Sixth Circuit Court
J. Ernest Kinard, Jr., Chief Administrative Judge

Case No. 2013-002677

T. B. Patterson, Jr., Appellant,

v.

Justo Carmona Ortega, Respondent.

PETITION FOR REHEARING

In accordance with the provisions of Rule 221, SCACR, appellant requests the court rehear his appeal.

The court should rehear this appeal and grant appellant the relief requested in his appeal because it failed to apply the authorities cited in the unpublished opinion filed March 11, 2015, to the facts and matters of record in this case. Specifically, this court upheld the circuit court opinion that affirmed the magistrate court decision when the magistrate court refused to award damages in accordance with the standard for determining damages in South Carolina; that standard was argued to both courts below, and the record contained all the evidence necessary to determine damages properly.

MEMORANDUM OF APPELLANT IN SUUPORT OF
THE MOTION FOR REHEARING

The opinion of the court filed March 11, 2015, under the provisions of Rule 220 (b), SCACR, in effect, declares that there was no error of law in the courts below; by

citations, it also at least implies that appellant, plaintiff below, failed to prove damages proximately resulting from the negligence of defendant and failed to present evidence that would allow the trial court to determine damages with reasonable certainty.

However, the magistrate documented that appellant argued for his damages and provided evidence of those damages, both in the Magistrate's Return on Appeal (R. 4 to 5) and the Judgment and Final Order (R. 6 to 12), and then failed to determine those damages in accordance with South Carolina law.

The magistrate court noted that appellant was without the use of his vehicle for three weeks and two days, and a receipt showing a total billing in the amount of $526.39 for one week's use of a 2009 Chevrolet Tahoe. (Magistrate's judgment, May 16, 2013, page 3; R. 8; Plaintiff's exhibit, April 12, 2013; R. 50 and 51), and noted the request for a total of $1,776.27 (three weeks at $526.39 plus two days at $98.55) (Magistrate's judgment, May 16, 2013, page 5; R. 10). The magistrate then stated that [Appellant] clearly sustained the loss of use while his vehicle was being repaired and that it was proximately caused by the accident, but went on to add that "the record before the court substantiates only the expense for a replacement vehicle for one week and not for the entire time for the repairs." It further stated that [Appellant] had proved "an amount equal to one-week's rental expense but nothing more," adding that, "There was no way to reliably quantify 'loss of use' as a general circumstance under these conditions." (Magistrate's judgment, May 16, 2013, page 6; R. 11).

The magistrate stated that [Appellant] clearly sustained the loss of use while his vehicle was being repaired and that it was proximately caused by the accident, but went on to add that "the record before the court substantiates only the expense for a

replacement vehicle for one week and not for the entire time for the repairs." It further stated that [Appellant] had proved "an amount equal to one-week's rental expense but nothing more," adding that, "There was no way to reliably quantify 'loss of use' as a general circumstance under these conditions." (Magistrate's judgment, May 16, 2013, page 6; R. 11). Our Supreme Court held long ago that "As bearing on the question of the value of the use of the property of which the owner was deprived, the rental value or expense of hiring a substitute for that of which he was deprived is a pertinent consideration." *Coleman v. Levkoff*, 128 S.C. 487, 491, 122 S.E. 875, _____ (1924). Sixty years later, this court noted that a daily rental was a proper measure of loss of use (a stipulated rental value). *Hutson v. Cummins Carolinas, Inc.*, 280 S.C. 552, 314 S.E.2d 19 (Ct.App. 1984).

The magistrate court made an error of law in that it did not determine damages in accordance with established South Carolina law; this court should correct that failure and award appellant the amount for loss of use of his vehicle to put him in the same position he would have been if the appellee had not caused him to incur the loss of use of his vehicle. *Austin v. Transp. Servs., Inc.*, 358 S.C. 298, 312, 594 S.E.2d 867, 874 (Ct. App. 2004).

The same argument applies to the failure of the magistrate to award any damages to appellant for his time lost in dealing with the accident and its consequences. Under *Austin*, supra, the magistrate should have awarded damages in "the amount needed to compensate the plaintiff for the losses proximately caused by the defendant's wrong so that the plaintiff will be in the same position he would have been in if there had been no wrongful injury." Appellant testified that he had lost sixteen hours and twenty-five

minutes of available work time because of the accident caused by the respondent and that his standard rate at the time was $300.00 per hour (Magistrate's Judgment, May 16, 2013, page 2 and 3; R. 7 and 8); appellant valued that lost time at $4,925.00 (magistrate's judgment, May 16, 2013, page 5; R. 10). The magistrate stated that appellant "has not proven any tangible and quantifiable losses sustained as a result. (Magistrate's judgment, May 16, 2013, page 6; R. 11).

Appellant clearly quantified his loss as to income; his sworn testimony specified the time he lost and his hourly rate; the magistrate clearly knew how much appellant claimed, but refused to award any damages, other than a "token" $100.00 for inconvenience. Again, the magistrate failed to determine damages in accordance with South Carolina law, and this court should correct that failure.

CONCLUSION

Appellant requests this court rehear his appeal and either modify the judgment to award the correct amount of damages or remand to the trial courts to assess damages in accordance with the law of South Carolina, as requested in his brief on appeal.

March 26, 2015

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CERTIFICATE OF SERVICE

In accordance with the provisions of Rule 240(c)(1) SCACR, I hereby certify that a copy of this petition was mailed to Mr. Michael S. Traynham and Mr. George V. Hanna, IV, Post Office Box 12009, Columbia, South Carolina 29211-2009, on March 26, 2015.

T. B. Patterson Jr.

The South Carolina Court of Appeals

T. B. Patterson, Jr., Appellant,

v.

Justo Carmona Ortega, Respondent.

Appellate Case No. 2013-002677

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

FILED

April 24, 2015

cc:
T. B. Patterson, Jr., Esquire
Michael Smoak Traynham, Esquire
George Verner Hanna, IV, Esquire
The Honorable J. Ernest Kinard, Jr.