

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Kay F. Paschal,

Plaintiff,

vs.

Leon Lott, the Duly Elected Sheriff
of Richland County, South Carolina,

Defendant.

C/A No. 2012-CP-32-00342

ORDER REGARDING
DEFENDANT'S
POST-TRIAL MOTIONS

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FOR THE ELEVENTH JUDICIAL CIRCUIT
RICHLAND COUNTY, SOUTH CAROLINA

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FILED

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The Defendant has filed three post-trial motions: a Motion to Reduce Verdict by granting a New Trial *Nisi* (New Trial *Nisi Remittitur*), or in the alternative to impose the statutory cap of \$300,000; a Motion for Judgment Notwithstanding the Verdict (JNOV), or in the Alternative for a New Trial Absolute; and, a Motion for a New Trial Pursuant to the Thirteenth Juror Doctrine. The motion to reduce the verdict to \$300,000 is granted. The remaining motions are denied. While the court is seriously concerned about the cumulative effect of the forceful presentation of issues that seemed irrelevant, abandoned, or barred by *res judicata*, it is the court's conclusion that the jury's verdicts must be given deference, the overall trial was fair, that there was sufficient evidence to support the jury's verdicts, and that the jury's verdicts should be allowed to stand.

1. The damage cap under § 15-78-120 is applicable and limits recovery to \$300,000.

The Plaintiff contends that the damage cap in the South Carolina Tort Claims Act ("SCTCA") does not apply because the jury found intentional torts. If the court believes that the cap does apply, the Plaintiff argues that the proper cap is \$600,000.

It is the Plaintiff's argument that the statutory cap only applies in cases where the governmental entity has injured the plaintiff by an act of negligence. This argument is tied to the

definition of "occurrence" found in the statute. While the Plaintiff makes a concrete argument, it is the court's view that the language should be read to place a cap of \$300,000 for the conduct involved here.

An injured party may sue a governmental entity for all torts, intentional and negligent. Pursuant to § 15-78-40, "[a] governmental entity [is] liable for [its] torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein." The government's liability in tort includes liability for the intentional torts of malicious prosecution and abuse of process. *McBride v. School Dist. Of Greenville County*, 389 S.C. 546, 689 S.E.2d 845 (Ct. App. 2010). See also *Swicegood v. Lott*, 379 S.C. 346, 665 S.E.2d 211 (Ct. App. 2008), which involved the identical Plaintiff's firm and the same Defendant at bar here.

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Pursuant to § 15-78-120(a)(1) and (2) (emphasis added):

(a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:

(1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single *occurrence* regardless of the number of agencies or political subdivisions involved.

(2) Except as provided in Section 15-78-120(a)(4), the total sum recovered hereunder arising out of a single *occurrence* shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

The Plaintiff cites S.C. Code § 15-78-30(g) (emphasis added):

(g) "Occurrence" means an unfolding sequence of events which proximately flow from a single act of *negligence*.

It is the Plaintiff's position that these sections should be read together so that the statutory damage caps only apply to causes of action for negligence. The cardinal rule of statutory

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construction is to ascertain and effectuate the intent of the legislature. *Shirley's Iron Works, Inc. v. City of Union*, ___ S.C. ___, ___, 743 S.E.2d 778, 784 (2013) citing *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "It is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of [the South Carolina Tort Claims Act] and in accordance with the principles established herein." *S.C. Code Ann.* §15-78-20(a)(1986 as amended). "The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State." *S.C. Code Ann.* §15-78-20(f)(1986 as amended). "The provisions of this chapter establish limitations on and exemptions to the liability of the governmental entity and must be liberally construed in favor of limiting the liability of the governmental entity." *S.C. Code Ann.* §15-78-200(1997 as amended).

Further evidence of legislative intent in enacting the SCTCA is found in the Editor's Note to the Thomson-West 2005 edition of the main volume following the "HISTORY" for §15-78-200, which statute was passed as 1997 Act No. 155, Part II, §55B, in which the editor quotes the immediately preceding section—1997 Act No. 155, Part II, §55A—as providing:

SECTION 55A. The General Assembly finds:

(1) that because of the unique nature, role, funding, and function of government, the General Assembly has never intended that the government or taxpayers would be subject to unlimited liability for tort actions against the government;

(2) that this section shall clarify any ambiguity in the General Assembly's intent that there remain reasonable limits upon recovery against the government for tort actions, and that the government is only liable for torts as expressly prescribed and authorized in the "South Carolina Tort Claims Act."

7 Code of Laws of South Carolina, *Civil Remedies and Procedures*, p. 836, §15-78-200, Ed. Note (Thomson-West 2005 Edition).

It is this court's opinion that the caps were intended to apply to torts and that the language should be read to limit recovery in this case. Citations to a case excluding the caps for a statutory whistleblower remedy do not control the situation here. The Plaintiff's recovery is in tort.

The Plaintiff also argues that, even if the cap applies, she is entitled to \$600,000. The jury awarded a verdict for Ms. Paschal on both claims for malicious prosecution and abuse of process. The Plaintiff argues that the malicious prosecution involved the Defendant's harassment, search, and arrest of Ms. Paschal without probable cause. She argues that the abuse of process was based upon the Defendant's use of the legal process to interfere with and restrict Ms. Paschal's ability to engage in civil litigation related to an estate. She recognizes that the conduct of the Defendant in both of the causes of action is intertwined, but believes that she would be entitled to the \$600,000 cap because the impact on Ms. Paschal's life was distinct and the claims were distinct.

The problem with her post-trial argument is that she admitted that the damage calculations for the causes of action were identical. At trial, the parties agreed that the damages would be the same under either theory of recovery, and they agreed to submit the case using a general verdict form for damages. The actions amounted to one occurrence.

2. The motions for JNOV and for new trial are denied.

The Defendant seeks to have judgment notwithstanding the verdict, failing which there are various motions for new trial. Those motions are denied.

The Defendant asserts that the Plaintiff failed to prove the requisite elements of her causes of action for Abuse of Process and Malicious Prosecution. The arguments center around

the assertion that there was insufficient competent evidence as to the elements of these offenses, and that there was insufficient evidence of damages and proximate cause.

The court disagrees with the assertion that there is insufficient evidence as to the elements of the causes of action. The court also disagrees with the Defendant's interpretation of the evidence related to damages and proximate cause, except to the extent that it concerns the assertions about the Plaintiff's inability to pursue her claims against the estate in Richland County. Insofar as the mental and emotional damages suffered by the Plaintiff, including the indignities associated with her incarceration, the court finds that there is evidence from which a reasonable juror could determine extensive damages. Further, as to her loss of earning potential as an attorney, the evidence presented would justify the jury in making a substantial award of damages.

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The court does have serious concerns with the repeated focus by the Plaintiff on aspects that dealt with missing Probate Court hearings and her loss of a claim related to the estate. In the court's view, these claims were largely unproven to the extent that there was not sufficient competent evidence on that subject for the jury to consider them as being proximately caused by any wrongdoing on the part of the Defendant. Except as to a possible motive for the actions being taken against the Plaintiff, the court feels that many of the things related to the Probate Court that were discussed in testimony should have been avoided because they were irrelevant, abandoned, or barred by *res judicata*. It is concerning that the efforts to segregate issues may have been compromised. Defense counsel was placed in a very difficult situation regarding objections. When the court ruled, there were several times when it seemed that the banned issues crept back into the discussion.

The court felt that it clearly ruled that the Plaintiff settled her case with the alleged co-conspirators who were her adversaries in the Probate Court matter. She entered into a settlement agreement that was binding upon her. Nevertheless, the Plaintiff and her attorney kept bringing up things that, in the court's view, she was not allowed to pursue. For these reasons, extremely serious consideration has been given to the Motion for a New Trial under the Thirteenth Juror Doctrine.

During the interim since these post-trial motions were argued, the court has wrestled with the overall question of whether the trial was fair. The court acknowledges that it was far from a perfect trial. The court has evaluated whether there is any indication that the jury based its verdicts on improper grounds, and whether the forcefulness of asserting improper elements into the case tainted the Defendant's ability to receive a fair trial from an impartial jury.

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Considering the evidence in totality, there is considerable evidence to support substantial damages being awarded to the Plaintiff on a general verdict form. The Plaintiff is a licensed attorney. By virtue of her license, she has enhanced sensitivity to being charged with a crime. There is evidence that she is near the end of her career and that she had come through all those years without any significant brushes with law enforcement. Her alleged misconduct in Lexington County was claimed to be related to property crimes and things that did not appear to warrant an extreme sense of urgency in making an arrest. Ms. Paschal was accused of misusing or forging a power of attorney in order to purchase a handicapped-accessible van for the handicapped person with whom she lived. The evidence is certainly capable of more than one interpretation, but it can reasonably be interpreted to support the conclusion by a jury that overzealous, ill-willed, and improper prosecution was conducted by the Defendant as to the Lexington County charges. So, while the court has concerns, it has not been shown that the

verdict was the product of passion, prejudice, caprice, or any improper motive or misconduct on the part of the jury that would justify setting the verdicts aside.

As to whether the court applied the law properly, that has been the cause of some angst in evaluating the post-trial motions. Some of this relates to the proper interpretation of S.C. Code Ann. § 22-5-110 and its applicability to the evaluation of the actions of the Defendant's deputy. Some of it relates to the immunity under the SCTCA. During the trial, the court found a statute that seemed to deal with when it was appropriate for officers from one jurisdiction could proceed with investigations in another jurisdiction, and the court believed the reference to the "only" method was instructive. The attorneys for both sides seemed to disagree, stating that references to that statute in the charge were not warranted since it dealt with joint task force situations. The jury charge was modified to remove that reference, at the request of both attorneys.

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The Defendant argues that § 22-5-110 is not jurisdictional and applies to the magistrates issuing warrants, not to the law enforcement officers seeking them. That was strenuously argued during trial. Viewing the totality of the circumstances, the court finds that sufficient evidence was presented to enable the jury to determine that the conduct of the Defendant in pursuing and obtaining the arrest warrant that is the subject of this action was contrary to the procedure provided in S.C. Code Ann. § 22-5-110, that the Defendant was put on notice by the 11th Circuit Solicitor's office of the applicability of that statute, that there was mention to the Richland County Lieutenant about Magistrates having to issue a courtesy summons in some situations, that the Richland County Deputy failed to alert the Magistrate about the information she obtained related to a courtesy summons, and that she withheld from the Magistrate the fact that the Lexington County Sheriff's Office's investigation did not conclude that charges were warranted (though the court acknowledges that there is an argument about there being a *caveat* concerning

the Lexington County Sheriff's investigation being halted for other reasons). The jury evaluated the motive, and it was within its province to do so and to reach the conclusions it apparently did.

The court disagrees with the Defendant's argument that there is no evidence that the matter terminated in the Plaintiff's favor, which is an element for malicious prosecution. This argument is based on the fact that there is still an ongoing investigation for matters that allegedly occurred in Richland County. In the court's view, there is sufficient evidence from which the jury could determine that the Lexington County matter terminated in the Plaintiff's favor.

The court also disagrees that there is a lack of evidence that the Richland County Sheriff's Department acted with malice in instituting or continuing the proceedings, and a lack of evidence about the Defendant instituting or continuing an action that lacked probable cause. Again, the jury could have reached a different result, but there is sufficient evidence to allow the jury to draw those conclusions.

The Defendant argues that the Defendant acted in good faith in seeking the advice of the Solicitor's offices in Lexington and Richland Counties. The evidence at trial showed that this Defendant did contact the prosecutors' offices and received advice. There is a dispute as to whether there was a full and complete disclosure of all material facts, and whether the Defendant acted and relied upon such advice in good faith before seeking the arrest warrants in Lexington County.

The issues related to immunity under S.C. Code Ann. § 15-78-60(3), (4), and (5), were also raised as a ground for a new trial. Having considered the arguments presented on these defenses, the court finds that there is sufficient evidence to allow the jury to determine that these immunities did not preclude recovery in this case.

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The court rejects the argument that there was no evidence from which a reasonable juror could have concluded that the damages awarded were proximately caused by any act or omission of this Defendant, with the award of damages being so grossly excessive as to be the result of passion, caprice, prejudice, or some other influence outside of the evidence at trial. The court denies the motions for setting aside the verdict and for a new trial in this regard.

The Defendant asks the court to reduce the verdict far below the \$300,000 amount, if the verdicts are allowed to stand and if the court does not grant a new trial absolute. When a jury's verdict is inadequate or excessive, the trial judge has the discretionary power to grant a new trial *nisi*. *V.E. Amick & Associates, LLC v. Palmetto Environmental Group, Inc.*, 394 S.C. 538, 549, 716 S.E.2d 295, 300-301 (Ct. Ap. 2011), citing *Hawkins v. Greenwood Development Corporation*, 328 S.C. 585, 600, 493 S.E.2d 875, 883 (Ct. Ap. 1997). The consideration of a motion for a new trial *nisi* requires the judge to consider the adequacy of the verdict in light of the evidence presented. *Id.*

For the reasons stated above, the court declines to reduce the verdict further. The Motion for New Trial, *Nisi Remittitur*, is denied. It is the court's view that it was foreseeable that having someone arrested and placed in jail would subject that individual to the type of treatment that the Plaintiff testified as having occurred. In the court's view, there was evidence that the things that took place at the Lexington County Detention Center were the direct, natural, and proximate result of the Defendant's actions.

The more difficult decisions relate to the arguments that the verdict was somehow improperly tainted by swaying the jury based on passion, prejudice, sympathy, or some other improper influence. It was permissible for Plaintiff's Counsel to communicate the imagery of

the Plaintiff forced to be naked or wrapped in a sheet while in the Lexington County Detention Center. Far more troubling, as indicated above, were references to the Richland County Probate Court dispute with the Wallace children, and repeatedly faulting the Richland County Sheriff's Department for the Plaintiff being forced to settle her spousal share claim and renounce her claim to being David Wallace's common-law spouse. While those are troubling, the issue often came where there was no objection or with voluntary questioning that elicited the response.

The Defendant takes issue with the Richland County Deputy being accused of perjury, the alleged mischaracterization of the Lexington County Investigator's determination that there was insufficient probable cause, and the alleged mischaracterization of the dismissal of the arrest warrants at the Preliminary Hearing as being based upon lack of probable cause. In the court's view, none of those arguments warrant setting aside the verdicts, reducing the verdicts below the cap, or granting a new trial.


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There was evidence that the Richland County Lieutenant did not know the meaning of foundational words that she used in her affidavit to obtain the arrest warrant. There is evidence from which the jury could conclude that she intentionally failed to disclose to the Magistrate the fact that the Lexington County Sheriff's Department investigated the matter and declined prosecution. There is evidence that she was put on notice by the 11th Circuit Solicitor's office that there was a procedure for a courtesy summons, but did not reveal that to the Magistrate, seeking an arrest warrant where a summons would have worked fine. As to the Lexington County Sheriff's Office's investigation, there was evidence that the additional information obtained has not changed the position to stand by the initial finding of lack of probable cause.

Finally, the court has revisited the grounds for directed verdict raised during trial. The court finds nothing in those rulings that now cause it to set aside the verdicts or grant a new trial.

THEREFORE, IT IS ORDERED that the motion to impose the \$300,000 cap under the SCTCA is granted. All other post-trial motions are denied. The Plaintiff shall have judgment against the Defendant in the amount of \$300,000.

AND IT IS SO ORDERED.



William P. Keesley
Circuit Judge

December 9, 2014

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