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

Appellate Case No. 2015-001126

T. B. Patterson, Jr., Petitioner,

v.

Justo Ortega, Respondent.

REPLY

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QUESTIONS PRESENTED

1. Did the Court of Appeals err in affirming the court of common pleas and the magistrate's refusals to award complete relief for loss of use of his vehicle to petitioner?
2. Did the Court of Appeals err in affirming the court of common pleas and the magistrate's refusals to award any sum for lost income to petitioner?

ARGUMENTS

Despite the claims of the respondent, the magistrate refused to determine the damages of petitioner in accordance with South Carolina law and his failures are clear in the record. Both the circuit court and the Court of Appeals joined the magistrate in error and this Court should correct those errors.

1.

THE COURT OF APPEALS ERRED IN AFFIRMING THE COURT OF COMMON PLEAS AND THE MAGISTRATE'S REFUSALS TO AWARD COMPLETE RELIEF FOR LOSS OF USE OF HIS VEHICLE TO PETITIONER

The respondent argued that the magistrate court's decision was supported by the evidence that established an out-of-pocket expense for rental of a vehicle for one week of the twenty-three days of loss incurred by petitioner, and reiterated the "correct rule of law," that a plaintiff is entitled to recover for the loss of use of his automobile for a *reasonable length of time,* citing *Newman v. Brown*, 228 S.C. 472, 476, 90 S.E.2d 649, 651 (1955). (Return, p. 2). The problem with the decision of the trial court was that it refused to apply the correct standard, instead imposing its own out-of-pocket limitation of the loss of use damages. The judge specifically noted [Petitioner] 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." He further stated that [Petitioner] 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; A. 13). There is no indication anywhere in the record that the repair time was unreasonable and there is no holding by the trial court that indicated its holding was in any way related to any excessive time for repairs.

The magistrate court made an error of law in that it refused to determine damages in accordance with established South Carolina law; this court should correct that failure and award petitioner 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).

2.

THE COURT OF APPEALS ERRED IN AFFIRMING THE COURT OF COMMON PLEAS AND THE MAGISTRATE'S REFUSALS TO AWARD ANY SUM FOR LOST INCOME TO PETITIONER

The respondent has been citing *Rimer v. State Farm Mut. Auto. Ins. Co.*, 248 S.C. 18, 27, 148 S.E.2d 742, 746 (1966), from the beginning of this case in the magistrate court, but has always omitted the part of the second sentence in the citation presented; the complete holding is as follows:

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**. (Emphasis added.)

Here, petitioner 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 petitioner 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.

Both the trial court and the respondent used the phrase "tangible damages" repeatedly to suggest that the petitioner did not suffer any loss of income from his lost work time documented in the record. The petitioner could not locate the phrase "tangible damages" in South Carolina case law. It simply has no sensible meaning, and the magistrate court's finding that petitioner suffered no "tangible damages" is nonsense; petitioner lost work time for which he could have billed his clients or used otherwise in the pursuit of his law practice. He was entitled to compensation for that lost time. If not, that would imply that there is no compensation owed to any self-employed person whose work is prevented by the negligent act of another.

CONCLUSION

The trial court clearly refused to apply the proper standards to measure damages under South Carolina tort law; the circuit court and the Court of Appeals deferred to it, despite the fact that the rejection of those standards and the substitution of arbitrary limitations on damages by the magistrate court were recorded in the order and of the return on appeal of that court.

Petitioner requests this Court grant him a writ of certiorari to the Court of Appeals

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.

Respectfully submitted,

July 6, 2015

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CERTIFICATE OF SERVICE

In accordance with the provisions of Rule 242(c) 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 July 6, 2015.

T. B. Patterson, Jr.