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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM MARION COUNTY
COURT OF COMMON PLEAS

D. Craig Brown, Circuit Court Judge

Opinion No. 2015-UP-155
(S.C. Ct. App. Filed March 18, 2015)

Ashlie Outing Petitioner,

v.

Velmetria Chante Weeks. Respondent,

APPENDIX

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
COURT OF COMMON PLEAS

D. Craig Brown, Circuit Court Judge

Case No. 2011-CP-33-598

Ashlie Outing Appellant

v.

Velmetria Chante Weeks. Respondent,

APPELLANT'S FINAL BRIEF

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AFFIRM THE MAGISTRATE'S DENIAL OF
APPELLANT'S MOTION FOR A DIRECTED VERDICT
AND JUDGMENT NOTWITHSTANDING THE VERDICT
WHERE ALL THE EVIDENCE INCLUDING RESPONDENT'S
CLEAR AND DISTINCTIVE ADMISSIONS CLEARLY
MANDATED A FINDING OF NEGLIGENCE ON THE
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I.

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE CIRCUIT COURT JUDGE ERRED IN AFFIRMING THE TRIAL MAGISTRATE'S DENIAL OF APPELLANT'S MOTION FOR DIRECTED VERDICT WHEN THE EVIDENCE CLEARLY MANDATED A FINDING OF NEGLIGENCE AS A MATTER OF LAW ON THE PART OF THE RESPONDENT.

STATEMENT OF THE CASE

Ashlie Outing brought this action for negligence and damages in regard to an automobile accident against the Defendant Velmetria Chante Weeks on May 4, 2006. The Defendant Weeks answered interposing a general denial and an affirmative comparative negligence defense. A trial was held on July 20, 2011 before the Honorable Mackie D. Hayes, Magistrate for Marion County Summary Court.

At the close of the evidence, Appellant moved for a directed verdict on the issue of Defendant's negligence. This Motion was denied. The jury returned a verdict for the Defendant on July 20, 2011. At that time, the Plaintiff made a motion for judgment notwithstanding the verdict or in the alternative a new trial which motion was denied.

Appellant served her notice of appeal to the Circuit Court on August 18, 2011. A hearing was held before the Honorable D. Craig Brown, Circuit Court Judge sitting as an Appellate Court from the decision of the Magistrate's Court on April 22, 2013.

STATEMENT OF THE FACTS

On January 30, 2006, a vehicle driven by Respondent, Velmetria Chante Weeks, rear ended a vehicle driven by the

Appellant Ashlie Outing. At the time of the collision, Outing's car was slowing down when it was struck in the rear by the Respondent's vehicle.

ARGUMENTS

- I. IT WAS ERROR FOR THE CIRCUIT COURT JUDGE TO AFFIRM THE MAGISTRATE'S COURT DENIAL OF APPELLANT'S MOTION FOR A DIRECTED VERDICT AND JUDGMENT NOTWITHSTANDING THE VERDICT WHERE ALL THE EVIDENCE CLEARLY MANDATED A FINDING OF NEGLIGENCE AS A MATTER OF LAW ON THE PART OF THE RESPONDENT.

When reviewing the denial of a motion for directed verdict, a Court must apply the same standard as the trial court and view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. Pond Palace Partners, Inc., v. Poole, 351 S.C. 1, 15, 567 S.E.2d 881, 888 (Ct. App. 2002). "In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or non-existence of evidence." Sims v. Giles, 343 S.C. 708, 714, 541 S.E.2d 857, 861 (Ct. App. 2001). However, the trial court can be reversed by an appellate court when no evidence supports the ruling below. Law v. S.C. Dep't of Corr., 369 S.C. 424, 434-5, 629 S.E.2d 642, 648 (2006).

The only reasonable inference that could be drawn from the evidence presented at trial was that Defendant breached her duty to the Plaintiff as a matter of law and the Circuit Court's affirmation of the Magistrate Court's denial of Plaintiff's

motion for a directed verdict constitutes reversible error. All of the evidence presented in this case pointed unquestionably to Respondent's negligence and she did not present any evidence to support the denial asserted in her pleadings. In fact, Respondent specifically admitted as stated in the Magistrate's Return that she was negligent in the present (sic) of the Court. The Magistrate's Return further stated "therefore the motion for a directed verdict on the issue of negligence was denied." These statements contained in the Return are obviously contradictory on their face as the admission of negligence by the Defendant would be the most obvious grounds for granting a directed verdict on the issue of negligence.

Viewing the evidence and reasonable inferences in the light most favorable to the Defendant on the motion for directed verdict as to Defendant's breach of duty in this case, the only reasonable conclusion that can be reached is that the Defendant did in fact breach said duty. Consequently, the Circuit Court's affirmation of the Magistrate's Court's denial of a directed verdict and judgment notwithstanding the verdict and allowing the issue to go to the jury was erroneous as a matter of law and constitutes reversible error.

All motorists have a duty to keep a reasonable lookout to avoid hazards when on the highway. Thomasko v. Poole, 349 S.C. 7, 12, 561 S.E.2d 597, 599 (2002). A person who fails to see

what a person of ordinary care and prudence would have seen is guilty of negligence. Id. Where the evidence shows conclusively that Respondent failed to exercise care commensurate with the conditions of travel, the issue of liability is a matter of law and the jury should be directed to consider only the issue of damages. See Lufkin v. Kyle, 275 S.C. 90, 267 S.E.2d 533 (1980). Based on the statement contained in Magistrate's Return that the Defendant admitted negligence in the presence of the Court, such failure indisputably took place here. At no point did Defendant offer any evidence tending to prove that she did not breach her duty to keep a reasonable lookout while on the highway and, in fact, specifically admitted such a breach.

In elevating would had been a given throughout the trial i.e., Defendant's negligence, to the level of a prerequisite to a verdict in favor of the Plaintiff, the Magistrate's Court's decision to deny Plaintiff's motion for directed verdict and resultant jury charge on the issue of negligence created the inescapable likelihood that the jury would place an inappropriate and inordinate amount of importance on proof of negligence without reaching the issues of proximate cause and damages, the evidence of which overwhelmingly and uncontrovertedly militated in favor of a verdict for Plaintiff. "A jury charge consisting of irrelevant and inapplicable principles may confuse the jury and constitutes reversible error where the jury's confusion

affects the outcome of the trial." Fettler v. Gentner, 396 S.C. 461, 722 S.E.2d 26 (SC App. 2012) quoting Berberich v. Jack, 392 S.C. 278, 285, 709 S.E.2d 607, 611 (2011) (quoting Cole v. Raut, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008)). Thus, the Circuit Court's decision to affirm the Magistrate's Court's denial of a directed verdict on the issue of negligence had the effect of violating and corrupted the whole process and was reversible error. See Lufkin. Id.

The Circuit Court's Order states:

"Upon hearing the appeal the Appellate Court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the Court may affirm or reverse the judgment of the Court below, in whole or in part, as to any or all the parties and for errors of law or fact."

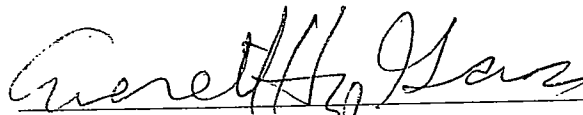
Therefore, it appears that the Circuit Court decided the appeal on the basis that the Magistrate's rulings were mere technical errors and defects - a finding which is patently misplaced in that negligence is the defining threshold issue in a case such as the one at hand.

CONCLUSION

Appellant respectfully requests that this Court reverse the judgment of the Circuit Court affirming the Magistrate Court and

remand this matter for a new trial on the issue of damages.

Respectfully submitted,



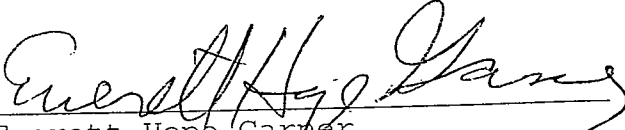
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January 10, 2014

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief contains all material proposed to be included by any of the parties and not any other material.

January 10, 2014



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
COURT OF COMMON PLEAS

D. Craig Brown, Circuit Court Judge

Case No. 2011-CP-33-598

Ashlie Outing Appellant

v.

Velmetria Chante Weeks Respondent,

APPELLANT'S FINAL REPLY BRIEF

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986 (1913). 2

Statutes

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REPLY TO ARGUMENTS

I. The Circuit Court improperly affirmed the Trial Magistrate's denial of Appellant's Motion for a Directed Verdict on the issue of negligence.

Respondent in her Initial Brief posits "facts" that are not in the record. It certainly appears that Respondent is reciting "facts" as she wants them to be not as they are.

The Respondent correctly cites the Section 18-7-170 of the Code of Laws of South Carolina (1976, as amended) as being applicable to appeals such as the one herein. Again, the failure to direct a verdict on the issue of negligence is hardly a technical error which does not affect the merits. It is most assuredly the threshold issue in a case such as the one at hand.

Respondent further states - citing Hadfield v. Gilchrist, 343 S.C. 88, 538, S.E.2d 268 (Ct. App. 2000) - that "the Court of Appeals will presume that an affirmance by a Circuit Court of a Magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the Magistrate and there are no facts that show the affirmance was influenced by an error of law. "Hadfield" further states unless the Court of Appeals finds an error of law, it will affirm the judge's holding if there are any facts supporting his decision."

The only factual record in this case is the Magistrate's Return which succinctly states that Defendant admitted that she was negligent in the present (sic) of the Court therefore the Motion for Directed Verdict on the issue of negligence was denied. Thus, there is no testimony in the record upon which a determination of sufficiency or insufficiency of the evidence can be based and no way to satisfy the criteria elucidated in Stanford v. Cudd, 93 S.C. 367, 76 S.E. 986 (1913). The contradictory nature of the statement in the return is illustrative of the absence of facts to support the Judge's decision. The Magistrate's Return shows pointedly that his denial of the directed verdict was based on improper legal reasoning thus constituting an error of law.

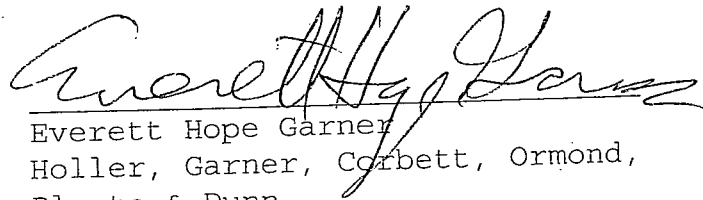
The Circuit Court can not abdicate its responsibility to meaningfully consider an appeal because the Magistrate's Return provides no insight into the proceedings in the inferior Court. Appellant should not and can not be punished and denied a meaningful review by the Appellate Court under these circumstances.

CONCLUSION

Appellant respectfully requests that this Court reverse the judgment of the Circuit Court and Magistrate's Court and remand

this matter for a new trial on the issue of damages.

Respectfully Submitted,



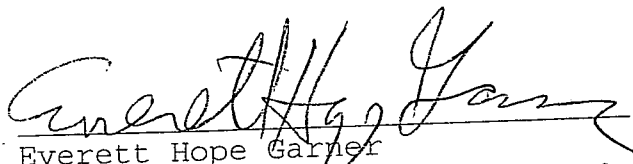
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Reply Brief contains all material proposed to be included by any of the parties and not any other material.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge


Case No. 2011-CP-33-598

Ashley Outing Appellant,

v.

Velmetria Chante Weeks Respondent.

RESPONDENT'S FINAL BRIEF



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Burns v. Wannamaker, 281 S.C. 352, 315 S.E.2d 179 (Ct. App. 1984)

Stanford v. Cudd, 93 S.C. 367, 76 S.E. 986 (1913)

Statutes and Rules

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

STATEMENT OF THE FACTS

The incident giving rise to the underlying litigation involves an automobile accident which occurred on January 30, 2006 on Highway 76 in Marion, South Carolina. (*See Plaintiff's Complaint*). The Appellant was operating a four-door Ford sedan in a westerly direction and the Respondent was operating a four-door Ford sedan directly behind the Appellant. (*See Accident Report*). The Respondent was in the process of slowing down due to "stop and go" traffic and impacted the rear of the vehicle operated by the Appellant. The Appellant alleged bodily injuries as a result of the incident and filed the underlying action in the Magistrate's Court in Marion County on or about May 4, 2006. (*See Plaintiff's Complaint*).

STATEMENT OF THE CASE

The Appellant asserted a cause of action against the Respondent for injuries sustained as a result of the Respondent's alleged negligence. (*See Plaintiff's Complaint*). The case was ultimately called to trial on July 20, 2011 in front of a six panel jury presided over by Magistrate Jackie Hayes.

The Appellant presented medical bills of approximately \$1,100.00 which she alleged were related to the accident in issue. On cross-examination, the Appellant confirmed that there were no repairs necessary to the vehicle in which she was operating following the incident. The Appellant further confirmed that she declined the need for EMS or treatment at the emergency room following the incident. The Appellant and Respondent both drove away from the scene of the incident and went to Francis Marion University where they were both enrolled in class at the time of this incident.

Photographs of the vehicles involved in the incident were admitted into evidence for the jury to factor into their deliberation.

The Respondent's primary argument at trial was that the incident in issue was not the proximate cause of the Plaintiff's alleged injuries and/or the alleged injuries were not reasonable based upon the minor incident. The Respondent further argued that an injured party is only entitled to recover such sums that are both and reasonable and necessary from the accident. The Respondent relied upon *Black v. Hodge*, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991) in the defense of the case. The Magistrate Court charged the jury on the inherent probability of the testimony and the credibility of the witnesses and their interests in the result of the litigation per the *Black v. Hodge* case.

After deliberation, the jury returned a verdict for the Respondent.

Following the trial, the Appellant filed a Notice of Appeal with the Circuit Court which was heard on April 22, 2013 by the Honorable D. Craig Brown. (*See Notice of Appeal*). After hearing oral argument from both parties, the Circuit Court affirmed the Magistrate's Court by Order dated May 16, 2013. (*See Order of Circuit Court*). This appeal follows.

ARGUMENT

The standard of review to be applied by a Circuit Court in an Appeal of a Magistrate's judgment is set forth in § 18-7-170 of the *Code of Laws of South Carolina* (1976, as amended) which provides as follows:

Upon hearing the appeal the Appellant Court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the Court may affirm or reverse the judgment of the Court below, in whole or in part, as to any or all the parties and for errors of law or fact.

The aforementioned statute confers authority upon the Circuit court to reverse a Magistrate's finding of fact when exercising appellate jurisdiction in an appeal from a Magistrate's judgment. *Hadfield v. Gilchrist*, 343 S.C. 88, 538, S.E.2d 268 (Ct. App. 2000) (citing *Burns v. Wannamaker*, 281 S.C. 352, 315 S.E.2d 179 (Ct. App. 1984)).

The standard of review for the Court of Appeals is noted to be more limited than that of the Circuit Court as referenced in the *Hadfield* opinion:

The Court of Appeals will presume that an affirmance by a Circuit Court of a Magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the Magistrate and there are no facts that show the affirmance was influenced by an error of law. *Id.*

It has been held that where the testimony is sufficient to sustain a judgment of the Magistrate's Court, and it is affirmed on appeal to the Circuit Court, this Court will assume the Circuit Court affirmed the judgment on the merits, in the absence of facts showing the affirmance was controlled or affected by errors of law. *Stanford v. Cudd*, 93 S.C. 367, 76 S.E. 986 (1913).


In the matter at hand, the Circuit Court affirmed the jury's finding and the Magistrate's judgment in light of the fact that the testimony was sufficient to sustain the judgment. In a negligence case, the party asserting the cause of action must prove that there was a duty, breach, causation and injury to sustain a verdict. While the Respondent admitted "simple negligence" in regards to the actual circumstance surrounding the incident in issue, the Respondent hotly contested the proximate cause and alleged injuries of the Appellant. The Respondent relied upon well settled case law which was charged to the jury and arguments that the lack of physical damage to the Appellant's vehicle, her declining EMS and medical treatment immediately

following the incident along with the fact that the Appellant was able to drive away from the accident scene was supporting evidence that the Appellant did not sustain an injury to sustain an award of damages

It is clear that the Circuit Court affirmed the Magistrate's judgment on sound and meritorious ground in making its ruling. As this Court has stated in numerous cases, it will presume an affirmance by a Circuit Court of a Magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the Magistrate. In the situation at hand, there is no evidence or facts to suggest that the ruling by the Circuit Court for the decision by the jury should be overturned.

CONCLUSION

The Respondent respectfully requests that this Court affirm the Order of the Circuit Court.


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December 31, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2011-CP-33-598

Ashley Outing Appellant,

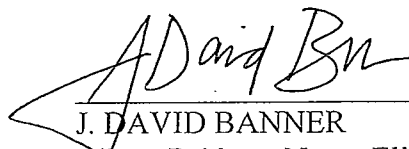
v.

Velmetria Chante Weeks Respondent.

CERTIFICATE OF COMPLIANCE

I certify that Respondent's Final Brief complies with Rule 211(b) of the Appellate Court Rules.

December 31, 2013



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
COURT OF COMMON PLEAS

D. Craig Brown, Circuit Court Judge

Case No. 2011-CP-33-598

Ashlie Outing Appellant

v.

Velmetria Chante Weeks Respondent,

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION)
)
 Ashley Outing,)
)
 Plaintiff,)
)
 vs.)
)
 Velmetria Chante Weeks,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-33-598

ORDER AFFIRMING THE
 MAGISTRATE'S COURT RULING

THIS MATTER is before the Court upon Motion by the Plaintiff appealing the verdict of the Marion County Magistrate's Court. The trial of this matter was conducted on July 20, 2011 in front of a Marion County jury with Magistrate Judge Mackey D. Hayes presiding.

At the close of the Defendant's case, the Plaintiff made a motion for directed verdict on the issue of negligence, which was denied. After the jury verdict, the Plaintiff timely moved the Court for a judgment notwithstanding the verdict or in the alternative, a new trial, which was denied by the Magistrate's Court.

The Plaintiff timely filed a Notice of Appeal with this Court respectfully submitting that the trial judge erred in failing to grant the Plaintiff's Motion for Directed Verdict on the issue of negligence and/or failed to grant the Plaintiff's Motion for Judgment Notwithstanding the Verdict or alternatively, a new trial.

Subsequent to the Notice of Appeal, the Magistrate filed a Return with this Court on September 7, 2011.

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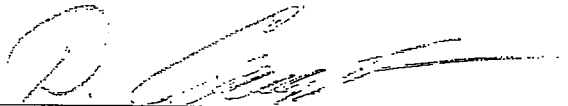
SOCA _____

The parties presented before this Court for oral argument on April 22, 2013. § 18-7-170 (1976, as amended) of the *Code of Laws of South Carolina*, addresses judgment on appeal to the Circuit Court which provides as follows:

Upon hearing the appeal the Appellant court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

Based on this Court's review, it is hereby ORDERED that the ruling in the magistrate's Court is AFFIRMED and the verdict in favor of the Defendant is hereby AFFIRMED.

AND IT IS SO ORDERED.



THE HONORABLE D. CRAIG BROWN
CHIEF ADMINISTRATIVE JUDGE FOR THE
TWELFTH JUDICIAL CIRCUIT

Florence, South Carolina
May 13, 2013

Marion County Summary Court

2715 East Highway 76, Suite B

Mullins, SC 29574

August 31, 2011

State of South Carolina

County of Marion

Ashlie Outing

Plaintiff

Vs.

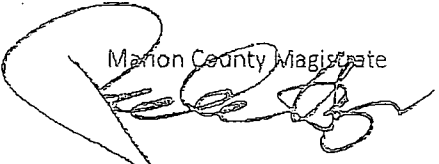
Velmetria Chante Weeks

Defendant

2011-CF-33-518

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MARION COUNTY
CLERK OF COURT

in this case the defendant admitted they were negligent in the present of the court. Therefore the Motion for directed verdict on the issue of negligence was denied.

Marion County Magistrate

Mack Hayes

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARION)

IN THE MAGISTRATE'S COURT

Ashlie Outing)
3913 Cherry Court)
Mullins, SC 29574)

No:

Plaintiff,)

vs.)

Velmetria Chante Weeks)
115 Jeffs Pl.)
Mullins, SC 29574)

Defendant.)

COMPLAINT
(Jury Trial Demanded)

Plaintiff complaining of the Defendant, would respectfully show unto this Court that:

1. Plaintiff is a citizen and resident of the County of Marion, State of South Carolina.
2. Plaintiff is informed and believes that the Defendant, is a citizen and resident of the County of Marion, State of South Carolina.
3. On or about January 30, 2006, Plaintiff was operating her vehicle on Highway 76 and was slowing down for traffic at a school crossing when the vehicle operated by the Defendant suddenly and forcefully struck the rear of Plaintiff's vehicle.
4. As a result of the above, the Plaintiff suffered physical harm and injury, as well as mental duress and loss of

enjoyment of life, all of which has and will in the future cause her to undergo physical and mental pain and suffering, has and will in the future cause her to have to spend money for medical services.

5. The accident and Plaintiff's damages, injuries and losses were the direct and proximate result of Defendant's negligence, gross negligence, carelessness, willfulness and wantonness in the following particulars, to wit:

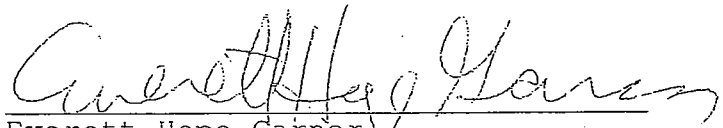
- a. In failing to maintain a proper look-out;
- b. In failing to keep her vehicle under proper control;
- c. In failing to apply her brakes if any he had;
- d. In driving too fast for conditions;
- e. In failing to use the care and caution that a reasonable person would have used under the circumstances then and there prevailing.

All of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of the laws of South Carolina.

6. The Plaintiff is informed and believes that she is entitled to judgment against the Defendant for actual and punitive damages as may be established by a jury, as well as costs of this action and such other and further relief as this Court may deem just and proper.

WHEREFORE, the Plaintiff prays that she be awarded judgment

against the Defendant an amount to be determined by a jury for actual and punitive damages as well as the costs of this action and such other and further relief as this Court may deem just and proper.


Everett Hope Garner
HOLLER, DENNIS, CORBETT, ORMOND,
PLANTE & GARNER
P.O. Box 11006
Columbia, SC 29211

Columbia, South Carolina
3/4, 2006

A CERTIFIED COPY OF THE
ORIGINAL FILED IN THIS OFFICE
CASE# 07-0073 *WJ*
Rec'd 2-27-07

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARION)

IN THE MAGISTRATE'S COURT
TWELFTH JUDICIAL CIRCUIT
CASE NUMBER: 07-0073

Ashley Outing,)
)
Plaintiff,)
)
vs.)
)
Velmetria Chante Weeks,)
)
Defendant.)
)
_____)

ANSWER

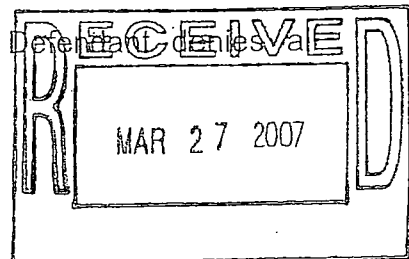
The Defendant, Velmetria Chante Weeks, without waiving any objection to venue and subject to any and all motions, answers the Complaint of the Plaintiff would allege as follows:

FOR A FIRST DEFENSE

1. That the Defendant denies all allegations contained in the Complaint which are not specifically admitted herein and demand strict proof hereof.
2. That the Defendant admits, based on information and belief, the allegations contained in Item 1.
3. That the Defendant admits, based on information and belief, the allegations contained in Item 2.
4. That the Defendant admits so much of Item 3 of the Complaint that may be construed to allege that a collision occurred, however, the Defendant denies a remaining or inconsistent allegations of Item 3.

A CERTIFIED COPY OF THE ORIGINAL FILED IN THIS OFFICE
CASE# 07-0073

MAGISTRATE OF MARION COUNTY
COURT REPORTER



5. That the Defendant is without sufficient information and knowledge to admit the allegations of Item 4 as to the damages and injuries of the Plaintiff, if any, and therefore the Defendant demands proof thereof and denies same.

6. That the Defendant denies allegations of Item 5.

7. That the Defendant denies allegations of Item 6.

FOR A SECOND DEFENSE

8. That the Defendant realleges the allegations of the First Defense above as fully as if repeated verbatim herein.

9. The Defendant alleges that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the greater negligence and/or willfulness of the Plaintiff which exceeds the negligence and/or willfulness, if any, on the part of the Defendant, without which greater negligence and/or willfulness on the part of the Plaintiff, said alleged injury or damage would not have occurred or been sustained and for that reason, the Plaintiff is totally barred from recovery.

10. Alternatively, the Defendant alleges that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the negligence and/or willfulness of the Plaintiff combining, concurring and contributing with the negligence and/or willfulness, if any, on the part of the Defendant, and for that reason the recovery of the Plaintiff, if any, shall be reduced in proportion to the amount of the Plaintiff's negligence.

FOR A THIRD DEFENSE

11. That the Defendant realleges the allegations of the First and Second Defenses above as fully as if repeated verbatim herein.

12. The evidence of recklessness and/or any degree of fault as alleged by the Plaintiff seeking punitive damages from this Defendant would not be, upon information and belief, clear and convincing as required by §15-33-135 of the 1976 South Carolina Code of Laws Ann. Further the imposition of punitive damages against this Defendant in the context of this lawsuit is unconstitutional under both the South Carolina and United States Constitutions. Therefore, the Plaintiff's request for punitive damages should be stricken from the Complaint.

WHEREFORE, the Defendant prays that the Complaint be dismissed with prejudice and that she be awarded judgment for the costs and disbursements of this action and for other and further relief as this Court may deem just and proper.



WILLIAM H. SEALS, JR.
Seals Law Firm, P. A.
P. O. Box 143
208 West Dozier Street
Marion, South Carolina 29571
Attorney for Defendant

Marion, South Carolina

March 27, 2007.

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)


IN THE MAGISTRATE'S COURT
TWELFTH JUDICIAL CIRCUIT
CASE NUMBER: 07-0073

Ashley Outing,)
Plaintiff,)
vs:)
Velmetria Chante Weeks,)
Defendant.)

CERTIFICATE OF MAILING

I, Renee Wiggins, as an employee for William H. Seals, Jr., Attorney at Law, and counsel for the Defendant in the above captioned matter, do certify that I have served (all) counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same by United States Mails, postage prepaid, to the following address(es):

PLEADINGS: **Answer**
COUNSEL SERVED: Mr. Everett Hope Garner
 Attorney at Law
 P. O. Box 11006
 Columbia, South Carolina 29211



Renee Wiggins

Marion, South Carolina
March 27, 2007.

SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM

Of Units 2

Amended - Attach Copy of Original Report

Notified 752

Arrival 755

Date: 3006 Time: 755 County: 34 Collision Location (Rt. # / Name): Hwy 76
 1- Interstate 4- Secondary 2- US Primary 5- County 3- SC Primary
 Lane # / Dir: 050 Direction: N E 2- US Primary 5- County 3- SC Primary 6- Other
 Base Intersection (Rt. # / Name): Bluff road
 R.R. Id.: From Ramp Only To: 1- Interstate 4- Secondary 2- US Primary 5- County 3- SC Primary 6- Other
 Second Intersection (Rt. # / Name): Green St
 Miles: 0.5 Dir: N E In / Near City or Town of: Marion
 ASRU code: MP/Grid: Latitude: 34 10.485 Longitude: 079 23.305

Q-573298 Driver/Pedestrian's Full Name: Velmetria Chante Wicks
 Unit # 1 Sex F Race B Street/R.F.D.: 115 Jeffs pl.
 Birth Date: 01/12/85 City, State, & Zip: Mullins SC 29574
 State: SC Driver's License #: 011623294 Insurance Company: STATE FARM
 Year: 94 Body: 43 Vehicle Make: FORD VIN #: 1FA1D524OR A23910
 State: SC Year: 06 License Plate #: 165KCP Owner's D.L. #:
 Home Telephone: (803) 464 8489 Owner's Full Name: VELMA LEE GODBOLD
 Bus. Telephone: Street/R.F.D.: 115 Jeffs place
 Contributed To Collision: Yes No Mullins SC 29574
 Estimated Speed: 10 Speed Limit: 35 C.D.L. Req: Yes No T/B S Req: Yes No Alc/Drg info (see back): Yes No
 Summons #: 16899 OK Code: Towed By:

Q-573299 Driver/Pedestrian's Full Name: Ashlie Lavoone Outing
 Unit # 2 Sex F Race B Street/R.F.D.: 3913 Cherry Court
 Birth Date: 12-7-86 City, State, & Zip: Mullins SC 29574
 State: SC Driver's License #: 011639276 Insurance Company: HOWARD B SMITH PERS
 Year: 93 Body: 43 Vehicle Make: FORD VIN #: 1FMDU822XPDL 7753
 State: SC Year: 06 License Plate #: 238EPD Owner's D.L. #:
 Home Telephone: Owner's Full Name: Cynthia G. Outing
 Bus. Telephone: Street/R.F.D.: 3913 Cherry Court
 Contributed To Collision: Yes No Mullins SC 29574
 Estimated Speed: 05 Speed Limit: 30 C.D.L. Req: Yes No T/B S Req: Yes No Alc/Drg info (see back): Yes No
 Summons #: Code: Towed By:

Q-573300 Driver/Pedestrian's Full Name:
 Unit # Sex Race Street/R.F.D.:
 Birth Date: City, State, & Zip:
 State: Driver's License #: Insurance Company:
 Year: Body: Vehicle Make: VIN #:
 Estimated Speed: Speed Limit: C.D.L. Req: Yes No T/B S Req: Yes No Alc/Drg info (see back): Yes No
 Summons #: Code: Towed By:

Dir. of Travel: Unit 1: N S E W Unit 2: N S E W Unit 3: N S E W

 Unit 1 Dam. \$ Unit 2 Dam. \$ Unit 3 Dam. \$ Prop. Dam. 1 \$ Prop. Dam. \$
 Property Owner/Witness: Address: State Zip Phone
 Photo: Describe What Happened (Refer to Units by Number)
 Y N
 Unit # 1 hit unit # 2 in the Rear while unit # 2 was slowing down

Date of Birth	Sex	Race	INJ	Seal	RSD	A.B.D.	Eject	LAI	Tran	Name	Street Address	Zip Code
61285	F	B	0	01	99	4	1	1	2	Kalocheta C. Weeks	115 Jeffs place north	29524
101782	M	B	0	04	99	4	1	1	2	Phillip weeks	115 Jeffs place north	29524
11786	F	B	0	04	99	4	1	1	2	Ashlie L. Outney	3913 Cherry Court	29524

Race	A - Asian/Pacific Islander	W - Caucasian	a) Injury Status	2 - Non-incapacitating	Sealing Loc.	20 - Pedestrian	60 - Sleeper of Cab	Restrain/Safety Device
B - African American	H - Hispanic	O - Other	0 - Not Injured	3 - Incapacitating	01 02 03	30 - Trailing Unit	70 - Riding on Unit Exterior	00 - None Used
Alaskan Native or American Indian	U - Unk.		1 - Possible	4 - Fatal	04 05 06	40 - Bus or Van (4th row or Higher)	80 - Lap	11 - Shoulder Belt Only
Air Bag Deployment / Switch			b) Motorcycle Only		07 08 09	50 - Other Enclosed Area (nontrailing)	99 - Unk./NA	12 - Lap Belt Only
1 - Deployed Front	4 - Not Deployed	1 - Not Ejected	Head Injury	1 - Yes	2 - No	51 - Other Unenclosed Area (nontrailing)		13 - Shoulder & Lap Belt
2 - Deployed Side	7 - Not Applicable	2 - Part. Ejected	Location After Impact	3 - Freed (non-mech.)				99 - Unk.
3 - Deployed Both	9 - Deployment Unk.	3 - Tot. Ejected	1 - Not Trapped	4 - Not Applicable				
4 - Switch in On Position	3 - No Switch	7 - Not App.	2 - Extricated (Mechanical Means)	9 - Unknown				
5 - Switch in Off Position	9 - Unknown	9 - Unk.						

Non-Collision	04 - Equipment Failure	Collision: Not Fixed	27 - Pedestrian	Collision: Fixed Object	47 - Embankment	55 - Mail Box	58 - Other
1 - Cargo/Equip Loss or Shift	05 - Fire/Explosion	08 - Overturn/Rollover	20 - Animal (Deer Only)	40 - Bridge Overhead Structure	48 - Equipment	56 - Median Barrier	69 - Unk.
2 - Cross Median/Center Line	06 - Immersion	09 - Ran off Road Left	21 - Animal (All Other)	41 - Bridge Rappart End	49 - Fence	57 - Overhead Sign/Support	70 - Other
3 - Downhill Runaway	07 - Jackknife	10 - Ran off Road Right	22 - Motor Veh. (In Transport)	42 - Bridge Pier or Abutment	50 - Guardrail End	58 - Other (Post, Pole, Support, Etc.)	
Event 1	Event 2	Event 3	Event 4	Most Harm	Hrml		
1	1	1	1		2		
2	2	2	2		2		
3	3	3	3		3		

anner of Collision (Struck Veh.)	30 - Rear-to-Rear	50 - Sideswipe Same Dir.	1 - Most Deformed Area	1 - Deformed	Most Deformed
00 - Not Coll. W/ Motor Veh.	41 - Angle (↘↗)	60 - Sideswipe Opposite Dir.	2 - 3	2 - 3	2 - 3
10 - Rear End	42 - Angle (→ ←)	70 - Backed Into	4 - 5	4 - 5	4 - 5
20 - Head On	43 - Angle (↗ ↘)	99 - Unknown	6 - 7	6 - 7	6 - 7
Vehicle Type	15 - Full Size Van	27 - Pedalcycle	61 - School Bus		
01 - Automobile	16 - Mini Van	38 - Animal Drawn Veh	62 - Passenger Bus		
12 - Pickup Truck	17 - Sport Utility	39 - Animal (Ridden)	98 - Other		
13 - Truck Tractor	25 - Motorcycle	41 - Pedestrian	99 - Unk. (Hil and Run Only)		
14 - Other Truck	26 - Other Motorbike	51 - Train			

Use Code	04 - Ambulance	08 - Farm Use	12 - Fire Fighting	Alcohol / Drug Test Given	3 - Given - Pending	Special Use Only
01 - Personal	05 - Military	09 - Wrecker or Tow	13 - Logging	1 - Given - Known Results	4 - None	1 - 2 - 3 - 4 - 5 - 6 - 7
02 - Driver Training	06 - Transport Passengers	10 - Police	18 - Other	2 - Given - Unusable	5 - Refused	
03 - Construction/MainL	07 - Transport Property	11 - Government	41 - Pedestrian	Test Type	3 - Urine	1 - Under - Compartment Intrusion
4 - Utility Trailer	8 - Towed Motor Vehicle	C - Other Tanker		1 - Breath (Alc Only)	4 - Serum	2 - Under - No Intrusion
1 - None	5 - Farm Trailer	9 - Petroleum Tanker	D - Flat Bed	2 - Blood	8 - Other	4 - Over - MV in Transport
2 - Mobile Home	6 - Trailer w/Boat	A - Lowboy Trailer	E - Twin Trailers	Drug Results	3 - Marijuana	5 - Over - Other Vehicle
3 - Semi-Trailer	7 - Camper Trailer	8 - Autocarrier Trailer	F - Other	1 - Amphetamines	4 - Opiates	9 - Unk.
				2 - Cocaine	5 - PCP	3 - Disabling Damage
					8 - Other	5 - Not Applicable

on Prior to Impact	(Vehicle)	(Non-motorist)	Alc Test Results	1 - Two-way, Not Divided	3 - Two-way, Divided: Barrier
01 - Backing	08 - Parked	24 - Approaching/Leaving Vehicle	A1 -	2 - Two-way, Divided, Unprotected Median	4 - One-way
02 - Changing Lanes	09 - Stowing or	22 - Entering/Crossing Locallon.	A2 -	1 - Gore	3 - Median
03 - Entering Traffic Lane	10 - Stopped in Traffic	23 - Playing/Working on Vehicle	A3 -	2 - Island	4 - Roadside
04 - Leaving Traffic Lane	11 - Turning Left	24 - Pushing Vehicle		3 - Shoulder	7 - Sidewalk
05 - Making U-turn	11 - Turning Right	25 - Standing		8 - Outside Trafficway	9 - Unk.
06 - Movements Essentially Straight Ahead	18 - Other	26 - Walking, Playing, Cycling		1 - Straight - Level	3 - Straight - Hillcrest
07 - Overtaking/Passing	88 - Other	27 - Working		2 - Straight - On Grade	4 - Curve - Level
				1 - Dry	3 - Snow
				2 - Wet	4 - Slush
				6 - Contaminate	8 - Other
				7 - Water (Standing, etc.)	9 - Unk.

Weather Condition	3 - Cloudy	6 - Fog, Smog, Smoke	02 - Flashing Traffic Signal	21 - Officer or Flagman	Traffic Control Type
1 - Clear (no adverse conditions)	4 - Sleet, Hail	7 - Blowing Sand, 8 - Severe Crosswinds	11 - RR (X-bucks, Lights & Gates)	22 - Oncoming Emergency Vehicle	1 - 2 - 3 - 4 - 5 - 6 - 7 - 8 - 9 - 98
2 - Rain	5 - Snow	9 - Unk.	12 - RR (X-bucks & Lights)	31 - Pavement Markings (only)	43 - Yield Sign
3 - Dusk			13 - RR (X-bucks Only)	41 - Stop Sign	44 - Work Zone
1 - Daylight	4 - Dark (Lighting Unspecified)	7 - Dark (No lights)		42 - School Zone Sign	45 - Other Warning Signs
2 - Dawn	5 - Dark (Street Lamp Lit)			1 - Yes, Directly	2 - Yes, Indirectly
				3 - No	9 - Unk.
				1 - Before 1st Sign	3 - Transition Area
				2 - Advanced Warning Area	4 - Actvily Area
				1 - Shoulder/Median Work	3 - Intermittent/Moving Work
				2 - Lane Shift/Crossover	4 - Lane Closure

Contributing Factors	09 - Made an Improper Turn	Roadway	Non-Motorist	Environmental	82 - Obstruction
01 - Disregarded Signs, Signals, Etc.	10 - Medical Related	30 - Debris	48 - Other	60 - Animal in Road	63 - Weather Cond.
02 - Distracted/Inattention	12 - Aggressive Operation of Vehicle	31 - Non-highway Work	49 - Unk.	61 - Glare	68 - Other
03 - Driving Too Fast for Conditions	13 - Over-correcting/Over-steering	32 - Obstruction in Roadway		62 - Failure to Yield R. of W.	69 - Unk.
04 - Exceeded Authorized Speed Limit	14 - Swerving to Avoiding Object	33 - Road Surface Condition (i.e., Wet)		63 - Not Visible (Dark Clothing)	70 - Brakes
05 - Failed to Yield Right of Way	15 - Wrong Side or Wrong Way	34 - Rut, Holes, Bumps		64 - Disregard Signs, Signals, Etc.	71 - Steering
06 - Ran off Road	19 - Cell Phone	35 - Shoulders (None, Low, Soft, High)		65 - Improper Crossing	72 - Power Plant
07 - Fatigued/Asleep	17 - Vision Obscured (Within Unit)	36 - Traffic Control Device (i.e., Missing)		66 - Daring	73 - Tires/Wheel
08 - Followed Too Closely	18 - Improper Lane Usage/Change	37 - Work Zone (Constr./Maint./Utility)		67 - Wrong Side of Road	74 - Lights
	26 - Other Improper Action	38 - Worn, Travel-Polished Surface		68 - Other	75 - Signals
				69 - Unk.	76 - Windows/Shield
					77 - Restraint System
					78 - Truck Coupling
					79 - Cargo
					80 - Fuel System
					88 - Other
					89 - Unk.

Main FR-10 to Office of Financial Responsibility
S.C. Department of Public Safety
PO Box 1498 Columbia, SC 29216

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
FR 10 (REV. 07/01)
NOTICE OF REQUIREMENT



Date: 12-06 Time: 7:55 County: 14 Interstate: 4 Secondary Collision Location (R # / Name): Hwy 76
Miles: 0-Main line 6-Connection 2-Alternate 7-Business 5-Spur Dir: N E S W In / Near City or Town of: Marion

To Vehicle Owner/Operator: Failure to comply could result in appropriate action under 56-10-270 and 56-10-20 of the 1976 code of laws of S.C. as amended, if vehicle subject to registration in S.C. and upon conviction thereof the Department must suspend your driving and/or registration privileges until all compliances have been met under the above sections of law.

Q-573298 Driver/Pedestrian's Full Name: Velma Lee Godbold
Q-573299 Driver/Pedestrian's Full Name: Cynthia G. Outing
Unit # 1 Sex F Race B Street/R.F.D. 115 Jells pl. City, State, & Zip Mullins SC 29574
Unit # 2 Sex F Race B Street/R.F.D. 3713 Cherry Court City, State, & Zip Mullins SC 29574
State SC Driver's License # 011623294 Insurance Company STATE FARM
State SC Driver's License # 011637276 Insurance Company HOWARD B. SMITH JR
Year 74 Body 45 Vehicle Make FORD VIN # 1FA1P5240R A2391093 Year 73 Body 15 Vehicle Make FORD VIN # 1FMDU32XP0117733
State SC Year 06 License Plate # 165KEP Owner's D.L. # State SC Year 76 License Plate # 238EPD Owner's D.L. #
Home Telephone (873) 464 8457 Owner's Full Name Velma Lee Godbold Home Telephone () Owner's Full Name Cynthia G Outing
Bus. Telephone () Street/R.F.D. 115 Jells place Bus. Telephone () Street/R.F.D. 3713 Cherry Court
Contributed To Collision (Yes) No City, State, & Zip Mullins SC 29574 Contributed To Collision (Yes) No City, State, & Zip Mullins SC 29574

Q-573300 Driver/Pedestrian's Full Name: State Year License Plate # Owner's D.L. #
Unit # Sex Race Street/R.F.D. Home Telephone Owner's Full Name
Birth Date City, State, & Zip Bus. Telephone Street/R.F.D.
State Driver's License # Insurance Company Contributed To Collision (Yes) No City, State, & Zip
Year Body Vehicle Make VIN # Accident Insurance Information for Unit # 7
Company Name South Carolina PER DEE Area Code/Phone Number (803) 464 62
Agency Name Howard B. Smith Policy Number 42-843 887-00

All Units Insurance Information
(to be completed by Investigating Officer)

Accident Insurance Information for Unit # 1
Company Name STATE FARM Area Code/Phone Number (873) 464 8660
Agency Name W.C. MORRIS Policy Number 734945-027-408
Accident Insurance Information for Unit #
Company Name Area Code/Phone Number
Agency Name Policy Number

Insurance Information

Notice of Requirement Accepted: YES Signature: YOU [Signature] Y/N Refused to Affix Signature?
Y/N Vehicle Subject to Registration in SC?
To Be Completed By Insurance Agency, Broker, Or Other Company Representative
Reference to Unit #: I hereby affirm that to the best of my knowledge the vehicle described above was insured by the below stated Insurance Company on the date of the collision.
Insurance Company Policy # 4274388 100 Signature: Cynthia G. Outing Title
Beginning Date: 10-2-05 Ending Date: 4-2-06 Policy Holder: Cynthia G. Outing NAIC# (Assigned by S.C. Dept. of Ins.) 32700 Bus. Telephone ()

Notice: Failure to have this form completed by your insurance broker, agent or representative and returned to the South Carolina Department of Public Safety within 15 days may result in suspension of your driving and/or registration privileges.

If any of the below are applicable, disregard the above portion:
Check here if a Form SR-23, Heat Policy of 25 or more vehicles is on file with the Department covering the vehicle.
Check here if a certificate of self insurance has been issued by the Department covering the vehicle and indicate the certificate number.
Check here if liability insurance was not in effect to comply with South Carolina statutory requirements.
Form FR-10 Not Issued: Section 56-10-270 56-10-520
No FR-10 Issued to Operator/ Owner of Unit #:
Summons Issued to:
For operating or allowing the operation of an uninsured vehicle Summons Number:
Signature: P41

BOOK _____

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT - MARION COUNTY

Ashlie Outing,)
Plaintiff,)
vs.)
Velmetria Chante Weeks,)
Defendant)

No: *2011-0-33-518*
Magistrate Court No: 07-0073-02
NOTICE OF APPEAL

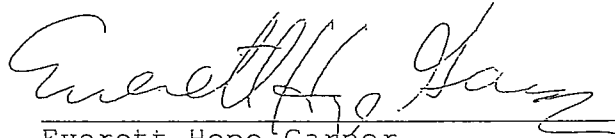
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BOOK
AUG 1 8 2011
3:03

Plaintiff by and through her undersigned counsel, hereby appeals from the Decision and Judgment of the Marion County Magistrate's Court, Judge Mackie D. Hayes by trial by jury on July 20, 2011. The appeal is based upon the following grounds:

1. It is respectfully submitted that the Trial Judge erred in failing to grant Appellant's Motion for Directed Verdict on the issue of negligence when the evidence clearly mandated such a finding on the part of respondent as a matter of law.
2. It is respectfully submitted that the Trial Judge erred in failing to grant Appellant's Motion for Judgment Notwithstanding the Verdict or alternatively a new trial when the

evidence clearly mandated such.

Respectfully Submitted,



Everett Hope Garner
HOLLER, DENNIS CORBETT, ORMOND,
PLANTE & GARNER
P.O. Box 11006
Columbia, SC 29211
(803) 765-2968
Attorney for Plaintiff

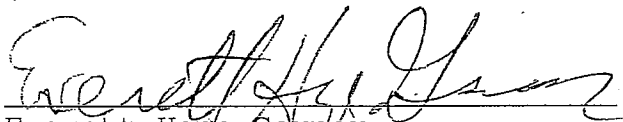
Columbia, South Carolina
8/11/11, 2011

CERTIFICATE OF COUNSEL

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

Dated: _____

12/16/13



Everett Hope Garner
Holler, Garner, Corbett, Ormond,
Plante & Dunn
P.O. Box 11006
Columbia, SC 29211
(803) 765-2968
Attorney for Appellant

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ashley Outing, Appellant,

v.

Velmetria Chante Weeks, Respondent.

Appellate Case No. 2013-001300

Appeal From Marion County
D. Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2015-UP-155
Submitted January 1, 2015 – Filed March 18, 2015

AFFIRMED

Everett H. Garner, of Holler, Garner, Corbett, Ormond,
Plante & Dunn, of Columbia, for Appellant.

J. David Banner, of Aiken Bridges Elliott Tyler &
Saleeby, P.A., of Florence, 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)); *Price v. Pickens*

Cnty., 308 S.C. 64, 67, 416 S.E.2d 666, 668 (Ct. App. 1992) ("The burden is on the appellant to provide a sufficient record such that this court can make an intelligent review."); *Windham v. Honeycutt*, 290 S.C. 60, 64, 348 S.E.2d 185, 187 (Ct. App. 1986) ("This court will not consider facts that do not appear in the transcript of record.").

AFFIRMED.¹

FEW, C.J., and THOMAS and LOCKEMY, JJ., concur.

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 MARION COUNTY
COURT OF COMMON PLEAS

D. Craig Brown, Circuit Court Judge

Case No. 2011-CP-33-598

Ashlie Outing Appellant

v.

Velmetria Chante Weeks Respondent,

PETITION FOR REHEARING

Appellant by and through her undersigned counsel and pursuant to the authority of SCACR 221(a), petition this Honorable Court for a rehearing of this appeal. The Appellant respectfully contends that the Court misapprehended and misapplied case are as follows:

1. The Court of Appeals Opinion rules that the burden is on the Appellant to provide a sufficient record so that this Court can make an intelligent review and the Court will not consider facts that do not appear in the Transcript of Record citing Price v. Pickens County, 308 S.C. 64, 67 416 S.E.2d 666-668 (Ct. App. 1992) and Windham v. Honeycutt, 290 S.C. 60, 64 348 S.E.2d 185 (Ct. App. 1986).

The Court of Appeals erred in the application of the above cited case law in affirming the Circuit Court's affirmation of the Magistrate's Court Decision citing A & I, Inc., v. Gore, 366

S.C. 233, 239 621 S.E.2d 383, 386 (Ct. App. 2005) because the intractable application of these principles in this case create an impossible burden for the Appellant. The Magistrate is charged with the responsibility of providing a return for the Appellate Court to review and Appellant has absolutely no control over its content. In the present case, the Appellant presented the entire existing record and the Return of the Magistrate's Court makes it patently obvious that the Magistrate improperly denied a directed verdict on the issue of negligence.

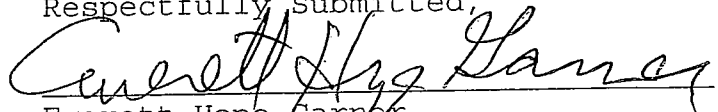
It would be manifestly and incontrovertibly unfair to hold any Appellant responsible for the dereliction of the Magistrate's Court in failing to provide a proper record for the Appellate Court to review. Although the magnitude of the present case is small, the effect on the Appellant is not and the Appellant should not be denied a meaningful review by the Court of Appeals because of procedural factors completely beyond her control.

CONCLUSION

The Court of Appeals opinion summarily denies Appellant the opportunity of a proper review of the inferior Court's proceedings and in doing so vitiates the purpose of the appeals process itself in contravention of Appellant's rights and the rights of others similarly situated. For the foregoing reasons,

the Court should rehear the matter and reverse the lower Court's ruling.

Respectfully Submitted,



Everett Hope Garner

Holler, Garner, Corbett, Ormond,
Plante & Dunn

P.O. Box 11006

Columbia, SC 29211

(803) 765-2968

Attorney for Appellant

Dated: March 27, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2011-CP-33-598

Ashley Outing Appellant,

v.

Velmetria Chante Weeks Respondent.

RESPONDENT'S RETURN TO APPELLANT'S
PETITION FOR REHEARING



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

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TABLE OF AUTHORITIES

Cases

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

Burns v. Wannamaker, 281 S.C. 352, 315 S.E.2d 179 (Ct. App. 1984)

Stanford v. Cudd, 93 S.C. 367, 76 S.E. 986 (1913)

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

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

Statutes and Rules

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

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

PROCEDURAL HISTORY

The Appellant asserted a cause of action for negligence against the Respondent for alleged injuries sustained in an automobile accident which occurred on January 30, 2006 on Highway 76 in Marion, South Carolina. The case was tried before a six (6) panel jury presided over by Magistrate Jackie Hayes on July 20, 2011. After submission of the case to the jury, a verdict was returned for the Respondent.

Following the trial, the Appellant filed a Notice of Appeal with the Circuit Court which was heard on April 22, 2013 by the Honorable D. Craig Brown. After hearing oral argument from both parties, the Circuit Court affirmed the Magistrate's Court by Order dated May 16, 2013.

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

ARGUMENT

The standard of review to be applied by a Circuit Court in an appeal of the Magistrate's judgment is set forth in § 18-7-170 of the *Code of Laws of South Carolina* (1976, as amended) which provides as follows:

Upon hearing the appeal the appellant court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not effect the merits. In giving judgment the Court may affirm or reverse the judgment of the Court below, in whole or in part, as to any or all the parties and for errors of law or fact.

The standard of review for the Court of Appeals is noted to be more limited than that of the Circuit Court. *Hadfield v. Gilchrist*, 343 S.C.88, 538 S.E.2d 268 (Ct. App. 2000) (citing *Burns v. Wannamaker*, 281 S.C. 352, 315 S.E.2d 179 (Ct. App. 1984)). The *Hadfield* opinion provides as follows:

The Court of Appeals will presume that an affirmance by a Circuit Court of a Magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the Magistrate and there are no facts that show the affirmance was influenced by an error of law.

It has been held that where the testimony is sufficient to sustain a judgment of the Magistrate's Court, and it is affirmed on appeal to the Circuit Court, this Court will assume the Circuit Court affirmed the judgment on the merits, in the absence of facts showing the affirmance was controlled or effected by errors of law. *Stanford v. Cudd*, 93 S.C. 367, 76 S.E. 986 (1913).

In the matter at hand, the Circuit Court affirmed the jury's finding and the Magistrate's judgment in light of the fact there was no error of law. In a

negligence case, the party asserting the cause of action must prove that there was a duty, breach, causation and injury to sustain a verdict. While the Respondent admitted "simple negligence" in regards to the actual circumstance surrounding the incident in issue, the Respondent hotly contested the proximate cause and alleged injuries of the Appellant. The Respondent relied upon well settled case law which was charged to the jury and arguments that the lack of physical damage to the Appellant's vehicle, her declining EMS and medical treatment immediately following the incident along with the fact that the Appellant was able to drive away from the accident scene was supporting evidence that the Appellant did not sustain an injury to sustain an award of damages.

It is clear that the Circuit Court affirmed the Magistrate's judgment on sound and meritorious ground in making its ruling. As this Honorable Court has stated in numerous cases, it will presume an affirmance by a Circuit Court of a Magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the Magistrate. The Appellant has not offered any evidence or proven any facts to suggest that the ruling by the Circuit Court for the decision by the jury should be overturned.

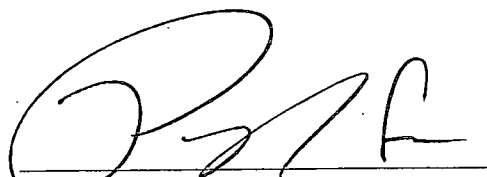
As this Court appropriately cited in its per curium opinion, "where the Circuit Court has affirmed the Magistrate Court decision, this Court looks to whether the Circuit Court Order is controlled by an error of law or is unsupported by the facts." *A & I, Inc. v. Gore*, 366 S.C. 233, 239, 621 S.E.2d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

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

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

CONCLUSION

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



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April 29, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2011-CP-33-598

Ashley Outing Appellant,

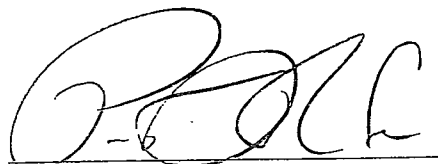
v.

Velmetria Chante Weeks Respondent.

CERTIFICATE OF COMPLIANCE

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

April 29, 2015



J. DAVID BANNER
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The South Carolina Court of Appeals

Ashley Outing, Appellant,

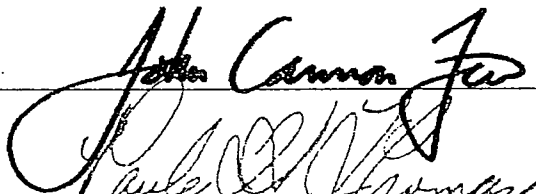
v.

Velmetria Chante Weeks, Respondent.

Appellate Case No. 2013-001300

ORDER

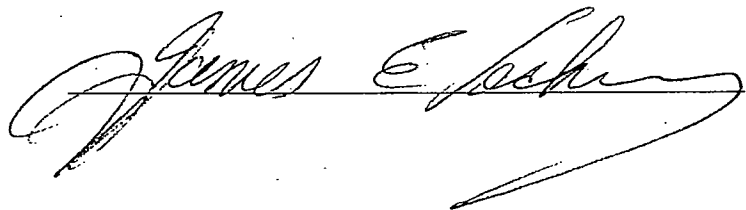
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

cc:

Everett H. Garner, Esquire

J. David Banner, Esquire

Sherry R. Rhodes

FILED

June 26, 2015