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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM MARION COUNTY  
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

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

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Ashley Outing ..... ~~Appellant,~~ *Petitioner,*

v.

Velmetria Chante Weeks ..... Respondent.

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RESPONDENT'S RETURN TO **PETITIONER'S**  
PETITION FOR WRIT OF CERTIORARI

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August 25, 2015

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## TABLE OF AUTHORITIES

### Cases

*Black v. Hodge*, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991)

*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)

### Statutes and Rules

Rule 242(f) of the Appellant Court Rules

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

## QUESTIONS PRESENTED

**1. Did the Court of Appeals err in affirming the Circuit Judge's affirmation of the Magistrate's denial of Appellant's Motion for a Directed Verdict and Judgment Notwithstanding the verdict when all of the evidence including Respondent's clear and distinctive admissions clearly mandated a finding of negligence on the part of Respondent as a matter of law?**

## ARGUMENT

The Respondent argues that the Court of Appeals did not err in affirming the Circuit Court's affirmation of the Magistrate's denial of Appellant's Motion for Directed Verdict and Judgment Notwithstanding the Verdict in this matter.

In the case at hand, the Appellant asserted a cause of action against the Respondent for injuries sustained as a result of an automobile accident which occurred on January 30, 2006 on Highway 76 in Marion, South Carolina. 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 in "stop and go" traffic. The Respondent impacted the rear of the Appellant's vehicle and the Appellant alleged bodily injury as a result of the same. An action was filed in the Magistrate's Court in Marion County on or about May 4, 2006. Ultimately, the case was 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. In addition, photographs of the vehicles involved in the incident were admitted into evidence for the jury to factor into their deliberation. The Appellant confirmed she and the Respondent both drove away from the scene of the incident.

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 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.

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 support an award for damages.

The Circuit Court affirmed the Magistrate’s judgment and the Court of Appeals subsequently affirmed the Circuit Court. As our Appellant Courts have stated in numerous cases, it will presume an affirmance by a Circuit Court of a Magistrate’s judgment 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 and/or the affirmation by the Appellant Court should be overturned.

The Appellant argues that since there should have been a finding of negligence as a matter of law, that an award for the Appellant would have been returned. However, the Appellant is misguided in that she must show that the

alleged negligence was the proximate cause of an injury and/or that the alleged injuries and medical treatment were both reasonable and necessary as a result of the incident. The Respondent admitted simple negligence and thus the issue as to negligence was not an issue for the jury to decide but one of proximate cause along with the reasonable and necessary medical treatment and medical bills. Based on the jury's verdict, it is evident that the jury determined that either the Plaintiff's alleged injuries were not the proximate cause of the incident or that her treatment was not reasonable and necessary based upon all of the evidence presented at trial. Thus, the Court of Appeals' affirmation of the Circuit Court's affirmation of the Magistrate's denial of the Appellant's Motion for Directed Verdict and/or Judgment Notwithstanding the Verdict was appropriate in light of the fact the Appellant has not shown that the subsequent rulings were the result of an error of law.

**2. Did the Court of Appeals err in summarily denying Claimant's appeal and Petition for Rehearing by ruling that the burden is on the Appellant to provide a sufficient record so that the 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, 67m 416 S. E. 2d 666, 668 (Ct. App. 1992) and Wyndham v. Honeycutt, 290 S.C. 60, 64, 348 S.E.2d 185, 187 (Ct. App. 1986)?**

#### **ARGUMENT**

The Court of Appeals did not err in denying Claimant's appeal and Petition for Rehearing. The standard of review for the Court of Appeals is more limited than that of the Circuit Court, which affirmed the Magistrate's Court ruling. 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).

Therefore, it is apparent that the Court of Appeals' standard of review is more limited than that of the Circuit Court and thus the Court of Appeals did not err in its ruling denying the Appellant's Appeal and Petition for Rehearing.

  
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PROOF OF SERVICE

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I certify that I have served the Respondent's Return to ~~Appellant~~ <sup>Petitioner</sup>'s Petition for Writ of Certiorari on Appellant by depositing a copy of it in the United States Mail, postage prepaid, on August 25, 2015, addressed to her attorney of record, Everett H. Garner, Holler, Dennis, Corbett, Ormond, Plante & Garner, P. O. Box 11006, Columbia, SC 29211.

August 25, 2015

  
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