

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APPEAL FROM MARION COUNTY
COURT OF COMMON PLEAS

SEP 14 2015

D. Craig Brown, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No: 2015-001589

Ashlie Outing Petitioner,

v.

Velmetria Chante Weeks. Respondent,

PETITIONER'S AMENDED REPLY TO
RESPONDENT'S RETURN

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Attorney for Petitioner

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TABLE OF CONTENTS

Table of Authorities.	3
Reply	4
Conclusion.	6

TABLE OF AUTHORITIES

Cases:

Fettler v. Gentner, 396 SC 461, 722
S.E.2d 26 (Ct. App. 2012).

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

Keaton Ex. Rel. Foster v. Greenville
Hospital System, 334 S.C. 488, 514 S.E.2d 570 (1999)

REPLY

The Respondent's Return to the Petition for Certiorari in regard to questions presented:

1. Utterly and completely ignores the threshold issue in this Petition, ie., that the Magistrate's failure to direct a verdict especially in view of his specific statement "in this case the Defendant admitted they were negligent in the present [sic] of the Court therefore the motion for a directed verdict on the issue of negligence was denied" allowing the jury to consider the issue of negligence when there was no evidence otherwise. The Respondent embarks on a "analysis of proximate cause and medical relationship which is based on alleged facts that are totally absent from the terse "record" cited above. This would constitute improper argument outside the record.

The Respondent also states that Defendant admitted simple negligence in regard to the circumstances surrounding the accident. If this were the case, then obviously the Judge should have directed a verdict on the issue of simple negligence which he manifestly failed to do thus polluting the process beyond that point. The contradictory nature of the statement in the Magistrate's Return clearly illuminates an error of law.

2. The Respondent utterly and completely ignores the issue of insufficient record and embarks on the technical errors and the presumptive affirmance principles. Contrary to the specious arguments of the Respondent, the affirmations of the lower court's have most certainly been controlled and affected by errors of law as so starkly illustrated by the statement in the Magistrate's Return. "As the record does not disclose the grounds upon which the Court rendered its judgment, we must assume that it was rested upon some sound and meritorious ground, and sustain it, if the record discloses any such ground." Hadfield v. Gilchrist, 343 S.C. 88, 538 S.E.2d 268 (Ct. App. 2000). Here the record discloses nothing remotely akin to any meritorious ground.


Further, errors may only be found to be harmless where the reviewing Court can find beyond a reasonable doubt that the error did not contribute to the verdict in the case below. Keaton Ex. Rel. Foster v. Greenville Hospital System, 334 S.C. 488, 514 S.E.2d 570 (199). The Magistrate's Return or lack thereof is supremely illustrative of the inexorable dilemma and impossible burden placed upon Petitioner to furnish a sufficient record in this case. The case should be remanded for a new trial on the issues of proximate cause and damages. Fettler v. Gentner, 396 SC 461, 722 S.E.2d 26 (Ct. App. 2012).

CONCLUSION

This case is important and justice should be done.

Respectfully submitted,

September 9, 2015


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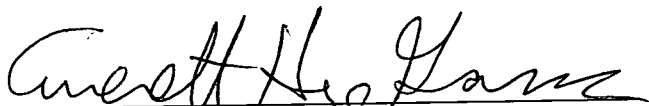
v.

Velmetria Chante Weeks. Respondent,

PROOF OF SERVICE

I certify that I have served the Petitioner's Amended Reply to Respondent's Return on Velmetria Chante Weeks by depositing a copy of it in the United States mail, postage prepaid, on September 9, 2015, addressed to her attorney of record, J. David Banner, Esquire, Post Office Drawer 1931, Florence, South Carolina 29503.

September 9, 2015


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