STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Madel C. Rivero, as Personal Representative for the Estate of Lilia Lorena Blandin,

Plaintiff,

vs.

Civil Action No. 2013-CP-23-6522

Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County,

Defendant.

ORDER CONCERNING DEFENDANT GREENVILLE SHERIFF POST-TRIAL MOTIONS

This matter is before the Court on seven (7) Motions filed by the Defendant as set out below. The parties submitted written arguments to the Court for consideration.

With respect to the following Motions filed by Defendant Greenville Sheriff, the Court finds that the jury's verdict of $750,000.00 for Plaintiff's survival claim should be reduced, after credit for all applicable offsets and pursuant to the S.C. Tort Claims Act, and judgment should be entered against Defendant for $300,000.00 on the survival claim. Similarly, the jury's verdict of $500,000.00 for Plaintiff's Wrongful Death claim should be reduced, after credit for all applicable offsets and pursuant to the S.C. Tort Claims Act, and judgment should be entered against Defendant for $300,000.00 on the wrongful death claim. Therefore, the Court grants the relief sought by Defendant in the Motions listed below and orders that judgment be entered against the Defendant on the Survival claim for $300,000.00 and the Wrongful Death claim for $300,000.00 :

1. **Defendant's Motion for Offset and Remittitur of Verdict (filed October 12, 2015 at 3:24 pm)**

2. **Defendant's Motion to Alter or Amend (filed October 8, 2015 at 2:11 pm)**

3. **Defendant's Motion for Offset and Remittitur of Verdict (filed October 8, 2015 at 2:09 pm)**

4. **Defendant's Motion to Alter or Amend (filed October 12, 2015 at 3:23 pm)**

With respect to the following Motions, the Court denies the Motions for the reasons set forth herein:

5. **Defendant's Motions for JNOV and New Trial (filed October 12, 2015 at 3:24 and 3:25 pm)**

To recover in a survival action in South Carolina, Plaintiff must establish some evidence of "conscious pain and suffering." Camp v. Petroleum Carrier Corp., 204 S.C. 133, 28 S.E.2d 683 (1944). Our courts do not require an extensive showing to support a finding of conscious pain and suffering, but merely some evidence – "a scintilla" – of conscious pain and suffering to submit the matter to the jury for determination. Croft v. Hall, 208 S.C. 187, 37 S.E.2d 537 (1946). If there is any evidence from which a jury could reasonably conclude a decedent experienced conscious pain and suffering, the issue must be submitted to the jury. Vereen v. Liberty Life Ins. Co., 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991) (quoting Croft v. Hall). There is no requisite time period, degree or manner of "conscious pain and suffering" that is necessary to support a survival award. Scott v. Porter, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000) (citing Holston v. Sisters of Third Order of St. Francis, 165 Ill.2d 150, 650 N.E.2d 985 (1999)).

The Court found at trial and finds now that Plaintiff produced sufficient evidence of Lilia Blandin's conscious pain and suffering to submit the Survival cause of action to the jury. Testimony from Kim Selvy and Barbara Headen showed that Lilia Blandin fought against her attacker and yelled, "Please stop!" **after** being stabbed. Testimony of the medical examiner explained the "defensive" stab wounds on Lilia's body and how those wounds indicated she fought back against her attacker. The medical examiner testified that Lilia's death would not have been immediate, lasting as long as a few minutes, during which she would have endured conscious pain and suffering. The evidence presented to the jury on this issue, as well as the reasonable conclusions to be drawn from such evidence, support the submission of the survival claim to the jury and the jury's finding of a survival award.

For these reasons, Defendant's Motion is denied.

6. **Defendant's Motion for JNOV and/or In The Alternative New Trial *Nisi Remittitur***

Unless the jury's award for survival is "excessive," remittitur would not be appropriate. Hunter v. Staples, 335 S.C. 93, 515 S.E.2d 261 (Ct. App. 1999). A jury's determination of award on a survival action should be given great deference. Russ v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993). Considering the testimony and evidence concerning the survival cause of action, some of which is noted above, the Court finds the jury award of $750,000.00 (which will be reduced to $300,000.00) is not excessive. For these reasons, Defendant's Motion is denied.

7. **Defendant's Motion for JNOV and New Trial (filed October 12, 2015 at 3:24 pm).**

Generally, statutes that create or define the duties of public office do not create a duty of care toward individuals. Parker v. Brown, 195 S.C. 35, 10 S.E.2d 625 (1940); Jensen v. Anderson County DSS, 304 S.C. 195, 403 S.E.2d 615 (1990) (rehearing denied 1991); Arthurs ex. rel. Estate of Munn v. Aiken County, 346 S.C. 97, 551 S.E.2d 579 (2001). However, our courts have recognized an exception to the "public duty rule." Arthurs, infra; Jensen, infra. Steinke v. SC Dept. Labor Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999) (rehearing denied 1999).

Patricia Sullivan's duties and obligations arose, not from statute, but from GCSO General Order 238. The "public duty rule" is therefore inapplicable to her actions or inactions. Failure to follow internal policies and guidelines of an entity is evidence of negligence. Madison, ex rel. Bryant v. Babcock Center, 371 S.C. 123 638 S.E.2d 650 (2006).

With respect to the deputies' failure to investigate and arrest, Plaintiff claimed their duties arose from both GCSO General Order 238 and S.C. Code Ann. §16-25-70. As such, the "public duty rule" may be applicable to claims of a duty existing pursuant to §16-25-70, but it would not apply to the common law duty to follow the GCSO policies and procedures. Madison, supra. Because Defendant did not request a special interrogatory verdict form, the Court is unable to determine whether the jury found GCSO was grossly negligent for violating its own policies, §16-25-70, or both. Plaintiff submitted evidence to support a finding by the jury of a violation of either GCSO Order 238 and SC Code §16-25-70.

Because Plaintiff's claims involved a violation of statute as a basis for a finding of a violation of duty, the Court considered the public duty rule and whether a "special

duty" exception existed. Under Arthurs, a "special duty" exists if the Court so finds after consideration of a six-part test adopted in Jensen. See also, Edwards v. Lexington Sheriff Dep't, 386 S.C. 285, 688 S.E.2d 125 (2010).

The Court has considered the six part Arthurs test in this case. The essential purpose of the CDV Act is to protect against domestic violence and imposes upon law enforcement officers a non-discretionary duty to arrest a suspect where there is sufficient evidence domestic violence has occurred and there is a physical manifestation of injury. Further, the officer may arrest any time there is probable cause, even without a physical manifestation of injury. In the instant case, each officer testified that if Ms. Blandin, Ms. Rivero, or the children had indicated that an assault had occurred, under the totality of the circumstances, Avery Blandin would have been arrested for CDV. Additionally, both experts testified that if the jury believed the testimony of Chelsea Blandin and Ms. Rivero, the deputies would have had no discretion and should have arrested Avery Blandin.

Next, the CDV Act defines a clearly identifiable, limited class of persons to be protected, namely victims of criminal domestic violence. Lilia Blandin was a person within the class of persons to be protected because there was evidence she was a victim of domestic violence on December 9th, when the officers were on the scene. Law enforcement officers are aware of the likelihood of harm to class members upon their failure to fulfill their duties. In this case, Deputy Tyner and Deputy Picone testified about their knowledge of the cycle of domestic violence and that failure to stop that cycle with arrest or intervention would likely result in an escalation of violence against Lilia. Both the Defendant's expert witness and Plaintiff's expert witness testified that the most

effective way to stop the cycle of violence from escalating is to incarcerate the offender, even for a short time.

Finally, the deputies are given sufficient authority to act in circumstances - i.e. arrest - under S.C. Code Ann. §16-25-70 (A) or (B). There was evidence in this case from which the jury could have found that the deputies had a non-discretionary duty to arrest, or, in the alternative, that the deputies were grossly negligent in deciding not to arrest when they had probable cause, and therefore the authority, to do so.

After the Court determines the existence of a duty, matters of breach of duty and causation are generally factual issues for jury determination. Martasin v. Hilton Head Health System, 364 S.C. 430, 613 S.E.2d 795 (Ct. App. 2005)(rehearing denied 2005)(cert. denied 2006); Hill v. York County Sheriff's Dept., 313 S.C. 303, 437 S.E.2d 179 (Ct. App. 1993) (rehearing denied 1993)(cert. denied 1994). The testimony of the child Chelsea Blandin, Ms. Madel Rivero, and both experts are more than sufficient to establish probable cause for the arrest, and thus a breach of duty upon failure to arrest. State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996)(rehearing denied 1996); State v. Moultrie, 316 S.C. 547, 451 SE2d 34 (Ct. App. 1994).

As to causation, the evidence presented to the jury in the form of expert and lay witness testimony supported the jury's determination of causation. Several witnesses, including both parties' experts and Deputy Picone and Deputy Tyner, testified about the cycle of domestic violence. There was evidence that Avery Blandin only became violent when intoxicated. There was evidence that had Avery been arrested on December 9, 2011, he would likely have still been in jail on December 10, 2011 when he killed Lilia. Proximate causation does not have to be shown with exact certainty. Koester v. Carolina

Rental Center, Inc., 313 S.C. 490, 443 S.E.2d 392 (1994)(rehearing denied 1994); Hill, infra.

Defendant raised several defenses and immunities under the S.C. Tort Claims Act and S.C. Code Ann. § 16-25-70. The Court has considered Steinke and other applicable law, the pleadings, the evidence submitted, the arguments of counsel and requested charges, and finds that a "gross negligence" standard applies to Defendant's duties in this case. The Court instructed the jury several times on "gross negligence" prior to the verdict. The determination of whether Defendant's actions were "grossly negligent" was for jury determination, and the Court will not disturb the verdict. Clark v. SC Dept. of Public Safety, 632 S.C. 377, 608 S.E.2d 573 (2005)(rehearing denied 2005). Plaintiff produced sufficient evidence to support the jury's determination that Defendant was grossly negligent, and thus, liable.

For these reasons, Defendant's Motion is denied.

IT IS THEREFORE ORDERED:

Judgment shall be entered in favor of Plaintiff against Defendant for $300,000.00 (Three Hundred Thousand and 00/100ths Dollars) on the Survival claim and for $300,000.00 (Three Hundred Thousand and 00/100ths Dollars) on the Wrongful death claim.

AND IT IS SO ORDERED.

Honorable Robin B. Stilwell
Circuit Court Judge

November 9, 2016
Greenville, SC