THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEALS FROM RICHLAND COUNTY
Honorable G. Thomas Cooper Jr, Circuit Court Judge

Case No. 2015-002356

Clarence B. Jenkins Jr, Appellant.

v.

South Carolina Department of Employment Workforce, South Carolina Budget & Control Board, and Office of the Governor of South Carolina, Respondents,

APPELLANT'S FINAL BRIEF

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* Under Rule 267(e), SCACR, the cover of the final briefs should be the following colors: brief of appellant - blue; brief of respondent - red; reply brief - gray; and amicus curiae or intervenor - green.

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2. THE APPELLANT ORIGINAL COMPLAINT NEVER SEPARATED ADRIENNE SORENSON FROM SOUTH DEPARTMENT OF EMPLOYMENT WORKFORCE, SOUTH CAROLINA BUDGET AND CONTROL BOARD AND OFFICE OF SOUTH CAROLINA GOVERNOR WHICH IS CLEARLY DEFINED BY EACH CAUSE OF ACTION. BECAUSE FRAUD MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE, THE COURT ERRED WHEN IT CHARGED THE JURY THAT THE RESPONDENT MUST PROVE FRAUD BY A PREPONDERANCE OF THE EVIDENCE

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STATEMENT OF ISSUES ON APPEAL

1. JUDGE G. THOMAS COOPER JR, ERR IN APPLYING THE LAWS ESTABLISHED BY SC GENERAL ASSEMBLY.

2. JUDGE G. THOMAS COOPER JR, DISMISSED COMPLAINT 2015-CP-40-03112 UNDER RULE 12(b) AFTER SUBMITTING MEMORANDA OF LAW FOR EACH MOTION, PRESENTATION OF ORAL ARGUMENTS ON SEPTEMBER 15, 2015 AND SUBMISSION OF PROPOSED ORDER PER REQUEST BY THE HONORABLE COURT. FURTHERMORE COMPLAINT 2015-CP-40-03112 SHOULD HAVE NOT BEEN DISMISSED UNDER RULE 12(b) BECAUSE EVERY QUALIFYING STIPULATION WAS MET.

3. THE ACTION OF ADRIENNE SORENSON ILLEGALLY BARRED FROM APPLYING WAS NEVER SEPARATED FROM SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT WORKFORCE, SOUTH CAROLINA BUDGET AND CONTROL BOARD AND OFFICE OF SOUTH CAROLINA GOVERNOR AND UNDER THEIR SUPERVISION.

STATEMENT OF THE CASE

I received an email from Sharlayne Bellamy of SC Judicial Center on July 24, 2013 that my application would no longer be considered for Administrative Specialist II/Docketing

Specialist II position due to receiving notification from the state of South Carolina that candidate has been marked as "Barred From Applying". I have always believed that state of South Carolina was performing the blackball effect against me due to not receiving employment for position which was well qualified for.

I contacted state agencies seeking assistance due to a possible blackball effect that included South Carolina Department Of Employment Workforce and Office Of South Carolina Governor Office that went ignored.

By providing South Carolina Department Of Employment Workforce and South Carolina Budget and Control Board and Office Of South Carolina Governor of "Barred From Applying" after receiving notification from Sharlayne Bellamy therefore they either did not respond at all or declared a system error in an attempted cover up of an illegal employment activity. Judge G. Thomas Copper Jr, dismissed the complaint due to a preponderance of evidence that was never seen by the court..

FACTS

Appellant was "Barred From Applying" by South Carolina Department Of Employment Workforce which is an illegal employment activity referenced by exhibit. Senior Management at state agencies knew about "Barred From Applying " through documented conversation in an attempt to provide a cover up referenced by exhibit. By Appellant being illegally barred from applying prevented employment opportunities through unlawful employment activity therefore created an environment that led to deprivation referenced by exhibit.

ARGUMENTS

I. ADRIENNE SORENSON BY APPLYING "BARRED FROM APPLYING" ACTED IN A GROSSLY NEGLIGENCE MANNER AS AN EMPLOYEE OF SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT WORKFORCE THEREFORE STATE AGENCIES BECOMES LIABLE AND FURTHERMORE DUE TO ADRIENNE SORENSON BEING REFERRED AS TO ACTING OUT OF SCOPE OF HER

GROSSLY NEGLIGENCE CONDUCT. BY ADRIENNE SORENSON BEING EMPLOYED AT SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT WORKFORCE IN THE HUMAN RESOURCES OFFICE APPLYING "BARRED FROM APPLYING" DURING NORMAL WORK HOURS WAS IN OFFICIAL DUTY.

[The South Carolina Tort Law 15-78-30 and South Carolina Law Exceptions to waiver of immunity 15-78-60 (25).]]

II. G. THOMAS COOPER JR, DISMISSED COMPLAINT 2015-CP-40-03112 AS PLAINTIFF WAS "BARRED FROM APPLYING" BY DEFENDANTS WHEN A STATE DECLARATION STATES IT IS A PUBLIC POLICY OF THIS STATE THAT ECONOMIC INSECURITY DUE TO UNEMPLOYMENT IS A SERIOUS MENACE TO HEALTH, MORALS AND WELFARE OF THE PEOPLE OF THIS STATE.

[South Carolina Law 41-27-20.]

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

May 19, 2016

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Prakash and Urmila Solanki, Respondents,

v.

Wal-Mart Store #2806, and Spartanburg County Sheriff's Office, Defendants,

Of whom Wal-Mart Store #2806 is the Appellant.

Appellate Case No. 2012-213247

Appeal From Spartanburg County
The Honorable Frank R. Addy, Jr., Circuit Court Judge

Opinion No. 5264
Heard March 5, 2014 – Filed August 20, 2014

AFFIRMED

Regina Hollins Lewis and Mary Daniel LaFave, both of Gaffney Lewis & Edwards, LLC, of Columbia, for Appellant.

John David Hawkins and Charles Logan Rollins, II, both of The Hawkins Law Firm, of Spartanburg, for Respondents.

KONDUROS, J.: Wal-Mart Store #2806 (Wal-Mart) appeals the trial court's award of punitive damages to Prakash and Urmila Solanki (collectively, the Solankis) in an action for gross negligence. It also appeals the trial court's denial

of its post-trial motions for Judgment Notwithstanding the Verdict (JNOV) and for the reversal or reduction of punitive damages. We affirm.

FACTS/PROCEDURAL HISTORY

On November 27, 2009, "Black Friday," the Solankis went shopping at the Wal-Mart in Boiling Springs, South Carolina. After they selected their items, Mr. Solanki went to the self-checkout line; however, he experienced a problem with the register. Ryan Smalls, a Wal-Mart employee, attempted to help Mr. Solanki. When Smalls could not get the self-checkout machine to operate correctly, Smalls took Mr. Solanki to a cashier-assisted register. There were also problems with that register. During the transaction, Mr. Solanki handed Smalls his debit card and identification. Smalls manually stenciled Mr. Solanki's debit card, which he used as a credit card because Mr. Solanki could not remember his pin number. However, the credit card information of Robin Martin was hand keyed into the register during this transaction. A receipt with Martin's credit card information was signed by Mr. Solanki and $144.70 was charged to her account. The Solankis left the store unaware of the mistake.

On December 1, 2009, Martin notified the Spartanburg County Sheriff's Office her credit card had been stolen and two unauthorized charges were on her account, including Mr. Solanki's purchase at Wal-Mart. Deputy Gina Cashion was assigned to the case. She requested Wal-Mart provide her with the video surveillance and receipts for the date and time of the unauthorized charges. Wal-Mart found one transaction for that date in the amount of $144.70. It provided Deputy Cashion with video surveillance of the transaction, a copy of the stenciled impression of Mr. Solanki's debit card, the itemized receipt, and the store's copy of the receipt showing Martin's credit card information with Mr. Solanki's signature.

Deputy Cashion tried to contact Mr. Solanki but was unsuccessful. Based on the information at her disposal, she obtained an arrest warrant for Mr. Solanki. He was arrested in Georgia in April 2010 and spent six nights in jail before he was transported to South Carolina where he posted bail. He was indicted on financial transaction card theft and financial transaction card fraud, but the indictments were dismissed on August 24, 2010.

Mr. and Mrs. Solanki filed a complaint against Wal-Mart and the Sheriff's Office for (1) negligence, (2) gross negligence and recklessness, (3) false imprisonment, (4) intentional infliction of emotional distress, (5) defamation and defamation per

se, (6) assault, (7) battery, (8) malicious prosecution, and (9) loss of consortium.[1] The trial court directed a verdict for Wal-Mart on all causes of action except negligence and gross negligence. The jury returned a verdict against Wal-Mart for negligence. They awarded Mr. Solanki $50,000 in actual damages and $225,000 in punitive damages against Wal-Mart. They also found Mr. Solanki was comparatively negligent in the amount of 25%. Wal-Mart filed post-trial motions for JNOV, new trial *nisi* remittitur, reversal or reduction of punitive damages, or new trial pursuant to the Thirteenth Juror Doctrine. The trial court denied all of Wal-Mart's motions. This appeal followed.

LAW/ANALYSIS

I. Punitive Damages

Wal-Mart asserts the Solankis presented insufficient evidence to submit the issue of punitive damages to the jury. Specifically, Wal-Mart maintains the Solankis presented no evidence at trial its actions were willful, wanton, or reckless. Instead, it argues this is a case of simple negligence, which is not subject to punitive damages. Furthermore, Wal-Mart contends the trial court erred in applying the gross negligence standard without first making a finding of willful, wanton, or reckless misconduct before submission to the jury.

Additionally, Wal-Mart argues the Solankis asserted a heightened duty of care for Wal-Mart beyond the duty a merchant owes to its customers. Wal-Mart maintains it was not under a heightened duty of care, and under the general duty of care a merchant owes to a customer, no facts were presented at trial that demonstrated Wal-Mart breached its duty. Wal-Mart contends the Solankis presented no evidence showing it deviated from industry standards by handing over the evidence in its possession to the Sheriff's Office without conducting its own investigation. We disagree.

"In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law, and a factual finding by the jury will not be disturbed unless a review of the record discloses no evidence that reasonably supports the jury's findings." *Wright v. Craft*, 372 S.C. 1,

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[1] The trial court granted a directed verdict on all claims against the Sheriff's Office except for the claims of false imprisonment and malicious prosecution. The jury returned a verdict in favor of the Sheriff's Office on both claims.

18, 640 S.E.2d 486, 495 (Ct. App. 2006). According to Rule 220(c), SCACR, an appellate court may affirm the lower court's judgment for any reason appearing in the record on appeal. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 417, 526 S.E.2d 716, 722 (2000).

> The standard of review as regards the refusal to grant a directed verdict is well established: In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt. The trial court can only be reversed by this [c]ourt when there is not evidence to support the ruling below.

Creech v. S.C. Wildlife & Marine Res. Dep't, 328 S.C. 24, 28-29, 491 S.E.2d 571, 573 (1997) (internal quotation marks omitted).

"The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future." *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000). "Punitive damages also serve to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party." *Id.* at 378-79, 539 S.E.2d at 533.

To receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights. *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 313, 594 S.E.2d 867, 875 (Ct. App. 2004). "A conscious failure to exercise due care constitutes willfulness." *McCourt ex rel. McCourt v. Abernathy*, 318 S.C. 301, 308, 457 S.E.2d 603, 607 (1995). The issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton. *Graham v. Whitaker*, 282 S.C. 393, 398, 321 S.E.2d 40, 43 (1984).

> In light of *Gamble* [*v. Stevenson*, 305 S.C. 104, 111-12, 406 S.E.2d 350, 354 (1991)], there are now three stages in this state to a trial court's review of punitive damages.

> First, the court must determine whether the defendant's conduct rises to the level of culpability warranting a punitive damage award. If not, the issue of punitive damages may not be submitted to the jury. If so, the jury should be adequately instructed to assess an appropriate amount of damages. Second, the trial judge must conduct a post-trial *Gamble* review to ensure that the award does not deprive the defendant of due process. If the award is determined to violate the defendant's due process rights, then the trial court must either grant a new trial absolute, or a new trial *nisi* remittitur. If the award is determined not to violate the defendant's due process rights, then the trial court reaches the third inquiry, to wit, whether, in the exercise of its discretion, it finds the award excessive or inadequate.

S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc., 324 S.C. 149, 154, 478 S.E.2d 57, 59 (1996).

Negligence is the failure to exercise due care, while gross negligence is the failure to exercise slight care. *Clyburn v. Sumter Cnty. Sch. Dist. # 17*, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994). "While punitive damages are recoverable for negligence so gross or reckless of consequences as to imply or to assume the nature of wantonness, willfulness or recklessness, yet they are not awarded in this state for mere gross negligence." *Bell v. Atl. Coast Line R. Co.*, 202 S.C. 160, 171, 24 S.E.2d 177, 182 (1943). "If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning- the conscious failure to exercise due care." *Berberich v. Jack*, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011).

Gross negligence is ordinarily a mixed question of law and fact. *Clyburn*, 317 S.C. at 53, 451 S.E.2d at 887. "When the evidence supports but one reasonable inference, it is solely a question of law for [the] court, otherwise it is an issue best resolved by the jury. . . . In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 144, 638 S.E.2d 650, 661 (2006). "[A] merchant is not an insurer of the safety of his customer but owes them only the duty of exercising ordinary care to keep the premises in reasonably safe condition." *Pennington v. Zayre Corp.*, 252 S.C. 176, 178, 165 S.E.2d 695, 696 (1969).

The record contains no evidence the trial court imposed a heightened duty of care on Wal-Mart. At trial, the Solankis' attorney discussed his own belief that Wal-Mart should be subject to a heightened duty; however, the record does not indicate the trial court instructed the jury on a heightened duty.

We find the Solankis presented sufficient evidence of Wal-Mart's willful, wanton, or reckless misconduct to send punitive damages to the jury in two factual circumstances— the taking of the credit card information for the sale and the turning over of the credit card information to law enforcement. The trial court followed proper procedure in making this finding. At the close of all evidence, Wal-Mart moved for a directed verdict, asserting the Solankis had not proven gross negligence, and the trial court denied the motion. In its order denying Wal-Mart's post-trial motions, the trial court explicitly found sufficient evidence of willful, wanton, or reckless misconduct by Wal-Mart to send the issue to the jury. Particularly in light of the standard of review for directed verdict motions, we find sufficient evidence existed at the close of evidence to allow the issue of gross negligence to go to the jury. Wal-Mart attempted to run Mr. Solanki's credit card at least three times. When that was unsuccessful, the employee resorted to manually stenciling Mr. Solanki's credit card; however, the information hand-keyed into the cash register belonged to Martin. At the end of the transaction, the receipt presented had Mr. Solanki's signature but showed Martin's credit card information. These facts combined with Mr. Solanki's testimony that he did not use Martin's credit card could allow a reasonable jury to determine Wal-Mart's actions amounted to gross negligence. When reviewing these facts in the light most favorable to the Solankis, we find no error in the trial court's conclusions.

The trial court also found evidence was presented from which a reasonable jury could have concluded Wal-Mart was aware of the dangerous condition it created. It determined Wal-Mart knew the employee hand-keyed the transaction and testimony was presented Mr. Solanki did not present any card but his own to the cashier. Therefore, viewing all facts in the light most favorable to the Solankis, the trial court determined it would be reasonable to conclude Wal-Mart was responsible for the error in processing the credit card. Furthermore, the trial court concluded Wal-Mart was responsible for the creation and production of the evidence used to arrest Mr. Solanki and it was in the best possible position to point out the discrepancies to the police officers.

II. Post-trial Motions

Wal-Mart asserts the evidence was insufficient to sustain the grant of punitive damages. Therefore, the trial court erred in denying the motion to reverse or reduce the amount of punitive damages.

Regarding the motion for JNOV, Wal-Mart argues the denial of this motion was the first time the trial court made a finding of willful, wanton, or reckless misconduct by Wal-Mart. It maintains this was an error of law. Additionally, it asserts the trial court erred in its evaluation of the *Gamble* factors and the trial court's reasoning is insufficient to sustain an award of punitive damages under a clear and convincing standard. In response to the trial court's evaluation of the first *Gamble* factor (defendant's degree of culpability), Wal-Mart contends the hand keying of Mr. Solanki's credit card only speaks to simple negligence. Additionally, Wal-Mart argues that even if its response to the Sheriff's Office's request for information amounted to negligence, it was only simple negligence, and no evidence was presented Wal-Mart was aware of a dangerous condition it then failed to mitigate. Therefore, it contends the evidence was insufficient to sustain the award of punitive damages.[2] We disagree.

When reviewing a motion for JNOV, an appellate court must employ the same standard as the trial court. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). On appeal from an order denying a motion for JNOV, an appellate court views the evidence and all reasonable inferences in a light most favorable to the non-moving party. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331-32, 732 S.E.2d 166, 171 (2012).

In *Gamble*, 305 S.C. at 111-12, 406 S.E.2d at 354, the supreme court of South Carolina specified an eight-factor post-verdict review for trial courts to conduct to determine if a punitive damages award comports with due process. The factors are:

> (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7)

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[2] Wal-Mart makes no argument regarding the *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), factors.

> defendant's ability to pay; and finally, (8) . . . other factors deemed appropriate.

Id. The trial court is not required to make findings of fact for each factor to uphold a punitive damage award. *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996).

"[W]e need dwell no longer upon the rationale, or upon the merits or demerits, of the doctrine [of punitive damages]. Acquiescence in it for almost two centuries justifies the conclusion that it is now agreeable to, and part of, the public policy of the state." *Rogers v. Florence Printing Co.*, 233 S.C. 567, 574-75, 106 S.E.2d 258, 261-62 (1958).

As previously noted, the Solankis presented sufficient evidence to send the issue of punitive damages to the jury. Accordingly, the trial court did not err in denying Wal-Mart's post-trial motion to reverse or reduce the amount of the punitive damages. We also disagree with Wal-Mart's proposition it was an error of law for the trial court to explicitly state its finding of willful, wanton, or reckless misconduct for the first time in its order denying Wal-Mart's post-trial motions.

We find the trial court's analysis of the *Gamble* factors is sufficient to sustain the punitive damages award. The trial court made the required *Gamble* analysis after the award of punitive damages. Regarding the defendant's degree of culpability, it found Wal-Mart created and disseminated the evidence used to arrest Mr. Solanki. Therefore, Wal-Mart was in the best position to point out the hand-keying of the credit card information to the Sheriff's Office. As to the duration of the conduct, the trial court determined the transaction itself lasted a few minutes. However, Wal-Mart had the opportunity to explain the odd nature of the transaction throughout the criminal process. Concerning the defendant's awareness or concealment, the trial court found Wal-Mart created the documents and had exclusive knowledge and possession of them when it turned the information over to the Sheriff's Office. Furthermore, Wal-Mart was in the best position to ensure the transaction was handled properly. The trial court stated a punitive damages award may encourage greater oversight in Wal-Mart's and similarly situated vendor's credit card processing procedures. Regarding whether the award is reasonably related to the harm likely to result from such conduct, the trial court found the award was reasonably related to the harm suffered by Mr. Solanki and others who may be improperly accused of a crime due its negligence. It further found Wal-Mart was able to pay the punitive damages award. The court considered the fact that the jury was able to view the transaction on video and then

render its verdict as a significant "other factor." We find the evidence supports the trial court's ruling.

CONCLUSION

Based on the foregoing, the trial court's decision is

AFFIRMED.

LOCKEMY, J., concurs.

WILLIAMS, J: I respectfully dissent and believe the trial court improperly sent the issue of punitive damages to the jury.

The Solankis failed to submit *any* evidence at trial that Wal-Mart's actions in processing Mr. Solanki's credit card or in complying with law enforcement's request were "willful, wanton, or in reckless disregard of [Mr. Solanki's] rights." *See Longshore v. Saber Sec. Servs., Inc.*, 365 S.C. 554, 564, 619 S.E.2d 5, 11 (Ct. App. 2005) (finding "the plaintiff must prove the defendant's misconduct was willful, wanton, or in reckless disregard of his rights" to support an award of punitive damages). Although I believe the error in hand-keying Mr. Solanki's credit card information would give rise to a negligence claim against Wal-Mart, no evidence was introduced at trial to show Wal-Mart's conduct was so gross or reckless of consequences that punitive damages were warranted. *See Rogers v. Florence Printing Co.*, 233 S.C. 567, 577, 106 S.E.2d 258, 263 (1958) ("The test by which a tort is to be characterized as reckless, wil[l]ful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights."); *Hicks v. McCandlish*, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952) ("Gross negligence is a relative term, and means the absence of care that is necessary under the circumstances, but the absence of this care alone, whether called 'gross' or 'ordinary' negligence, does not authorize the jury to give exemplary damages."); *Bell v. Atl. Coast Line R. Co.*, 202 S.C. 160, 171, 24 S.E.2d 177, 182 (1943) ("While punitive damages are recoverable for negligence so gross or reckless of consequences as to imply or to assume the nature of wantonness, willfulness or recklessness, yet they are not awarded in this state for mere gross negligence.").

Specifically, testimony from trial negates the Solankis' claim that Wal-Mart acted in a reckless manner. Ryan Smalls, the Wal-Mart employee who handled Mr.

Solanki's transaction, testified at trial to Wal-Mart's internal procedures for handling credit card transactions. Smalls testified that Wal-Mart's policy, when a credit card would not swipe at a self-checkout station, was to first try to finalize the transaction at the self check-out station. If this did not work, an employee would suspend the transaction and attempt to process the transaction at the employee's work station. If the credit card still would not work, the employee would hand key the credit card number into the system twice to ensure accuracy, enter the expiration date, and then ask a customer service manager to manually perform an override. After the override was performed, the employee would then enter the three-digit security code on the back of the credit card before finalizing the transaction. According to Smalls, even a manager could not override the transaction if each of these steps were not properly taken. Although Smalls did not independently recollect this transaction with Mr. Solanki, after viewing the video surveillance, he affirmed that each of the foregoing steps was taken during this transaction. Further, although it is regrettable that Mr. Solanki spent six nights in jail as a result of this incident, the Solankis presented no evidence that Wal-Mart's actions of complying with law enforcement's request were unreasonable or that Wal-Mart intentionally and recklessly processed Mr. Solanki's credit card transaction. *See Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 201, 621 S.E.2d 363, 366 ("In order to receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or with reckless disregard for the plaintiff's rights. A conscious failure to exercise due care constitutes willfulness." (internal citations omitted)).

Moreover, I believe the trial court erred when it failed to adequately assess the culpability of Wal-Mart's conduct *before* charging the jury on punitive damages. *See S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc.*, 324 S.C. 149, 154, 478 S.E.2d 57, 59 (1996) ("*First*, the [trial] court must determine whether the defendant's conduct rises to the level of culpability warranting a punitive damages award. If not, the issue of punitive damages may not be submitted to the jury." (emphasis added)); *Longshore*, 365 S.C. at 564, 619 S.E.2d at 11 ("[T]rial judges in this state have long been required, *as a threshold matter*, to assess the culpability of a defendant's conduct to determine whether punitive damages are available in a given case (i.e., whether the issue should be submitted to the jury)." (emphasis added) (quoting *South Carolina Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc.*, 324 S.C. 149, 152, 478 S.E.2d 57, 58 (1996))). Rather, the extent of the trial court's observation on the issues of gross negligence and punitive damages was as follows:

> As a general rule, the issues of gross negligence are properly for the jury to determine. There's evidence, based upon the weirdness of the transaction, for lack of a better word, . . . from which the jury could conclude that, in some way, . . . the defendant Wal-Mart, was grossly negligent in the way they handled the transaction. . . . I'll charge gross negligence and punitives.

I believe the "weirdness of the transaction," standing alone, is insufficient as a matter of law to substantiate a gross negligence claim or to support an award of punitive damages. Thus, I respectfully disagree with the majority and would hold the trial court erred in submitting the issue of punitive damages to the jury.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jenny C. Mishoe, Respondent,

v.

QHG of Lake City, Inc., Appellant.

Appeal From Williamsburg County
Clifton Newman, Circuit Court Judge

Opinion No. 4027
Heard June 15, 2005 – Filed October 3, 2005

AFFIRMED

Charles E. Carpenter, Jr. and S. Elizabeth Brosnan, both of Columbia and Douglas C. Baxter, of Myrtle Beach, for Appellant.

Ronnie Alan Sabb and W. E. Jenkinson, III, both of Kingstree, for Respondent.

HEARN, C.J.: In this civil action, QHG of Lake City, Inc. appeals the award of $750,000 in actual damages and $1,250,000 in punitive damages in favor of Jenny C. Mishoe. QHG alleges a new trial should be granted as a result of an improper closing argument and the circuit court's erroneous restriction of the scope of QHG's cross-examination of Mishoe. Moreover, QHG argues the evidence does not support an award of punitive damages. We affirm.

FACTS

On June 3, 1998, Jenny C. Mishoe visited her grandmother at Carolinas Hospital System, a wholly owned facility of QHG of Lake City, Inc. After the visit, Mishoe left the hospital via the emergency room exit and proceeded to her car across the horseshoe drive area in front of the emergency room doors. While walking across the pavement near the emergency room exit, Mishoe's left foot got caught in a hole. Mishoe suffered serious injuries to both her left ankle and right knee.

QHG was required to perform regular, twice-yearly safety inspections of its premises to maintain its accreditation. On July 1, 1997, the head of maintenance for the hospital, Edward McDonald, provided the hospital with a written report stating a hole existed in the pavement near the emergency room exit. The hospital took no action to repair the hole or warn visitors and patients of the hole's existence.

The matter proceeded to trial and the jury returned a verdict in Mishoe's favor in the amount of $750,000 actual damages and $1,250,000 punitive damages. The jury found Mishoe ten percent comparatively

directed verdict and judgment notwithstanding the verdict on the issue of punitive damages, which the circuit court denied. The circuit court also denied QHG's motion for reconsideration. This appeal followed.

LAW/ANALYSIS

I. Punitive Damages

QHG alleges the circuit court erred in denying its motion for a directed verdict and judgment not withstanding the verdict on the issue of punitive damages.**[1]** Specifically, QHG argues the circuit court erred because there was no clear and convincing evidence the hospital's actions constituted willful, wanton, or reckless conduct. We disagree.

In reviewing the denial of a motion for directed verdict or JNOV, the appellate court applies the same standard as the circuit court. Gilliland v. Doe, 357 S.C. 197, 199, 592 S.E.2d 626, 627 (2004). When ruling on directed verdict or JNOV motions, the circuit court must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. Sabb v. South Carolina State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). If the evidence as a whole is susceptible to more than one reasonable inference, a jury issue is created and the motion should be denied. Adams v. G.J. Creel & Sons, Inc., 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995).

On appeal from the denial of a motion for directed verdict or JNOV, the appellate court may only reverse if there is no evidence to support the circuit court's ruling. South Carolina Prop. & Cas. Guar. Ass'n v. Yessen, 345 S.C. 512, 521, 548 S.E.2d 880, 885 (Ct. App. 2001). Neither the circuit court nor the appellate court has the authority to decide credibility issues or resolve conflicts in testimony. Garrett v. Locke, 309 S.C. 94, 99, 419 S.E.2d 842, 845 (Ct. App. 1992).

In order to receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or with reckless disregard for the plaintiff's rights. S.C. Code Ann. § 15-33-135 (2004); Taylor v. Medenica, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). A conscious failure to exercise due care constitutes willfulness. Welch v. Epstein, 342 S.C. 279, 301, 536 S.E.2d 408, 419 (Ct. App. 2000). When evidence exists that suggests a defendant is aware of a dangerous condition and does not take action to minimize or avoid the danger, sufficient evidence exists to create a jury issue as to whether there is clear and convincing evidence of willfulness. See McGee v. Bruce Hosp. Sys., 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996). The issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton. Welch, 342 S.C. at 301, 536 S.E.2d at 419.

The amount of damages, actual or punitive, remains largely within the discretion of the finder of fact, as reviewed by the trial judge. Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991). The trial judge is vested with considerable discretion over the amount of a punitive damages award, and this court's review is limited to correction of errors of law. Welch, 342 S.C. at 305, 536 S.E.2d at 421. Moreover, the appellate court must affirm the circuit court's punitive damages finding if any evidence reasonably supports the court's factual findings. Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 314, 594 S.E.2d 867, 875 (Ct. App. 2004).

Here, the evidence demonstrates the head of maintenance for QHG provided actual, written notice of the existence of the hole in question to the CEO of the hospital on July 1, 1997, almost one year before the accident occurred. QHG took no action to repair the hole after receiving notice of its existence. Moreover, the hospital took no precautions to warn visitors or patients of the existence of the hole. Therefore, we find the evidence of this written notice is sufficient to submit the issue of QHG's willful, wanton, reckless, or malicious conduct to the jury.

II. Mistrial Motion

QHG next argues the circuit court erred in failing to grant its motion for a mistrial. QHG alleges comments made by Mishoe during closing arguments could not be remedied by the circuit court's curative instruction and, therefore, a mistrial was warranted. Specifically, QHG claims any reference to the $2.8 million sales price of the hospital resulted in sufficient prejudice to justify a mistrial. We disagree.

The granting or denying of a motion for mistrial is within the sound discretion of the trial judge. Creighton v. Coligny Plaza Ltd. Partnership, 334 S.C. 96, 118, 512 S.E.2d 510, 521 (Ct. App. 1998). Absent an abuse of discretion, the decision of the trial judge will not be overturned on appeal. Id. The burden is on the moving party to show not only error, but also the resulting prejudice. Id. The granting of a motion for a mistrial is an extreme measure which should be taken only when an incident is so grievous that the prejudicial effect can be removed in no other way. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999).

When an objection is timely made to improper remarks of counsel during closing arguments, the judge should rule on the objection, give a curative charge to the jury, and instruct offending counsel to desist from improper remarks. McElveen v. Ferre, 299 S.C. 377, 381, 385 S.E.2d 39, 41 (Ct. App. 1989). In this matter, counsel for Mishoe made the following remarks to the jury on the issue of punitive damages:

> What is the reasonable relationship to harm-and there was harm-and the defendant's ability to pay. [sic] I ain't too much worried about that hospital paying. When they left Williamsburg County, they left with 2.8 million dollars worth of our money just when they left.

At that time, counsel for QHG objected, and stated:

> QHG: Your Honor, I'd object to any testimony about how much money the hospital sold for, and everybody knows-
>
> The Court: The objection is-
>
> QHG: -the price of the deal
>
> The Court: Yes, sir.
>
> QHG: And I would move for a mistrial.
>
> The Court: Pardon?
>
> QHG: I'd move for a mistrial.
>
> The Court: Ladies and gentlemen, the objection is sustained and you are to disregard the last argument by counsel. And, counsel, you are not to argue that particular issue. The motion is otherwise denied.

After the curative instruction was given, no additional objection was made by QHG.

The circuit court followed the procedure established in McElveen. The judge ruled on QHG's objection, offered a curative instruction to the jury, and admonished Mishoe's counsel not to mention the sales price and the fact it was "our money" again. See McElveen, 299 S.C. at 381, 385 S.E.2d at 41. The curative instruction adequately corrected the statement and advised the jury to disregard. Moreover, the sales price of the hospital had already been admitted, and the jury heard the amount during the trial. QHG cannot demonstrate evidence of a prejudicial effect warranting a mistrial. See Creighton, 334 S.C. at

116, 512 S.E.2d at 521. Therefore, we find the trial judge did not abuse his broad discretion in denying the mistrial motion.

III. Scope of cross-examination

QHG also argues the trial court erred in limiting the scope of its cross-examination of Mishoe. Specifically, QHG asserts the circuit court erred in prohibiting it from questioning Mishoe on her prior litigation history as it was relevant to her credibility. We disagree.

The admission and rejection of testimony is largely within the trial judge's sound discretion and will not be disturbed on appeal absent a showing that the trial court abused its discretion or its decision was controlled by an error of law. Ippolito v. Hospitality Mgt. Assocs., 352 S.C. 563, 569, 575 S.E.2d 562, 566 (Ct. App. 2003).

In this case, QHG argues the medical records of Dr. Hazelwood, a treating physician, are important to prove that Mishoe's medical condition had nothing to do with the fall at the hospital. The trial judge allowed QHG to introduce the majority of the medical records of Dr. Hazelwood. The trial judge allowed into evidence the portion of the records relevant to QHG's argument. The evidence in those records was relevant to the issue of whether Mishoe sought treatment from Dr. Hazelwood for injuries unrelated to the fall at the hospital was admitted. The only sentence the trial judge did not admit was Dr. Mendes "refused to see her again because of her prior experience with litigation." The trial judge allowed QHG to cross-examine Mishoe on her relevant medical history. Therefore, we hold the trial judge did not abuse his discretion in limiting the scope of the cross-examination.

CONCLUSION

For the aforementioned reasons, the decision of the circuit court and award of punitive damages is hereby

AFFIRMED.

BEATTY and SHORT, JJ., concur.

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[1] QHG does not ask this court to review the circuit court's Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991), punitive damages analysis. Although QHG takes issue with opposing counsel's comment during closing argument regarding the $2.8 million sale of the hospital, it does so only by arguing a mistrial should have been granted. See infra. QHG does not assert the use of the $2.8 million sales price was an improper method to value QHG's net worth.

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Employee, Appellant,

v.

South Carolina
Department of
Employment Workforce,
South Carolina Budget &
Control Board, and Office
of the Governor of South
Carolina, Respondents,

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Transcripts
2. Order of October 8, 2015;
3. Order of September 15, 2015;
4. Plaintiff Proposed Order September 25, 2015;
5. Complaint;
6. Answer;
7. Memoranda Of Law September 3, 2015;

8. Unlawful Employment Practices, Exception 1-13-80 (1) (2);
9. South Carolina Tort Law 15-78-30;
10. South Carolina Law Slander and Libel 15-3-550;
11. South Carolina Law Declaration 41-27-20;
12. South Carolina Law Exemption to immunity 15-78-60 (25);
13. Rule 12(b);
14. Defendant's Exhibits 1, 2, 3, and 4.

I certify that this designation contains no matter which is irrelevant to this appeal.

May 19, 2016

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

May 19, 2016

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PROOF OF SERVICE

I certify that I have served the Appellant's Final Brief by personally delivering a copy of it to their attorney on record, Attorney Eugene H. Matthews, at the office at 1900 Barnwell Street, Columbia, South Carolina 29201, on May 19, 2016.

May 19, 2016

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