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FORM 4

JUDGMENT IN A CIVIL CASE

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF MARION
IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-33-140

VANESSA BLACKWELL, a/k/a JACQUELINE BLACKWELL
PLAINTIFF(S)

MARION COUNTY SHERIFF'S DEPARTMENT
DEFENDANT(S)

Submitted by: Eric M. Poulin	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Defendant's Post Trial Motions are denied and Judgment is entered in favor of Plaintiff. However, pursuant to the South Carolina Tort Claims Act, the Defendant shall not be liable for any amount of the verdict in excess of \$300,000.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Vanessa Blackwell a/k/a Jacqueline Blackwell	Marion County Sheriff's Department	\$325,000.00
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

VANESSA BLACKWELL, a/k/a
JACQUELINE BLACKWELL,

Plaintiff(s),

v.

ANDREW J. HERRING, Individually, and
as an employee/agent of MARION
COUNTY SHERIFF'S DEPARTMENT;
and MARION COUNTY SHERIFF'S
DEPARTMENT,

Defendant(s).

FILED
IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO. 2015-CP-33-0140
MAR 18 PM 1:54

ORDER DENYING DEFENDANT'S
POST TRIAL MOTIONS AND
ENTERING JUDGMENT

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SC Court of Appeals

BACKGROUND

This matter is before the court following a jury trial in which the jury reached a verdict for the Plaintiff in the amount of \$500,000. The jury also found the Plaintiff to be 35% comparatively negligent. This case arises out of a motor vehicle/pedestrian collision in which the Plaintiff, a pedestrian, was struck by a Marion County Sheriff Department's reserve deputies while driving a Marion County vehicle. Plaintiff argued that Defendant left the roadway and struck her as she was walking in the grass. Conversely, Defendant argued that Plaintiff was walking in the road. Both Plaintiff and Defendant testified as to their recollection of the event.

Following the verdict, Defendant timely filed several post trial motions, including a Motion for Judgment Notwithstanding and a Motion for New Trial on several grounds. For the following reasons, these motions are respectfully **denied**.

JNOV

Defendant first moves for JNOV arguing that, because the jury found Plaintiff comparatively negligent, they necessarily believed she was in the road. As such, Defendant

argues that judgment should be directed in its favor. However, this argument is in error. Defendant argued that, even if Plaintiff was in the grass, she was nonetheless negligent for walking on the wrong side of the road, at night, in dark clothing. The jury found that Plaintiff was 35% comparatively negligent. This is perfectly consistent with the presumption that the jury believed Plaintiff was in the grass, but walking in the wrong direction and/or with dark colored clothing. As such, it is equally consistent to find that Defendant was 65% negligent in leaving the roadway and striking her. This is a classic factual dispute which was appropriately resolved by the jury, and which should not be disturbed by the Court.

NEW TRIAL

Defendant next moves for a new trial on numerous grounds. Specifically, Defendant argues that the Court erred in admitting or excluding certain evidence, including the refusal to ask certain voir dire questions, that Plaintiff made improper arguments during closing, and that the verdict evidences a basis in passion, capriciousness and/or prejudice.

1. Admission/Exclusion of Evidence/Testimony

Defendant argues that the Court erred in admitting Plaintiff's medical bills into evidence, and in excluding certain testimony of proposed witness Rhianna Herring. Defendant also argues that the Court erred in prohibiting the publication of certain portions of Plaintiff's deposition.

The admission or exclusion of evidence is left to the sound discretion of the trial court and should not be disturbed absent an abuse of discretion. Dunn v. Charleston Coca-Cola Bottling Co., 311 S.C. 43, 45, 426 S.E.2d 756, 757 (1993). "Expert testimony is not required to prove proximate cause if the common knowledge or experience of a lay person is extensive enough." O'Leary-Payne v. R.R. Hilton Head II, Inc., 371 S.C. 340, 349, 638 S.E.2d 96, 101 (Ct. App. 2006). Moreover, "where physical injury is coincident with or immediately follows an

accident and is naturally and directly connected with it, lay testimony may be sufficient to carry to the triers of facts the issue of whether or not the accident proximately caused it” Roscoe v. Grubb, 237 S.C. 590, 596, 118 S.E.2d 337, 340 (1961).

Here, it is clear, even to a lay person, that Plaintiff did not have a compound fracture nor a large open wound on her leg prior to the collision. It is equally discernable to a lay person that a 55 mph collision between an automobile and a pedestrian could be reasonably expected to cause such an injury, and in this case that it did. Thus, it was appropriate for Plaintiff’s medical bills to be admitted into evidence. See, e.g., Armstrong v. Weiland, 267 S.C. 12, 16, 225 S.E.2d 851, 853 (1976)(“When the testimony of an expert witness is not relied upon to establish proximate cause, it is sufficient for the plaintiff to put forth some evidence which rises above mere speculation and conjecture”), Moultrie v. Checker Yellow Cab Co., Inc., 93-UP-048 (Unpublished Opinion)(A layperson’s testimony is sufficient to lay a foundation for admitting medical bills redacted for insurance information because the layperson is competent to testify to the indebtedness. The absence of supporting medical testimony goes to the weight of the evidence, not admissibility), confirmed by the published opinion of Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 719 S.E.2d 703 (Ct. App. 2011).

Next, evidence which is not relevant is not admissible. S.C. Evid. R. 402. Evidence Rule 401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

Defendant proffered testimony from Ms. Herring that she saw Plaintiff in the roadway five to ten minutes prior to the incident. However, Ms. Herring admitted that she did not witness the incident, and had no idea where Plaintiff had been walking in the five to ten minutes between

the time Ms. Herring claims to have seen her and the time of the incident. Thus, this testimony was appropriately excluded because it was not relevant. Even if true, the fact that Plaintiff was in the road ten minutes prior to the collision has no bearing on the question of whether Plaintiff was in the road at the time of the incident. The only testimony that would have bearing on the issue of whether or not Plaintiff was in the road *at the time of the incident* would be from those individuals who actually witnessed the incident.

The Court also has broad discretion to bar evidence that is cumulative. Defendant contends that the Court erred in not allowing it to publish certain portions of the Plaintiff's deposition during its case in chief. However, the Plaintiff was present and testified at trial. Moreover, Defendant had an opportunity to fully cross examine the Plaintiff and, in fact, did cross examine the Plaintiff. Moreover, the publication would have been duplicative and/or cumulative because the testimony Defendant sought to introduce through the publication of the deposition transcript was essentially identical to the testimony it had already elicited from her on the stand. As such, this is not sufficient ground for new trial.

Finally, Defendant next contends that the Court erred in refusing to ask all of Defendant's requested *voir dire* questions. "After the statutory questions have been asked and answered, any further examination of a juror on *voir dire* must be left to the discretion of the trial Judge, which is subject to review only for abuse thereof." State v. Bethune, 93 S.C. 195, 75 S.E. 281 (1912). Here, the Court did ask the vast majority of the *voir dire* questions that were proposed by each party, and was well within its discretion to decline to ask the few remaining questions. As such, this is not a sufficient ground for new trial.

2. Closing Arguments

Defendant next argues that the Court erred in allowing Plaintiff to make improper arguments during closing in contradiction to the rulings on Motions in *limine*. However, Defendant does not specify which arguments it finds objectionable. Prior to the trial, in response to Defendant's Motions in *limine*, Plaintiff's counsel agreed that he would not make a "golden rule" argument and that he would not make a punitive argument (i.e. send a message and punish). To the best of the Court's recollection, and with Defendant having not pointed out any such arguments in its motion, no such arguments were ever made.

Moreover, even if an objectionable argument had made, or if Defendant now has issue with other arguments, such objections were not preserved. A ruling on a motion in *limine* is not final. It is well settled that an objection not raised contemporaneously is waived. See, e.g., Young v. Warr, 252 S.C. 179, 200, 165 S.E.2d 797, 807 (1969)("the proper course to be pursued when counsel makes an improper argument is for opposing counsel to immediately object and to have a record made of the statements or language complained of and to ask the court for a distinct ruling thereon"); Varnadore v. Nationwide Mut. Ins. Co., 289 S.C. 155, 345 S.E.2d 711 (1986)(holding objection not timely raised is waived and will not be reviewed).

3. Passion/Caprice/Prejudice

Finally, Defendant argues that the award of damages should be thrown out because it suggests a basis in passion, capriciousness and/or prejudice. However, this argument is in error. The jury deliberated for several hours. They ultimately assigned fairly precise percentages of negligence, demonstrating that they put honest effort and thought into the deliberation. Moreover, the award of \$500,000 (reduced to \$325,000) does not appear to be excessive or extreme given Plaintiff's injuries and damages.

JUDGMENT FILED

Having denied Defendant's post trial motions, the Court now enters judgment in favor of the Plaintiff. The jury's verdict of \$500,000 must be reduced to \$325,000 due to the finding of 35% comparative negligence. Moreover, because Defendant is a governmental entity subject to the South Carolina Tort Claims Act, they are not liable for any portion of this verdict in excess of the statutory cap of \$300,000, although the Plaintiff is not prohibited from collecting the balance of the verdict from other sources of private insurance, such as her personal UIM policy.

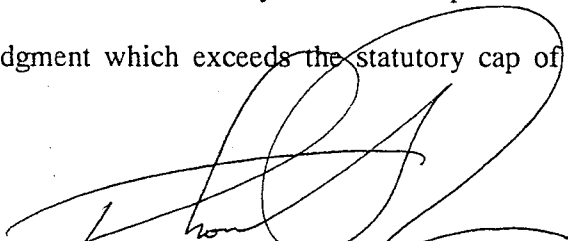
IT IS THEREFORE ORDERED that Defendant's Motions for JNOV and for New Trial are denied.

IT IS FURTHER ORDERED that judgment be entered in favor of Plaintiff in the amount of \$325,000.

IT IS FURTHER ORDERED that Defendant Marion County Sheriff's Department shall not be liable for any portion of the final judgment which exceeds the statutory cap of \$300,000.

IT IS SO ORDERED!

Dated this 10th day of JAN, 20 17



The Honorable Thomas A. Russo
Presiding Judge, 12th Judicial Circuit