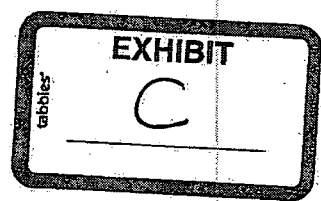


STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON)	
)	
Carla Denise Garrison, and)	CASE NO. 2014-CP-04-1426
Clint Garrison)	CASE NO. 2014-CP-04-2206
)	
Plaintiffs,)	
)	
v.)	ORDER
)	
Target Corporation,)	RECEIVED
)	
Defendant.)	FEB 23 2017
)	

SC Court of Appeals

THIS MATTER came before the Court on hearing of the parties' post-trial motions. This case was tried before a jury beginning September 6, 2016, and concluding September 8, 2016. The jury returned a substantial verdict in favor of Plaintiffs. Following trial, Defendant timely moved for Judgment as a Matter of Law, New Trial Absolute, New Trial *Nisi Remittitur*, relief under the Thirteenth Juror Doctrine, and, alternately, reduction of the punitive damages award pursuant to the cap imposed by Section 15-32-530(A) of the South Carolina Code. Plaintiffs timely moved for costs and interest on the judgment. The motion hearing was conducted on November 3, 2016 in Spartanburg, South Carolina. Present for the Plaintiffs were Joshua Hawkins, Esquire of the Greenville bar and Todd Butler, Esquire, of the Mississippi bar, admitted *pro hac vice*. Present at the hearing for Defendant was Knox Haynsworth, Esquire of the Greenville bar, along with George Sibley, III and Kevin Elliker, both of the Virginia bar, also admitted *pro hac vice*.

Upon hearing the oral arguments of the parties and reviewing their written submissions, the Court hereby denies Defendant's motion for Judgment as a Matter of Law as to the actual damages award only, and Defendant's motions for New Trial Absolute, New Trial *Nisi Remittitur*,



and relief under the Thirteenth Juror Doctrine, along with Plaintiff's Motion for Costs. However, the Court hereby grants Defendant's motion for Judgment as a Matter of Law as to the punitive damages award and Plaintiff's Motion for interest on the judgment for the reasons stated herein.

STATEMENT OF RELEVANT FACTS

On the evening of May 21, 2014, Denise Garrison drove to a Target retail store in Anderson, South Carolina, with her daughter Kaleigh. Before entering the store, Mrs. Garrison stopped to examine her coupon book on the hood of the car. As she was doing so, Mrs. Garrison heard her daughter say, "Mommy, what is this?" She testified that she looked up to see her daughter holding a syringe with a small needle "pointing out." Rather than instructing her daughter to put the syringe down, Mrs. Garrison instinctively reacted and swatted the syringe out of her daughter's hand onto the pavement of the parking lot.

Mrs. Garrison then looked down to see "a tiny bead of blood and a puncture wound." She hurried to the restroom of the store and washed her hands repeatedly. She then called her husband, Clint Garrison, who suggested that she speak with a Target employee. Mrs. Garrison spoke with Shelby Brintnall, who was the "lead-on-duty" at the store for the evening. Ms. Brintnall followed Mrs. Garrison to the parking lot, where she photographed the syringe, which appeared "dingy, dirty, and gross." However, the needle was nowhere to be found. Ms. Brintnall collected the plastic tube of the syringe and brought it into the store.

Before she left the store that evening, Mrs. Garrison spoke with Ms. Brintnall about the incident and Ms. Brintnall completed an incident report. She wrote: "Guest's daughter picked up needle. [Mrs. Garrison's] first reaction was to smack the needle out of her hand. And when she did it stuck, it stuck her in the right hand." After Mrs. Garrison left the store that evening, Ms. Brintnall completed another report, describing the investigation and noting her impressions. In

that report, Ms. Brintnall noted that she could not locate a needle, and only the plastic tube of the syringe was recovered.

The next day, Mrs. Garrison went to the emergency room where she was treated for a needle stick. She was referred to an infectious disease specialist and was prescribed HIV medication and antibiotics. Her medication reportedly caused severe dizziness, nausea, vertigo, and extreme nightmares. Due to his wife's "zombie-like state" while on the medication, Clint Garrison had to take several days off work. As Mrs. Garrison is a stay-at-home mother, the family depends entirely on Mr. Garrison's income. Mrs. Garrison was able to change her medication after a few weeks and many of the side effects subsided, but she continued to experience nausea. To date, Mrs. Garrison has received four blood tests for HIV, but there is no evidence that she contracted any infectious disease – either HIV or otherwise – as a result of this incident.

Mrs. Garrison filed suit against Target in 2014. Mr. Garrison filed his own lawsuit shortly thereafter, and the two actions were consolidated for trial in this case. The trial was conducted from September 6 to September 8, 2016, in Anderson, South Carolina. After hearing testimony from multiple witnesses including Ms. Brintnall, Mrs. Garrison, and Mr. Garrison, the jury returned a verdict in favor of Plaintiffs, awarding Denise Garrison \$100,000 in actual damages and \$4,510,000 in punitive damages, and awarding Clint Garrison \$3,500 in lost wages and \$5,000 for loss of consortium.

DISCUSSION

As an initial matter, to the Court, the instant matter is one that has required the utmost thought and consideration. Though there is a sizeable amount of money at stake, the public goodwill and reputations of the parties and counsel involved is even more important. The sanctity of the jury is of paramount importance to the Court in this matter, but so is the proper application

of South Carolina and federal law to the facts of this case. Each of the post-trial motions made by Plaintiffs and Defendant have been addressed, in turn, below.

I. JUDGMENT AS A MATTER OF LAW

The defendant first contends it is entitled to judgment as a matter of law – also known as a judgment notwithstanding the verdict – pursuant to Rule 50 of the South Carolina Rules of Civil Procedure. Judgment as a matter of law is appropriate if the evidence as a whole is susceptible to only one reasonable inference, such that no jury issue is created. *Bloom v. Ravoira*, 339 S.C. 417 (2000), cited in *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32 (2001). When ruling on such a motion, the trial judge must view the evidence in the light most favorable to the non-moving party. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316 (2003); *Welch v. Epstein*, 342 S.C. 279 (Ct. App. 2000). Importantly, the jury's verdict must be upheld unless no evidence reasonably supports the jury's findings. *Curcio*, 355 S.C. 316. Further, the motion should not be granted where the evidence yields more than one inference or its inference is in doubt. *Daves v. Cleary*, 355 S.C. 216 (Ct. App. 2003); *The Huffines Co., L.L.C. v. Lockhart*, 365 S.C. 178 (Ct. App. 2005).

Here, Defendant's motion for judgment as a matter of law cannot be granted regarding the award of actual damages. When viewed in the light most favorable to Plaintiffs, the evidence leads to more than one reasonable inference on the issues of constructive knowledge and proximate causation. However, finding punitive damages unconstitutional in this case, the Court finds judgment as a matter of law is appropriate as to that aspect of the award alone.

1. Constructive Knowledge

Under South Carolina law, in order to recover from a merchant following an injury in a store, a customer must prove either that (1) her injury was caused by a dangerous condition specifically created by the merchant; or (2) that the merchant "had actual or constructive

knowledge of the dangerous condition and failed to remedy it." *Wintersteen*, 344 S.C. at 35. Since there is no allegation that Target created the dangerous condition, the latter prong is the only one at issue here.

In order to prove constructive knowledge, the plaintiff must prove that the dangerous condition preexisted her injury long enough for the merchant to "have discovered and remedied it." *Anderson v. Winn-Dixie Greenville, Inc.*, 257 S.C. 75, 77 (1971). Here, although there was no direct evidence as to the exact length of time the syringe had been in the parking lot, witnesses testified the syringe was "dingy, dirty and gross," and bore a "weathered" look similar to other items of trash in the parking lot. That testimony, when viewed in the light most favorable to Plaintiffs, leads to the reasonable inference that the syringe was in Target's parking lot long enough to impute constructive knowledge. Thus, judgment as a matter of law is not appropriate on the constructive knowledge issue.

2. Proximate Causation

South Carolina is a comparative negligence state, meaning that a plaintiff must prove her "own negligence is not greater than that of the defendant" in order to recover. *Bloom v. Ravoira*, 339 S.C. 417 (2000). A plaintiff can be comparatively negligent when she breaches a duty of care by act or omission, and her breach proximately causes her own injuries. *See id.* Comparison of the plaintiff's negligence with that of the defendant is ordinarily a question of fact for the jury to decide. *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 32 (1997); *cited in Bloom*, 339 S.C. at 422. In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent. *Bloom*, 339 S.C. 422; *citing Creech*, 328 S.C. at 33. Judgment as a matter of law is generally not appropriate in a comparative

negligence case. *Id.*

In the instant matter, Mrs. Garrison saw the syringe in her daughter's hand, immediately reacted, and struck it to the ground. Though that action caused the needle stick injury, the action could reasonably be viewed as an impulse reaction motivated by a mother's instinct to protect her child. As the Supreme Court of this state held in *Bloom*, a comparative negligence determination is soundly within the purview of the jury where there is more than one reasonable inference. Therefore, judgment as a matter of law as to proximate causation is not appropriate here.

3. Punitive Damages

"[P]unitive damages serve at least three important purposes: punishment of the defendant's reckless, willful, wanton, or malicious conduct; deterrence of similar future conduct by the defendant or others; and compensation for the reckless or willful invasion of the plaintiff's private rights." *Clark v. Cantrell*, 339 S.C. 369, 379 (2000). The South Carolina Supreme Court has articulated three "guideposts" to be applied in conducting a post-judgment review of punitive damages. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 52 (2010). Those guideposts are as follows: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570 (2009); *cited in Austin*, 387 S.C. at 52. These guideposts incorporate the relevant factors set forth by the United States Supreme Court in *BMW of North America v. Gore*, 517 U.S. 559 (1996) and the South Carolina Supreme Court in *Gamble v. Stevenson*, 305 S.C. 104 (1991)¹ (though the

¹ The *Gamble* opinion identified eight considerations that trial courts should apply when reviewing the constitutionality of punitive damages awards: (1) the defendant's degree of culpability; (2) the duration of the conduct; (3) the defendant's awareness or concealment; (4) the

Gamble factors may still be used to supplement the guideposts as needed). *Mitchell*, 385 S.C. at 585–587.

a. *Reprehensibility*

Significantly, the United States Supreme Court remarked in *Gore* that the degree of reprehensibility of a defendant's conduct is "perhaps the most important indicium of the reasonableness of a punitive damages award." *Gore*, 517 U.S. at 565. In a reprehensibility analysis, a court should consider factors such as whether:

The harm caused was physical opposed to economic; the tortious conduct evinced an indifference or a reckless disregard of the health or safety of others;² the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.

State Farm Mut. Ins. Co. v. Campbell, 538 U.S. 408, 419 (2003).

Though there is evidence supporting the actual damages award in this case as discussed hereinabove, that evidence does not justify the jury's award of punitive damages. Defendant Target's conduct – albeit negligent by determination of the jury – did not involve repeated actions, and was not intentional, malicious, or deceitful. Further, Defendant's conduct does not evince a reckless disregard for the health or safety of others. The incident at issue here was an isolated incident that resulted from Defendant's failure to make the parking lot safe. There is no evidence that Defendant engaged in a pattern of reckless, willful, or wanton conduct that is sufficiently reprehensible to justify the punitive damages award here.

existence of similar past conduct; (5) the 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) the defendant's ability to pay; and (8) any other factors deemed appropriate. *Gamble*, 305 S.C. at 111–112.

² South Carolina law mirrors this requirement. A plaintiff seeking punitive damages in this state must present "evidence the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Taylor v. Medenica*, 324 S.C. 200, 221 (1996).

b. *Disparity of Harm*

The second *Mitchell* guidepost requires trial courts to weigh the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award. *Mitchell*, 385 S.C. at 585. "The ratio of actual or potential harm to the punitive damages award is 'perhaps the most commonly cited indicium of an unreasonable or excessive punitive damages award.'" *Id.* at 588; citing *Gore*, 517 U.S. at 580. Though the United States Supreme Court has consistently declined to adopt a bright line ratio or mathematical test, the Court has noted that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Id.* Citing *Campbell*, 538 U.S. at 425. Here, the punitive damages award was \$4,510,000, and the actual damages awarded to Mrs. Garrison were in the amount of \$100,000. Thus, the ratio is in excess of 45:1. This ratio should not stand in the light of the *Campbell* decision, and cannot stand under the statutory cap placed on punitive damages by the South Carolina General Assembly in South Carolina Code Ann. § 15-32-530. However, since Defendant Target's conduct was not sufficiently reprehensibly to justify punitive damages in this case, the disparity of harm and the ratio of punitive damages to actual damages awarded need not be discussed any further.

c. *Comparable Penalties*

The third and final *Mitchell* guidepost requires the trial court to consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. "When identifying 'comparable cases' a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant." *Mitchell*, 385 S.C. at 588-589. In the instant matter, there is no

evidence that Mrs. Garrison contracted any form of infectious disease. The actual damages awarded to Plaintiffs adequately account for Mrs. Garrison's medical bills, pain and suffering, emotional anguish, and her husband's loss of consortium and lost wages. Thus, comparable penalties need not be considered in great depth.

II. NEW TRIAL ABSOLUTE AND THIRTEENTH JUROR DOCTRINE

Defendant next contends it is entitled to a new trial absolute, or in the alternative, a new trial under the "thirteenth juror" doctrine. A new trial absolute must be granted if the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motive. *Cock-N-Bull Steak House v. Generali Ins. Co.*, 321 S.C. 1 (1996); *Vinson v. Hartley*, 324 S.C. 389 (Ct. App. 1996). Similarly, under South Carolina's "thirteenth juror" doctrine, "a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict." *Vinson*, 324 S.C. at 402. "The doctrine entitles the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597 (2009) (internal quotation marks omitted).

Defendant contends that the jury's award of more than \$100,000 in actual damages was "shockingly disproportionate to the harms alleged," such that a new trial absolute is necessary. The Court disagrees. It is well established in South Carolina law that a jury's determination of damages is entitled to substantial deference. *Rush v. Blanchard*, 310 S.C. 375 (1993). Here, though the punitive damages award violated Defendant's constitutional Due Process rights, the Court finds the actual damages award is not shocking to the conscience. Mrs. Garrison sustained several thousand dollars in medical bills as a result of this incident. Further, her husband – the

family's sole breadwinner – was forced to miss multiple days of work due to her injury. Additionally, Mrs. Garrison suffered extreme emotional anguish, coupled with weeks of nausea and horrific nightmares due to the HIV medications she was prescribed. Based on this evidence, the Court finds the jury's award of actual damages does not shock the conscience and a new trial absolute shall not be granted as a result. Further, the Court finds that the evidence justifies the verdict and actual damages award in this case, so a new trial absolute shall not be granted under the "thirteenth juror" doctrine.

III. NEW TRIAL *NISI REMITTITUR*

Defendant's final contention is that it is entitled to a new trial *nisi remittitur*. A new trial *nisi remittitur* is appropriate when the jury's verdict is excessive or "unduly liberal," but not necessarily "actuated by passion, caprice, or prejudice" sufficient to warrant a new trial absolute. *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 531 (1993). Ruling on a new trial *nisi remittitur* "requires the court to consider the adequacy of the verdict in light of the evidence presented." *Waring v. Johnson*, 341 S.C. 248, 256 (Ct. App. 2000). The critical inquiry is whether the award excessively compensates the injured party. *Graham v. Whitaker*, 282 S.C. 393 (1984).

Defendant contends the actual damages award is grossly excessive and requires the grant of a new trial *nisi remittitur*. Again, the Court disagrees. "The trial court alone has the power to grant a new trial *nisi* when he finds the amount of the verdict to be merely inadequate or excessive." *Proctor v. Dept. of Health and Environmental Control*, 268 S.C. 279, 320 (Ct. App. 2006); citing *Chapman v. Upstate RV and Marine*, 364 S.C. 82, 89 (Ct. App. 2005). Compelling reasons must be given to justify invading the jury's province by granting a new trial *nisi remittitur*. *Id.* See also *Pelican Bldg. Ctrs. V. Dutton*, 311 S.C. 56, 61 (1993). Under the circumstances, the Court does not find compelling reasons to invade the province of the jury by granting a new trial *nisi* in this

matter. The Court has substantially altered the overall verdict by eliminating the punitive damages award. Under the circumstances, a new trial would amount to a sizeable waste of the resources of both South Carolina and Anderson County. Therefore, Defendant's motion for a new trial *nisi remittitur* is denied.

IV. PLAINTIFFS' MOTIONS FOR COSTS AND INTEREST

Costs may be granted to the prevailing party in a lawsuit pursuant to Rule 54(d) of the South Carolina Rules of Civil Procedure and South Carolina Code Ann. § 15-37-10. However, under the plain language of Rule 54(d), the Court has the discretion to rule otherwise. Rule 54(d) requires the prevailing party to submit an itemized affidavit of costs with its motion. Further, a party must point to a specific statute or rule of court to support each of his or her claims for costs, fees, and disbursements. *Black v. Roche Biomedical Laboratories*, 315 S.C. 223 (Ct. App. 1993). Since Plaintiffs have done neither, Plaintiff's motion as to costs is hereby denied.

Pursuant to South Carolina Code Ann. § 34-31-20, a judgment must draw interest according to law, and the legal interest rate is 8.75 percent per annum. Thus, Plaintiffs' motion for interest on the judgment is granted. Plaintiffs are entitled to interest on the actual damages award at the statutory rate of 8.75 percent, beginning the date the verdict was issued. That date is September 8, 2016.

CONCLUSION

THEREFORE, IT IS ORDERED that for the foregoing reasons, Defendant's Motions for Judgment as a Matter of Law as to the actual damages, New Trial Absolute, New Trial *Nisi Remittitur*, and Judgment under the Thirteenth Juror Doctrine are hereby denied. Plaintiffs' Motion to Tax Costs is also denied. However, Defendant's Motion for Judgment as a Matter of Law as to the punitive damages award is granted. Plaintiff's Motion for Interest is hereby granted as well.

AND IT IS SO ORDERED.

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Anderson Common Pleas

Case Caption: Carla Denise Garrison VS Target Corporation
Case Number: 2014CP0401426
Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

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