

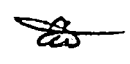
STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
RALPH C. WILLIAMS, SR., and)
LINDA WILLIAMS,)
)
Plaintiffs,)
)
v.)
)
PATRICIA A. JOHNSON, JOSETTE)
PEPPERS, and UNIHEALTH POST-)
ACUTE CARE – ORANGEBURG,)
LLC,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2012-CP-38-845

ORDER

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SC Court of Appeals

This matter is before the Court on the Parties' Post-Trial Motions, to include the following: Defendants' Motion for Judgment Notwithstanding the Jury Verdict, or in the Alternative, Motion for a New Trial; Defendant UniHealth Post-Acute Care – Orangeburg, LLC's Motion for Judgment Consistent with Special Interrogatory Answers, Judgment Notwithstanding the Jury Verdict, or in the Alternative, Motion for a New Trial Absolute; Defendants' Motion to Reduce Punitive Damages; and Plaintiffs' Post-Trial Motions. Plaintiffs filed a single document on September 18, 2014 entitled "Plaintiffs' Post-Trial Motions" that included: a Motion Judgment Notwithstanding the Verdict; a Motion to Conform the Evidence to the Proof Present at Trial; a Motion in the Alternative for a New Trial Against UniHealth Post-Acute Care – Orangeburg, LLC Only; and, a Motion to Set Aside Verdict Form Questions No. 3 and 4, and for Judgment Notwithstanding the Jury Verdict on the Scope of Employment Issue.

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I. PROCEDURAL AND FACTUAL BACKGROUND

A. Plaintiffs' Claims and Allegations in the Amended Complaint

In this case, Plaintiffs asserted causes of action against Defendants for (1) defamation (both libel and slander) and (2) loss of consortium regarding events that occurred at the nursing home operated by Defendant UniHealth Post-Acute Care – Orangeburg, LLC (“UniHealth”) in June 2010.¹ Plaintiffs alleged that Defendants Johnson and Davis defamed Plaintiff Ralph C. Williams, Sr. (hereinafter “Ralph Williams”) when they reported their suspicions that Ralph Williams was attempting to have sex with a female nursing home resident. Plaintiffs’ allegations and theory of liability against UniHealth were based on the *respondeat superior* doctrine. (See Pls.’ Am. Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 252-254, 265-268.)

B. Trial Testimony and Undisputed Facts

After jury selection, the trial in this case began on Wednesday, September 3, 2014 and concluded on Monday, September 8, 2014. The evidence showed that during the early morning hours of June 21, 2010 Johnson found Ralph Williams’s supply cart sitting outside of Room 39 in the facility.² When she opened the door to Room 39, Johnson saw Ralph Williams with his pants at least partially down and on the bed with the resident, a vulnerable adult.³ The proper procedure for a CNA changing a resident’s adult brief does not require a CNA to be on a resident’s bed.⁴ Johnson confronted Ralph Williams by stating, “What are you doing?”⁵ Ralph Williams responded, “Will you please shut the door.”⁶ Johnson left the door open,⁷ and she ran

¹ (See Pls.’ Am. Compl.)

² (See Trial Transcript, Testimony of Patricia Johnson, p. 158, lines 12-14 and pg. 188, line 18; see also Trial Transcript, Testimony of Ralph Williams, p. 507, line 15.)

³ (See Trial Transcript, Testimony of Ralph Williams, pg. 508, lines 1-3.)

⁴ (See Trial Transcript, Testimony of Patricia Johnson, pg. 216, line 6 through pg. 218, line 1; Testimony of Josette Peppers, pg. 254, lines 18-23; Testimony of Deborah Pigott, pg. 742, line 10 through pg. 745, line 2; Testimony of Ralph Williams, pg. 564, line 18 through pg. 565, line 186.)

⁵ (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 21-22.)

⁶ (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 22.)

⁷ (See Trial Transcript, Testimony of Ralph Williams, p. 509, lines 1-3.)

to get another nurse, Davis.⁸ The two nurses returned to Room 39 and found Mr. Williams in the corner of the room adjusting his pants.⁹ Thereafter, Ralph Williams was escorted out of the room without objection,¹⁰ and Davis went to alert the facility's Director of Nursing and the local authorities.¹¹ The Orangeburg County police arrived at the facility and investigated the incident.¹² The police determined that there was sufficient cause to arrest Ralph Williams.¹³

C. The Jury's Verdict

At the conclusion of the trial, the jury returned a special verdict form with interrogatory responses finding that Johnson and Peppers did not act in good faith when they reported their suspicions about Ralph Williams's actions on June 21, 2010. The jury also returned special verdict interrogatory responses indicating that the two nurses acted outside the scope of their employment when they made their reports. Regarding damages, the verdict form listed \$102,500.00 in actual damages to Ralph Williams, nothing to Plaintiff Linda Williams, and punitive damages totaling \$897,500.00 (\$200,000 against Johnson; \$97,500 against Davis; and \$600,000 against UniHealth).

II. LEGAL AUTHORITY AND ANALYSIS

A. Standard of Review

"In South Carolina, a trial judge may grant a new trial following a jury verdict under the Thirteenth Juror doctrine. 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, 681 S.E.2d 879, 883 (2009) (internal quotation marks and citations omitted). Under the thirteenth juror doctrine, the trial

⁸ (See Trial Transcript, Testimony of Patricia Johnson, p. 178, lines 9-10 and pg. 203, lines 19-25.)

⁹ (See Trial Transcript, Testimony of Josette Davis, p. 245, lines 1-7; see also Trial Transcript, Testimony of Patricia Johnson, p. 172, lines 2-4 and p. 197, lines 4-6; Trial Transcript, Testimony of Ralph Williams, pg. 509, lines 9-14.)

¹⁰ (See Trial Transcript, Testimony of Patricia Johnson, p. 209, lines 9-22; see also, Trial Transcript, Testimony of Josette Davis, p. 250, lines 3-10.)

¹¹ (See Trial Transcript, Testimony of Josette Davis, p. 250, lines 22-25 and p. 251, lines 1-25.)

¹² (See generally Trial Transcript, Testimony of ODPS Officer Robert Warrington, pp. 271-284 and ODPS Officer Stephanie Scott, pp. 289-301.)

¹³ (See Trial Transcript, Testimony of Officer Robert Warrington, p. 286, lines 23-25 and p. 287, line 1.)

court may grant a new trial based on its view of the facts. *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). The Supreme Court reviewed the doctrine in *Folkens*, stating:

This Court has had an opportunity to reconsider the thirteenth juror doctrine on several occasions. Each time we have refused to abolish the doctrine. We have also refused to require trial judges to explain the reasons for the ruling. The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror “hangs” the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the “thirteenth juror” vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Id. (internal citation omitted); *see also* *Rivera v. Newton*, 401 S.C. 402, 413-415 (S.C. Ct. App. 2012); *South Carolina State Highway Dep't v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975)). Thus, when acting as thirteenth juror, the trial court possesses “veto power to the Nth degree.” *Worrell v. South Carolina Power Co.*, 186 S.C. 306, 313-314, 195 S.E. 638, 641 (1938).

B. South Carolina’s Omnibus Adult Protection Act

South Carolina’s Omnibus Adult Protection Act requires nurses to “immediately” contact law enforcement in connection with “suspected sexual assault,” and encourages liberal reporting by granting nurses qualified immunity for making such reports. By statute, all nurses “*having reason to believe* that a vulnerable adult has been or is likely to be abused, neglected, or exploited *shall* report the incident in accordance with this section.” S.C. Code Ann. § 43-35-25(A) (emphasis added). Additionally, “in cases of ... *suspected* sexual assault law enforcement *must* be contacted immediately.” S.C. Code Ann. § 43-35-25(G) (emphasis added). A nurse who has “reason to believe” or who “suspect[s]” sexual assault has no discretion in the matter—she “must” report the incident and notify law enforcement “immediately.” “A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial

proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption." S.C. Code Ann. § 43-35-75(A).

C. The Evidence Did Not Support The Verdict

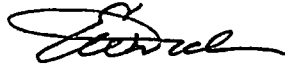
From the testimony of the witnesses and the evidence presented at trial, the Court exercises its discretion as the thirteenth juror and grants a new trial.¹⁴ The Court finds that the evidence did not justify the verdict. Ralph Williams, by his own testimony, was on a female resident's bed with the door closed in the middle of the night and his pants had at least somewhat fallen down. The evidence further showed that nurses are not supposed to get on a resident's bed. The recitation of facts and evidence herein are not intended to be and are not exhaustive, as there was other substantial evidence admitted at trial which causes the Court to conclude that the evidence did not justify the verdict. The facts of the case and the interests of justice persuade the Court that a new trial is warranted.

¹⁴ Albeit for different reasons, both the Plaintiffs and the Defendants have moved to set aside or otherwise modify the verdict, which reinforces the Court's view that a new trial is warranted.

III. CONCLUSION

For the reasons set forth above, the Court hereby exercises its authority under the thirteenth juror doctrine and **GRANTS** Defendants' Motion for a New Trial and **DISMISSES AS MOOT** the remaining Post-Trial Motions of Defendants and Plaintiffs. The Court further **ORDERS** the entire jury verdict from the initial trial be discarded and the case be set for re-trial. Given that the jury verdict no longer stands, the Parties shall be permitted to file any appropriate pretrial motions, regardless if they were previously ruled upon.

This 14th day of ~~December~~ ^{January}, 2016



~~Ed~~ Honorable Edgar W. Dickson
Circuit Court Judge, First Judicial Circuit