

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Gordon G. Cooper, Master-in-Equity

Case No. 2017-000582

RECEIVED

JUN 12 2017

SC Court of Appeals

Brandon Hendrickson, Appellant,

v.

Dennis Wheeler..... Respondent.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the court committed an error of law by awarding Appellant \$8,975.00?
- II. Whether the court committed an error of law by not awarding punitive damages?

STATEMENT OF THE CASE

Appellant filed his initial Complaint on or around August 22, 2016, which contains allegations of negligence for failure to yield to the right of way, failure to maintain proper lookout, failure to maintain proper control of a vehicle, failure to stop for oncoming traffic, violation of statutes governing the rules of the road, and failure to use the degree of care of a reasonably prudent person under the same or similar circumstances, resulting in a motor vehicle accident. (Complaint). Appellant served the Complaint on Respondent on or about September 23, 2016. Approximately 38 days later, Appellant filed an Affidavit of Default on November 1, 2016. (Affidavit of Default). Appellant then filed his Motion for Default Judgment on November 14, 2016. Default was entered by the court on November 21, 2016 and the matter was referred to the Master-in-Equity, as requested by Appellant. (Order of Default). On December 16, 2016, Respondent simultaneously filed an Answer and Motion to Set Aside the Default. (Answer; Motion to Set Aside Default).

The hearing for the Motion to Set Aside the Default and the hearing for damages were both scheduled for January 30, 2017 in front of the Master-in-Equity, Judge Cooper. Respondent and Appellant both served their memoranda in support of and in opposition to the Motion to Set Aside Default, respectively, on January 30, 2017. (Memorandum in Support of the Motion to Set Aside Default; Return and Memo in Opposition to Defendant's Motion to Set Aside Default). After denying the Motion to Set Aside Default, Judge Cooper proceeded with the damages hearing.

Judge Cooper ruled on January 31, 2017 and signed the Order granting Appellant damages on February 7, 2017. Judge Cooper found for Appellant in the amount of \$8,637.00, but further held that Appellant failed to meet his burden for non-economic damages and punitive

damages. (Informal Order dated January 31, 2017; Order, pg. 4). Appellant subsequently filed on February 16, 2017, a Motion to Alter or Amend the Judgment, Motion for New Trial or Reopening of the Damages Hearing, and a Motion for New Trial Nisi Additur. (Post Trial Motions). Respondent filed his response on March 7, 2017. (Defendant's Reply to Plaintiff's Post Trial Motions). On March 27, 2017 Judge Cooper heard arguments relating to Appellant's post-trial motions.

Judge Cooper granted Appellant's Motion to Amend the Judgment and added an additional medical expense of \$318.00 to the judgment amount. He denied Appellant's remaining post-trial motions. (Informal Order dated March 27, 2017). On May 5, 2017, Judge Cooper signed an Order reflecting the same. (Order dated May 5, 2017). Appellant filed his Notice of Appeal on March 6, 2017.

ARGUMENTS

I. STANDARD OF REVIEW

In a non-jury action at law, the judge's findings will not be disturbed upon appeal unless they are without evidentiary support. Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 295, 468 S.E.2d 292 (1996). The trial court's findings have the same force and effect as a jury verdict unless it committed some error of law leading to an erroneous conclusion or unless the evidence is reasonably susceptible of the opposite conclusion only. Midland Guardian Co. v. Thacker, 280 S.C. 563, 568, 314 S.E.2d 26 (Ct.App. 1984). The Court must affirm the trial court if there is any evidence that reasonably supports its decision. Townes Associates, Ltd. v. Greenville, 266 S.C. 81, 86, 221 S.E.2d 773 (1976). In reviewing the findings, the Court must view the evidence and all its reasonable inferences in the light least favorable to the losing party below. Doremus v. Atlantic Coast Line R.R. Co., 242 S.C. 123, 133, 130 S.E.2d 270 (1963).

The trial judge has considerable discretion regarding the amount of damages, both actual and punitive. Consequently, the review on appeal is limited to the correction of errors of law. The court's task in reviewing a damages award is not to weigh the evidence, but to determine if there is any evidence to support the damages award. Austin v. Specialty Transp. Servs., 358 S.C. 298, 311, 594 S.E.2d 876 (Ct.App. 2004). Questions regarding credibility and weight of evidence are exclusively for the trial court. Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 202, 723 S.E.2d 597 (Ct.App. 2012).

II. THE COURT DID NOT ERR IN AWARDING APPELLANT \$8,975.00 AFTER REVIEWING THE EVIDENCE PRESENTED AT THE DAMAGES HEARING

Respondent was entered into default on November 21, 2016. After Appellant moved for default judgment and requested that the Master-in-Equity hear the case, a damages hearing was scheduled to determine the amount of damages. A defendant in default admits liability but not the damages as set forth in the prayer for relief. Solley at 203. A defaulting defendant concedes liability, but does not concede the amount of liability. The prayer in an action may not serve as substitute for proof. The plaintiff must prove by competent evidence the amount of damages, and such proof must be by a preponderance of the evidence. Howard v. Holiday Inns, Inc., 271 S.C. 238, 240, 246 S.E.2d 880 (1978).

Appellant argues that the court's award, which did not include damages for pain and suffering, is unsupported by the evidence in the record. However, as aforementioned, a trial judge's findings will not be disturbed upon appeal unless they are without evidentiary support. Rickborn at 295. The reviewing court must affirm the trial court if there is **any** evidence that reasonably supports its decision. Townes at 86 (emphasis added).

Here, there is ample evidence to support the trial judge's award. Appellant testified that he did not take an ambulance to the emergency room after the hospital. He further testified that

he waited approximately 6 hours before going to the hospital after the accident. Additionally, his emergency room record (from the same day as his accident), submitted by Appellant into evidence during the damages hearing, noted “litigation liability.” (Transcript of Testimony, pg. 19). Appellant’s emergency room record also notes “patient records a decrease in pain, reclined and looking at cell phone.” (Transcript of Testimony, pg. 20). Appellant testified that he did not have a decrease in pain, but that his nurse “must have had me mistaken with someone else.” (Transcript of Testimony, pg. 20). His record also reflected that on the same day as his hospital visit, he had an injury while exercising. Appellant denied reporting that injury to his medical providers. (Transcript of Testimony, pgs. 20-21). Questions regarding credibility and weight of evidence are exclusively for the trial court. Solley at 202.

At the emergency room, Appellant’s x-rays revealed that he did not have any fractures. He was diagnosed with a back strain and discharged that day with instructions to take ibuprofen and a muscle relaxer, as needed. (Transcript of Testimony, pg. 21). Despite his discharge records instructing him to follow up with a primary care physician, Appellant instead waited approximately 12 days and then went to a chiropractor instead of a medical doctor. (Transcript of Testimony, pg. 23). Appellant again disputed his medical records and maintained that he complained of neck pain at the emergency room, despite the record noting that he was negative for neck pain. (Transcript of Testimony, pg. 25). Finally, Appellant did not seek any treatment related to the underlying motor vehicle accident in this case after May of 2016, demonstrating that he did not have significant ongoing damages as it relates to this accident. (Transcript of Testimony, pg. 32).

Appellant relies on Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 719 S.E.2d 703 (Ct.App. 2011) in his brief, stating that the trial court’s award of economic and non-economic

damages was affirmed by the Court of Appeals, and that the evidence of non-economic damages presented in Wilder was similar to the evidence presented in the present case. Appellant further states that the Master in Wilder was the same Master in this case. (Initial Brief of Appellant, pg. 7). The Court in Wilder does not hold that a trial judge must award non-economic damages. The Court does hold, however, that “the trial court [is granted] wide latitude in the review of an award of damages.” Wilder at 148. Additionally, the trial judge in Wilder was Thomas W. Cooper, not Gordon G. Cooper, who was the Master-in-Equity in this case. Regardless, if the trial judge had been the same in both cases, there is no requirement under South Carolina law that if a judge finds for non-economic or punitive damages in one case, then he must find those damages in all cases that come before him.

Appellant has failed to prove that Judge Cooper committed an error of law in awarding him \$8,975.00. There is evidence to support Judge Cooper’s findings. Appellant argues that he believes sufficient evidence was presented to meet the burden of proof for non-economic damages. However, the trial judge has discretion regarding the amount of damages in a case, and questions regarding credibility and weight of evidence are exclusively for the trial court. Austin at 311; Solley at 202. Presenting evidence does not equate to presenting evidence that meets the burden of proof.

III. THE COURT DID NOT ERR IN DENYING APPELLANT PUNITIVE DAMAGES

Punitive damages must be proved by clear and convincing evidence, the highest burden of proof in civil law. Austin at 313. A factual question as to punitive damages is presented when there is evidence of a statutory violation. Id at 314. To justify an award of punitive damages, a plaintiff must demonstrate the defendants’ conduct was willful, wanton, or undertaken in reckless disregard of plaintiff’s rights. Kuznik v. Bees Ferry Assocs., 342 S.C.

579, 611, 538 S.E.2d 15 (Ct.App. 2000). Violation of a statute does not constitute reckless, willfulness, and wantonness per se, but is some evidence the defendant acted recklessly. Wise v. Broadway, 315 S.C. 273, 276, 433 S.E.2d 857 (1993). The trial judge is vested with considerable discretion over the amount of a punitive damage award. Kuznik at 611. The Court's review of the amount of punitive damages is limited to correction of errors of law. South Carolina Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc., 324 S.C. 149, 153, 478 S.E.2d 57 (1996).

In this case, Judge Cooper found that Appellant failed to prove by clear and convincing evidence that punitive damages should be awarded. The trial judge considered Appellant's request for punitive damages, unlike in Payne v. Bouharoun, 292 S.C. 390, 356 S.E.2d 439 (Ct.App. 1987) upon which Appellant relies, and found that Appellant failed to meet his burden. The details of the arguments made at damages hearing are set out in Judge Cooper's Order awarding Appellant damages. (Order dated February 7, 2017).

Appellant argues that recklessness was pled in the Complaint and therefore, due to the default, admission of reckless conduct constitutes clear and convincing evidence of the same. (Initial Brief of Appellant, pg. 11). However, it is well settled law in South Carolina that a defendant in default admits liability but not the damages as set forth in the prayer for relief. Solley at 203. The prayer in an action may not serve as substitute for proof. Howard at 240. Similarly here, pleading recklessness in the Complaint is insufficient to prove by clear and convincing evidence that punitive damages should be awarded.

Appellant relies on Magnolia North Prop. Owner's Ass'n v. Heritage Cmtys. Inc., 397 S.C. 348, 366, 725 S.E.2d 112 (Ct.App. 2012) and argues that it is a duty to award punitive damages. However, the Court in Magnolia found that "...only after the jury has evaluated the

evidence and concluded the plaintiff is entitled to punitive damages does it become the jury's 'duty' to impose such damages on the defendant." Magnolia at 366. Here, Appellant argues that the admission of liability due to default meets his burden of proof for punitive damages. As stated, the violation of a statute does not constitute recklessness, willfulness, and wantonness per se. It is simply some evidence that a defendant acted recklessly. Wise at 276. However, "some evidence" does not mean that a burden has been met, or that where violation of a statute exists, punitive damages **must** be awarded, only that they may. It cannot be that in every case where liability is admitted, punitive damages must be awarded.

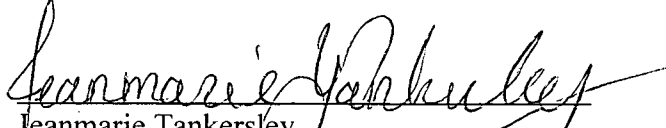
In reviewing a trial court's finding, the reviewing court must "look at the evidence in the light most favorable to the respondents and eliminate from consideration all evidence to the contrary." Solley at 202. Looking at the evidence in this case in the light most favorable to the Respondent, there is sufficient evidence to support the trial judge's findings and award of \$8,975.00.

CONCLUSION

It is well settled law in South Carolina that the amount and type of damages are within the discretion of the trial judge. The trial court did not err in finding that Appellant was entitled to \$8,975.00 in damages, and was not entitled to punitive damages. For the reasons stated herein, and for any ground appearing in the record pursuant to Rule 222(c), SCACR, Appellant's appeal should be denied and the trial court's order should be upheld.

Respectfully submitted,

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June 9, 2017

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PROOF OF SERVICE

I certify that I have served the **Respondents' Initial Brief and Designation of Matter** to be Included in the Record on Appeal on Brandon Hendrickson by depositing a copy of it in the United States Mail, postage prepaid, on June 9, 2017, addressed to his attorney of record:

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June 9, 2017

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
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SC Court of Appeals

RE: Brandon Hendrickson v. Dennis Wheeler
Case No.: 2017-000582
Date of Incident: February 18, 2016
Carrier Claim No.: 2016-55362
MGC File No.: 20777.16074

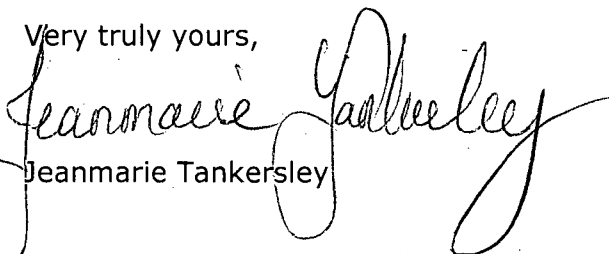
Dear Ms. Kitchings:

Enclosed for filing please find the following documents:

1. Original and one copy of the Initial Brief of Respondent;
2. Original and one copy of the Designation of Matter to be Included in the Record on Appeal; and
3. Original and one copy of Respondent's Proof of Service concerning items one and two.

Please file these documents and return the clocked-in copies in the enclosed, self-addressed stamped envelope.

Very truly yours,

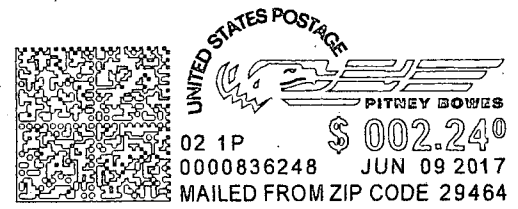
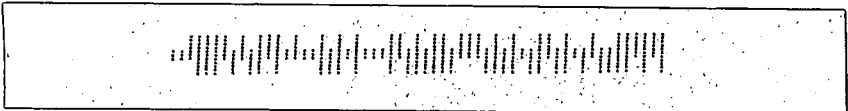


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Enclosures

cc: Jon E. Newlon, Esq. (w/encls.)



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