STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas
Deadra L. Jefferson, Circuit Court Judge

Case No. 2013-CP-10-3891
Appellate Case No. 2016-002526

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SC Court of Appeals

Linda Beth Weddle,

Respondent,

v.

Charleston County Sheriff's Office,

Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Tort Claims Act §15-78-60(25) – Gross Negligence Standard - Absence of Slight Care

I. Did the Trial Court err in denying the Defendant Sheriff's Office motion for a directed verdict on the cause of action for gross negligence where the only inference from the unrebutted testimony is that the Detention Officer exercised at least slight care in using the technique she had learned in training to lift the Detainee up off the floor of the jail intake area?

Proof of Proximate Cause – Necessity of Expert Opinion

II. Did the Trial Court err in allowing evidence of $52,192.72 in medical expenses where the Plaintiff Detainee failed to present any medical expert testimony to establish a causal link between the medical treatment and the actions of the Detention Officer in lifting her up off the floor?

III. Did the Trial Court err in denying the Defendant Sheriff's Office motion for a directed verdict where the Plaintiff Detainee failed to meet her burden of presenting any medical expert testimony that the $52,192.72 in medical expenses were proximately related to the alleged gross negligence?

STATEMENT OF THE CASE

This is an action brought by Linda Beth Weddle under the S.C. Tort Claims Act, S.C. Code Ann. §§ 15-78-10 et seq., alleging that she was the victim of excessive force during her detention at the Charleston County Detention Center on July 19, 2010. The Plaintiff Detainee originally filed her action on July 3, 2013, and the Defendant Charleston County Sheriff's Office filed an answer on June 6, 2014. However, the case proceeded to trial on an amended complaint[1]. [ROA 15; Amd. Complaint, filed November 15, 2016.]

The Plaintiff Detainee had been arrested for disorderly conduct and transported to the Detention Center. As alleged, while in detention, she sat down and laid on the floor because she felt ill and a Detention Officer forcibly jerked her up and slammed her against the wall, thereby injuring her shoulder. The Plaintiff has affirmatively disavowed any constitutional claim of excessive force under Section 1983 and declared that she is only pursuing a gross negligence cause of action under the Tort Claims Act. [ROA 10; District Court Order of remand, filed May 27, 2014, No. 2:13-cv-2177-RMG.] The Plaintiff Detainee asserted two causes of action: (1) Gross Negligence by the Detention Officer, and (2) Grossly Negligent Supervision/Training by the Sheriff's Office. [ROA 17; Amd. Complaint ¶16.] By its answer, the Sheriff's Office denied the allegations of negligence, asserted defenses under the Tort Claims Act, and pled comparative negligence. [ROA 20; Answer to Amd. Complaint, filed November 15, 2016.]

The matter came to trial on November 14-16, 2016[2], before the Honorable Deadra L. Jefferson, and a jury in the Charleston County Court of Common Pleas. The Sheriff's Office made

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[1] The complaint was amended to seek only damages related to Plaintiff's shoulder injuries. [ROA 63; Tr. 33:12-14.]

[2] It is worthy of noting that this case was being tried in Charleston County during the same time that the Michael Slager trial was being conducted in the same courthouse.

motions for directed verdict at the close of the Plaintiff's case, and at the end of its case. [ROA 192-193, 261-262; Tr. 162-63, 231-32.]

The Trial Court granted a directed verdict in favor of the Defendant Sheriff's Office on the negligent supervision/training cause of action at the close of the Plaintiff's case. [ROA 234; Tr. 204.] The Trial Court ruled that Plaintiff had not meet her burden of proving gross negligence in supervision/training because her "confinement expert" did not offer a qualified opinion since he did not review any of the Sheriff's Office policies/ procedures or training records/material and he did not testify to any standards to support his opinion of negligence. [ROA 6; Supplemental Order Granting Defendant's Motion for Directed Verdict as to Plaintiff's Cause of Action for Negligent Supervision/Training, filed December 15, 2016.] The Plaintiff has not cross appealed from that Order.

The case went to the jury only on the gross negligence claim, and a verdict was returned in favor of the Plaintiff in the amount of $75,000. The Trial Court declined to allow the Defendant any additional time to make post-trial motions; thus, the Sheriff's Office made a Rule 50 Motion for Judgment Notwithstanding the Verdict once the jury was discharged and the Trial Court immediately denied the motion. [ROA 342-343, 1, 344-349; Tr. 312-13, Judgment & Verdict Form, dated November 16, 2016, Tr. 314-19.] The Defendant timely served and filed a Notice of Appeal on December 16, 2016. [ROA 28, NOA.]

STATEMENT OF THE FACTS

The story begins with a dispute between the Plaintiff Laura Beth Weddle and the City of North Charleston regarding overgrowth of vegetation in her front yard within the public right of way. [ROA 147-148; Tr. 117-18.] When a crew from the City Public Works Department went to the Plaintiff's home on July 19, 2010 to clear the vegetation, she tried to block their efforts and the

confrontation escalated to the point that law enforcement had to be called to the home. In fact, the North Charleston City Police were called to the Weddle home several times that day, until finally they arrested Mrs. Weddle for disorderly conduct and transported her to the Detention Center in handcuffs. [ROA 127, 150-153; Tr. 97:17-30, 120-23.] While the Plaintiff does not assert any claim against the Sheriff's Office in regard to her arrest, those facts are relevant to the issue of Plaintiff's behavior in the Detention Center and the reasonableness of the Detention Officer's actions.

The event of which the Plaintiff complains occurred in the Intake area at the Detention Center and it was captured on videotape. [ROA 154; Tr. 124, Plaintiff's Ex. 2 & 3[3].] The tape shows that Mrs. Weddle was handcuffed with her hands behind her back and standing against a wall awaiting processing, when she slid to the floor in a sitting position and then rolled over such that she was lying on the floor of the Intake area in the entrance doorway. [See ROA 155-156, 182-183; Tr. 125-26, 152-54.] She claims that she slid down because she was feeling ill/nauseous and the Detention Officer refused to give her a chair or a bucket. [ROA 155; Tr. 125.] The Detention Officer instructed Mrs. Weddle to get up, but Mrs. Weddle stubbornly refused to do so until her handcuffs were removed. [ROA 156-157, 182-183; Tr. 126-27, 152-54.] At that point, the Detention Officer lifted her up off the ground. [ROA 157, Tr. 127.] Then, in accordance with standard procedure, Mrs. Weddle was searched, the handcuffs were removed[4], and she was processed through booking and eventually placed in a cell until she was released the next day. [ROA 253; Tr. 223.] Mrs. Weddle did not vomit and she did not faint. [ROA 206, 243; Tr. 176:22-25, 213:2-9.] She was steady on her feet and able to walk through the intake and booking areas

[3] The video discs will be submitted to the Court for viewing along with the Record on Appeal.

[4] The handcuffs had to be removed by the arresting officer. [ROA 210; Tr. 180:3-4.]

without any difficulty. [ROA 174, 214, 253; Tr. 145, 184, 223.] Mrs. Weddle underwent a standard medical screening at the time she was booked which did not show any need for medical treatment. [ROA 206, 353; Tr. 176, Defendant Ex. 1.]

Upon her release, Mrs. Weddle was examined by her son, a pharmacist, then she went to another physician, Dr. Caldwell, some days later complaining of pain in her shoulder. [ROA 159-160, 185-186; Tr. 129-130, 155-56.] She was uncooperative and noncompliant with Dr. Caldwell and his staff, refusing to have x-rays or go to physical therapy, and instead, demanding an MRI and pain medications. [ROA 187-188; Tr. 157-58.] Mrs. Weddle withdrew her care from Dr. Caldwell and sought treatment from a series of doctors until she finally found a surgeon she liked and agreed to surgery on her rotator cuff. The surgery occurred four years after the alleged events at the detention center. [ROA 160-161, 189; Tr. 130-31, 159.]

ARGUMENT

STANDARD OF REVIEW

Admission of Evidence: The admission of evidence is a matter left to the discretion of the trial judge and, absent clear abuse, will not be disturbed on appeal. Carlyle v. Tuomey Hosp., 305 S.C. 187, 407 S.E.2d 630, 632(1991).

Directed Verdict: "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." Strange v. South Carolina Dep't of Highways & Pub. Transp., 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994). However, "[a] directed verdict should be granted where the evidence raises no issue for the jury as to the defendant's liability." Guffey v. Columbia/Colleton Reg'l Hosp., Inc., 364 S.C. 158, 163, 612

S.E.2d 695, 697 (2005). The Appellate Court applies the same standard. O'Leary-Payne v. R.R. Hilton Head, II, 371 S.C. 340, 347–48, 638 S.E.2d 96, 100 (Ct. App. 2006).

I. THE UNREBUTTED TESTIMONY THAT THE DETENTION OFFICER USED THE LIFTING TECHNIQUE SHE HAD LEARNED IN TRAINING ESTABLISHES THAT SHE USED AT LEAST SLIGHT CARE IN LIFTING THE DETAINEE UP OFF OF THE FLOOR OF THE JAIL INTAKE AREA.

The South Carolina Tort Claims Act waives the common law sovereign immunity of governmental entities subject to certain exceptions as provided in S.C. Code Ann. 15-78-60. As applies in this case, §15-78-60(25) provides immunity for any loss resulting from confinement of prisoners unless there was gross negligence:

> The governmental entity is not liable for loss resulting from:
>
> (25) responsibility or duty including but not limited to supervision, protection, control, confinement or custody of any ... prisoner, inmate ... of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.

"Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Etheredge v. Richland School Dist. 1, 341 S.C. 307, 534 S.E.2d 275, 277 (2000). "Negligence is the failure to exercise due care, while gross negligence is the failure to exercise slight care." Clyburn v. Sumter Cty. Sch. Dist. No. 17, 317 S.C. 50, 53, 451 S.E.2d 885, 887–88 (1994). While gross negligence ordinarily is a mixed question of law and fact, the question becomes a matter of law for the court when the evidence supports but one reasonable inference. Id. The Plaintiff did not present any evidence from which a jury could reasonably infer that the Charleston County Sheriff's Office was grossly negligent in failing to use even the slightest care during the process of booking Mrs. Weddle into the Detention Center. Instead, the unrebutted testimony that the Detention Officer used the lifting

technique she had learned in training establishes that she used at least slight care under the circumstances.

On her cause of action for gross negligence, the Plaintiff alleged that she was jerked up and thrown against the wall, and she asserted that the Sheriff's Office was grossly negligent in certain particulars:

a. In improperly restraining Plaintiff;

b. In its use of excessive and unnecessary force;

c. In failing to use reasonable means to restrain the Plaintiff;

d. In failing to use even the slightest care and caution; ....

[ROA 17; Amd. Complaint ¶16.] However, at trial, the evidence does not support any inference that the Detention Officer was grossly negligent in any respect.

First, there is no evidence that Mrs. Weddle was improperly restrained. Mrs. Weddle testified that she was handcuffed by the North Charleston City Police officer at her home and arrived at the Detention Center in handcuffs. [ROA 155; Tr. 125:9-12.] The Plaintiff's expert in confinement facility management, James Aiken, testified that an arrestee should remain in handcuffs when brought in to the intake booking area, so he did not find any fault with Mrs. Weddle remaining in handcuffs in the intake area. [ROA 111, 94; Tr. 81:1-4, 64:10-13.] Mrs. Weddle acknowledged at trial that, based on her expert's opinion, it was appropriate for the Detention Officer to keep her handcuffed in the intake facility. [ROA 185; Tr. 155:14-18.]

Second, there is no evidence that Mrs. Weddle was thrown against the wall. The video does not show any such action. The expert does not testify about any such conduct, and most significantly, Mrs. Weddle does not testify that she was thrown against the wall. By her testimony,

she only complains that she was injured by the Detention Officer's action in lifting her up. [ROA 158; Tr. 128:8-10.]

While there is a dispute in testimony as to whether the Detention Officer "jerked" Mrs. Weddle up or lifted her up, there is no evidence that the Detention Officer failed to use slight care in getting her off the floor of the intake area. Rather, the evidence establishes that the Detention Officer acted reasonably and appropriately in performing her job of getting the detainee processed and booked into the Detention Center as she had been trained to do.

Mrs. Weddle testified that that she was jerked up: "[W]ithout any warning and preparing I was jerked up by this area of my elbow and shoulder." [ROA 157; Tr. 127:3-4.] The Detention Officer testified, in contrast, that she asked Mrs. Weddle to get up multiple times but she refused to do so, until the Detention Officer took her by the elbow and guided Mrs. Weddle up off the floor. [ROA 208-209; Tr. 178:19 - 179:10.] While Mrs. Weddle denied that the Detention Officer told her to get up multiple times, she did admit that the officer told her to get up at least once, and Mrs. Weddle also admitted that she refused to do so – not because she couldn't physically get up – but because she wanted the handcuffs removed first. [ROA 184-185; Tr. 154-55.] There is no audio on the video of the incident, but the video does visually confirm the Detention Officer's testimony as to her actions. In addition, it is significant that the Plaintiff's expert does not refer to the action as a jerking. Rather, the Plaintiff's expert opined that the Detention Officer simply used an improper technique in lifting Mrs. Weddle up off the floor.

The Plaintiff's expert in confinement facility management testified that it was inappropriate to pick Ms. Weddle up by the elbow, instead they are supposed to "come under the armpits." [ROA 95; Tr. 65:22-24.] In contrast, the Defense expert in jail practices and procedures, Captain

Tice, opined that lifting a detainee off the ground by their elbow is a proper mechanism for getting them off the ground. [ROA 257; Tr. 227:6-18.]

The Detention Officer explained that she needed to get Mrs. Weddle off the floor because she posed a hazard to herself and others. [ROA 208; Tr. 178.] The Detention Officer further testified that she used the technique she had been trained to use and she did not use any greater strength or leverage than was required to help her get up. [ROA 202, 207, 228, 223; Tr. 172:18-20, 177:6-8, 198:13-16, 193:6-8.] The Defense expert testified that the Detention Officer properly used a lift and follow technique as she had been trained to do. [ROA 251; Tr. 221:12-23.]

The Plaintiff tried to convey the impression that there was no urgent need to get Mrs. Weddle off the floor because the area was not busy and she was not in anyone's way. [See ROA 97-98, 224-225; Tr. 67-68, 194-195.] The Defense expert in jail practices and procedures, Captain Tice, testified that allowing Mrs. Weddle to continue lying on the floor in the doorway of the intake area created a safety risk especially with the degree of activity at that time (@4:00 pm). [ROA 250-251; Tr. 220:5 - 221:11.] Even the Plaintiff's own expert testified that that there was a safety risk, explaining that the intake area of a jail is the most sensitive area within the correctional environment and thus, the Detention Officers must be vigilant -- or in his words -- have "all your warp shields up" -- "in order to prevent, detect, respond, and contain situations before they deteriorate ... to unstable situations such as a critical event." [ROA 92, 109; Tr. 62:4-5, 62:13-17, 79:17-21.] He defined "critical event" as "in a corrections environment those things that we may think would take only seconds can mean the difference between life and death." [ROA 92; Tr. 62:21-23.]

Incongruously, while the Plaintiff's expert acknowledged the risk that Mrs. Weddle posed by lying on the floor of the intake area, the expert voiced his opinion that the Detention Officer's

lifting technique amounted to an excessive use of force. The expert even went so far as to make an absurd comparison of the incident to a use of excessive force in the same category as deadly force:

> Q. Is it your opinion that what you have called a critical event was an improper or excessive use of force in this matter?
>
> A. That is correct. It can be categorized as such. And I have reviewed use of force on thousands of occasions ranging from minor use of force to also authorizing deadly force to be used against an inmate to which it was.

[ROA 98; Tr. 68:14-18.] The opinion on excessive force was uncalled for and gratuitous because the Plaintiff had affirmatively abandoned any constitutional claim of excessive force. [ROA 10; District Court Order of remand, filed May 27, 2014, No. 2:13-cv-2177-RMG.]. The only question for the jury was whether the Detention Officer was grossly negligent in handling the Detainee in the intake area, and while the Plaintiff's expert opinion, that it was inappropriate to lift Mrs. Weddle up by the elbow, might create a jury issue on negligence, it does not permit any reasonable inference on the heightened standard of gross negligence since the unrefuted evidence is that the Detention Officer used the lift and follow technique as she has been taught in training.

The Plaintiff's expert testified that the Sheriff's Office was negligent in supervising and training the Detention Officer. However, the Court held that the expert did not have any foundation to offer a qualified opinion on the negligent supervision/training claim because he did not review the Sheriff's Office policies or training records. [ROA 235, 8; Tr. 205-06; 12/15/16 Supplemental Order, p. 3.] The Plaintiff has not appealed from that ruling so it has become the law of the case. Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) (an unappealed order becomes the law of the case). Thus, in the absence of any controverting expert opinion, the opinion of the Defense expert stands as the conclusive opinion on the Detention Officer's training.

As the Detention Officer testified, she receives annual training on how to handle detainees in handcuffs, and the Defense expert confirmed that the Detention Center officers in the intake area are required to undergo 40 hours of training every year. [ROA 212-213, 247, 248; Tr. 182:19-183:2, 217:4-7, 218:10-21.] The Defense expert, who is a supervising captain at the Detention Center as well as a field training officer and instructor,[5] testified that the Center complies with the state minimum standards in regards to the applicable guidelines, policies, and procedures, and that the Center is also accredited and certified through the American Corrections Association, a national accrediting body. [ROA 246, Tr. 216:14-25.] Accordingly, the unrebutted testimony that the Detention Officer used the lifting technique she had learned in training establishes beyond any reasonable inference that, at the very least, she used slight care under the circumstances.

In support of this argument, is the opinion in Hamilton v. Charleston Cty. Sheriff's Dep't, 399 S.C. 252, 731 S.E.2d 727 (Ct. App. 2012), a case in which an inmate, who had been sexually assaulted by a guard, sued the Sheriff's Department for negligent supervision. The trial court granted a directed verdict for the Sheriff's Department, and the Court of Appeals affirmed, stating:

> Although [plaintiff's expert] testified the Department violated nationally accepted standards, the Department provided uncontradicted evidence that it met minimum security standards set for South Carolina. In addition, there is no evidence the Department knew or should have known of the necessity to exercise additional supervision of Officer Aiken to prevent him from harming Hamilton. We find the only inference from the evidence is that the Department exercised at least slight care in its supervision of Officer Aiken. See *Jackson v. S.C. Dep't of Corrs.*, 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct.App.1989) (stating to be guilty of gross negligence defendant's conduct must not have given slight care to what he was doing). Accordingly, the trial court properly granted the Department a directed verdict on Hamilton's negligent supervision claim.

Id. at 730. Here, the Trial Court should have granted a directed verdict for the Sheriff's Office because the only inference that can be reached is that the Detention Officer used at least slight care

[5] [ROA 245, 247; Tr. 215:16-19, 217:16-23.]

in using the lift and follow technique, as she had been trained, to get Mrs. Weddle up off the floor of the intake area.

On a final note, there was testimony from the Plaintiff's expert that the Detention Officer should have called medical staff to make a determination on whether Mrs. Weddle needed a gurney or special assistance getting up, but there was no evidence that she needed medical care in that situation. [ROA 95-96; Tr. 65-66.] The Plaintiff did not present any medical expert testimony that she needed a gurney or special medical techniques in getting her off the floor. The testimony is that Mrs. Weddle asked for an Alka-Seltzer and something in which to vomit, but she never vomited. [ROA 206, 206, 211; Tr. 176:22-23, 176:24-25, 181:19-21.] She never fainted, and once she was up off the floor she proceeded through the security search to the booking area without any difficulty. [ROA 206, 243, 253; Tr. 176, 213, 223.] The testimony showed that there was no medical reason she could not get up; rather, she was simply refusing to do so until the Officer removed her handcuffs. [ROA 156-157, 184-185; Tr. 126-27, 154-55.] The Detention Officer testified that she did not observe anything about Ms. Weddle that made her concerned that she needed medical assistance in the intake area. [ROA 206, 207; Tr. 176:18-21, 177:1-4.]. In addition, the record shows that Mrs. Weddle underwent a standard medical screening when she was booked and that report indicates that there was no visible signs of injury or illness requiring immediate treatment or medical care. [ROA 353; Defendant's Ex. 1.] Ultimately, the fact is that Mrs. Weddle only testified that her shoulder injury resulted from being lifted off the floor (which is unsubstantiated by any medical expert evidence), thus her jail expert's opinion about some failure to obtain a medical screening before lifting her cannot sustain any inference of gross negligence.

II. THE PLAINTIFF DETAINEE DID NOT PRESENT ANY MEDICAL EVIDENCE TO PROVE PROXIMATE CAUSE.

A. The Trial Court erred in allowing evidence of $52,192.72 in medical expenses where the Plaintiff Detainee failed to present any medical expert testimony of a causal link between the medical treatment and the actions of the Detention Officer in lifting her up off the floor.

B. The Trial Court erred in denying the Defendant Sheriff's Office motion for directed verdict where the Plaintiff Detainee failed to meet her burden of presenting medical expert testimony that the $52,192.72 in medical expenses were proximately related to the alleged gross negligence.

The above stated issues presented on appeal regarding the admissibility and sufficiency of evidence are both grounded in the same point, namely the fact that Mrs. Weddle did not present any medical evidence to establish a causal link between the Detention Officer's actions in lifting her and the injury to her shoulder and $52,192.72 in medical expenses for a surgery she underwent four years after her detention.

In tort cases, a plaintiff may recover for the necessary and reasonable medical expenses caused by an injury. Sossamon v. Nationwide Mut. Ins. Co., 243 S.C. 552, 559, 135 S.E.2d 87, 91 (1964); 11 S.C. Jur. *Damages* § 18. However, "[n]either the existence, causation nor amount of damages can be left to conjecture, guess or speculation." Gray v. Southern Facilities, Inc., 256 S.C. 558, 183 S.E.2d 438 (1971). Thus, the plaintiff must present evidence of the amount of the medical expenses, the reasonableness of that amount, and the necessity of the medical treatment encompassed in those charges. This generally requires medical expert testimony:

> Medical bills not clearly identified by medical testimony, or otherwise, as being connected with the tortious act which resulted in injuries under litigation are generally held inadmissible,

Carlyle v. Tuomey Hosp., 407 S.E.2d at 633 (quoting 22 Am.Jur.2d *Damages* § 933 (1988)). Similarly, expert testimony is required to prove a causal link between the wrongful conduct and the injury where the causation issue is beyond the common knowledge or experience of a

layperson. *See* O'Leary-Payne v. R.R. Hilton Head, II, 638 S.E.2d at 101. This Plaintiff did not present any expert testimony to prove proximate cause.

The Plaintiff testified -- over objection -- that being lifted up by her elbow caused her injury. [ROA 157-158; Tr. 127-28.] She also testified -- over Defendant's objection -- that she incurred $52,192.72 in medical expenses. [ROA 164-165; Tr. 134:22 – 135:17.] Mrs. Weddle's testimony on medical causation should not have been allowed because she is not a medical expert. Likewise, the Trial Court should have granted a directed verdict because Mrs. Weddle's personal testimony does not meet the burden of proof for proximate cause.

The Plaintiff did not introduce into evidence any medical records or medical bills, not even a summary of her expenses. Apart from her own testimony, the Plaintiff only called two other witnesses -- her expert on confinement facility management and her husband, neither of whom offered any opinion on causation.

The Plaintiff's expert admitted that he could not offer any opinion on causation:

> Q. And in this case you only reviewed the case from an operational prospective, correct?
>
> A. That is correct.
>
> Q. You are not able to provide any opinions to the jury on whether or not Mrs. Weddle's alleged injury was actually caused by Officer Gladden, correct?
>
> A. I have no medical expertise in that area, correct.
>
> Q. And you are leaving whether or not Mrs. Weddle allegedly sustained an injury up to a medical professional, correct?
>
> A. It has to be left to a medical professional, yes.

[ROA 112; Tr. 82: 6-16.]. Likewise, her husband also admitted he could not offer any opinion on her injury or its cause:

Q. You are not able to offer any opinion as to medical diagnosis or causation of an injury, are you?

A. No.

[ROA 134; Tr. 104:4-6.]

Mrs. Weddle testified that she was examined by her son, who is a pharmacist, when she was released. [ROA 160; Tr. 130:1-9.] However, she did not call him as a witness to testify.

On a directed verdict motion, 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 Plaintiff's bare testimony that her shoulder hurt when the Detention Officer lifted up from the floor and the total amount of her medical bills (incurred four years later) does not meet the standard of proof on causation of the injury or the medical expenses. Thus, there is no evidence from which the jury could reasonably infer the Detention Officer's action was the proximate cause of her injuries. Accordingly, the Defendant is entitled a judgment notwithstanding the jury's verdict.

CONCLUSION

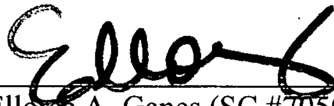
The Plaintiff cannot recover under the Tort Claims Act, §15-78-60(25) without proving that the Detention Officer failed to exercise slight care. The unrebutted testimony that the Detention Officer used the lifting technique she had learned in training establishes that she used at least slight care in lifting the Detainee up off of the floor of the jail intake area. For this reason, the Sheriff's Office is entitled to a directed verdict/JNOV.

Similarly, the Plaintiff cannot recover without medical expert testimony to establish a causal link between her shoulder injury and the actions of the Detention Officer in lifting her up off the floor. Since the Plaintiff did not present any medical evidence, the Trial Court erred in

allowing evidence of $52,192.72 in medical expenses and the Sheriff's Office was entitled to a directed verdict/JNOV on this additional ground.

WHEREFORE, based on the foregoing, the Charleston County Sheriff's Office respectfully requests that the Court vacate the judgment entered on the jury verdict and remand for entry of judgment for the Appellant.

HOOD LAW FIRM, LLC



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June 28, 2017

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SC Court of Appeals

CERTIFICATION OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), South Carolina Appellate Court Rules.

Elloree A. Ganes