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

Linda Beth Weddle,

Respondent,

v.

Charleston County Sheriff's Office,

Appellant.

FINAL REPLY BRIEF OF APPELLANT

HOOD LAW FIRM, LLC

Elloree A. Ganes (SC #70509)
Benjamin H. Joyce (SC #100949)
Deborah H. Sheffield, *Of Counsel* (SC #2757)
172 Meeting Street ~ P.O. Box 1508
Charleston, South Carolina 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630

Attorneys for the Appellant
Charleston County Sheriff's Office

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ARGUMENT IN REPLY

Points of Clarification:

1. Respondent Plaintiff accuses the Appellant Sheriff's Office of "the use of excessive force." [Respondent's Brief, p. 2.] However, the Plaintiff already 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.]
2. In her Statement of the Case, the Respondent Plaintiff claims that she requested assistance from the detention center staff when she first arrived there and they did nothing to address her requests. [Respondent's Brief, p. 2.] The trial transcript shows that by her own testimony Mrs. Weddle was just nervous and she only asked for a container to vomit in and a chair to sit on. [ROA 155; Tr. 125:15-24.] In addition, the Detention Officer recalled that she asked for Alka-Seltzer, but Mrs. Weddle 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 area to the booking area without any difficulty. [ROA 206, 243, 253; Tr. 176, 213, 223.] In addition, the record shows that Mrs. Weddle underwent a standard medical screening when she was booked and that report indicates that there were no visible signs of injury or illness requiring immediate treatment or medical care. [ROA 353; Defendant's Ex. 1.]
3. In her Statement of the Case, the Respondent Plaintiff claims that the Detention Officer approached her and abruptly grabbed her under her right elbow and lifted her to her feet. [Respondent's Brief, p. 2.] The trial transcript shows that Mrs. Weddle admitted the Detention Officer asked her to get up (at least once), and she also admitted that she refused to do so – not

because she could not physically get up – but because she wanted the handcuffs removed first. [ROA 184-185; Tr. 154-55.]

4. Respondent states that: "Appellant failed to file any post-trial motions but made an oral Rule 50 Motion for Judgment Notwithstanding the Verdict, which was a restatement of the Motion for Directed Verdict and which was denied. [ROA 342-343, Tr. 312-13.]" [Respondent's Brief, p. 3.] To clarify, the Trial Court refused 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:

> THE COURT: .... You are excused with the court's profound thanks. I will hear post-trial motions in a moment.
>
> (WHEREUPON, break to excuse jury 11/16/16, 1:14 p.m.)
>
> (WHEREUPON, resume 11/16/16, 1:16 p.m.)
>
> THE COURT: Are there any post-trial motions from the plaintiff?
>
> MR. BOLES: None, Your Honor.
>
> THE COURT: From the defense?
>
> MS. GANES: Yes, Your Honor. At this time we would move for a judgment notwithstanding the verdict based on the same arguments that we made at the close of the plaintiff's case and at the close of the evidence. Under South Carolina law plaintiff did not meet the burden or present sufficient evidence to the jury of proximate cause of her injury or the -- meet the standard under our law for expert testimony. And I would ask Your Honor if you would indulge us and give us ten days to submit a supplemental brief.
>
> THE COURT: No, ma'am. I hear motions at the end of the trial.
>
> MS. GANES: Okay. [ROA 342; Tr. 312:2-23.]

I. The Appellant did preserve for appeal its issue regarding the lack of evidence as to gross negligence.

The Appellant has raised one of its issues on appeal as:

> 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?

Respondent argues that the Appellant did not preserve this issue because the Appellant never raised the issue of testimony related to lifting technique or training as evidence that the Detention Officer was not grossly negligent. Appellant maintains that the issue was preserved.

"[T]he long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 526 S.E.2d 716, 724, 338 S.C. 406, 422 (2000). One of the purposes of issue preservation rules are "'to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.'" Herron v. Century BMW, 719 S.E.2d 640, 642, 395 S.C. 461, 465 (2011) (quoting Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). The Appellate Courts' requirement as to the degree of specificity in the language and detail of a motion or objection is not as exacting as the Respondent would appear to contend, for "a party is not required to use the exact name of a legal doctrine in order to preserve the issue." Herron, 395 S.E.2d at 466 (citations omitted). The issue only need be "sufficiently [or reasonably] clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge." Id. (citations omitted). "[A]n objection must be sufficiently specific to inform the trial court of the point being urged by the objector." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

The Sheriff's Office made 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.] As noted above, 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.

Whatever the Respondent may argue about the specificity of the Appellant's motion for directed verdict on this gross negligence issue, the Record clearly shows that the Trial Judge understood that the issue as to the sufficiency of the evidence of the "slight care" element of the gross negligence cause of action had been raised, and she ruled on it. [ROA 264; Tr. 234:3-5 "Mr. Aiken testified that there was an absence of ***slight care*** in the way that the plaintiff was handled. (Emphasis added).] *Compare* Scoggins v. McClellion, 321 S.C. 264, 267, 468 S.E.2d 12, 14 (Ct. App. 1996) ("Farmer's Market did not argue the plaintiff's failure to prove the elements of negligence, thus the trial court could not possibly have granted a directed verdict on that ground.")

After the Plaintiff rested her case, the Defendant made its DV motions which included, in pertinent part: "The standard here is not only -- is gross negligence. And it is the defendant's position that in fact this case taken in the light most favorably to the plaintiff does not create a question of fact for the jury as to gross negligent from a negligent supervision ***or on the negligence in general.***" [ROA 192-193; Tr. 162:23-163:3 (emphasis added).] The Trial Court clearly ruled on the gross negligence issue:

> ***Now as in regards the second part of the defense's motion which is a directed verdict on the negligence, which is really a gross negligence standard***, and that is the first cause of action as to the defendant Charleston County Sheriff's Office, considering the evidence in the light most favorable to the nonmoving party that motion is denied. There is sufficient evidence in the record to establish a question of fact regarding whether the Charleston County Sheriff's Office was grossly negligent in the handling of the plaintiff. .... ***As it regards gross negligence, it is denied.*** [ROA 235-237; Tr. 205:8 – 207:13 (emphasis added).]

Notably, however, the Trial Court did grant the Appellant's directed verdict motion on the negligent training and supervision cause of action.

At the close of the Defense case, the Appellant renewed its motion for directed verdict on the remaining cause of action for gross negligence:

> THE COURT: The defense has rested. Are there any motions?
>
> MS. GANES: Yes, Your Honor, we would renew our motion for directed verdict at this time on the negligence and gross negligence cause -- or I'm sorry, gross negligence cause of action being that jail practices are not in the common knowledge of a layperson and we believe that Mr. Akins' testimony was insufficient to establish that there was any breach of any professional standard to establish the appropriate standard **** It is the defense's position that because Mr. Aiken's testimony was insufficient under South Carolina's standard for expert witness testimony then the basis could not be established for a verdict against the defendant on gross negligence without establishing a breach in the appropriate -- a breach in the duty that was to be afforded to plaintiff and in the evidence in the light most favorable to the plaintiff a directed verdict in favor of the defendant on that cause of action is appropriate. [ROA 261-262; Tr. 231:6 – 232:6.]

Again, the Trial Court clearly ruled on the issue of the sufficiency of the evidence on the gross negligence cause of action:

> THE COURT: Considering the evidence in the light most favorable to the nonmoving party there exists a question of fact as to whether the defendant acted in a grossly negligent manner toward the plaintiff. [ROA 263; Tr. 233:20-23.]

After the jury rendered its verdict, the Appellant made a JNOV motion:

> MS. GANES: Yes, Your Honor. At this time we would move for a judgment notwithstanding the verdict based on the same arguments that we made at the close of the plaintiff's case and at the close of the evidence. [ROA 342; Tr. 312:11-14.]

At this point, the Trial Court again ruled on the issue of the sufficiency of the evidence on the gross negligence cause of action by acknowledging that the Appellant was raising the same issues and the ruling remained the same:

> The defense basically raises the same issues that it raised at both the close of the plaintiff's case and at the close of their case. The court incorporates its previous findings of fact in rulings on the law and does this portion of the record without restating it in the interest of time. [ROA 345; Tr. 315:2-7.]

Of note, the specificity of the JNOV motion is beside the point because:

> A motion for judgment notwithstanding the verdict (JNOV) is not necessary to preserve issues based on the sufficiency of the evidence. A JNOV motion allows the trial judge to reconsider his ruling on the directed verdict motion, but is limited to the grounds argued for directed verdict.

15 S.C. Jur. *Appeal and Error* § 82 (footnotes omitted). Nevertheless, the point is that the Appellate Courts have clearly held that "we do not reach issues which were not ruled upon by the trial court." Atlantic Coast Builders and Contractors, LLC v. Lewis, 730 S.E.2d 282, 285, 398 S.C. 323, 329 (2012). However, the issue of slight care/gross negligence issue was raised with sufficiency as to be understood by the Trial Court and it was ruled upon.

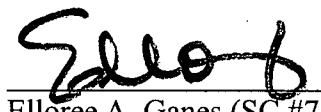
As comprehensively discussed in the Appellant's Brief, the Respondent's expert's opinion that the Detention Officer breached a duty of care to lift the Respondent by her elbow does not amount to the requisite standard of failure to use slight care in the face of the unrebutted testimony that the Detention Officer used the lifting technique she had learned in training under the reasoning of Hamilton v. Charleston Cty. Sheriff's Dep't, 399 S.C. 252, 731 S.E.2d 727 (Ct. App. 2012), as discussed in the Appellant's Brief. Similarly, the asserted breach of an alleged duty to obtain an immediate medical evaluation when Mrs. Weddle first entered the Detention Center complaining of nausea cannot support any reasonable finding of gross negligence, where Mrs. Weddle only testified that her shoulder injury resulted from being lifted off the floor (which is unsubstantiated by any medical expert evidence). Accordingly, her jail expert's opinion about some failure to obtain a medical screening before lifting her cannot sustain any inference of a failure to provide slight care.

CONCLUSION

The undisputed evidence that the Detention Officer acted in accordance with her training in combination with the absence of any probative evidence that the training was negligent establishes, as a matter of law, that she used at least slight care and thereby defeats any claim of gross negligence by the Defendant Sheriff's Office. Similarly, the absence of any medical expert testimony to properly establish a causal link between the actions of the Detention Officer and Mrs. Weddle's her shoulder injury and her medical expenses likewise defeats her claim.

WHEREFORE, based on the foregoing and each and all arguments of its opening brief, the Appellant respectfully asks the Court to reverse the denial of its motions for a directed verdict/JNOV, vacate the judgment entered on the jury verdict, and remand for entry of judgment for the Appellant.

HOOD LAW FIRM, LLC



Elloree A. Ganes (SC #70509)
Benjamin H. Joyce (SC #100949)
Deborah H. Sheffield, *Of Counsel* (SC #2757)
172 Meeting Street ~ P.O. Box 1508
Charleston, South Carolina 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630

Attorneys for the Appellant
Charleston County Sheriff's Office

June 19, 2017

CERTIFICATION OF COUNSEL

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

Elloree A. Ganes