

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
CALLIE BARRAS)
)
)
Plaintiff,)
)
vs.)
)
CITY OF MYRTLE BEACH)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2016-CP-26-00135

ORDER DENYING POST
TRIAL MOTIONS OF DEFENDANT

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SC Court of Appeals

On May 17, 2017, a jury in the above-captioned matter rendered a verdict against the Defendant City of Myrtle Beach in the amount of \$547,128.93. On or about May 19, 2017, the Defendants filed post-trial motions seeking a Judgment Notwithstanding the Verdict, as well as seeking an order to alter or amend this court's previous denials of Defendant's Motion for Summary Judgment, Motion for Non-Suit and Motion for Directed Verdict. Defendant alternatively also moved for a New Trial Absolute and a New Trial Nisi Remittitur.

The Defendant's grounds for these motions were:

1. That pursuant to the Recreational Use Statute the Defendant was "essentially immune" from Plaintiff's claims because no duty of care was owed to the Plaintiff;
2. That Defendant could not show by clear and convincing evidence that the Defendant was grossly negligent; and
3. That the damages awarded were excessive in relation to the medical expenses.

Based upon the arguments of counsel at trial and in their memorandums of law, as well as based upon all testimony and evidence presented at trial, I make the following findings of fact:

FINDINGS OF FACT

1. The Recreational Use Statute (RUS) provides that if a land owner permits the use of their land without charge for recreational purposes, that the owner does not make any assurances that the property is safe and the owner does not assume liability for injury to a person caused by an act of omission.

2. Liability of a land owner is not limited by RUS if there is a grossly negligent willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity.

3. Several witnesses testified that the Plaintiff had been a volunteer for the Defendant for over ten years and that on the day she was injured, she was on the Defendant's property in her capacity as a volunteer working for the Defendant and therefore I find that the question of whether the Plaintiff was on the Defendant's property "for recreational purposes", as required by S.C. Code Ann. Section 27-3-40, was an issue properly left to the jury. It was explained to the jury in the court's charges that if it found that the Plaintiff was not on the Defendant's land for recreational purposes, the defenses and immunities of RUS did not apply and that the Defendant could be held liable for negligence if it did not use reasonable care.

4. There was testimony from three witnesses that the Defendant had been made aware, three weeks prior to the Plaintiff's fall, that the mats being used by the Defendant were a tripping hazard. Defendant made no effort to remedy the problem and the Plaintiff subsequently tripped over one of the mats and was injured. I find that this testimony was sufficient to allow the jury to consider whether the Defendant acted in a grossly negligent manner and for the jury to not apply RUS if they found gross negligence existed.

5. I find there was sufficient evidence to support the jury's decision to not apply RUS and to find that the Defendant was negligent.

6. At no time did the Defendant object to the Court leaving the applicability of RUS to the determination of the jury.

7. I find there were numerous issues of fact and that this case was properly submitted to the jury.

8. The Plaintiff provided significant evidence to the jury regarding the physical and mental anguish she endured as a result of her injuries as well as her loss of enjoyment of life. Plaintiff described in detail her fears in the hospital that her injuries would leave her incapacitated or with permanent brain damage as a similar blow to the head had permanently damaged her husband. She also testified about the embarrassment of when she had to go into the public with a damaged face leading people to question whether she had been a victim of domestic abuse.

9. The jury was instructed in the court's charges to consider not only her physical pain and suffering and medical bills, but also her mental anguish. I find that the award of damages in this matter, especially when given the reduction to \$300,000 pursuant to the Tort Claims Act, falls within a range supported by the evidence.

Based upon the above Findings of Fact, I make the following Conclusions of Law:

CONCLUSIONS OF LAW

1. Whether the Plaintiff was visiting Defendant's land for a recreational purpose, as required by SC Code Ann. Section 27-3-40 for RUS to apply, is a question of fact for a jury to decide. Harris v. University of South Carolina, 391 S.C. 518, 700 S.E.2d 45 (Ct. App. 2012).
2. While gross negligence is ordinarily a mixed question of law and fact, in most cases gross negligence is a factually controlled concept whose determination best rests with the jury. Solanki v. Walmart Store Number 2806, 410 S.C. 229, 763 S.E.2d 615, 619 (Ct. App. 2014).
3. If a verdict falls within a range supported by the evidence, it should not be disturbed on the basis of excessiveness. Hyload, Inc. v. Pre-Engineered Products, Inc., 308 S.C. 277, 417 S.E.2d 622 (Ct. App. 1992).
4. I further order that the total verdict shall first be reduced by the set off in the amount of \$20,000 and that the remainder \$527,128.93 shall be reduced to \$300,000 as required by the Torts Claims Act.

Based upon the above findings of fact and conclusions of law I find that the verdict of the jury should not be disturbed and therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Plaintiff, Callie Barras, shall have judgement against Defendant, City of Myrtle Beach, in the amount of \$300,000 and Defendant's post-trial motions are denied.

AND IT IS SO ORDERED

S/ Larry B. Hyman Jr.
Presiding Judge
Fifteenth Judicial Circuit



Horry Common Pleas

Case Caption: Callie Barras VS Myrtle Beach City of , defendant, et al

Case Number: 2016CP2600135

Type: Order/Other

So Ordered

s/ Larry B. Hyman 2152

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