STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2015-CP-10-3392
ANN M. BLANDIN,	)	
	)	
Plaintiff,	)	
	)	**ORDER**
v.	)	
	)	
CITY OF NORTH CHARLESTON,	)	
Defendant.	)	

This matter came before the Court on May 2, 2017 for a hearing to determine the amount of damages sustained by the Plaintiff, Ann M. Blandin. Present before the Court were John E. Parker and William F. Barnes, III for Ms. Blandin and Robert H. Hood Jr. and William G. DesChamps, IV for the City of North Charleston ("City"). After hearing testimony and reviewing the exhibits, the Court makes the following findings regarding Ms. Blandin's damages.

BACKGROUND

This action arises out of a serious collision that occurred on January 3, 2015 in the City of North Charleston. (Compl. ¶ 3). On that day, Ms. Blandin was traveling North on McDowell Avenue in North Charleston. (Compl. ¶ 3). She stopped for a stop sign at the intersection of McDowell Avenue and East Montague Avenue. (Compl. ¶ 3). While stopped she looked both ways and there was no traffic approaching from either direction which posed a danger to her crossing East Montague Avenue. (Compl. ¶ 3). Ms. Blandin was almost across East Montague Avenue when her vehicle was struck by a North Charleston Police car being operated by an employee of North Charleston at an unlawfully high rate of speed without flashing lights or other audible warning devices as required by law. (Compl. ¶ 3).

Ms. Blandin filed a Complaint against the City of North Charleston on June 15, 2015. (Compl.). The Complaint alleges that the City of North Charleston's employee was negligent in several particulars: in traveling at an excessive and unlawful rate of speed; in failing to use flashing lights and audible warning signals; in failing to keep a proper lookout; in failing to keep the automobile under proper control; in violating § 56-5-1520; and in violating S.C. Code of Laws Ann. § 56-5-760 (1976, as amended). (Compl. ¶ 4 (a)-(f)). The Complaint alleges that the collision caused Ms. Blandin to suffer severe and permanent injuries which caused her to incur expeses for medical treatment. (Compl. ¶ 5). As a result of the collision Ms. Blandin will also suffer pain for the rest of her life. (Compl. ¶ 5).

North Charleston was served with the Complaint on June 30, 2015. (Aff. of Service). City of North Charleston Mayor, R. Keith Summey, was served in addition to Sandy Brown, an Administratie Assistant to Clerk of Council, who was authorized to accept service on behalf of the City. (Aff. of Service). The Affidavit of Service was filed on July 7, 2015. (Aff. of Service).

On November 9, 2015, The Honorable Julie J. Armstrong, Charleston County Clerk of Court, entered default against the City pursuant to Rule 55(a), SCRCP, based on the accompanying affidavit that no answer or other responsive pleading was filed as required by Rule 12, SCRCP. (Entry of Default).

On April 5, 2016, The Honorable Thomas L. Hughston, Jr. entered an Order referring the matter to this Court, pursuant to Rule 53(b), SCRCP, to determine the damages to be awarded to Ms. Blandin since the City is in default. (Order of Reference). On May 17, 2016, the City received notice of a damages hearing that was scheduled for July 7, 2016. (Mot. to Set Aside Default). The City moved to set aside the default and for late answer pursuant to Rules 6(b) and 55(c), SCRCP. (Mot. to Set Aside Default).

Following a hearing on the City's motion on June 14, 2016, The Honorable J. C. Nicholson, Jr., denied the City's motion to set aside default and for late answer. (Order filed June 15, 2016). On June 24, 2016, the City moved pursuant to Rule 59(e), SCRCP, to reconsider the Court's June 15, 2016 Order denying the motion to set aside default and for late answer. (Mot. to Reconsider). In an Order filed July 12, 2016, the Court denied the motion to reconsider as to the request for the Court to withdraw its prior ruling. The Court clarified its prior order, however, by noting that "the June 14, 2016 Order denied the Motion to Set Aside Entry of Default because failure to forward an e-mail does not amount to good cause shown for failure to timely file an Answer. In addition, the City of North Charleston is not a state agency under SCRCP 55(e)." (Order filed July 12, 2016).

I. DAMAGES AWARD

This matter was scheduled for a damages hearing on May 2, 2017 at 2:00 pm. "It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). The Court heard testimony from Paul Pritchard, M.D, Ann Blandin, and Corona Campbell. The City cross-examined each witness to contest damages. Dr. Pritchard testified as an expert witness regarding Ms. Blandin's injuries and damages. According to Dr. Pritchard, Ms. Blandin sustained a fractured vertebra, multiple fractured ribs, and a concussion as a result of the collision on January 3, 2015. Ms. Blandin remained hospitalized at MUSC from January 3, 2015 through January 6, 2015. (Ex. 1). At the time Ms. Blandin was discharged, she was immobile. Ms. Blandin returned to MUSC on January 11, 2015 and remained hospitalized until January 21, 2015. (Ex. 2). Dr. Pritchard testified that, at the time of the collision on January 3, 2015, Ms. Blandin was on peritoneal dialysis which she self-administered. Following this collision, Ms. Blandin could no longer receive peritoneal dialysis and instead had to switch to hemodialysis.

According to Dr. Pritchard, this switch was, to a reasonable degree of medical certainty, related to the collision of January 3, 2015.

Dr. Pritchard testified about Ms. Blandin's extensive medical treatment following the collision. Ms. Blandin's medical expenses were admitted into evidence subject to several redactions – Exhibits 1-30. Dr. Pritchard testified that, with the exception of one provider, Ms. Blandin's medical expenses were caused, to a reasonable degree of medical certainty, by the collision of January 3, 2015. Ms. Blandin's daughter detailed the treatment from the other provider. Ms. Blandin incurred medical expenses totaling $1,451,190.91. (Ex. 31). Dr. Pritchard testified that her injuries, to a reasonable degree of medical certainty, were permanent.

The City cross-examined Dr. Pritchard about the switch from peritoneal dialysis and hemodialysis and that he had not taken out the costs of the peritonetal dialysis from the total medical expenses of $1,451,190.91 that Ms. Blandin received for approximately three (3) months following the collision.

Following Dr. Pritchard, Ms. Blandin testified about her life prior to and since the collision. Prior to the collision Ms. Blandin lived by herself and self-administered peritoneal dialysis. However, following this collision she was never able to live by herself and was dependent on others to take care of her. She also has great difficulty moving her legs and is confined to a wheelchair.

Lastly, Ms. Blandin's daughter, Corona Campbell, testified about the impact the collision had on Ms. Blandin, and verified Ms. Blandin's inability to walk and take care of herself.

Having conducted a hearing on the damages Ms. Blandin sustained, I find the testimony of Paul Pritchard, MD, Ann Blandin, and Corona Campbell to be credible. Ms. Blandin was born on March 17, 1944, which according to S.C. Code of Laws Ann. § 19-1-150 (1976, as amended) she has a life expectancy of 14.31 years. Ms. Blandin sustained debilitating injuries in the collision that are

permanent and dramatically altered her life. Additionally, I find the testimony of Paul Pritchard credible that the change from peritoneal dialysis to hemodialysis was caused from the collision. Even taking into consideration the three (3) months of peritoneal dialysis following the collision that Ms. Blandin would have incurred regardless, I find that the medical expenses total $1,000,000.00 related to this collision. I also award and find $4,250,000.00 for Ms. Blandin's damages related to past pain and suffering, future pain and suffering, and permanent injury. The total judgment against the City is in the amount of $5,250,000.00

II. APPLICATION OF CAPS CONTAINED IN S.C. CODE OF LAWS ANN. § 15-78-120(A) (1976, as amended).

Having determined the amount of the judgment against the City, the next issue is whether the judgment should be lowered to the caps contained in § 15-78-120(a) ("Cap"), that would impose a cap of three hundred thousand dollars. Ms. Blandin contends that the Cap does not apply to this action as it is a limitation of liability that must be pled as an affirmative defense that is different than an exception to the waiver of immunity contained in S.C. Code of Laws Ann. § 15-78-60 (1976, as amended). In support of this position, Ms. Blandin relies on several cases from the South Carolina Supreme Court and Court of Appeals which state that "[t]he burden of establishing ***a limitation upon liability*** or an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense." Strange v. SC. Dept. of Hwys. & Pub. Transp., 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994) (emphasis added); see also, Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999) ("The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense."); Niver v. S.C. Dep't of Hwys. & Pub. Transp., 302 S.C. 461, 463, 395 S.E.2d 728, 730 (Ct. App. 1990) ("The burden of establishing a limitation upon liability or

an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense.").

According to Ms. Blandin the disjunctive "or" in the above cases create two categories of affirmative defenses that are different - (1) a limitation upon liability or (2) an exception to the waiver of immunity contained in § 15-78-60. Ms. Blandin submits that both categories must be pled as affirmative defenses based on South Carolina law. For example, in Pike v. S.C. Dept. of Transp., 343 S.C. 224, 540 S.E.2d 87 (2000), the Supreme Court held that "when a governmental entity asserts the ***affirmative defense of discretionary immunity*** under the Tort Claims Act, the ***burden of proof is on the governmental entity*** and this burden is one of persuasion by a preponderance of the evidence." Id. at 232, 540 S.E.2d at 91 (emphasis added). Given that the City is in default and does not have any affirmative defense except to cross-examine witnesses and object to evidence, the limitation upon liability imposed by S.C. Code of Laws Ann. § 15-78-120 (1976, as amended) cannot be asserted.

The City relies on the Court of Appeals decision in Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 607 S.E.2d 711 (Ct. App.2005). Parker involved an automobile collision that involved a van owned by the Spartanburg Sewer District. Id. at 279, 607 S.E.2d at 713. The Sewer District did not plead the Tort Claims Act in its answer. Id. On the first day of trial the Sewer District filed an amended answer, essentially asserting the Cap. Id. The trial judge stated that the amended answer that the Sewer District filed could not be filed without permission of the Court. Id. at 280, 607 S.E.2d 713. The Sewer District then moved to amend its answer to conform to the evidence, which the trial court denied. Id. The jury returned a verdict for $450,000.00. Id. The Sewer District moved to reduce the amount to the Cap but the trial court denied that motion. Id. In reversing the trial court, the Court of Appeals noted that there is nothing in the South Carolina Tort Claims Act "mandating that a governmental entity plead the monetary statutory cap included within section 15-78-20." Id. at

285, 607 S.E.2d at 716. The Court of Appeals also held that the trial court abused its discretion in denying the Sewer District's motion to amend its answer. Id. at 287, 607 S.E.2d at 717; see also S.C. Code of Laws Ann. § 15-78-20 (b) (1976, as amended) ("The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents ...") and S.C. Code of Laws Ann. § 15-78-20 (f) (1976, as amended) ("The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.").

After reviewing these cases and the South Carolina statutory requirements, I conclude as a matter of law that the statutory cap and the Court of Appeals decision in Parker controls. Accordingly, I must apply the Cap and reduce the judgment to $300,000.00. The Cap operates by law and does not have to be pled as an affirmative defense. I reduce the $5,250,000.00 judgment proportionately based on the medical expenses and other damages and award $57,150.00 allocated to Ms. Blandin's medical expenses and $242,850.00 related to past pain and suffering, future pain and suffering, and permanent injury.

CONCLUSION

For these reasons, the Court applies the Cap and enters judgment against the City for $300,000.00.

IT IS SO ORDERED.

The Honorable Mikell R. Scarborough

Charleston, South Carolina
~~May~~ 6/21, 2017