STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) 2011-CP-25-00252
)
Maurice Dawkins,)
)
Plaintiff,)
)
v.) **VERDICT FORM**
)
James A. Sell,) FILED 9:28 AM PM
)
Defendant.) OCT 12 2017
MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY, SC

VERDICT

☐ We, the Jury, find for the **Plaintiff** against the Defendant in the amount of $_____ **actual** damages.

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☑ We, the Jury, find for the **Defendant.**

_____
FOREPERSON

10/12/2017
DATE

EXHIBIT
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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	FOURTEENTH JUDICIAL CIRCUIT
	)	CIVIL ACTION NO.: 2011-CP-25-00252
MAURICE DAWKINS,	)	
	)	
Plaintiff,	)	**ORDER DENYING PLAINTIFF'S MOTIONS FOR NEW TRIAL AND JUDGMENT NOTWITHSTANDING THE VERDICT**
	)	
vs.	)	
	)	
JAMES A. SELL,	)	
	)	
Defendant.	)	

The trial of the above-captioned case began on October 9, 2017, in Hampton County. At the conclusion of trial, the jury returned for a verdict for the Defendant, James A. Sell. Plaintiff then filed a Motion for Judgment Notwithstanding the Verdict, pursuant to Rule 50(b), SCRCP, for amendment pursuant to Rule 52(b), SCRCP, and Motion for New Trial pursuant to Rule 59, SCRCP.

STATEMENT OF FACTS

This matter arises from an accident that occurred August 21, 2010, on I-95 in Hampton County, South Carolina. The Defendant, James Sell, was driving a Budget Rental Truck ("Budget Truck") when he lost control and the Budget Truck rolled onto its left side. The truck blocked both south bound lanes of travel on I-95. The Defendant and his grandson then exited the vehicle with the assistance of some other drivers who stopped to render aid, including the Plaintiff, Maurice Dawkins ("the Plaintiff"). Approximately five to ten minutes later, the Budget Truck was hit by a semi-trailer truck owned by Co-Defendant Pierce National and operated by

Co-Defendant Dennis Owens.[1] The Budget Truck then struck the Defendant and the drivers who were rendering aid; thereby injuring several individuals, including the Plaintiff.

The case was tried beginning on October 9, 2017 and the jury returned a verdict for the Defendant on October 12, 2017. At the trial of this matter, the Plaintiff called as witnesses the investigating officer, Officer Rush, and two other individuals who stopped to aid the Defendant-Josh Sparkman and Kristin Starnes-Sparkman. They testified that prior to the accident with the semi-truck, other vehicles happened upon the Budget Truck in the roadway and were able to safely move around the Budget Truck. They also testified that at least one other semi-truck had also safely moved around the Budget Truck prior to the accident with Pierce National's semi-truck.

In the Defendant's case, the Defendant called Co-Defendant Dennis Owens, the driver of Pierce National's Semi-Trailer Truck, and John Pinckney, an expert in Federal Motor Carrier Safety Regulations (FMCSA) compliance and safety, to testify regarding the actions of Dennis Owens. Mr. Pinckney opined that Dennis Owens violated several FMCSA regulations and falsified his driver logs showing that he had not had the proper rest. Additionally, the evidence presented showed that Dennis Owens did not slow for the hazard of rain, was driving too fast for conditions, and overdrove his headlights. At the conclusion of trial, the jury returned a verdict for Defendant.

DISCUSSION

The motion for judgment notwithstanding the verdict "is limited to the grounds stated in the motion for a directed verdict." V.E. Amick & Assoc., LLC v. Palmetto Envitonmental Group, Inc., 394 S.C. 538, 548-49, 716 S.E.2d 295, 300 (Ct. App. 2011). "A directed verdict or judgment

[1] Pierce National and Dennis Owens both settled with Plaintiff prior to trial.

notwithstanding the verdict should not be granted unless only one reasonable inference can be drawn from the evidence. Creighton, 334 S.C. at 112 (*citing* Brady Dev. Co., 312 S.C. 73, 439 S.E.2d 266 (1993)). "If the evidence as a whole is susceptible of more than one reasonable inference, the case should be submitted to the jury." Creighton, 334 S.C. at 112 (*citing* Gamble v. International Paper Realty Corp., 323 S.C. 367, 474 S.E.2d 438 (1996); Brady Dev. Co., 312 S.C. 73, 439 S.E.2d 266 (1993)). In other words, a motion for judgment notwithstanding the verdict "may be granted only if no reasonable jury could have reached the challenged verdict." Gause v. Smithers, 403 S.C. 140, 149, 742 S.E.2d 644, 649 (2013).

Moreover, "the grant or denial of a new trial motion rests within the discretion of the trial judge." Umhoefer v. Bollinger, 298 S.C. 221, 379 S.E.2d 296 (Ct. App. 1989). "The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." Howard v. Roberson, 376 S.C. 143, 149; 654 S.E.2d 877, 880 (Ct. App. 2007) (quoting Chapman v. Upstate RV & Marine, 364 S.C. 82, 88–89; 610 S.E.2d 852, 856 (Ct. App. 2005)). The Court may grant a new trial absolute only if "the verdict is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded." Burke v. AnMed Health, 393 S.C. 48, 710 S.E.2d 84, 88 (Ct. App. 2011). Similarly, the Court may grant a new trial under the thirteenth juror doctrine if the Court determines that "the jury's verdict is contrary to the fair preponderance of the evidence." Id.

I. Motion for Judgment Notwithstanding the Verdict

In its motion for judgment notwithstanding the verdict, Plaintiff alleges that the Court erred in failing to direct a verdict in favor of Plaintiff on the issue of intervening and superseding

negligence, and in failing to direct a verdict in favor of Plaintiff on the issue of Defendant's negligence. Although the Defendant testified that he accepted responsibility for turning over the Budget Truck, the question of whether Defendant's conduct amounted to the breach of any duty owed to Plaintiff was properly before the jury. Likewise, the jury's determination that Defendant did not breach any duty owed to Plaintiff was reasonable in light of the evidence presented. Further, the act of Pierce National's semi-trailer truck crashing into the Budget Truck could reasonably be said to be a superseding cause of Mr. Dawkins' injuries; certainly at least to the extent that it was a proper question for the jury to determine. The evidence supported the conclusion that a "reasonable jury" could have made the same decision as the jury in the present case.

Additionally, Plaintiff alleges that the Court erred in not directing a verdict on the issue of negligence on the theory that Defendant violated S.C. Code §§ 56-5-5060, 56-5-5080, and 56-5-5090 by not putting out roadside flares. The law states that a "*[c]ausative* violation of an applicable statute constitutes actionable negligence and is evidence of recklessness, willfulness and wantonness." Fairchild v. SCDOT, 398 S.C. 90, 100, 727 S.E.2d 407, 412 (2012) (quoting Field v. Gregory, 230 S.C. 39, 46, 94 S.E.2d 15, 19 (1956)) (emphasis added). As mentioned, the testimony in the case reflected that five to ten minutes had elapsed after the Budget Truck flipped on its side, and that as many as twenty other vehicles, including at least one other semi-truck, passed the location before the accident in question occurred. These facts render the question of whether the violation of these statutes was "causative" of Plaintiff's injuries as one that was properly before the jury. Likewise, the jury's determination that Defendant's alleged violation of these statutes did not cause Plaintiff's injuries could properly be characterized as reasonable given the evidence presented at trial.

II. Motion for New Trial

The Plaintiff also moves for a new trial on three (3) grounds. The first ground claims that the Defendant should not have been allowed to cross examine the Plaintiff on his pleadings and discovery responses; or, in the alternative, the Plaintiff should have been allowed to disclose to the jury that there was a settlement with Co-Defendants Owens and Pierce National or to disclose to the jury the settlement amount. However, the Plaintiff cites no law to this effect. In fact, generally, the prior pleadings in an action may be received in evidence against the pleader. Young v. Martin, 254 S.C. 50, 58, 173 S.E.2d 361 (1970). This issue has been previously addressed by the Supreme Court in the case of Lucht v. Youngblood, 266 S.C. 127, 221 S.E.2d 854 (1976). In Lucht, counsel also attempted to cross examine on prior pleadings regarding settlement with a different defendant in order to impeach. Lucht, 266 S.C. at 134. The trial court in Lucht did not allow counsel to cross-examine on the prior pleadings because it was concerned with disclosure of the prior settlement. Id. On appeal, the Supreme Court set out the procedure to handle such an issue and held:

> "[W]hile this is a difficult issue to handle, the trial judge should have permitted the cross examination on the pleadings. If the judge thought the release on a covenant was becoming involved, he should simultaneously charge the jury that a plaintiff may choose which defendant he wishes to sue and that if any actions against a former defendant are relevant, they would be a matter for the court and not for the jury." Id. at 135.

Additionally, the Plaintiff claims that the defendant should not have been allowed to publish to the jury the Plaintiff's discovery responses. However, Rule 33(d) SCRCP specifically states that "the answers may be used to the extent permitted by the rules of evidence." If the Plaintiff's complaint is with the publishing the name of an expert to the jury, there is no error in

this regard. In the case of Holmes v. Black River Elec. Co-op., Inc., 274 S.C. 252, 260–61, 262 S.E.2d 875, 879 (1980), counsel for the plaintiff referenced to the jury that there were two experts who were retained, but did not testify. The Supreme Court held that "failure to call a witness is proper argument. In the presence of the jury, attention was called to the fact that these two expert witnesses had been offered to counsel for [the Planitiff]. Of course, the jury was permitted to draw any inferences warranted. We find no error." Holmes 274 S.C. at 260–61 (*citing* State v. Hammond, 270 S.C. 347, 242 S.E.2d 411 (1978)). Therefore, the law is settled that pleadings and discovery materials may be properly used on cross examination of a witness.

The Plaintiff further asserts that the Court erred in allowing Defendant Sell to "exceed the bounds of the empty chair defense." The Plaintiff claims that Defendant Sell should not be allowed to use the empty chair defense and claim a set-off for the amount paid by the settling defendant/empty chair. The Plaintiff's argument is without merit because this specific issue is addressed in the South Carolina Contribution Among Joint Tortfeasors Act ("the Act"), S.C. Code Ann. § 15-38-15. Under subsection (D) of the Act, "a defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party." S.C. Code Ann. § 15-38-15(D). Setoff was recently addressed by the Supreme Court in Huck v. Oakland Wings, LLC, No. 2015-002025, 2017 WL 3044750, at *2 (S.C. Ct. App. July 19, 2017). In *Huck*, the court reaffirmed that "a nonsettling defendant is entitled to credit for the amount paid by another defendant who settles." Huck, 2017 WL 3044750 at *2; (*citing* Welch v. Epstein, 342 S.C. 279, 312, 536 S.E.2d 408, 425 (Ct. App. 2000); Powers v. Temple, 250 S.C. 149, 155, 156 S.E.2d 759, 761 (1967) "The reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained

which has already been paid to him." Truesdale v. S.C. Highway Dep't, 264 S.C. 221, 235, 213 S.E.2d 740, 746 (1975). "In other words, there can be only one satisfaction for an injury or wrong." Welch, 342 S.C. at 312; Huck, 2017 WL 3044750 at *2. No applicable law supports the conclusion that the Plaintiff exceeded the bounds of the "empty chair" defense.

The Plaintiff also claims that this Court erred in charging the jury on intervening and superseding negligence. As discussed above, a Pierce National semi-truck crashed into the overturned Budget Truck. It was proper for the jury to decide whether the occurrence of this crash was an intervening and superseding cause of Plaintiff's injuries.

CONCLUSION

This Court having considered the arguments, supporting and opposing documents, and based on the same DENIES Plaintiff's Motions for New Trial and for Judgment Notwithstanding the Verdict.

IT IS SO ORDERED!

November 17, 2017
Charleston, South Carolina

Roger M. Young, Sr.
Presiding Judge

Hampton Common Pleas

Case Caption: Maurice Dawkins VS James A Sell , defendant, et al

Case Number: 2011CP2500252

Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134