THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No. 2017-001568

Callie Barras.....Respondent,

V.

City of Myrtle Beach.....Appellant.

Initial Brief of Respondent

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STATEMENT OF THE CASE

Respondent Callie Barras filed a lawsuit against Appellant City of Myrtle Beach (the City) for injuries she sustained during a fall at the City's Base Recreation Center (the Center) where she was serving as a volunteer for the City. (Amended Complaint). Following a three-day jury trial, the jury returned a verdict in Respondent's favor. (Verdict). The City filed post-trial motions arguing it could not be subject to liability pursuant to the Recreational Use Statute and there was no evidence of gross negligence. (Motions). These motions were denied. (Order). This appeal followed.

STATEMENT OF FACTS

The City owns, maintains, and operates the Center where the City offers a myriad of activities for community members including bingo, which has been part of the City's programing since 1996.[1] (Tr.44; 188, 214, 231). Through this program, the community is invited to partake in two games of bingo with a refreshment hour in between the games twice a week. (Tr.217). The City advertises this program through its website and a program flyer. (Tr.188, 194)

The City relies on volunteers to operate the program. (Tr.189, Tr. 214-15). Specifically, the City provides the hall, tables, chairs, and coffee[2] , then in turn utilizes twenty-five volunteers to execute the program. (Tr. 139, 191, 194, 214). Each program volunteer must be approved by the City and is subject to a background check. (Tr.165, 202).

Volunteers, like Respondent, arrive at the Center two hours before the start of bingo to assist with setting up tables and chairs and setting out refreshments, and then stay after to clean up. (Tr. 153, 166-67, 217). Preparing refreshments requires volunteers to use the Center's kitchen—access to which is restricted to only volunteers—and the Center's carts to transport the refreshments from the kitchen to the hall. (Tr.73-74, Tr. 154). While there is no cooking involved, volunteers in the kitchen are responsible for food preparation which includes: packing and unpacking, cutting, and heating/cooling the food. (Tr.74, 137).

Volunteers have a well-developed routine and chain of command amongst themselves for executing their tasks. (Tr.137, 143, 166). However, any issue that arises with a volunteer, program participant, or the program itself is addressed by the City through Pam Stone, the City's Recreation

[1] The City also allows the public to rent space in the Center for private functions.
[2] Money is collected at the weekly bingo programs and is given to the City to pay for the coffee. (Tr. 71).

Director, and Dustin Jordan, the Center's facility supervisor, who handles day-to-day operations for the City. (Tr. 93, 140-41, 188, 193, 199).

For over a decade, Respondent has served as a City volunteer assisting with bingo. (R.43). In this capacity, Respondent does "whatever is necessary." (Tr. 143). Typically, she helps in the kitchen with food preparation and transportation to the hall, along with the corresponding duties of receiving the food donated by program participants, set-up, and clean-up. (Tr. 137).

On April 8, 2015, Respondent, a retiree, was volunteering in the kitchen when, while attempting to transport refreshments, she tripped on a commercial mat that had been placed in the kitchen by the City. (Tr.55-56). At the time, the mat had become warped with waves spreading across it. As a result, Respondent's foot caught under the mat and she fell. Respondent landed on the cement floor. She sustained injures to her head, arm, knee and foot, and was taken by an ambulance to the hospital. (Tr.56). At the hospital, at which she stayed overnight, doctors determined she had a concussion and a sprained ankle. Respondent was forced to wear a walking boot and underwent five months of physical therapy. (Tr. 60-61, 65, 68).

Because of her injuries, Respondent brought this lawsuit alleging the City and Alsco—the company who provided the mats—were negligent and liable for her injuries. (Amended Complaint) (Tr.88). Specifically, Respondent alleged the City was subject to premise liability and that the City and Alsco were negligent because they knew or should have known the mats were a tripping hazard. (Amended Complaint). During the course of litigation, Respondent settled with Alsco and stipulated its dismissal with prejudice and the matter proceeded against the City. (Stipulation of Dismissal with prejudice).

At trial, Respondent put forth evidence and testimony demonstrating the City exercised control over the bingo program and the faulty mat. Respondent testified on her own behalf and

also called as witnesses two other volunteers—Irene Demczuk and Leroy Marcotte— to demonstrate the City maintained the facility, approved who could volunteer, and had the final determination on all programming decisions and the parameters of bingo. (Tr.93, 140-41, 165-66, 188, 193, 199). This testimony was corroborated by the City's witnesses Stone and Jordan. *Id.* Stone clarified in her testimony that placement of the mats was left to the City's sole discretion. (Tr.231).

Respondent also put forth evidence that the City had actual notice the mats were a hazard and had caused individuals to trip prior to Respondent's fall. (Tr.50). Marcotte testified he reported problems with the mats to Stone on multiple occasions. (Tr.170.) Additionally, six witnesses testified about a March 2015 meeting where volunteers raised concerns with Stone about the mats.[3] Respondent, Marcotte, and Demczuk testified they told Stone the mats were causing people to trip and asked whether something could be done. (Tr. 52-53, 82, 144, 151). The three witnesses testified they asked Stone whether the mats could be rolled up to prevent falls but Stone refused. (Tr.53, 151). They explained Stone "would prefer to have the [mats] left there because the hall is rented [at other times] and the [mats] were there to prevent slippage, water, whatever." (Tr.148). Marcotte testified that Stone "was firm about making sure those mats stayed on that floor" despite the known risk, especially to the elderly utilizing canes and walkers. (Tr.171).

When asked about this meeting, Stone could not remember any issue with the mats being raised. (Tr.234). However, this testimony was later contradicted when she testified that after hearing trial testimony from Respondent and the other volunteers about her decisions "that [it] sounds like me." (Tr.235). Jordan's testimony also showed notice because he admitted that, while

[3] Witnesses testified that the March 2015 meeting originated because volunteers and participants wished to prohibit children from attending the program. (Tr. 52-53, 82, 144, 151). Following that discussion, volunteers raised their concerns about the mats. *Id.*

he was not at Stone's meeting about the mats, he was aware volunteers voiced concerns to Stone about the mats. (Tr.201, 206).

Additionally, Respondent's witnesses testified the mats were often warped. As part of the City's contract with Alsco, mats would be replaced at the Center every two weeks. (Tr. 149, 191-92). Yet, several witnesses testified the clean mats would "bunch up," have "humps" in them, and "buckle" after only a few days. (Tr.79, 145, 148, 152). Jordan admitted seeing the mats develop waves. (Tr.201). In sum, the testimony reflected as the mats remained on the floor longer, "the problems worsened." (Tr.149). Because of these issues, volunteers were concerned about their safety, especially in the kitchen, because "once you get busy you start working . . . you're not aware of [the mat], and it could cause an accident." (Tr.148). Further, the volunteers testified they would try to straighten the mats out themselves using their hands or feet, but the mats would simply "bunch up" again. (Tr.156).

Several witnesses also testified that people had tripped and fallen on the mats before. (Tr. 79). For example, Respondent and Demczuk testified that a pizza delivery man had gotten his foot caught under a mat and nearly fell with a stack of pizzas weeks prior to Respondent's fall. (Tr.47). Demczuk testified she had tripped on the mats a couple of times and had seen several individuals stumble on the mats in the kitchen, as well as in the main areas of the Center. (Tr. 52, 145, 157, 169). Marcotte had also tripped on the mats a couple of times. (Tr.169).

Several witnesses testified the City took no action to address the hazardous mats. Respondent testified that neither Stone nor anyone else with the City offered a solution for the mat problems following the March 2015 meeting. (Tr.54). Eric Weiss, who delivered the mats to the Center for Alsco every two weeks, testified that he was never told by the City that anyone fell on a mat. (Tr.124). Further, he stated that the City never inquired about whether there was a way to

keep the mats from becoming wavy. (Tr.124). Nor did they ask Weiss if there were other mats available that would not wrinkle or become wavy. (Tr.125).

Jordan testified that despite knowing the mats would get waves in them, he never spoke to Weiss or any other Alsco representative about problems with the mats. (Tr.201-02). He also did not attempt to address any issue with the mats with Stone, despite knowing the volunteers had raised concerns about the tripping hazard. (Tr.206). Further, Jordan stated that Stone never told him that anyone had complained about the mats, and she had not spoken to him after the meeting with the volunteers. (Tr.200). Stone's testimony mirrored Jordan's, in which she stated she never spoke with Jordan about the mats before the fall. (Tr.229).

At the close of Respondent's case-in-chief, the City moved for a directed verdict on the grounds that the Recreational Use Statute applied—contending it could not be held liable because of the statutory immunity, and separately argued that Respondent was a licensee.[4] (Tr.181). Respondent's counsel adamantly opposed the application of the Recreational Use Statute because Respondent was serving as the City's volunteer when she fell and was not engaged at the Center for "recreational purpose" as defined by the statute.[5] (Tr.99, 104). Rather, Respondent was assisting the City with their program. (Tr.104). Notably, counsel argued the burden was on the City to prove the Recreational Use Statute applied. (Tr.108). The City contended the Recreational Use Statute applied because Respondent was at the Center for bingo—a recreational purpose—and the City disclaimed running the program. (Tr.102, 105, 181-82). The trial court denied the motion as to the statute, and explained it intended to charge the jury on whether the Recreational

[4] The City also moved for a directed verdict based on the Tort Claims Act and Jordan's inspection of the premises. (Tr.181). None of these issues are addressed in this appeal.

[5] By way of reference, the trial court had a lengthy discussion about the application of the Recreational Use Statute prior to the City moving for a directed verdict in anticipation of the motion and those arguments have been incorporated here. (Tr. 97-119).

Use Statute applied given Respondent's volunteer status. (Tr.183-84). Specifically, the trial court explained it would allow the jury to determine whether the statute applied by telling "the jury the purpose of the statute, what it shields against, the exceptions to the statute, and let them determine whether or not this is a case where [Respondent] either fits under the statute or she does not." (Tr.183-84). As to Respondent's status as a licensee, the trial court found Respondent was a licensee whether she was on the premises to volunteer or engage in recreation. (Tr.183-184).

The City renewed the directed verdict motion at the close of its case arguing Respondent failed to show any defect in the mat along with the statutory arguments, including that the Recreational Use Statute applied and thus barred any liability, which the trial court denied. (Tr.237-38). The trial court then instructed counsel "look very closely at the charge. And as we have discussed, it's going to be complicated. And I want us to give a charge that can be understood by a lay jury. . . we will conference again about it, and have some time to straighten it up." (Tr.238-39).

Following the conference and before charging the jury, the trial court allowed counsel to place any objection on the record and reminded counsel of its policy of providing written copies of the charges to the jury. (Tr. 239). Respondent's counsel objected to the jury being charged with the Recreational Use Statute and asked the Court to find as a matter of law that the statute did not apply because Respondent was on the premises as a volunteer and not for recreational purposes at the time of the injury. (Tr.239-40). In support of this position, counsel noted Respondent was never asked if she was going to play bingo on the day of accident, the fall occurred while Respondent was volunteering, and the City failed to put forth sufficient evidence that the statute applied. (Tr.240-41). Additionally, Respondent's counsel again raised concerns about the trial court's finding that Respondent was a licensee and the trial court's duty charge that instructed the

jury to find she was a licensee whether she was on the premises as a volunteer or for a recreational purpose. (Tr.243).

In contrast, the City made no objection to the jury charges. (Tr.243). Instead, the City objected to the verdict form stating, "it makes no mention of the gross negligence standard or the Recreational Use Statute." (Tr.243). The objection was overruled because the trial court found the jury charges, which would be taken back with the jury, outlined the applicable burden of proof and standards to be applied.[6] (Tr.243-44). The trial court explained it understood, per the conference held in chambers, that the City's objection to be that it wanted special interrogatories to address comparative negligence which it believed was unnecessary given the charges' explanation of burden of proof and the standards that must be applied." (Tr. 243-44). The trial court further explained it believed if special interrogatories were utilized for comparative negligence it would confuse the jury given the explanation of the standard in the jury charges. *Id.*

The jury subsequently returned a verdict in favor of Respondent for $547,128.93. (Tr.297–98). The City orally moved for a judgment notwithstanding the verdict, which was later supplemented by memorandum. (Tr. 300-01); (City's Memorandum) (Respondent's memorandum). The City argued it owed Respondent no duty because the Recreational Use Statute applied, and Respondent failed to show by clear and convincing evidence that the City was grossly negligent.[7] Respondent opposed these arguments, and the motion was denied. (Respondent's Memorandum) (Order denying post trial-motions). This appeal followed.

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[6] By way of reference, the jury charges stated that the City would only be liable if the jury found specific circumstances existed: "grossly negligent, willful, or malicious conduct by the defendant or circumstances where the defendant charged a fee for the use of the property." (Tr. 281-82) (Charges at 13-15).

[7] Additionally, the City requested a new trial absolute on two grounds not subject to the appeal. (the City's Memorandum).

ARGUMENTS

The issues raised to this Court are ones of hindsight and are unpreserved for appellate review. The City predicates its contention that the trial court erred in failing to grant a directed verdict as to the Recreational Use Statute on systemic errors with the verdict form and jury charges. Respondent readily acknowledges that the verdict form is imperfect and could have been drafted more clearly to avoid inviting the issues now placed before this Court. However, at trial the City made no objection to the jury charges and the trial court's comments to the jury, two errors it now heavily relies on, nor did it raise the specific objection as to the framing of the verdict form it now seeks to advance.

That being said, the jury charges adequately support the verdict form, in addition to evidence in the record supporting the jury's verdict. As explained herein, the charges on both the Recreational Use Statute and duty invite only one conclusion: the Recreational Use Statute applied and Respondent could only recover if the jury found the City was grossly negligent. While the trial court repeatedly stated the charges allowed the jury to determine if the statute applied, a plain reading of the charges demonstrate that the jury was entitled to find "negligence" against the City only if it found the City's actions were "specific circumstances" denoting gross negligence.

In an effort to burnish its deficiencies, the City directs this Court to engage in statutory interpretation to determine if the Recreational Use Statute's immunity includes a landowner's volunteer. While this inquiry serves as a useful starting point in this Court's appreciation of the overall analysis, this argument is futile because the trial court's ruling that the jury's verdict is supported by evidence of gross negligence is dispositive. For these reasons, the trial court should be affirmed.

I. The trial court properly denied the City's request for a directed verdict for immunity from liability pursuant to the Recreational Use Statute because Respondent was not on the premises for recreational purposes; Furthermore, there was sufficient evidence to create a jury question.

The City contends the trial court should have directed a verdict in its favor because the Recreational Use Statute establishes it owes no duty when an individual is on its property for recreational purposes and there was no evidence of gross negligence. The City accordingly asks this Court to find the Recreational Use Statute absolves a landowner's liability for a volunteer, in direct contradiction to a plain reading of the statute. As explained herein, evidence presented demonstrated the Recreational Use Statute was inapplicable because Respondent was on the premises in her capacity as the City's volunteer, not for recreational purposes at the time of her injuries. Furthermore, the evidence presented created a question of fact and a directed verdict would have been improper.

The Recreational Use Statute grants immunity to encourage landowners to make "land and water areas available to the public for reactional purpose." S.C. Code Ann. § 27-3-30; *see also* S.C. Code Ann. § 27-3-50 (noting the statute applies to land leased to State and political subdivisions). Specifically, the statute provides, in pertinent part:

> an owner of land owes no duty of care to keep the premises safe for entry or use by *persons who have sought and obtained his permission to use it for recreational purposes* or to give any warning of a dangerous condition, use, structure, or activity on such premises to such *persons entering for such purposes*.

S.C. Code Ann. § 27-3-30 (emphasis added); *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct.App.1997) (explaining landowners owe no duty of care to keep the premises safe for recreational users and are not required to give any warning of a dangerous condition). The statute defines "recreational purpose" as including, but not limited to, any of the following: "hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving,

nature study, water skiing, summer and winter sports and viewing or enjoying historical, archaeological, scenic, or scientific sites." S.C. Code Ann. § 27–3–20(c).

Immunity, however, is not absolute. S.C. Code Ann. § 27-3-60. A landowner remains subject to liability existing for "grossly negligent, willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity" and for any injury suffered when the landowner charges for entry to the land. *Id.*

The City asserts the trial court erred in denying the directed verdict motion because Respondent was on the premises for a "recreational purpose." Such an interpretation is unsupported by the plain language and purpose of the statute, as well as ignores pertinent case law.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hardee v. McDowell*, 381 S.C. 445, 453, 673 S.E.2d 813, 817 (2009) (internal quotation omitted). Under the plain meaning rule, it is not the province of the court to change the meaning of a clear and unambiguous statute. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009).

Under a plain reading of the statute, a landowner owes no duty of care for a person who entered the land "for recreational purposes." Respondent did not enter the Center for such purpose. Rather, she entered as a volunteer. There is no question Respondent was injured while serving as a City volunteer and the injury did not occur in connection with recreation. Respondent's efforts as a volunteer were supported and controlled by the City. This is best demonstrated by the City's own witnesses, who testified volunteers had to be approved by the City and the City strictly prohibited volunteers from moving the mats or even changing the age of bingo participants.

Significantly, the City's interpretation of the Recreational Use Statute contravenes the purpose of the statute, which is to encourage the use of land not an absolute bar to liability. S.C. Code Ann. § 27-3-30; *Cole v. S.C. Elec. & Gas, Inc.*, 355 S.C. 183, 189, 584 S.E.2d 405, 408–09 (Ct. App. 2003), *aff'd as modified*, 362 S.C. 445, 608 S.E.2d 859 (2005). Under the City's interpretation, the landowner is absolved from liability if any person, be it a volunteer, independent contractor, or employee, is connected to an activity that is recreational. The purpose of the statute could not, nor should it, be to remove a landowner's liability when an act is being done for the benefit of the landowner by another, i.e. a volunteer. *Harris v. Univ. of S.C.*, 391 S.C. 518, 525–26, 706 S.E.2d 45, 48–49 (Ct. App. 2011); *see also Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 468, 636 S.E.2d 598, 606 (2006). This is evidenced by the fact that the statute explicitly states that a landowner will be liable if he takes fees from a person on the land. S.C. Code Ann. § 27-3-60. Practically, the statute distinguishes a circumstance in which a landowner receives a benefit from a person's presence on the land and one in which the landowner is merely providing the means to access the land for recreation. Because a landowner's volunteer is on the premises with the direction and control of the landowner and not for his or her own independent recreation, the statute does not apply.

Accordingly, the City's argument that the statute must apply is fanciful because Respondent's purpose of being on the property was for the City's benefit of offering the program not for recreational use of the land. Certainly, if Respondent was not the City's approved volunteer subject to the City's direction and control or was injured while participating in bingo the outcome could be arguably different. That, however, is not the circumstance here.[8]

[8] The City's argument that the jury charges entitled the jury to add a simple negligence exception to the Recreational Use Statute is unpreserved for appellate review because the City made no objection to the jury charges. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295,

Moreover, at a minimum, Respondent's purpose at the Center created a question of fact for the jury and a directed verdict would have been improper. *Harris*, 391 S.C. at 526, 706 S.E.2d at 49 (explaining "whether [plaintiff's] visit was for recreational purposes are questions of fact for the jury to decide"). For these reasons, the jury verdict should be upheld.[9]

II. The trial court properly upheld the jury verdict because evidence the record contains evidence that the City was grossly negligent.

The City further contends no evidence was presented, other than evidence of slight care, to warrant a jury question as to gross negligence. The City thereby asks this Court to find the trial court erred in failing to direct a verdict in its favor as to gross negligence. The trial court should be affirmed because the record contains evidence that the City was grossly negligent.

Gross negligence "means the absence of care that is necessary under the circumstances." *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558, 571, 780 S.E.2d 252, 258–59 (2015). It is also described as "the failure to exercise slight care." *Etheredge v. Richland Sch. Dist. One,* 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000). Because gross negligence claims implicate mixed questions of law and fact, their determination typically rests with the jury. *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 332, 566 S.E.2d 536, 545 (2002).

"In deciding motions for directed verdict and those for judgment notwithstanding the verdict, the evidence and all reasonable inferences must be viewed in the light most favorable to

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641 S.E.2d 903 (2007); *State v. Avery*, 333 S.C. 284, 509 S.E.2d 476 (1999) (explaining "when an instruction as given is inadequate, a party must request further instructions or object at the completion of the instructions in order to preserve the issue for review"). Furthermore, as discussed more fully on pages 18-20 of this brief, a review of the jury charges demonstrates the charges do not permit a finding of simple negligence.

[9] If this Court finds that the Recreational Use Statute applies, and thus the City owes no duty to Respondent in her capacity as a volunteer, the City is still liable given the jury's verdict. Accordingly, the Court need not reach the issue of statutory interpretation. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when the disposition of one issue is dispositive).

the nonmoving party." *Howard v. State Farm Mut. Ins. Co.*, 316 S.C. 445, 451, 450 S.E.2d 582, 585-86 (1994). The trial court can only be reversed when there is no evidence to support the ruling below. *Creech v. S.C. Wildlife & Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997). This Court's inquiry turns on whether there is any evidence of gross negligence to support the jury's verdict. *See generally Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003) (stating that in deciding a motion for JNOV, "the trial judge is concerned with the existence of evidence, not its weight").

The record contains evidence from which a jury could conclude the City was grossly negligent. As discussed *supra*, there was extensive testimony showing the City was on actual notice of the problems with the mats more than a month before Respondent's fall. (Tr. 52-53, 82, 144, 151). Multiple witnesses, including Respondent, testified they raised concerns about the mats to the City, including a meeting with Stone in March 2015. (Tr. 52-53, 82, 144, 151). Moreover, City employees testified they made no efforts to address the mat problems, despite their awareness of the problems and the volunteers' concerns for both their safety and that of the elderly program participants. (Tr.206). For these reasons, the record supports the jury's finding of gross negligence, and the trial court should be affirmed.

III. The City's argument that it is prejudiced by the verdict form is unpreserved for appellate review, Furthermore, contrary to the City's assertions the verdict form only allowed for a finding of gross negligence.

The City next contends it is entitled to a new trial because the verdict form prejudicially framed the issues to the jury. In support of this position, the City argues the error is incurable because of errors arising from the jury charges and the trial court's prejudicial comments/explanations given to the jury. These arguments are unpreserved for appellate review. As discussed herein, the City's objection was limited to the verdict form concerning comparative

negligence and not the jury charges. Moreover, as to the merits of the City's argument, the factual underpinning the City seeks to rely on to prove prejudice is in fact nonexistent. Rather, the charges and verdict form were drafted to Respondent's detriment as to the Recreational Use Statute.

Following a conference in chambers and prior to charging the jury, the trial court allowed counsel to place any objections to the jury charges and verdict form on the record. The City's sole objection was that the verdict form "makes no mention of the gross negligence standard or the Recreational Use Statute." (Tr.243). In response to that objection, the trial court explained it understood the City's objection, per the chambers conference, to be that it wanted special interrogatories to address comparative negligence which it believed was unnecessary given the charges' explanation of burden of proof and the standards that must be applied." (Tr. 243-44). The trial court further explained it believed if special interrogatories were utilized for comparative negligence it would confuse the jury given the explanation of the standard in the jury charges. *Id.* Following this ruling, the trial court asked the City if it had any other objections for the record, which the City declined. (Tr.244).

Now on appeal the City argues the verdict form prejudicially framed the jury's inquiry because it "only allowed the jury to frame their answers in terms of whether the City was negligent and whether the negligence proximately caused injuries to [Respondent]." App. Br. 16. This argument was not encompassed with the City's objection. *S.C. Dep't of Transp.*, 372 at 295, 641 S.E.2d at 903 ("Issues not raised and ruled upon in the trial court will not be considered on appeal."); *In the Interest of Michael H.*, 360 S.C. 540, 602 S.E.2d 729 (2004) (noting trial court must be given an adequate opportunity to resolve the issue). While the City now suggests improper framing undermined the jury's ability to adequately consider its immunity because there was no place for the jury "to apply the Recreational Use Statute or even permitted the jury to enter a

general verdict," the City failed to offer this objection to the trial court. *State v. Dunbar*, 356 S.C. 138, 587 S.E.2d 691 (2003) (explaining that a party may not argue one ground at trial and an alternate ground on appeal). This is perhaps best demonstrated by the trial court's discussion of comparative negligence after the City's objection. (Tr. 243). To the extent the City was making an objection on how the issues were being framed, it was required to specify its objection so the trial court could address the legal basis of the objection. *S.C. Dept. of Transp.*, 372 S.C. at 295, 641 S.E.2d at 903 (explaining an objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge).

Moreover, the City's contention that the verdict form's error is incurable because of the trial court's failure to provide clear instructions further highlights the unpreserved nature of these arguments. The City, for the first time, takes issue with the jury charges and the judges' comments to the jury about the verdict form. App. Br. at 16. The City never objected to the jury charges or the trial court's comments to the jury. *Pinckney v. Pettijohn Builders*, 289 S.C. 405, 346 S.E.2d 533 (Ct. App. 1986) (explaining where counsel states at trial that he has no objection to a specific aspect of the jury charge, he may not argue on appeal that the jury charge was erroneous); *Portman v. Garbade*, 337 S.C. 186, 522 S.E.2d 830 (Ct. App. 1999) (explaining an objection to the trial court's question or comment was required to be raised at the time).[10] *Lipscomb v. Poole*, 247 S.C. 425, 147 S.E.2d 692 (1966) (holding an objection to the trial court's comments must be raised at the time of the objection). Accordingly, the City is prohibited from suggesting error or raising these matters for the first time on appeal.

[10] As the trial court explained, "I believe my charge certainly gives them the ability to accept or reject the recreational use facts. They can make a determination as to her purpose, her status and whether it applies."). (Tr. 242).

To the extent the Court addresses the merits of the City's argument, the City is unable to prove it was prejudiced by the absence of the Recreational Use Statute and the term gross negligence on the verdict form. *Freeman v. J.L.H. Invs., LP*, 414 S.C. 362, 386, 778 S.E.2d 902, 914 (2015) ("Error in the refusal to submit special interrogatories or special issues to the jury will constitute ground for reversal only if prejudice results to the complaining party.") (internal citations omitted). A review of the charges and verdict form demonstrate that the jury's finding of negligence was for gross negligence because of the language of duty charge, i.e. licensee finding by the trial court, and the Recreational Use Statute. (Tr. 278-283) (Charges at 13).

In charging the jury, the trial court first charged general negligence then turned to charging duty. (Tr.278). In setting forth duty, the trial court charged: "a person who enters the property without asking for specific permission of the land owner *to do volunteer work or to use recreational facilities*, among other things *is held to be a licensee*. I have determined that the *[Respondent] in this case is a licensee*." (Tr. 280-81). (Charge 13) (emphasis added).

Next, as to the Recreational Use Statute, the trial court charged "normally a breach of this duty would constitute negligence," however the statute establishes that except for limited circumstances a landowner owes no duty to a licensee. (Tr. 281); (charges 14). The trial court then set forth that the only way a plaintiff may recover is if limited circumstances—grossly negligent, willful, or malicious conduct by the defendant exists or circumstances where the defendant charged a fee for the use of the property—exist. (Tr.281-82). The court stated in pertinent part:

> The key here is whether you find that the plaintiff was upon the property for recreational purposes. If you find that the plaintiff was using the property for recreational purposes there would be no liability for the defendant unless you find that one of the special circumstances described . . . above exists.

(Tr.282-83) (charges 14-15).

Practically, the jury was not entitled to find liability under general negligence because the City is immune from general negligence liability. *See* Charges at 14 ("Except under these limited circumstances the landowner would not owe the generally recognized duty to licensees as described above. If you find there was no duty because of the special exception for landowner's making their property available to the public for recreational purposes then the plaintiff may not prevail.").

Additionally, there can be no suggestion that the Recreational Use Statute was not considered. The jury was required to find that the Recreational Use Statute applied at all times—to the potential determinant of Respondent—because the jury was not charged that it could find it was inapplicable and still find the City liable. This plain reading is supported by the trial court's charge on duty that Respondent was a licensee—whether she was there for volunteer work or recreational purposes—establishing Respondent's status for the purpose of the Recreational Use Statute. When those two charges are read together, the trial court effectively told the jury the only way the City could be held liable was if a special circumstance existed to create a duty.[11] Thus, negligence as written on the verdict form is gross negligence.

Moreover, the City's suggestion that the charges and verdict form confused the jury is unsupported by the jury's own actions. During their deliberations they asked two factual questions and one question on damages. (Court Exhibits 4-7). However, there were no questions about the charges, the meaning of negligence, or the verdict form. *Buff v. S.C. Dep't of Transp.*, 342 S.C. 416, 422–23, 537 S.E.2d 279, 282–83 (2000) (acknowledging our courts give an implicit consent

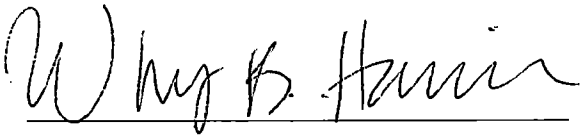
[11] While the City made no objection to the charges, Respondent's counsel repeatedly objected to the trial court charging that Respondent was a licensee and the Recreational Use Statute charge in its entirety. (Tr.242). Notably, in addressing charges, Respondent's counsel explained that "a licensee is somebody that enters the property for their own benefit" and "my client was clearly not acting as a licensee." (Tr.243). As a result, Respondent noted that the charges were improper. *Id.*

of understanding by the jury when issues are not raised). Thereby, undercutting any assertion that the jury misunderstood the verdict form and prejudiced the City. For these reasons, this Court should affirm.

CONCLUSION

Based on the forgoing reasons, the trial court's order should be affirmed.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No. 2017-001568

Callie Barras..... .....Respondent,

V.

City of Myrtle Beach .....Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on March 7, 2018, she served counsel for Appellant with *Respondent's Initial Brief* and *the Designation of Mater* by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

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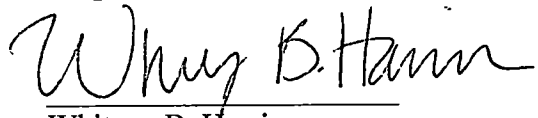
Respectfully submitted,



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March 7, 2018

The Honorable Jenny Kitchings
Clerk of South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: *Callie Barras v. City of Myrtle Beach*
Appellate Case No. 2017-001568

Dear Ms. Kitchings:

Please find enclosed for filing the original and two copies of the *Initial Brief of Respondent* and *Designation of Matter to be included in the Record on Appeal* in regards to this case. I have also enclosed a proof of service. Please return the additional filed copies to me via our courier.

Thank you for your attention to this matter. If you need any additional information, please do not hesitate to contact me.

With kind regards,

Sincerely,

Whitney B. Harrison

Enclosures

cc: Mark Nappier
Michael Battle
Kirk Battle