

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Keith L. Montgomery,)
)
Plaintiff,)
)
v.)
)
Richland County,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No. 2017-CP-40-0329

ORDER
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SC Court of Appeals

This matter comes before the Court by way of Rule 50(b) and 59, SCRPC motions filed by Defendant for Judgment Notwithstanding the Verdict (JNOV), New Trial Absolute, New Trial pursuant to the Thirteenth Juror Doctrine, and *Nisi Remittitur*. A jury trial was held April 4-5, 2018. A verdict was returned in favor of Plaintiff in the amount of \$48,000.00. Defendant's post-trial motions were filed on April 16, 2018.

I. Judgment Notwithstanding Verdict

Defendant contends he is entitled to JNOV because there was no evidence to support a finding that Johnnie Taylor, the employee of Defendant, acts or omissions rose to the level of an intentional conscious failure or that he failed to exercise slight care. Defendant further contends Plaintiff's trial testimony is neither indicative nor does it infer evidence of gross negligent conduct. In deciding a motion for JNOV, the trial judge is concerned with the existence of evidence, not its weight. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 585 S.E.2d 272 (2003). "In ruling on a motion for JNOV, the trial judge cannot disturb the factual findings of a jury unless a review of the record discloses no evidence which reasonably supports them. In making this determination, the judge must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party." *Burns v. Universal Health Servs., Inc.*, 361 S.C. 221, 231-32, 603 S.E.2d 605, 611 (Ct. App. 2004). The verdict will be upheld if there is any evidence to sustain the factual findings implicit in the jury's verdict. *Id.* There was evidence to support the jury's verdict in favor of Plaintiff on the causes of action. Accordingly, Defendant's Motion for Judgment Notwithstanding Verdict is denied.

II. New Trial Absolute

Defendant moves for a new trial absolute due to the Court precluding the testimony and evidence concerning Plaintiff's previous detention center incarcerations and the criminal offenses in which Plaintiff was charged during his retrospective bookings. Defendant contends the Court should have permitted Defendant to show that the testimony elicited by Plaintiff's counsel was untrue by questioning Plaintiff's counsel as to the nature of his previous bookings at Alvin S. Glenn Detention Center. This issue was thoroughly discussed in court. Defendant certainly asked questions relating to the dates Plaintiff was booked at Alvin S. Glenn Detention Center. What was not permissible however, was to discuss the specific charges because the admission of those charges did not comport with the Rules of Evidence relating to impeachment. See *Rule 609, SCRE*. Additionally, Defendant contends that the verdict is grossly excessive based on the nature of the evidence of damages presented and that there was a lack of evidence presented throughout the trial to support the jury's verdict. Plaintiff's medical expenses as well as his testimony was evidence from which the jury could determine the damages for personal injury.

In order for the Court to grant a new trial absolute, "compelling reasons, must be given to justify invading the jury's province." *Chapman v. Upstate RV & Marine*, 364 S.C. 82, 89, 610 S.E.2d 852, 856 (Ct. App. 2005). Defendant has not provided any compelling reasons to justify invading the jury's province for a new trial absolute. Accordingly, Defendant is not entitled to a new trial absolute.

III. Thirteenth Juror Doctrine

Defendant moves for a new trial absolute pursuant to the Thirteenth Juror doctrine on the grounds that the evidence does not support nor justify the verdict. "The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror "hangs" the jury." *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). There were clearly factual issues the jury considered and resolved those in favor of Plaintiff. The evidence supports the verdict. Accordingly, Defendant's motion for a new trial absolute based upon the Thirteenth Juror Doctrine is denied.

IV. *Nisi Remittitur*

The consideration for a motion for a new trial nisi remittitur requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. *Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 628 S.E.2d 496 (Ct. App. 2006). The jury returned a verdict in favor of Plaintiff. In light of the factual issues presented, the jury weighed the evidence in favor of Plaintiff. The verdict was not reached as a result of caprice, passion, prejudice, partiality, or improper motives. The jury was properly charged, carefully considered the evidence, and returned a reasonable verdict. Accordingly, Defendant is not entitled to a *nisi remittitur*.

ORDER

After careful consideration of the record in this case and the submissions of the parties, Defendant's motions for Judgment Notwithstanding the Verdict (JNOV), New Trial Absolute, New Trial pursuant to the Thirteenth Juror Doctrine, and *Nisi Remittitur* are **DENIED**. Pursuant to Rule 59(f), oral argument is not necessary.



Richland Common Pleas

Case Caption: Keith L Montgomery vs Richland County , defendant, et al

Case Number: 2017CP4000329

Type: Order/Other

IT IS SO ORDERED!

s/ Alison Renee Lee