

STANDARD OF REVIEW

The standard of review for a judgment on Appeal to Circuit Court from Magistrate Court is set forth in S.C. Code § 18-7-170, which provides as follows: “Upon hearing the Appeal, the Appellate Court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the Court may affirm or reverse the judgment of the Court below, in whole or in part, as to any or all the parties and for errors of law or fact.”

CONCLUSIONS OF LAW

As to each of the twelve (12) issues raised by Appellant, the Court finds as follows:

1. The Court did not err by allowing Respondent to cross-examine Appellant with the various pleadings he filed that alleged different amounts of his damages. Appellant filed several different pleadings reflecting various amounts of his alleged damages. The damages he claimed changed throughout the course of the litigation.

The law provides the trial judge with a wide range of discretion as to the admissibility of evidence. Appellant’s pleadings were prepared by and signed by the Appellant and filed with the Court, and therefore, it was not error for the trial judge to allow Respondent to impeach Appellant in cross-examination as to the inconsistency of his alleged damages.

2. The Court did not err in allowing Respondent to introduce Exhibits that were not previously filed with the Court. Respondent was not required to pre-file any Exhibits with the Court. The *Magistrate Court* or *South Carolina Rules of Procedure* do not require exhibits to be pre-filed. Furthermore, pre-trial discovery is not required in Magistrate’s Court.

3. The Court did not err in denying Appellant’s Motion to Dismiss Respondent’s Counterclaim. Appellant claims that Respondent’s Counterclaim is *res judicata* because it was

the same claim for relief Respondent sought pursuant to a Complaint for Repairman's Lien filed in Civil Action No.: 2015-CV-23-108000 (the "prior case").

Respondent towed Appellant's vehicle after a severe automobile collision on March 4, 2012 involving Appellant that ultimately resulted in Appellant's charge and conviction for Felony Driving under the Influence. Appellant's vehicle remained at Respondent's shop for approximately three (3) years. Respondent filed a Repairman's Lien in the prior case. The lien was granted and the car ultimately sold at sale for \$500.00. However, pursuant to Appellant's Motion to be Relieved from Default, the Court reversed the award to Respondent based upon Respondent's failure to provide notice via newspaper publication to Appellant pursuant to S.C. Code § 56-5-2935.

Appellant's position is that the decision in the prior case precludes Respondent from seeking those damages in its counterclaim. However, Respondent's counterclaim is not *res judicata*. Appellant opened the door to Respondent's counterclaim by bringing this action. Moreover, Appellant was afforded a full opportunity to defend himself and litigate all issues related to Respondent's Counterclaim in the trial brought pursuant to Appellant's Complaint.

4. The Court did not err when it denied Appellant's Motion to Dismiss the award of storage fees to Respondent. Respondent is limited in the amount of damages he can recover pursuant to the criteria provided for in § 56-5-2935. The jury awarded Respondent the maximum amount they could pursuant to said statute which was \$2,090.00 with a credit for \$500.00 in sale proceeds received by Respondent.

5. The Court did not err when it allowed Respondent's towed vehicle slip to be introduced into evidence. The towing slip was properly authenticated through Mike Barnes, the owner of Barnes Towing. The towing slip was relevant to Respondent's damages because it

provided the amount of the tow bill. Furthermore, the tow slip provided a list of items that were found in the car by the Respondent when the vehicle was towed, which did not include several of the items Appellant claimed were lost or destroyed by Respondent.

6. The Court did not err by charging only portions of the relevant case law. The Court properly instructed the relevant portions of the applicable state statutes to the jury. There is no requirement for the trial Court to read all of the law, but only the pertinent law necessary for the jury to make a decision based upon the issues before the Court. This is especially true when reading all the law may lead to confuse the jury. Finally, there is no mention in the Return that Appellant objected to the jury instructions.

7. The Court did not err in denying Appellant the right to argue and enter into evidence the Court's decision in the prior case. The prior case was not germane to the issues before the Court because the prior case was decided in Appellant's favor due to a technicality.

8. The Court did not err in limiting Appellant's witnesses. There is no mention in the Return of Appellant's request to call witnesses or that Appellant was precluded from calling witnesses. Appellant did not issue or request subpoenas that the Court failed to serve. Furthermore, Respondent represented to this Court that Appellant never made a request to call witnesses. Finally, Appellant fails to identify the witnesses to which he is referring.

9. The Court did not err in allowing Respondent to cross-examine Appellant as to his conviction for Felony DUI. The Appellant opened the door to allowing Respondent to discuss the prior conviction when, during opening statements, he told the jury that "he had made a mistake"; that "he was at fault for the accident"; and that "he was paying the price for it." Respondent admits that he opened the door. Furthermore, Respondent elected to wear his prison jumpsuit during all stages of the trial.

10. The Court did not err in denying Appellant's Motion for Directed Verdict as to Respondent's Counterclaim. There were facts in controversy in this case that the jury had to determine, and therefore, the denial of a directed verdict was proper.

11. The Court did not err in granting Respondent's Counterclaim. The jury ultimately decided to award Respondent's Counterclaim in an amount allowable pursuant to S.C. Code § 56-5-2935.

12. The Court did not err when it granted Respondent's Counterclaim. This issue is a reiteration of issue No. 3. The prior case is not germane to the issues before the Court. The Court granted the prior case in Appellant's favor. Now, Appellant had a full opportunity to litigate all issues and argue all damages related to Respondent's counterclaim. Appellant was not denied due process and there is no basis to disturb the jury's verdict.

CONCLUSION

This Court finds no error of law or an abuse of discretion by the trial Judge. Therefore, the Appeal is hereby dismissed and the jury's verdict in this matter is affirmed.

IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Terry Edward McCall VS Barnes Towing
Case Number: 2017CP2307401
Type: Order/Confirm

So Ordered

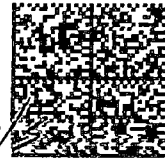
s/ Michael Nettles

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