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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2017-002145

GLENDA R. COURAM.....Appellant

v.

SHERWOOD TIDWELL .....Respondent

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF THE CASE

This is a personal injury action in which the Appellant and Respondent were involved in a motor vehicle accident on Interstate 20 in Richland County on September 18, 2015. Appellant, appearing pro se, filed her Complaint on April 12, 2016, alleging negligence on the part of Respondent. Although Respondent, in his Answer, denied liability, summary judgment was ultimately granted in favor of Plaintiff on that issue with the Respondent's consent, and the case proceeded on the issues of causation and damages.

On February 16, 2017, Respondent filed an Offer of Judgment pursuant to Rule 68 of the South Carolina Rules of Civil Procedure in which he offered the sum of twenty thousand dollars ($20,000) to Appellant in full compromise and settlement of her claims. Appellant rejected Respondent's offer, so a jury trial commenced on June 15, 2017. On June 16, the jury returned a unanimous verdict in favor of Appellant in the amount of one thousand dollars ($1,000). Appellant then filed a motion in which she requested the entry of "judgment notwithstanding the verdict. . . , [a] new trial or additur." Respondent opposed Appellant's motion and also filed a statement of costs in connection with his Offer of Judgment. Judge Jocelyn Newman denied the Appellant's motion and granted the Respondent's motion for costs by order dated October 4, 2017. The Appellant filed and served the Notice of Appeal on October 12, 2017, and a "corrected" Notice of Appeal was filed and served on October 20, 2017. The Appellant filed a "Motion to Set Aside Judgment or Order pursuant to Rule 60(b)" on December 4, 2017, and the Appellant then submitted a "letter of recusal" on December 14, 2017, to the Richland County Clerk of Court in which she requested "that my case never be scheduled before Judge Cayce Manning or Judge Joyce Newman [sic] and they be recused from presiding."

STANDARDS OF REVIEW AND ARGUMENTS

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED APPELLANT'S REQUEST FOR A CONTINUANCE AFTER THE COURT SPECIFICALLY ASKED THE APPELLANT IF SHE WAS READY TO PROCEED, AND SHE AGREED THAT SHE WAS READY TO PROCEED WITH THE TRIAL.

STANDARD OF REVIEW

"It is well-settled in South Carolina that a trial court's denial of a motion for continuance 'will not be disturbed absent a clear abuse of discretion.'" State v. McKennedy, 348 S.C. 270, 280, 559 S.E.2d 850, 855 (2002) (citing State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51 (1996) (citing State v. Tanner, 299 S.C. 459, 385 S.E.2d 832 (1989))). "Reversals for the denial of a continuance 'are about as rare as the proverbial hens' teeth.'" State v. Colden, 372 S.C. 428, 435, 641 S.E.2d 912, 916 (Ct. App. 2007) (citing State v. McMillian, 349 S.C. 17, 21, 561 S.E.2d 602, 604 (2002) (citing State v. Lytchfield, 230 S.C. 405, 409, 95 S.E.2d 857, 859, (1957))).

ARGUMENT

Before the trial began, Judge Jocelyn Newman stated that she intended to continue the case from the current term in order to give Appellant additional time to subpoena witnesses, per her prior request; however, the Appellant advised Judge Newman that she was prepared to proceed without witnesses. Transcript pp. 5-6. Appellant indicated that she wanted to proceed, because she wanted to "get this over with." Transcript p. 6. At that time Judge Newman began with pre-trial maters. Id. The Appellant did not request a continuance until Judge Newman had already begun hearing and ruling on pre-trial matters and various evidentiary issues. Transcript p. 30. Judge Newman then denied the Appellant's request for a continuance, because she had specifically affirmed the Appellant's desire to go forward with the trial at the start of the hearing. Id.

In the case at hand, the Appellant agreed to withdraw her request for a continuance and move forward with the trial. She renewed a request for a continuance only after the pre-trial hearing began and once she become dissatisfied with the court's rulings. There is a clear lack of an abuse of discretion by Judge Newman, as she specifically advised the Appellant prior to the pre-trial hearing that she was in fact willing to grant the Appellant's request for a continuance; however, the Appellant made it abundantly clear on the record that she desired to move forward with the trial.

II. THE TRIAL COURT PROPERLY DENIED THE APPELLANT'S REQUEST TO CHARGE THE JURY WITH PUNITIVE DAMAGES.

STANDARD OF REVIEW

"To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Adkins, 353 S.C. 312, 319, 577 S.E.2d 460, 464 (Ct. App. 2003) (citing State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000); State v. Harrison, 343 S.C. 165, 539 S.E.2d 71 (Ct. App. 2000)).

ARGUMENT

Once the Appellant rested her case, the Respondent moved for a directed verdict on various grounds, including the issue of punitive damages. Transcript p. 190. The Respondent argued that

there was no evidence presented of willful, wanton or reckless conduct. Id. Appellant then argued that the Respondent violated a statute; however, Judge Newman pointed out that the Appellant had made commentary throughout the trial and specifically during the Respondent's testimony, that she knew "it was an accident," and knew "what happened was unintentional," which is the "very antithesis of what punitive damages are intended for." Transcript p.191. Judge Newman then granted the Respondent's motion for a directed verdict on the issue of punitive damages, and it would not be submitted to the jury. Id.

Pursuant to S.C. Code § 15-32-520, in order to be awarded punitive damages, plaintiffs must prove by clear and convincing evidence that the harm was done as a result of the defendant's willful, reckless, or wanton conduct. While examining Respondent Tidwell, Appellant stated, "I know it was an accident." Transcript p.164. She further stated "what happened --- was unintentional." Id. "It was an accident, just simple as that." Id. By the Appellant's own questions and comments, she indicated that the Respondent was not willful, reckless or wanton. To warrant reversal, Judge Newman's refusal to charge the jury on punitive damages, "must be both erroneous and prejudicial to the defendant." See State v. Adkins, 353 S.C. 312, 319, 577 S.E.2d 460, 464 (Ct. App. 2003) (citing *State v. Hughey*, 339 S.C. 439, 529 S.E.2d 721 (2000); State v. Harrison, 343 S.C. 165, 539 S.E.2d 71 (Ct. App. 2000)). Judge Newman's granting the Respondent's directed verdict motion as to punitive damages and refusal to charge the jury with punitive damages, was not erroneous, because it was clearly based on the Appellant's own testimony and statements during the trial.

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN EXCLUDING THE APPELLANT'S MEDICAL RECORDS AND BILLS.

STANDARD OF REVIEW

The admission or exclusion of evidence is within the trial judge's discretion and to warrant reversal an appellant must show both abuse of discretion and prejudice. See Fields v. Reg'l Med. Cent. Orangeburg, 363 S.C. 19, 25-26, 609 S.E.2d 506, 509 (2005).

ARGUMENT

Respondent objected to introduction of Appellant's medical records as hearsay. Transcript p. 25. The Appellant was clearly perplexed as to why the medical records would be hearsay, and Judge Newman explained that the medical records themselves were in fact hearsay. Transcript p. 26. Judge Newman went on to explain to Appellant that although the medical records were hearsay, Appellant could still, of course, testify about her injuries. Transcript pp. 26-27. Judge Newman ruled that Appellant was not permitted to introduce her medical records into evidence, because she would need to have doctors to discuss the records, which Appellant did not plan to do. Transcript p. 27. Judge Newman went on to explain to Appellant that the medical records were hearsay, because they contained statements from doctors, opinions and other inadmissible information. Id..

Once Appellant advised the court that she did not have any additional witnesses, Respondent moved for a directed verdict. Transcript p.176-177. The Respondent moved for a directed verdict in part based on Appellant's lack of evidence regarding any medical bills; Appellant failed to

discuss or enter any medical bills as exhibits during her case in chief. Transcript p.177. Appellant then advised the court that she did intend to introduce her medical bills as exhibits. Id. The court then inquired whether Appellant did, in fact, have additional witnesses to call, which she did not. Id. Appellant went on to argue that she had rested her case as to witnesses, but she had not rested her case "as far as putting forth my bills and my injuries, my damages as a result of the accident." Transcript p.181. The Respondent then objected to introduction of the medical bills as there had been no testimony about the medical bills from any witness. Id. Judge Newman asked the Appellant to give her the stack of medical bills she had been referring to and wanted to introduce into evidence. Transcript pp. 183-184. While the Appellant struggled to assemble a stack of medical bills to introduce, Judge Newman specifically asked Appellant if the bills were in the stack of exhibits she intended to introduce. Transcript pp. 184-185. Appellant responded "no, ma'am." Transcript p. 185. Judge Newman then ruled that she would not allow the Appellant to introduce the bills, because there was no sponsoring witness; Appellant had advised she had no further witnesses and waited for the Respondent to move for a directed verdict before she ever mentioned moving medical bills into evidence. Id. Further, Judge Newman stated that the fact that the Appellant was compiling the bills at that moment suggested that Appellant never intended to introduce them as exhibits, as she had been instructed to compile a stack of proposed exhibits. Transcript p. 186. The medical bills were not in the stack of proposed exhibits. Id.

As to the exclusion of the Appellant's medical records, Judge Newman determining whether a piece of evidence was admissible or inadmissible under the South Carolina Rules of Civil Procedure was squarely within her discretion, The trial court properly found that the proposed exhibits were Hearsay according to Rule 44, SCRCP. Additionally, the Appellant failed to proffer the proposed exhibits.

Finally, as to the Appellant's medical bills, she never sought to properly introduce the documents into evidence. Only after she rested and contested the Respondent's motion for a directed verdict did she seek to move the medical bills into evidence. Once she was given a chance to present the documents to the court, Appellant did not have the medical bills compiled to enter into evidence. By failing to attempt to properly enter the medical bill exhibits at trial or even present them to the court, Appellant failed to preserve the issue for the court to consider.

IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE APPELLANT'S MOTION FOR A NEW TRIAL ABSOLUTE OR FOR A NEW TRIAL NISI.

STANDARD OF REVIEW

"The denial of a motion for a new trial nisi is within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion." James v. Horace Mann Ins. Co., 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006). "A trial judge's order granting or denying a new trial upon the facts will not be disturbed unless h[er] decision is wholly unsupported by the evidence, or the conclusion was controlled by an error of law." Folkens v. Hunt, 300 S.C. 251, 254–55, 387 S.E.2d 265, 267 (1990). "[T]o reverse the denial of a new trial motion under [the thirteenth juror doctrine,] we must, in essence, conclude that the moving arty was entitled to a directed verdict at trial." Parker v. Evening Post Publ'g Co., 317 S.C. 236, 247, 452 S.E.2d 640, 646 (Ct.App.1994).

ARGUMENT

In the case at hand, the trial court denied the Appellant's Motion for a New Trial Absolute. The trial court cited Vinson v. Harley, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996) in its denial of the Appellant's motion for a new trial absolute, which held that a new trial absolute should be granted "...if the amount of the verdict is grossly inadequate . . . so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice prejudice partiality, corruption or some other improper motives." Judge Newman October 4, 2018 Order P. 2. The trial court held that "[n]one of those circumstances are present here." Id. at 2-3.

Further, the trial court denied the Appellant's Motion for a New Trial *Nisi Additur* on the grounds that there was "no evidence in the record" for the Court to determine that the jury's verdict was inadequate; based on the evidence and testimony, the Court found that the verdict was appropriate.

Judge Newman's order denying a new trial shall not be disturbed "unless h[er] decision [was] wholly unsupported by the evidence, or the conclusion was controlled by an error of law." Folkens v. Hunt, 300 S.C. 251, 254–55, 387 S.E.2d 265, 267 (1990). The trial court's decision is clearly supported by the testimony and evidence; as Judge Newman stated, "it appears that the jury found that [Appellant] lacked credibility in her contention that she sustained severe injuries and 'substantial damage' in a low-speed, three-car collision in which neither of the other drivers suffered any injury whatsoever." Judge Newman October 4, 2018 Order P. 3.

V. THE ISSUE OF JUDICIAL BIAS OR PREJUDICE WAS NOT RAISED BY THE APPELLANT TO THE TRIAL COURT; THEREFORE, THE ISSUE OF JUDICAL BIAS OR PREJUDICE WAS NOT PRESERVED BY THE APPELLANT.

STANDARD OF REVIEW

"Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify [herself] will not be reversed on appeal." Patel v. Patel, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004).

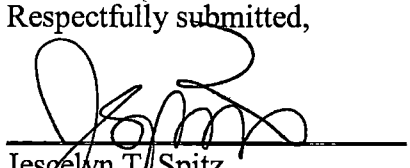
ARGUMENT

This allegation of judicial bias or prejudice was never raised during the trial, and the Appellant never asked Judge Jocelyn Newman to recuse herself. The first allegation of any bias or prejudice occurred when Appellant filed a "Memorandum of Support of the Motion for Relief from Judgment pursuant to SCRCP Rule 60(b)" after the conclusion of the trial on June 23, 2017. Appellant did not preserve the issue of alleged judicial bias or prejudice for this Court to consider, because Appellant never moved for Judge Newman to recuse herself during the pre-trial hearings or even during the trial itself. Furthermore, there is no evidence of judicial prejudice or bias.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the circuit court.

Respectfully submitted,



July 18, 2018

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PROOF OF SERVICE

I certify that I have served the Respondent's Initial Brief and Designation of Matter on Glenda R. Couram by depositing a copy of it in the United States Mail, postage prepaid, on July 18, 2018, to 104 Macaw Lane Lexington, South Carolina 29073-7673.

July 18, 2018

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