IN THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2013-CP-38-00992
2013-CP-38-00994

Appellate Case No. 2016-001807

Denetra Glover.....Respondent,

v.

William Shervon Stack and Shervon Latrese Simpson, ...Defendants,

Of whom

Shervon Latrese Simpson.....Appellant.

AND

Shirley Davis.....Respondent,

v.

William Shermon Stack and Shervon Latreese Simpson.....Defendants,

Of Whom Shervon Latreese Simpson.....Appellant.

FINAL REPLY BRIEF OF APPELLANT

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SUMMARY OF ARGUMENT

After obtaining a default against Appellant, Respondents Denetra Glover and Shirley Davis each elected to proceed with a default damages hearing instead of allowing a jury to determine the amount of their damages. The Master heard Respondents' evidence unopposed, found Respondents each sustained damages in the amount of $18,000 and entered judgments against Appellant in that amount. Then, Respondents each entered settlements with William Shermon Stack – a co-tortfeasor – in exchange for releases. Stack paid Respondent Glover $12,000 and Respondent Davis $11,000.

South Carolina Code Section 15-38-50 provides, "When a release . . . is given in good faith to one of two or more persons liable in tort for the same injury . . . it reduces the claim against the others to the extent of any amount stipulated by the release . . . ." S.C. Code Ann. § 15-38-50. Respondents settled with Stack in exchange for releases. Therefore, the judgments against Appellant in the amount of $18,000 were reduced *pro tanto* by the amount of the Stack settlements as a matter of law.

Despite Respondent's argument that the Circuit Court had discretion not to apply a set-off for amounts paid by a co-tortfeasor, this Court's holding in *Ellis* was clear: "Section 15-38-50 grants the Court ***no discretion*** in determining the equities involved and applying a set-off once a release has been executed in good faith between Plaintiff and one of several joint tortfeasors." *Ellis v. Oliver*, 355 S.C. 106, 113, 515 S.E.2d 268, 272 (Ct. App. 1999) (emphasis added). The statute requires the set-off, and the set-off operates as a matter of law. Because the Circuit Court failed to apply the set-off, the judgment should be reversed and the judgment should be marked satisfied.

Simpson paid Respondents the balance of the judgments – $6,000 and $7,000, respectively. At that point, Respondents recovered the full amount of their damages as determined by the

Master. Therefore, the judgments have been satisfied and the Circuit Court erred when it failed to grant Appellant's motion for entry of satisfaction of judgment.

I. The Master had no authority to award a judgment in an amount less than Respondents' full amount of damages.

Respondents do not contend in their brief to this Court – and they did not do so before the Circuit Court – that William Shermon Stack and Appellant caused them separate injuries. There was one collision, and there is one set of injuries for each Respondent. Instead, they seek to rewrite history by arguing that the Master in Equity determined something other than the total amount of their damages. At a default damages hearing, the Master acting as the finder of fact determined that Respondents each sustained $18,000 in damages. To avoid the impact of this holding, Respondents now make two arguments: (1) the Master did not actually make a determination of their damages, only the liability of Appellant; and (2) to hold otherwise would be unjust because it would deprive the non-defaulting co-defendant of his right to a jury trial. The first argument fails because the ***only*** issue before the Master was the extent of Respondents' damages, and the Master had no authority to award anything less than the full amount of their damages. The second argument fails because it flips the analysis on its head. The question is whether the Master's determination of Respondents' damages is binding between Respondents and Appellant, ***not*** Respondents and Stack. Therefore, the Circuit Court erroneously failed to mark the judgment satisfied.

A. The Master in a default damages hearing has no authority to award anything less than the plaintiff's total damages

As an initial matter, the Master did determine that Respondents each sustained $18,000 in total damages. The Master's Orders make two conclusions of law: "a. I find that Defendant is in default and is liable for ***the damages suffered by Plaintiff***." And "b. I conclude, ***therefore***, that the Plaintiff is entitled to judgment against the Defendant in the amount of" $18,000. (R. pp. 15 &

18) (emphasis added). Paragraph a. of the legal conclusions states Appellant was liable for the damages suffered by Plaintiff. If, as Respondents argue, the Order only found Appellant liable for a portion of Respondents' damages, then the Master would have said Appellant "is liable for the damages caused by" Appellant. Paragraph b. of the legal conclusions in the Orders uses the word "therefore," which reference back to the finding in Paragraph a. that Appellant was in default and "liable for the damages suffered by" Respondents. By using the word "therefore," the Master indicated he was awarding Respondents the amount of their damages. Based on the plain, unambiguous language of the Orders, the Master ruled Respondents each sustained damages in the amount of $18,000, for which Appellant was liable. It is not susceptible to another reasonable interpretation.

The Master found Appellant liable for "the damages suffered by Plaintiff." He made no attempt to distinguish between damages caused by Stack and damages caused by Appellant because the damages were indivisible. Every indicium from the Order shows the Master was making a determination of Respondents' total damages. In fact, the Master went so far as to make a determination that Respondents' injuries were permanent and referenced the life expectancy tables in determining the amount of their damages. (R. p. 14, ¶ 12) (R. p. 15, ¶ 12). There is no indication in the language of the Orders that the Master awarded something less than Respondents' total damages resulting from the accident.

Respondents fail to point to any recognized principle of law that would have allowed the Master to award anything less than their total damages at the default damages hearing. In fact, had the Master awarded something less than their total damages, then Respondents should have appealed that ruling because it would have been erroneous. In a default damages case, the Master has no authority to allocate damages or make any other reductions in damages. *See e.g.*, *Calise v.*

Hidden Valley Condo. Ass'n, Inc., 773 A.2d 834 (R.I. 2001) (holding that a party in default cannot seek to prove comparative fault of settling co-defendant); *Rodriguez v. Parks and Woolson Machine Co., Inc.*, 22 Mass. L. Rptr. 643 (Mass. Sup. Ct. 2007) (holding party cannot submit evidence of comparative fault at a Rule 55(b)(2) damages hearing). The very purpose of a Rule 55(b)(2) hearing is "to determine the amount of damages . . . ." Rule 55(b)(2), SCRCP. Therefore, the Circuit Court erred by finding that the Respondents' damages exceeded $18,000.

B. The Master's damages determination is binding between Respondents and Appellant.

Respondents spend a significant portion of their brief arguing that the Master's damages determination could not be a finding of their total damages because such a finding would have stripped Stack – a codefendant – of his constitutional right to a jury trial. However, Respondents are not trying to enforce a judgment against Stack. They are trying to enforce a judgment against Appellant, and the judgment is binding between Respondents and Appellant. Neither side appealed the amount of the judgment. Therefore, the judgment is final. Respondents had a right under Rule 55 to seek a jury determination of their damages, and they waived that right by seeking a referral of the case to a Master for a damages determination. *See* Rule 55(b), SCRCP. Therefore, the only party deprived of a right to a jury trial as a result of the default was Appellant.

Respondents are asking this Court to hold Appellant bound by the amount of the Master's judgment, but not them. They want Appellant to pay them the amount of the judgments, but they argue the judgments do not represent the amount of their damages resulting from the collision. They cannot have it both ways. Because they chose not to appeal the Master's Orders, they are bound by the Master's determination that their damages resulting from the collision are $18,000. Regardless of whether that finding would set a cap on Respondents' claims against any other tortfeasor for their injuries arising out of the accident, it is a binding determination of the amount

of their damages in this case between Respondents and Appellant. Moreover, given the fact that they only submitted medical bills of less than $4,000, there is no reason to believe the Master's damages award of approximately ***five times*** their medical bills was intended to award anything less than their total damages.[1] Therefore, the Master's judgments – at least as between the parties to this appeal – constitutes a binding determination of Respondents' total damages. Therefore, the Circuit Court erred in holding that the default judgment constituted something less than Respondents' total damages.

II. The set-off occurs as a matter of law, and the Circuit Court had no discretion to choose not to give effect to the set-off.

If courts ever had discretion as to whether to apply a set-off for amounts paid by one of several tortfeasors, that discretion was removed when the General Assembly enacted Section 15-38-50. "When the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law." *Smith v. Widener*, 397 S.C. 468, 472, 724 S.E.2d 188, 190 (Ct. App. 2012) (citing *Ellis*, 355 S.C. at 112, 515 S.E.2d at 271-72). "Under this circumstance, '[s]ection 15-38-50 grants the court no discretion . . . in applying a set-off.'" *Id.* (citing *Ellis*, 335 S.C. at 113, 515 S.E.2d at 272).

This Court in *Widener* looked to the actual and punitive damages for which the plaintiff sought relief, and determined that the damages were all for the same injuries. *Id.* at 472, 724 S.E.2d at 190-91. Therefore, even when the settling parties attempted to allocate all the settlement funds towards the punitive damages claim, this Court required application of the § 15-38-50 offset.

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[1] Respondent Davis submitted a Summary of Medicals to the Master with bills totaling $3,448.10. (R. p. 116). Glover presented a Summary of Medicals to the Master with bills totaling $3,754.00. (R. p. 119). The award of $18,000 to Davis is 5.2 times her medicals, and the award to Glover is 4.8 times her medicals.

Id. Because "the injury [the plaintiff] alleged she suffered as a result of the tortious conduct of all defendants was the same[,] . . . the trial court was required to grant the request for a setoff." *Id.*

Likewise here, Respondents sought recovery from Stack and Appellant for the same damages. This case involves a single collision with indivisible damages. Respondents have never argued otherwise. Therefore, the damages Respondents alleged against Stack and Appellant are the same.[2] Thus, "the right to setoff arises as an operation of law, and the circuit court ***must award a setoff***." *Id.* (emphasis added).

Respondents' attempt to distinguish this case based upon the procedural timing ignores the purpose of § 15-38-50 and attempts to place form over substance. The purpose of § 15-38-50 was to prevent double recoveries while encouraging settlements. *See Riley v. Ford Motor Co.*, 414 S.C. 185, 196, 777 S.E.2d 824, 830 (2015) ("Thus, the Act represents the Legislature's determination of the proper balance between preventing double-recovery and South Carolina's 'strong public policy favoring the settlement of disputes.'"). If the purpose of § 15-38-50 is to prevent double recoveries, then the timing of the settlement and the judgment should have no impact on the application of the setoff. Whether a plaintiff waits until obtaining a judgment against eight different tortfeasors before settling with the ninth or if he settles with eight tortfeasors and proceeds to trial against the ninth, the general principle against double recovery remains the same: "[T]here can be only one satisfaction for an injury or wrong." *Truesdale v. South Carolina Highway Dep't*, 264 S.C. 221, 235, 213 S.E.2d 740, 746 (1975). The timing is irrelevant.

[2] This Court in *Widener* held, "when a settlement is argued to involve two claims, one of which involves the same injury as the claim tried to verdict and one of which does not, the circuit court must make the factual determination of how to allocate the settlement between the two claims." *Id.* at 473, 724 S.E.2d at 191. That issue does not apply here.

Although Respondents accuse Appellant of failing to cite a case dealing with the particular facts of this case, the South Carolina Supreme Court's discussion of a nearly identical scenario in *Rourk v. Selvey*, 252 S.C. 25, 27-28, 164 S.E.2d 909, 910 (1968), provides ample guidance here:

> This stipulation clearly implies the typical case of a collision between automobiles contributed to by the negligence of both drivers, which causes personal injury to a third person. In such a case, the negligence of each driver is a proximate cause of inherently indivisible injuries. Both wrongdoers are jointly and severally liable for the entire harm, and plaintiff has the election of suing one or both. Upon recovery of a judgment against both, plaintiff may, at his election, collect the full amount from one. However, he is entitled to only one recovery, ***and the collection of a judgment against one wrongdoer extinguishes any claim against the other.***

(emphasis added).

The facts here are identical to the scenario discussed in *Rourk*. Respondents filed complaints alleging that two drivers' negligence – Appellant and Stack – contributed to a collision between automobiles which caused personal injury to Respondents. Therefore, "the negligence of each driver is a proximate cause of inherently indivisible injuries." *Id.* Although Respondents were free to pursue recovery from either Appellant, Stack, or both, they are only entitled to collect one recovery. By obtaining a settlement from Stack and the balance of the judgment from Appellant, Respondents have both made a full recovery. They cannot recover more.

Courts have no discretion when it comes to avoiding double recoveries. Even before the Act, South Carolina did not allow double recoveries. Now that the General Assembly has enacted § 15-38-50, there is no question. The setoff occurs as a matter of law. Therefore, the Circuit Court erred by failing to enforce the set-off and mark the judgment as satisfied.

III. This matter is properly before the Court of Appeals.

Rule 60(b)(5) expressly permits a motion for relief from a judgment when "the judgment has been satisfied." Rule 60, SCRCP. Appellant moved under Rule 60(b)(5) to have the judgments

marked as satisfied after paying the balance of the judgments. The Circuit Court denied that motion, which spurred this appeal. This Court has exercised its jurisdiction on similar appeals. *See e.g.*, *Saro Investments v. Ocean Holiday Partnership*, 314 S.C. 116, 441 S.E.2d 835 (Ct. App. 1994) (reviewing appeal for Rule 60(b)(6) motion and holding it was inequitable to continue enforcing judgment); *Mullarkey v. Mullarkey*, 397 S.C. 182, 723 S.E.2d 249 (Ct. App. 2012) (reviewing and reversing family court's denial of a Rule 60(b)(5) motion to modify an order nearly a decade after entry of a judgment).

Respondents contend Appellant failed to seek the set-off within a reasonable time after entry of the default judgment. However, the default judgment was entered ***before*** the settlements. Appellant is not appealing the entry of the default judgment. Respondents successfully prevented that avenue by waiting over a year before notifying Appellant's insurer of the default judgment. (R. p. 42). However, Rule 60(b)(5) is not limited to the one-year limitation that applies to sub-paragraphs (a) through (c). Rule 60, SCRCP. The reason that Rule 60(b)(5) permits a motion for relief from judgment where the judgment has been satisfied is obvious: If the court will not review whether a judgment has been satisfied and the judgment creditor refuses to file a satisfaction of judgment, then a defendant has no way of removing the mark of the outstanding judgment from the public records.

Nothing in South Carolina Code § 14-3-330 precludes this Court from hearing this matter. In fact, multiple provisions of § 14-3-330 apply. First, paragraph (1) permits an appeal of a final judgment. S.C. Code § 14-3-330. The term "final judgment" is "a term of art denoting the disposition of *all* issues in an action." *Link v. School Dist. of Pickens County*, 302 S.C. 1, 5 n.3, 393 S.E.2d 176, 178 (1990). Stated another way, an order is a "final judgment" when "the order must dispose of the whole subject matter of the action or terminate the action, leaving nothing to

be done but to enforce what has already been determined." *Bone v. U.S. Food Service*, 399 S.C. 566, 575, 733 S.E.2d 200, 204-05 (2012) (quoting *Charlotte-Mecklenburg Hosp. Authority v. South Carolina Dept. of Health and Envt'l Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010)).

The order denying Appellant's Motion for Entry of Satisfaction of Judgment was a final order and ended the case. After entry of the denial of Appellant's motion, "all issues in" the action were disposed of. Therefore, this matter is properly before the court.

Paragraph (2) gives this Court jurisdiction over an appeal of "an order affecting a substantial right made in an action when such order in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action . . . ." S.C. Code § 14-3-330. The right to have the judgment marked as satisfied is a substantial right of Appellant. To the extent it is not a "final judgment," the order "prevents a judgment from which an appeal might be taken or discontinues the action."

Likewise, Paragraph (3) of section 14-3-330 gives this Court jurisdiction to hear an appeal of a "final order affecting a substantial right made in any special proceeding or upon a summary application in ***any*** action ***after*** judgment." S.C. Code § 14-3-330 (emphasis added). To the extent the Order denying the motion for entry of satisfaction of judgment was not a "final judgment," it would qualify as a "final order" upon a summary application "after judgment." Therefore, this Court has jurisdiction to hear this appeal.

IV. Limiting Respondents' recoveries to the amount of their damages is not a "reward" to Appellant.

Respondents claim that applying the statutory set-off to avoid a double recovery somehow rewards Appellant for her default. However, applying the set-off merely avoids rewarding Respondents for being in a car accident. The purpose of tort law is to make Respondents whole,

not to be a means of profit. *See e.g.*, *Evenson v. Lilley*, 295 Kan. 43, 52, 282 P.3d 610, 617 (2012) ("The basic principle of damages is to make a party whole by putting it back in the position that it was in before the injury, not to grant the party a windfall profit."); *McAuley v. General Motors Corp.*, 457 Mich. 513, 520, 578 N.W.2d 282, 285 (1998) ("Because the purpose of compensatory damages is to make the injured party whole for the losses actually suffered, the amount of recovery for such damages is inherently limited by the amount of the loss; the party may not make a profit or obtain more than one recovery.").

A party who defaults is not punished with excessive damages. Neither the Rules of Civil Procedure nor South Carolina law permits a court to award damages in excess of the plaintiff's damages merely because a defendant defaults. In fact, had Plaintiffs alleged a particular amount in the ad damnum clause of their complaints, the damages award at the default damages hearing could not exceed that amount. *See* Rule 54(c), SCRCP ("A judgment by default shall not be different in kind from or exceed the amount that [is] prayed for in the demand for judgment.").

A default does not entitle the court to impose sanctions. It is deemed an admission of the factual allegations in a complaint and nothing more. As discussed above in Section II., equity is no longer a factor in applying a set-off for amounts paid by another tortfeasor. The setoff operates by statute as a matter of law. However, if equity is considered, subjecting oneself to a default does not create unclean hands.[3] In fact, defaulting – i.e., admitting the factual allegations of a complaint

[3] Respondents state in their brief that Respondent "has not paid any money in an effort to satisfy the judgment against her." (Brief of Respondents, p. 17). This is wholly incorrect. Appellant has paid $6,000 and $7,000 respectively, which constitutes the full balance of the judgment after the statutory set-off required by § 15-38-50. Respondents appear to suggest that these payments should not be attributed to Appellant because they were made by her insurer. This contention is disingenuous at best. Respondents are seeking recovery of the judgment from Appellant's insurer, and Appellant is the one who purchased the insurance. Any payments made by the insurer are made on Appellant's behalf.

– simplifies and streamlines a case. There is no dishonesty by a defendant in a default. There is no unjust delay in a default. If anything, allowing a default is the quickest way to a conclusion of the case. Therefore, Respondents' argument that Appellant should be deemed to have unclean hands based upon the default is unreasonable and would serve as a punishment against Appellant that is not supported or authorized by the law of this State.

If Respondents contend equity should be considered by the Court, then the Court should consider the inequity of Respondents obtaining a default judgment without serving a courtesy copy on the insurer and then waiting a full year before notifying the insurer of the default judgment, presumably thereby preventing the Appellant from being able to file a motion to set aside the default under Rules 60(b)(1) through (3). There is no secret here that Respondents are seeking recovery of the default judgment from Appellant's insurer. If the Court is to make equitable considerations – which is no longer required because the set-off is required by statute – then the equities here actually weigh strongly in favor of applying the set-off.

The inequity is even more apparent here because Respondents themselves allege in their Complaints that Stack turned left in front of Appellant. The Complaints allege Appellant had the right of way. (R. p. 22, ¶ 7.a) (R. p. 27, ¶ 7.a). In contrast, the only allegations against Appellant are that she somehow failed to avoid colliding with Stack's vehicle when he turned left in front of her and when she had the right of way. (R. p. 24, ¶ 11) (R. p. 29, ¶ 11).

Limiting Respondents' recovery to the amount of their damages is required by § 15-38-50 and South Carolina common law. Moreover, allowing a double recovery serves to punish Appellant for her default in a way that is not permissible under the law. Even when a party defaults, the court has no authority to award a plaintiff more than the amount of her damages. The rule is "almost universally held that there can be only one satisfaction for an injury or wrong." *Truesdale*, 264 S.C. at 235, 213 S.E.2d at 746. Therefore, a plaintiff who obtains a default judgment against one defendant and then obtains recovery from another tortfeasor is not entitled to recover the amount of the settlement ***plus*** the full amount of the judgment. Rather, the plaintiff can recover the balance of the judgment from the defaulting party after subtracting the amount paid by the settling tortfeasor. To allow otherwise violates the basic tenant of South Carolina law limiting her to a single recovery. Therefore, the judgment is reduced *pro tanto* by the amount of the recovery from the other tortfeasor. Because the Circuit Court failed to apply these well-established principles of South Carolina law, the Order should be reversed and remanded with instructions for the judgment to be marked as satisfied.

CONCLUSION

For the above-stated reasons, the Circuit Court's Order should be reversed. Respondents are only entitled to one recovery for their damages. In an uncontested default damages hearing, the Master determined their damages to be $18,000, each. Since that determination, Respondents have each recovered $18,000 from the allegedly at-fault parties – Appellant and Stack. South Carolina Code § 15-38-50, mandates that Stack's payments to Respondents reduce the outstanding judgments as a matter of law. In addition, even if § 15-38-50 does not apply, principles of South Carolina common law require reduction of the judgment to avoid a double recovery. Respondents

have been made whole. Therefore, Appellant Simpson requests that the Circuit Court's Order be reversed and the case be remanded with instructions for the judgments to be marked satisfied.

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CERTIFICATE OF COUNSEL

I, Wesley B. Sawyer, Esquire, Attorney for Appellant, certify that the Final Reply Brief of Appellant complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.

March 20, 2017

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