THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No.: 2017-000163

Henry Pressley,.....Respondent,

v.

Eric Sanders,.....Appellant.

FINAL APPELLANT'S BRIEF

R. Hawthorne Barrett
Richard A. Jones, III
Turner Padget Graham & Laney P.A.
P.O. Box 1473
Columbia, SC 29202
(803) 254-2200
TBarrett@TurnerPadget.com
TJones@TurnerPadget.com

Attorneys for the Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No.: 2017-000163

Henry Pressley,.....Respondent,

v.

Eric Sanders,.....Appellant.

FINAL APPELLANT'S BRIEF

R. Hawthorne Barrett
Richard A. Jones, III
Turner Padget Graham & Laney P.A.
P.O. Box 1473
Columbia, SC 29202
(803) 254-2200
TBarrett@TurnerPadget.com
TJones@TurnerPadget.com

Attorneys for the Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE ISSUE ON APPEAL

Did the trial court err in granting a new trial *nisi additur* where the Appellant challenged the nature and extent of the Respondent's claimed injuries and there was substantial evidence to support the jury's verdict?

STATEMENT OF THE CASE

The Appellant Eric Sanders ("Sanders") appeals the trial court's improper decision to disturb the valid and reasonable verdict that a jury returned after a full and fair trial in a minor wreck case. This case arises from an automobile accident that occurred at the intersection of I-77 and Garners Ferry Road in Columbia, SC, on February 16, 2015. The Respondent Henry Pressley ("Pressley") claims to have sustained physical injuries as a result of that accident, and he filed a Summons and Complaint in the Court of Common Pleas for Richland County on August 3, 2015. Sanders filed and served a timely Answer on September 10, 2015.

After a full period of discovery and an unsuccessful mediation, the case was called to trial before the Honorable L. Casey Manning on October 11, 2016. At the opening of the trial, counsel for Sanders admitted fault for the accident, but denied Pressley was entitled to all the damages he was claiming. During the course of the two-day trial, the jury heard testimony from Pressley and Sanders, as well as deposition testimony by a doctor who treated Pressley. Pressley presented medical and chiropractic bills totaling $9,658. He did not offer evidence of lost wages or any other special damages. Counsel for Pressley challenged at least half of the bills based on the overall evidence and an argument that the treatments leading to those bills were not reasonable and necessary under the circumstances.

On October 12, 2016, after deliberating for approximately an hour-and-a-half, the jury returned a verdict of $9,888.00. [R. pp. 169-170.] Although it had not been asked to do so, the jury broke down its verdict into two component parts: medical expenses of $4,888.00 and $5,000 for "pain and suffering." [R. pp. 169-170.] When the trial judge asked if the jury intended for both parts to combine for a total verdict of $9,888.00, the foreperson responded affirmatively. [R. pp. 169-170.]

After the trial judge effectively invited Pressley to do so, Pressley filed a Motion for a New Trial Absolute or in the Alternative for a New Trial *Nisi Additur* on October 24, 2016. [R. pp. 7-11.] The trial judge granted that motion in an Order signed on January 10, 2017. [R. pp. 3-6.] Although the Order was styled an "Order Granting Plaintiff's Motion for a New Trial Absolute or in the Alternative for a New Trial *Nisi Additur*," the judge did not address or grant Pressley's request for a new trial absolute. [R. pp. 3-6.] The judge granted only a new trial *nisi additur*, adding $10,000 to the jury's original verdict. [R. p. 6.] Counsel for Sanders received a copy of the Order on January 11, 2017, and filed and served a timely Notice of Appeal on January 27, 2017.

STATEMENT OF THE FACTS

On the morning of February 16, 2015, sixty-nine-year-old Pressley was stopped in his vehicle at a stop sign, waiting to merge onto Garners Ferry Road from the exit ramp of I-77. [R. pp. 24, 33.] Sanders drove his vehicle down the same exit ramp and stopped just behind Pressley's truck. [R. p. 122.] Sanders looked to his left to check the flow of traffic on Garners Ferry Road and then turned his attention back to the vehicle in front of him. [R. p. 122.] He saw the brake lights in that vehicle go off and assumed the driver was preparing to proceed onto Garners Ferry Road. [R. p. 122.] Sanders again looked to

his left to check traffic and then took his foot off his brake, thinking the vehicle ahead of his had entered the roadway. [R. pp. 122-123.] Unfortunately, Pressley had not moved his vehicle, and a minor collision occurred. [R. p. 123.]

The accident resulted in light damage to the front of Sanders' vehicle and the rear trailer hitch of Pressley's. [R. pp. 52, 123-124.] Pressley's airbag did not deploy. [R. p. 51.] Both Sanders and Pressley were able to drive their vehicles away after the investigating police officer released them. [R. pp. 35, 51-52.]

Pressley did not request an ambulance at the accident scene. [R. pp. 35, 52.] Later that day, he went on his own to a local emergency room to get checked out. [R. p. 70.] The ER staff took an x-ray of his back, which revealed no fracture or other traumatic injury. [R. p. 71.] The ER doctor did not recommend any follow-up care or refer Pressley to any other medical provider. [R. p. 53.]

The next day, Pressley consulted with an attorney who referred him to a chiropractor. [R. p. 53.] Pressley treated with that chiropractor for roughly three weeks. [R. pp. 38, 76.] During that course of treatment, Pressley underwent an MRI of his lumbar spine, which did not reveal any traumatic injuries. [R. pp. 76-79.] On March 15, 2015, the chiropractor released Pressley, noting that he was able to return to normal activities of daily living. [R. p. 76.]

Pressley did not receive any further treatments until more than a month later, when he visited his family doctor complaining of neck pain that had developed "over the past five days." [R. p. 81, line 10.] The doctor prescribed a pain medication and a muscle relaxer and recommended stretching exercises. [R. p. 81.] The record contains no evidence that the doctor referred Pressley to any other provider.

Almost another full month passed before Pressley sought any further treatment. [R. p. 82.] This time, Pressley's attorney referred him to Dr. Zgleszweski at Palmetto Spine and Sports Medicine. [R. p. 44.] Dr. Zgleszweski performed a "left sacroiliac joint injection" on May 21, 2106. [R. p. 87.] The injection was a diagnostic tool used to determine potential causes of Pressley's pain complaints. [R. pp. 86-87.] Dr. Zgleszweski described the injection as feeling like a "big bee sting." [R. p. 90, line 6.] As a result of that test, Dr. Zgleszweski recommended further procedures for Pressley's neck and back, but Pressley declined those treatments. [R. pp. 92-95.]

At his final visit with Dr. Zgleszweski, Pressley stated that he no longer had any pain in his neck or back. [R. p. 94.] Pressley further stated that he was "pretty much doing his activities of daily living without pain" and that "medication was no longer required." [R. p. 94, lines 13-16.] That visit occurred on June 9, 2015. [R. p. 94.] Pressley did not seek any other medical treatments after that date, other than to request medications from his family doctor. [R. pp. 46-47.]

STANDARD OF REVIEW

This Court has explained the standard of review in cases involving the granting of a new trial *nisi additur* in the following terms:

> When the jury's verdict is inadequate or excessive, the trial judge has the discretionary power to grant a new trial nisi. ... Compelling reasons, however, must be given to justify invading the jury's province in this manner. . . . The grant or denial of a motion for a new trial nisi rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by an error of law. . . . Yet, such discretion is not absolute. . . . This Court has the duty to review the record and determine whether there has been an abuse of discretion amounting to an error or law.

Waring v. Johnson, 341 S.C. 248, 256-57, 533 S.E.2d 906, 910-11 (Ct. App. 2000) (internal citations omitted) (emphasis added). Furthermore, "[t]he jury's determination of damages . . . is entitled to substantial deference." *Harrison v. Bevilacqua*, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003). Thus, this Court has not only the power, but also the duty to reverse a trial court's decision to grant a new trial nisi additur when an abuse of discretion exists because there are no compelling reasons to disturb the jury's original verdict.

ARGUMENT

The trial court erred in disturbing the jury's verdict because Sanders challenged the extent of Pressley's claimed damages and there was more than sufficient evidence to support the verdict.

Contrary to the trial judge's conclusions, there were no compelling reasons to alter the jury's verdict. Although the judge attempted to state such reasons, they do not withstand scrutiny when considered in the context of the entire record. Indeed, the record demonstrates that the stated reasons are simply not accurate. Furthermore, there is ample evidence to support the jury's verdict, and there is case law directly on-point that supports this appeal. For all of these reasons, this Court should reverse the Order and reinstate the jury's proper, original verdict.

I. The trial judge failed to present any "compelling reasons" to change the jury's verdict.

All of the purportedly "compelling" reasons listed by the trial judge appear on the second page of the Order. Essentially, those cited reasons are the following: (1) Pressley submitted "undisputed" medical bills of $9,658.00; (2) Dr. Zgleszweski gave an "undisputed" opinion that all medical treatments stemmed from the accident; and (3)

"[Pressley] suffered great pain as a result of the accident." [R. p. 6.] A review of the evidence and arguments presented at trial demonstrates that these stated reasons are untenable.

(A) The medical bills were not "undisputed."

The medical bills Pressley presented at trial were not "undisputed" in the sense the Order implies. Those bills were only "undisputed" in the sense that no one argued that the bills were not genuine records or that they did not add up to the sum claimed by Pressley. But Sanders most certainly did challenge the reasonableness and necessity of the majority of the bills. Sanders' trial counsel raised this argument to the jury, relying on several facts that came into evidence without objection or contradiction from Pressley. As discussed below, this created an issue for the jury to resolve as it saw fit, without interference from the bench.

The trial judge appears to have based his decision on a belief that Pressley was entitled to recover all of the medical bills he presented at trial. To the extent this was the trial judge's underlying rationale, it constituted an error of law. A plaintiff in a personal injury action is only entitled to recover for medical expenses that were: (1) proximately caused by the defendant's negligence, and (2) reasonable and necessary under the circumstances. *Todd v. Joyner*, 376 S.C. 114, 654 S.E.2d 862 (Ct. App. 2007). As with the other elements of a negligence claim, the plaintiff must present evidence to support the reasonableness and necessity of the claimed medical expenses. *Id.* Assuming the plaintiff offers such evidence, the jury must determine whether or not it is sufficient to warrant the inclusion of those expenses in the overall award. *Id.* Significantly, though, the jury is not obligated to accept all of the expenses claimed by the plaintiff. If the jury

does not believe certain medical expenses were reasonable or necessary under the circumstances, it is free to reject them. *See Steele v. Dillard*, 327 S.C. 340, 343-44, 486 S.E.2d 278, 280 (Ct. App. 1997) ("even if we accept [the plaintiff's] argument that the evidence shows he had at least $8,000.62 in uncontradicted damages, the jury was simply not required to believe that evidence.").

This is precisely what happened in the present case. Pressley submitted medical bills totaling $9,658.00. Sanders did not seriously challenge the bills for treatments that occurred shortly after the accident (i.e. the ER visit, the chiropractic treatments), which accounted for about half of the total costs. However, Sanders strongly disputed the reasonableness and necessity of the other half of the bills, which came from Pressley's treatments with Dr. Zgleszweski. Sanders argued that none of the previous doctors or chiropractors referred Pressley to Dr. Zgleszweski; the referral came, instead, from his attorney. Sanders also relied on the length of time that passed between the chiropractor releasing Pressley with no limitations and his first visit with Dr. Zgleszweski. Based on those facts, and the evidence as a whole, Sanders contended the jury should not award any of the bills from Dr. Zgleszweski. Thus, a jury question existed as to whether or not Pressley should receive compensation for those bills.

This dispute created different options for the jury to consider. If it believed <u>all</u> of Pressley's treatments were reasonable and necessary, the jury could render a verdict based on medical bills of $9,658. But if the jury concluded the treatment with Dr. Zgleszweski was <u>not</u> reasonable and necessary, its verdict would include medical bills totaling only half that amount. Therefore, the size of the resulting verdict depended greatly upon how the jury decided the issue of whether or not Dr. Zgleszweski's bills

were properly recoverable. Making that decision was the province of the jury, not the trial judge.

Ultimately, the jury awarded Pressley $9,888.00. Although this amount might arguably appear low if all the medical bills are considered, it is actually rather generous if they are not. The verdict was a little more than twice the amount of the non-Zgleszweski medical bills. Given the low-level impact of the accident and the moderate reputation of the trial venue, this was more than an adequate verdict if the jury sided with Sanders on the disputed treatments, which it plainly did.

In most cases, the jury's reasoning remains a mystery. Here, however, the jury plainly stated the amount it awarded for medical bills and the amount it gave for pain and suffering. [R. pp. 169-170.] The medical bills award matches up almost precisely with the total costs of the non-challenged treatments. Accordingly, there can be little doubt, if any, that the jury accepted Sanders' position that Pressley was not entitled to receive compensation for Dr. Zgleszweski's bills.

The trial judge failed to acknowledge the existence of this crucial jury issue in the Order granting Pressley's motion. Instead, the trial judge stated that there was no dispute as to the claimed medical bills. As the discussion above demonstrates, that statement is inaccurate because Sanders did challenge roughly half of those bills. Thus, the total amount of the medical bills does not constitute a compelling reason for the trial judge to change the jury's verdict.

(B) The jury was not required to accept Dr. Zgleszweski's opinions.

The trial judge concluded additur was warranted in part because Dr. Zgleszweski "gave an undisputed opinion that the injuries, pain, and subsequent treatment were related

to the collision." [R. p. 5.] This statement is also not entirely accurate, as Dr. Zgleszweski acknowledged that Pressley's age and forty years of work as a brick mason could have caused degenerative joint disease and resulting pain. [R. p. 116.] Thus, the opinion was not as unequivocal as the Order makes it appear.

Nevertheless, even if the opinion was rock-solid, the jury was not required to accept it. *See, e.g., Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 563, 658 S.E.2d 80, 89-90 (2003) ("That a witness has been qualified as an expert does not mean that the witness's credibility and the accuracy of his conclusions are beyond reproach."); *State v. Milian-Hernandez*, 287 S.C. 185, 186, 336 S.E.2d 476, 478 (1985) ("A jury may properly disregard expert testimony."). This is true even if the opinion stated by the expert is not contradicted. *See, e.g., Terwilliger v. Marion*, 222 S.C. 185, 188, 72 S.E.2d 165, 166 (1952) (the fact that testimony is not directly contradicted does not make it undisputed because questions remain as to the believability of the testimony and the credibility of the witness); *Ross v. Paddy*, 340 S.C. 428, 434, 532 S.E.2d 612, 615 (Ct. App. 2000) ("Even where the evidence is uncontradicted, the jury may believe all, some, or none of the testimony."). *See also Small v. Pioneer Machinery, Inc.*, 329 S.C. 448, 466, 494 S.E.2d 835, 844 (Ct. App. 1997) ("In a law case tried before a jury, it is the jury that must decide what part of a witness's testimony it wants to believe and what part it wants to disbelieve.").

The Order suggests that the jury was required to give credence to Dr. Zgleszweski's opinion on causation (as well as the reasonableness and necessity of the treatment) simply because no witness contradicted that opinion. As the authorities cited above demonstrate, however, that is not the law of South Carolina. Thus, this portion of

the Order was controlled by an error of law.[1] It necessarily follows that the trial judge abused his discretion in citing Dr. Zgleszweski's opinion in and of itself as a "compelling reason" for granting additur.

(C) The jury compensated Pressley for pain and suffering.

The Order also concludes the verdict was inadequate because Pressley "suffered great pain as a result of the accident." [R. p. 5.] For the following reasons, this also failed to establish any "compelling" basis for disregarding the jury's verdict.

First, the evidence presented at trial supported more than one inference or conclusion about the relative severity of Pressley's pain. Although Pressley claimed that he experienced pain, the record also demonstrated that he twice went approximately a month without seeking any medical treatments. [R. pp. 81-82.] Pressley further claimed that pain prevented him from working anymore, but he claimed no lost wages and received a "zero" impairment rating from Dr. Zgleszweski. [R. pp. 102, 117.] He also reported having little or no pain, both to the chiropractor and to Dr. Zgleszweski. [R. pp. 75-76, 92-94.] Taken as a whole, this evidence created a dispute as to whether and to what extent Pressley experienced pain after the accident, let alone "great" pain. Pressley's self-serving testimony on this point was not dispositive, as the Order implies.

Second, assuming Pressley did experience pain, the cause of that pain was an issue for the jury to decide. The evidence demonstrated that Pressley had degenerative joint disease that could have caused him to experience back and/or neck pain. [R. pp. 77-

[1] It is odd that the Order contained this legal error because the trial judge's charge explicitly acknowledged the extent of the jury's discretion in deciding what testimony to accept or reject. *See* R. p. 161, lines 22-23 ("[Y]ou can believe as much or as little of the witnesses' testimony as you deem proper."); p. 167, lines 3-4 ("[Y]ou do not have to accept the expert's opinion even though it comes from an expert."). In other words, the jury charge contained the correct law, whereas the Order did not.

80, 116-117.] In addition, Pressley worked as a brick mason for forty years before the accident. [R. pp. 25-26.] As Dr. Zgleszweski acknowledged, that work could have caused or contributed to any pain Pressley was having. [R. p. 116.] This evidence created a basis for the jury to conclude that the accident did not necessarily cause all of Pressley's claimed pain.

Third, notwithstanding the points discussed above, there is no dispute that the jury actually awarded Pressley an amount for pain and suffering. The jury expressly included an award of $5,000 in its verdict for that element of damages. Thus, the trial judge cannot possibly have concluded that the jury failed to compensate Pressley for the pain he allegedly experienced. Instead, the judge simply disagreed with the amount of that award. This distinction is significant because "the amount of damages for physical pain and suffering and for mental pain and suffering is incapable of exact measurement and is therefore left for determination by the jury." *Mims v. Florence Co. Ambulance Service Comm'n*, 296 S.C. 4, 7, 370 S.E.2d 96, 99 (Ct. App. 1988). Here, the jury considered all the evidence and gave Pressley an amount it believed fairly compensated him for pain and suffering. The jury's decision was entitled to great deference, and the trial judge did not provide any "compelling reasons" for rejecting it.

(D) Conclusion

The reasons listed in the Order do not justify the decision to disturb the jury's verdict. Those stated reasons are not accurate when the entire record is considered (as it must be), and they are certainly not "compelling." Therefore, the trial judge erred in granting Pressley's motion, and this Court should reverse and reinstate the jury's original verdict.

II. Substantial evidence supports the jury's verdict.

According to the Order, "[t]he jury verdict was inadequate based upon the evidence and testimony that was presented at trial." [R. p. 5.] This statement amounts to a conclusion that the record does not contain evidence upon which a reasonable jury could have based its original verdict. As briefly discussed above, however, there is ample evidence to support that verdict. This fact is significant because it further demonstrates the absence of any compelling reason to alter the decision the jury reached.

The accident giving rise to this case was a low-impact collision. [R. p. 123.] The airbag in Pressley's vehicle did not deploy, and both parties were able to drive their respective vehicles away from the scene. [R. p. 51.] Pressley did not request an ambulance or any other medical attention at the scene. [R. pp. 35, 52-53.]

When Pressley later went to the ER on his own, the x-rays were negative for any traumatic injuries, and the doctor did not refer him to any other providers for additional or future care. [R. pp. 53, 71-72.] The only such referral came from Pressley's attorney, whom he saw the next day. [R. p. 53.] The attorney sent Pressley to a chiropractor, who treated him for a little over three weeks before releasing him with reports of significant improvement. [R. p. 76.]

After that Pressley went more than a month without seeking or receiving any additional medical care. He then went to see his family doctor, who gave him prescriptions and recommended stretching exercises. [R. pp. 39-41, 81-82.] The family doctor did not refer Pressley to another doctor or specialist. [R. pp. 44, 56.] Again, that recommendation came only from Pressley's attorney and only after almost another full month had passed. [R. p. 56.]

Pressley first saw the new doctor (Dr. Zgleszweski) some three months after the accident. Dr. Zgleszweski performed a diagnostic test and then, based on the results, recommended two procedures. [R. pp. 87-93.] But Pressley declined any further treatment, and Dr. Zgleszweski released him with a "zero" impairment rating. [R. pp. 94-95, 117.] The record contains no evidence that Pressley received any other medical treatments after that.

The bills from Dr. Zgleszweski accounted for roughly half of the total medical expenses presented at trial ($9,658). If Dr. Zgleszweski's bills are subtracted from the total, the remaining bills are less than $5,000. Sanders challenged the reasonableness and necessity of the treatment with Dr. Zgleszweski, as well as any causal link between that treatment and the accident, as opposed to Pressley's degenerative condition and/or his forty years of working as a brick mason. Thus, under Sanders' theory of the case, the relevant, recoverable medical bills were much lower than the total that Pressley presented.

The original verdict gave Pressley $4,888 for his medical bills and $5,000 for pain and suffering, for a total of $9,888. The evidence discussed above amply supports that amount. The jury clearly concluded that the treatment with Dr. Zgleszweski was either not reasonable and necessary, or was not causally related to the accident. The jury further determined that Pressley experienced some pain and suffering, but that $5,000 was fair compensation for it. The jury was well within its rights to reach both of those decisions.

This case involved a low-impact wreck with minimal damage to the vehicles and no serious, quantifiable injuries to Pressley. He experienced some pain in the few weeks

immediately following the accident, but it resolved after an initial ER visit and some treatments with a chiropractor. After that, Pressley did not seek any medical treatments for almost a month before his attorney sent him to a new doctor, who doubled the total medical bills in only three visits, before releasing Pressley with a "zero" impairment rating.

The preceding paragraph is not Pressley's version of the events, of course, but that is irrelevant for present purposes. What matters is that Sanders made this argument to the jury, and the record supports it. Consequently, the jury was entitled to accept Sanders' position and return a commensurate verdict. That verdict obviously disappointed Pressley and might also have been below what the trial judge expected to see. But such disappointment and surprise did not justify altering a verdict that had a firm basis in the record. As long as the record supported the jury's decision, as it clearly did here, the trial court should not have substituted its opinion for that of the jury on a factual dispute. *See Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995); *State v. Garrett*, 350 S.C. 613, 567 S.E.2d 523 (Ct. App. 2002). Therefore, the trial judge abused his discretion in granting additur, and this Court should reverse and reinstate the original verdict.

III. Case law directly on point supports Sanders' position.

On at least two occasions, this Court has reversed decisions to grant new trials *nisi additur* in scenarios that were remarkably similar to the case at bar. An analysis of those cases and other analogous decisions demonstrates that the trial judge committed reversible error and that this Court should reverse.

In *Green v. Fritz*, 356 S.C. 566, 590 S.E.2d 39 (Ct. App. 2003), the plaintiff alleged she sustained injuries as a result of a minor automobile accident. The defendant admitted fault for the accident at trial, but disputed the amounts and extent of some of the medical treatments. *Id.* at 569, 590 S.E.2d at 40-41. Specifically, the defendant challenged the reasonableness and necessity of chiropractic bills ($1,470.00) that constituted roughly half of the plaintiff's total claimed specials ($2,929.25). *Id.* The defendant's attorney raised that dispute both during his cross-examination of the treating chiropractor and in his arguments to the jury. *Id.* When the jury ultimately awarded a total verdict of $2,000, the trial court granted the plaintiff's motion for additur. *Id.* at 569-70, 590 S.E.2d at 41.

In reversing the trial court's decision, this Court focused on the absence of any "compelling reasons" for granting additur. The trial court's only stated reason for granting the motion was that the verdict was less than the plaintiff's claimed specials, which the court then listed. *Id.* at 569-70, 590 S.E.2d at 41. This fact alone, however, was not a compelling reason for disturbing the jury's verdict. As the Court explained:

> Where, as here, the evidence of damages is disputed, the mere listing of [the plaintiff's] claimed damages by the trial judge in his order does not constitute compelling reasons for invading the jury's province. The order offers no reasons upon which we can review the appropriateness of usurping the jury's decision on damages.

Id. at 571, 590 S.E.2d at 41. Thus, the decision to grant additur was an abuse of discretion, and the Court reversed and reinstated the original verdict. *Id.* at 571, 590 S.E.2d at 42.

The facts in the present case are practically identical to those in *Green*. In both cases, the defendants admitted fault for the accidents, but disputed some of the treatments

claimed as damages. In both cases, the plaintiff presented testimony by one of the medical treatment providers, which the defendants challenged through cross-examination. In both cases, the jury accepted the defendants' arguments and awarded the plaintiffs less than the total amount of their claimed specials. And in both cases, that fact alone served as the real basis for the decision to grant additur. Therefore, this Court's reasoning in *Green* applies with equal force here.

The same is true of this Court's decision in *Luchok v. Vena*, 391 S.C. 262, 705 S.E.2d 71 (Ct. App. 2015).[2] *Luchok* was also an admitted fault case arising from a minor accident. The plaintiff claimed medical bills of $10,071, of which $9,100 came from chiropractic treatments. *Id.* at 263, 705 S.E.2d at 72. The defendant contested the chiropractic treatments as being unnecessary and unreasonable, given the three-week delay between the accident and the first chiropractor visit and the unusual length of the course of treatment. *Id.* at 264, 705 S.E.2d at 72. The jury returned a verdict of $3,023.90. *Id.* at 263, 705 S.E.2d at 72. The plaintiff moved for a new trial *nisi additur*, which the trial judge granted.[3]

The defendant appealed, and this Court reversed the trial judge. After noting the close similarities between the case before it and *Green*, the Court explained the deficiencies of the trial judge's order as follows:

> We interpret the judge's order to set forth two reasons for invading the jury's province. First, the verdict did not cover all the chiropractic bills. In the face of the sharply conflicting evidence, this is not a compelling reason to

---

[2] The Court called the facts in *Luchok* "indistinguishable" from those in *Green*. 391 S.C. at 263, 705 S.E.2d at 72.

[3] Although it is not stated in this Court's opinion, the Record on Appeal in *Luchok* reveals that the trial judge granted an additur amount of $12,500.

> grant the motion. *See Green*, 356 S.C. at 571, 590 S.E.2d at 41 ("Where, as here, the evidence of damages is disputed, the mere listing of Green's claimed damages by the trial judge in his order does not constitute compelling reasons for invading the jury's province.") ... Second, the "charges for chiropractic treatment of Plaintiff's injuries were reasonable and necessary." The judge is not entitled to make that determination as a matter of law when the evidence is conflicting. Therefore, there is no compelling reason and the trial judge's improper invasion of the province of the jury amounts to an abuse of discretion.

391 S.C. at 265, 705 S.E.2d at 73 (footnote omitted). Based on that abuse of discretion, the Court reversed the order and reinstated the original verdict. *Id.*

If the word "chiropractic" is replaced with "Dr. Zgleszweski," the passage quoted above could just as easily describe the present case. As in *Luchok*, the trial judge relied on the fact that the verdict did not cover all the medical bills and on a personal, subjective belief that the challenged treatments were reasonable and necessary. *Luchok* establishes that those purported bases are not compelling reasons to justify disturbing a verdict. Therefore, just as the order in *Luchok* could not stand, the present Order must also be reversed.

Although *Green* and *Luchok* are sufficient authorities on their own to warrant reversal, Sanders' position also finds support in another similar case, *Steele v. Dillard*, 327 S.C. 340, 486 S.E.2d 278 (Ct. App. 1997). Like the present case, *Steele* arose from a rear-end accident. The plaintiff claimed roughly $8,000 in specials at trial, and the defendant challenged the necessity of some of the treatments that led to those amounts. After the jury awarded only $6,662.88, the plaintiff filed a motion for a new trial *nisi additur*. The trial court denied the motion, and this Court affirmed. As the Court noted, the defendant had disputed the claimed damages at trial, and it was well within the jury's

discretion to award only a portion of those damages. *Id.* at 343-44, 486 S.E.2d at 280. Indeed, the Court went so far as to say that even if the claimed damages had been undisputed, the jury still could have rejected some (or all) of them based on its evaluation of the plaintiff's credibility. *Id.* Therefore, the trial court had properly allowed the verdict to stand.

This Court also reached a similar result in *Boozer v. Boozer*, 300 S.C. 282, 387 S.E.2d 674 (Ct. App. 1988). In that case, the plaintiff claimed he was injured while riding as a passenger in his wife's vehicle. At trial, the plaintiff alleged the accident caused an injury to his mouth that required $2,000 in dental treatments. The jury awarded only $748.39, and the plaintiff requested a new trial *nisi additur*. This Court affirmed the trial court's denial of that motion because it concluded the evidence regarding causation of the condition was in dispute. Consequently, the jury was not obligated to award the plaintiff the entire amount of the claimed dental bills, and no additur was warranted.

In still another case, the Supreme Court affirmed the denial of an additur motion when the discrepancy between the claimed specials and the verdict was much higher than in the cases previously discussed. *O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993). There, the defendant physician admitted he negligently damaged one of the plaintiff's nerves during surgery, thus requiring a second procedure. But the defendant disputed the plaintiff's claimed specials, which totaled $43,832.46.[4] Specifically, the defendant argued the severed nerve did not cause most of the plaintiff's lingering injuries. The jury returned a verdict of only $12,500, which both the trial court and the Supreme

[4] The plaintiff also claimed a 10% impairment of his leg.

Court allowed to stand. The jury was free to decide the issue of what caused the plaintiff's damages (*i.e.*, the injury that required the first surgery, or the severed nerve during that surgery), and there was evidence to support the jury's decision either way. Thus, the Court held the trial court had properly refrained from disturbing the verdict.

All of these authorities share one crucial element with the present case. In each of them, the defendant challenged the amount of specials claimed by the plaintiff. The tactics and rationales for those challenges varied from case to case, but all of the defendants called at least some of the plaintiffs' alleged damages into question at trial. This fact is significant because it provided justification for the decisions reached by the respective juries. Once the defendants contested the issue of damages, the juries were free to reject the claimed damages (or any portions of them) and compute awards based on their own views of the evidence. As these authorities demonstrate, this is a process the courts should strive to protect.

In *Luchok*, this Court cited "the long-standing requirement that 'a judge must offer compelling reasons for invading the jury's province by granting a motion for *additur*'" and noted that "[t]he requirement is imposed to balance the wide discretion given to a trial judge in ruling on a new trial motion with the substantial deference courts must give to a jury's determination of damages." 391 S.C. at 264, 705 S.E.2d at 72 (internal citations omitted). This statement is significant because it applies with equal force to the present case.

Pressley will no doubt cite and rely upon the lenient "abuse of discretion" standard of review for decisions on new trial motions. That is the correct standard of review, but the passage from *Luchok* demonstrates that it is not absolutely deferential. In

situations involving the amount of a verdict, there are competing interests, as deference is also given to a jury's decisions. This is why the "compelling reasons" requirement exists for granting additur. This requirement honors a trial judge's discretion, while also protecting the integrity of the jury's verdict. Stated another way, the "compelling reasons" standard prevents a trial judge from adding to a verdict simply because he or she personally believes it was too low. The trial judge must provide other, more substantial reasons to justify granting a motion for additur.

Here, the trial judge failed to meet that standard. The judge cited purported reasons in the Order, but previous case law has rejected those reasons, finding them to be insufficient. In scenarios that were practically identical to the present case, this Court has repeatedly reversed attempts to invade the jury's province based on such shaky grounds. Those cases are controlling precedent with no distinguishing factors. Therefore, this Court should adhere to those decisions, reverse the trial judge's Order, and reinstate the original jury verdict.

CONCLUSION

Pressley was understandably disappointed in the amount of the verdict, but the possibility of such disappointment is a risk inherent in a jury trial. Sanders challenged at least half of the claimed specials, and that meant a lower verdict was a potential outcome. The trial judge clearly sympathized with Pressley and agreed he should have received more, but that was not the judge's decision to make under these circumstances. The amount of recoverable specials was in dispute, and there was ample support in the record for the jury's verdict. The trial judge failed to provide any "compelling reasons" for disturbing that verdict. Instead, he listed only the kinds of reasons that this Court has

already rejected in controlling precedent. The trial judge abused his discretion in doing so, and this Court should reverse and reinstate the jury's verdict.

Respectfully submitted,

R. Hawthorne Barrett
Richard A. Jones III
Turner Padget Graham & Laney, P.A.
P.O. Box 1473
Columbia, SC 29202
(803) 254-2200
TBarrett@TurnerPadget.com
TJones@TurnerPadget.com

Attorneys for the Appellant

RULE 211(b) CERTIFICATION

The undersigned, an attorney in this matter for the Appellant, certifies that this Final Appellant's Brief complies with the provisions of Rule 211(b), SCACR.

R. Hawthorne Barrett

R. Hawthorne Barrett
Richard A. Jones III
Turner Padget Graham & Laney, P.A.
P.O. Box 1473
Columbia, SC 29202
(803) 254-2200
TBarrett@TurnerPadget.com
TJones@TurnerPadget.com

Attorneys for the Appellant