THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2017-002289

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SC Court of Appeals

MIRIAM H. SAMUEL ..... Appellant

v.

LYNNE N. JOHNSON ..... Respondent

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 while waiting in line at a Rite Aid pharmacy drive thru in Richland County on February 5, 2011. Appellant, through counsel, filed her Complaint on February 3, 2014, alleging negligence on the part of Respondent. A jury trial commenced on October 2, 2017, which lasted through October 5, 2017. On October 5, 2017, the jury returned a unanimous verdict for the Respondent. At the conclusion of the trial, Appellant moved for a judgment notwithstanding the verdict. The Appellant filed and served a Notice of Appeal on November 1, 2017.

I. APPELLANT'S ALLEGATIONS OF INEFFECTIVE REPRESENTATION ARE NOT APPEALABLE ISSUES.

STANDARD OF REVIEW

Rule 201, SCACR provides that "[a]ppeal may be taken, as provided by law, from any final judgment, appealable order or decision."

ARGUMENT

Throughout Appellant's Initial Brief, she has alleged ineffective assistance of counsel and complaints against her own counsel. As this Court is aware, an appeal is not the proper vehicle to bring allegations of legal malpractice and ineffective assistance of counsel in a civil matter. In fact, there are separate processes and causes of action within South Carolina for those allegations. Furthermore, according to Rule 201, SCACR, the issue of ineffective assistance of counsel and legal malpractice, whether founded or unfounded, is not an appealable issue as it is not a "judgment, appealable order or decision" for this Court to consider.

II. THE TRIAL COURT PROPERLY DENIED THE APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

STANDARD OF REVIEW

> When reviewing the denial of a motion for directed verdict or judgment notwithstanding the verdict t("JNOV"), this Court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. See, e.g., Steinke v. South Carolina Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999); Gastineau v. Murphy, 331 S.C. 565, 503 S.E.2d 712 (1998). The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt. Steinke, supra. This Court should reverse the trial court only when there is no evidence to support the ruling below. Id.; Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997). When considering directed verdict and JNOV motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence. Creech, supra; Reiland v. Southland Equip. Serv. Inc., 330 S.C. 617, 500 S.E.2d 145 (Ct. App. 1998).
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> A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992). The jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision. Smalls v. South Carolina Dep't of Educ., 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000); Hunter v. Staples, 335 S.C. 93, 515 S.E.2d 261 (Ct. App. 1999).

Welch v. Epstein, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct. App. 2000).

ARGUMENT

At the conclusion of the trial, Appellant moved for a JNOV "based on there was enough evidence in the record for the jury to find by a preponderance of the evidence in favor of the Plaintiff." Transcript pp. 357-358. In moving for a JNOV, the Appellant's attorney stated the wrong standard for a JNOV, which as noted above is to be granted "only if no reasonable jury could have reached the challenged verdict." Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992). The trial court properly denied the motion and stated, "there were disputed issues in this particular case. [The jury] heard all the evidence. They had the opportunity to discuss that and determine the facts based upon their view of what the evidence showed . . . ." Transcript p. 358. Further, the trial court explained that there was not "anything that would indicate that their verdict was based upon something other than the evidence in this case. . . .' Id. This Court, employing the same standard as the trial court, should, therefore, also deny Appellant's motion and argument for JNOV.

III. THE TRIAL COURT ISSUED APPROPRIATE RULINGS REGARDING THE RELEVANCE AND ADMISSIBILITY OF EVIDENCE.

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

Appellant appears to complain of various evidentiary rulings throughout the trial of this matter. Appellant's arguments appear to relate to exclusion of the Respondent's traffic citation, driving record and the accident report related to the accident in question. S.C. Code Ann. §§ 56-5-1260-1280 (1991) provides that accident reports are not admissible as evidence of negligence or due care in an action at law for damages. In the case at bar, the Respondent admitted simple negligence. As to the issue of Respondent's traffic citation, Appellant actually testified that the Respondent received a traffic citation. Transcript p. 115. The Appellant's attorney also stipulated that he would not question the Respondent regarding her driving history. Transcript p. 246.

Appellant also cites the trial court's exclusion of Dr. Fuller's testimony regarding her alleged impairment rating as improper. Judge Lee clearly stated that the testimony of Dr. Fuller regarding the issue of Appellant's impairment rating lacked foundation, because Dr. Fuller did not state how he "came up with the particular percentage that he chose." Transcript p. 39.

It is well-established in South Carolina that "the admission or exclusion of evidence is within the trial judge's discretion." See Fields v. Reg'l Med. Cent. Orangeburg, 363 S.C. 19, 25-26, 609 S.E.2d 506-509 (2005). Further, the Appellant "must show both abuse of discretion and prejudice." Id. In the case at hand, the Appellant has failed to prove that the trial court's evidentiary rulings were an abuse of discretion or resulted in any prejudice to Appellant. Additionally, Appellant appears to complain of evidence that was not offered by her attorney.

IV. THE TRIAL COURT PROPERLY INSTRUCTED THE JURY.

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

Appellant appears to complain of confusing, biased and prejudicial jury instructions. The only reference to the trial transcript found in Appellant's Initial Brief is a citation to Respondent's motion to exclude a jury charge regarding punitive damages. Transcript p. 292. The trial court

ruled in Appellant's favor on the issue of punitive damages and denied Responent's motion, and the jury was charged with punitive damages. Most importantly, Appellant's counsel had no objection to the proposed jury charges. Transcript pp. 298 and 352. As such, the issue was not preserved for consideration by this Court on appeal.

V. THE TRIAL COURT PROPERLY DISMISSED JUROR NUMBER ONE HUNDRED TWENTY (120).

STANDARD OF REVIEW

Rule 201, SCACR provides that "[a]ppeal may be taken, as provided by law, from any final judgment, appealable order or decision."

ARGUMENT

Rule 48, SCRCP provides in pertinent part that a "jury shall be composed of twelve persons . . . except that the parties may stipulate that the jury shall consist of any number less than twelve . . . ." Appellant appears to complain that juror number 120 was improperly dismissed once the trial began. When a jury was selected, the parties agreed to waive an alternate and proceed with eleven jurors if necessary. Transcript p. 57. After the first day of trial, Appellant's attorney advised the court that the Appellant and juror 120 had seen each other at church after the trial began, and the Appellant and juror 120 had actually discussed Appellant's alleged injuries and issues in the case. Transcript p. 202-207. As such, the juror was dismissed, and the trial proceeded with eleven jurors, as agreed, with no contemporaneous objection. As such, the issue was not preserved for consideration by this Court on appeal.

CONCLUSION

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

Respectfully submitted,

October 3, 2018

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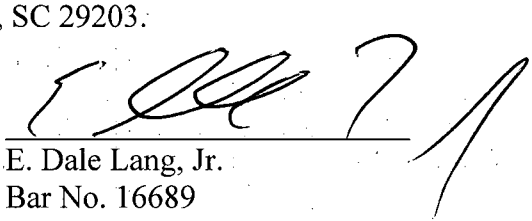
PROOF OF SERVICE

I certify that I have served the Respondent's Initial Brief and Designation of Matter on Miriam H. Samuel by depositing a copy of it in the United State Mail, postage prepaid, on October 3, 2018, to 4014 Margrave Road Columbia, SC 29203.



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