

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Gordon G. Cooper, Master-in-Equity

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Case No. 2016-CP-42-3107

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Brandon Hendrickson.....Appellant,

v.

Dennis Wheeler.....Respondent.

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FINAL REPLY BRIEF OF APPELLANT

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## REPLY ARGUMENT

- I. Respondent incorrectly argues there is evidentiary support for the trial court's decision not to award any noneconomic damages.

Respondent's purported evidentiary support for the trial court's decision not to award noneconomic damages includes: (a) Appellant testified he did not utilize an ambulance; (b) Appellant testified about 6 hours elapse between the time of the accident and when he showed up at the emergency room; (c) emergency room record<sup>1</sup> noted "litigation liability"; (d) emergency room record noted "patient records a decrease in pain,<sup>2</sup> reclined and looking at cell phone"; (e) Appellant testified he did not have a decrease in pain and nurse must have been mistaken; (f) emergency room record noting Appellant injured himself while exercising the day of the accident; (g) emergency room x-rays did not show broken bones; (h) Appellant followed up with Dr. Arcamone and not a primary care physician; (i) Appellant's testimony that he reported neck pain in the emergency room but the emergency room staff did not record this complaint; (j) Appellant did not seek any medical treatment after May 5, 2016, or almost three months after the date of accident.

As is expected in a default damages hearing where liability is established, the trial court should determine what economic damages proximately flow from an accident. To do so, the trial court first would consider evidence in order to determine what medical treatment

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<sup>1</sup> This was not a medical "record." It was a bill generated on March 8, 2016, several weeks after the accident. (R. p. 120). Pelham Medical Center's business practices are not relevant and do not offer any evidentiary support for the trial court's decision not to award noneconomic damages.

<sup>2</sup> As shown in the record, the decreased pain followed the administration of pain medications. (R. pp. 28-29, 131).

was proximately related to claimed injuries and what lost wages proximately flowed from those injuries. Thereafter, the trial judge would consider evidence of noneconomic damages in the context of that related medical treatment. The noneconomic damages would have to be something measurable even if nominal.

In this case, the trial judge was presented with all of the aforementioned evidence (a-j) and ruled, as a matter of fact and law, that all of Appellant's economic damages, medical treatment and lost wages, proximately resulted from the subject accident. The trial court specifically awarded all claimed medical bills and all claimed lost wages. The trial court did give any weight to the aforementioned evidence because it did not partition or reduce any of Appellant's proximately related economic damages. Further, there was no evidence of pre-existing conditions.

After finding all of Appellant's medical expenses and lost wages were proximately caused by the subject accident, the trial court then should have considered relevant evidence of noneconomic damages, e.g., shock, psychological trauma, mental anguish, apprehension, anxiety, pain and suffering, etc. Respondent wants this Court to find that the aforementioned evidence, which proximately proved by a preponderance of the evidence Appellant's claim for economic damages, also provides evidentiary support for the trial court's decision not to award any noneconomic damages. That does not make sense. If the trial court believed that Appellant's injuries were proximately caused by something other than the subject motor vehicle accident, then the trial court would not have specifically awarded all of Appellant's medical expenses. It is absurd to maintain an argument that Appellant was not injured, was not in pain and continued to receive related medical treatment for the sole purpose of being

checked out while perfectly fine.

While making this argument, Respondent ignores and fails to address other relevant evidence providing proximate cause of Appellant's claim for noneconomic damages:

- a. Appellant was in shock, razzed up and anxious at the scene. (R. p. 83).
- b. Appellant sought medical treatment the same day for pain in his lower back, middle back, pretty much his whole back, his hips and numbness in hands. (R. p. 83).
- c. Appellant further described his symptoms as numbness in hands, inability to turn his neck, tightness in his neck and tightness in his hips. (R. p. 84).
- d. Appellant was prescribed muscle relaxer and pain patches. (R. p. 84).
- e. Appellant went to Dr. Arcamone for follow up after he completed taking the prescriptions and when his pain got worse. (R. p. 85).
- f. Appellant's back was uncomfortable for the whole two weeks, numbness in his hands got worse and he could not sleep. (R. p. 86).
- g. Appellant's pain level went from 7-8 out of 10 down to 1-2 out of 10 after completion of his treatment with Dr. Arcamone. (R. p. 86).
- h. Appellant experienced back spasms<sup>3</sup> during his recovery. (R. p. 86).
- i. Appellant's neck and back still hurt for several months after conclusion of his treatment and still occasional hurt when the weather changed. (R. p. 87).
- j. Appellant asked for an award of noneconomic damages which included pain, suffering, shock and anxiety. (R. p. 88).
- k. On cross exam, Appellant had decreased pain while in the emergency room, (R. p. 20), but this decrease in pain was due to the administration of pain medications in the emergency room. (R. pp. 27-29).
- l. On cross exam, Appellant went to Dr. Arcamone shortly after Appellant's medications ran out. (R. p. 94).

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<sup>3</sup> Clinical objective sign of injury and source of pain.

- m. On cross exam, Appellant did not have pre-existing conditions. (R. p. 96).
- n. On redirect, Appellant testified his nurse failed to note neck pain and back pain, (R. p. 96), because the doctor did note Appellant experienced upper back pain and point tenderness in the lumbar spine with spasm. (R. p. 101).

The trial court erred by ignoring this evidence of noneconomic damages any by not awarding noneconomic damages is some amount.

- II. Respondent incorrectly argues Appellant did not show clear and convincing evidence of a violation of a statute and entitlement to consideration of a punitive damages.

Respondent asserts Appellant is relying on the default and allegations of recklessness in the complaint. To the contrary, Appellant is relying on more than that.

Respondent fails to recognize that when a criminal defendant pleads guilty to a criminal offense in open court, the proof of that criminal offense is absolute on the record. The plea goes beyond “clear and convincing” and even “beyond a reasonable doubt.” It is an absolute admission and an established fact. This admission more than meets the burden of clear and convincing proof of a violation of a statute.

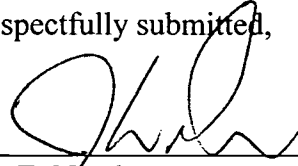
In this case, the Respondent pled guilty to the related criminal offense. (R. p. 41) . That plea is part of the record and part of the argument for consideration of punitive damages. The plea is not “some evidence” to be weighed against a standard of proof. It is an absolute admission and establishes the admission as a matter of law. See Zurcher v. Bilton, 666 S.E.2d 224, 379 S.C. 132 (2008) (A party may not take a contrary position to a guilty plea in a civil case involving the same facts).

The trial court erred by not even considering or awarding punitive damages given that the violation of the statute was proved by more than the “clear and convincing” standard.

CONCLUSION

For the reasons stated, this Court should remand this case for a determination of noneconomic damages and consideration and/or award of punitive damages.

Respectfully submitted,



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