

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2010-CP-14-362

Cynthia Richardson,.....Appellant,

v.

Piggly Wiggly Central, Inc.,.....Respondent.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities3

Statement of Issues on Appeal4

Statement of the Case4

Facts5

Arguments

 1. The trial Court’s ruling to deny the Defendant-Respondent’s
 Motion for Judgment Not Withstanding the Verdict of the jury
 should be upheld because the jury is the sole finder of fact and the Circuit
 Court erred by intruding into the sole purview of the jury by drawing
 conclusions of fact and granting the Defendant-Respondent’s Motion
 for Judgment Not Withstanding the Verdict.5

Conclusion7

TABLE OF AUTHORITIES

Law v. S.C. Department of Corrections, 629 S.E.2d 642 (2006)6

Milliken & Co. v. Morin, 685 S.E.2d 828 (2009)7

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR BY DENYING THE PLAINTIFF/APPELLANT'S MOTION FOR RECONSIDERATION AND BY GRANTING THE DEFENDANT/RESPONDENT'S MOTION FOR JUDGEMENT NOT WITHSTANDING THE VERDICT?

STATEMENT OF CASE

The matter before the Court is a premises liability matter (slip and fall) that was tried in the Clarendon County Magistrate Court before a jury on March 23, 2010. At the conclusion of the evidence the Defendant-Respondent moved for a directed verdict which was denied. The jury rendered a verdict finding that the Defendant-Respondent was negligent and awarding damages to the Plaintiff-Appellant in the amount of \$3,870.00. With the permission of the magistrate, the Defendant-Respondent filed a written Motion for Judgment Not Withstanding the Verdict and the Plaintiff-Appellant filed a Return to the Defendant-Respondent's Motion for Judgment Not Withstanding the Verdict. The Defendant-Respondent's Motion for Judgment Not Withstanding the Verdict was denied by Order of the Magistrate Court dated June 4, 2010. The Defendant-Respondent filed a Notice of Appeal to the Circuit Court. Pursuant to an agreement reached by the parties at the appeal hearing, counsel for both parties submitted briefs to the Court to address the appellate issues. The Circuit Court issued an Order reversing the Magistrate Court's judgment denying the Defendant-Respondent's Motion for Judgment Not Withstanding the Verdict. Plaintiff-Appellant filed a Motion for Reconsideration with the Circuit Court on June 23, 2011 which was denied by Order of the Circuit Court on January 18, 2012. Plaintiff-Appellant filed this appeal on February 8, 2012, seeking a reversal of the Circuit Court's denial of the Plaintiff-Appellant's Motion for Reconsideration and upholding the

trial Court's denial of the Defendant-Respondent's Motion for Judgment Not Withstanding the Verdict.

FACTS

On or about October 11, 2008, the Plaintiff-Appellant was a customer shopping in the Defendant-Appellant's store, namely Piggly Wiggly of Manning, SC, store number 32. While in the Defendant-Respondent's store, the Plaintiff-Appellant slipped and fell on a wet area as she exited the premises of the Defendant-Respondent. The Plaintiff-Appellant fell in a wet area that was located near the doorway of the Defendant-Respondent's store. When the Plaintiff-Appellant fell part of her body was in the Defendant-Respondent's store. The Plaintiff-Appellant did not fall on the sidewalk located outside of the Defendant-Respondent's store. As a result of the fall, the Plaintiff-Appellant suffered serious injuries to her person which required her to receive medical treatment. As a consequence of the Defendant-Respondent's negligence, the Plaintiff-Appellant incurred medical bills and endured substantial pain and suffering.

ARGUMENT

The Plaintiff-Appellant maintains that the trial court did not err in denying the Defendant-Respondent's Motion for a Judgment Not Withstanding the Verdict. The Plaintiff-Appellant asserts that there was sufficient evidence for a reasonable inference to be drawn by the jury that the Defendant-Respondent was negligent and the Defendant-Respondent was the proximate cause of the Plaintiff-Appellant's injuries and therefore, the Plaintiff-Appellant was entitled to an award of damages by the jury.

The Plaintiff-Appellant testified at trial that she slipped and fell on a wet area as she began to exit the store and the area was wet because it was raining on the day of the incident (see Court transcript page 12, lines 7-14 and page 29, lines 16-17 and page 30 lines 1-20).

Defendant-Respondent maintains that the Plaintiff-Appellant testified that she fell on the concrete sidewalk outside of the Defendant-Respondent's grocery store as she exited the premises, and therefore, no reasonable jury could find that the Defendant-Respondent was negligent and liable for the Plaintiff-Appellant's injuries. The crux of this dispute is that the parties have opposing views as to the specifics of the Plaintiff-Appellant's testimony as to where she fell. The uncontroverted evidence at trial established that the Plaintiff-Respondent fell as she was exiting the Defendant-Respondent's grocery store and that when she fell, the Plaintiff-Appellant was inside said grocery store and not outside the store on the sidewalk. Further, the uncontroverted evidence established that the Defendant-Respondent took no steps to address the wet flooring in its store by mopping the area or by warning customers that the flooring was wet by placing cones or caution signs in the area. Additionally, the Plaintiff-Appellant testified that there were no floor mats placed in the area where the flooring was wet and the Defendant-Respondent did not offer any evidence to the contrary (see Court transcript page 16, lines 3-4). In fact, the Defendant-Respondent did not call any witnesses in the trial of this case and provided no testimony or any other evidence to establish what, if any steps were taken to address the potential hazard created by the wet flooring.

In ruling on a motion for Judgment Not Withstanding the Verdict, the court must view the evidence and the inferences that reasonably can be drawn therefrom, in the light most favorable to the non-moving party, which in the case at hand, is the Plaintiff-Appellant. Law v. S.C. Dept. of Corrections, 629 S.E. 2d 642 (2006). With respect to the Plaintiff-Appellant's testimony regarding where she fell and the parties' opposing views on this matter, the court should not act as a thirteenth juror by interjecting its own interpretation of the Plaintiff-Appellant's testimony and rely upon such to draw conclusions different than that reached by the

jury on this issue. Moreover, the Plaintiff-Appellant maintains that any factual dispute regarding her testimony with respect to where she fell was sufficiently addressed and resolved by way of the jury's verdict. The jury is the sole finder of fact and in the matter at bar, there is sufficient evidence on record to support the verdict reached by the jury in this matter. Additionally, the Plaintiff-Appellant maintains that the Court should only disturb the jury's verdict, if the record is devoid of any evidence to support the jury's findings. Milliken & Co. v. Morin, 685 S.E. 2d 828 (2009). In the case at hand, the Plaintiff-Appellant presented unchallenged evidence from which a reasonable inference could be drawn by the jury that the Plaintiff-Appellant fell on the premises of the Defendant-Respondent's grocery store, and that the Defendant-Respondent was negligent and that the Defendant-Respondent's negligence was the direct cause of the Plaintiff-Appellant's injuries.

CONCLUSION

Accordingly, the Plaintiff-Appellant contends that the trial court did not err in denying the Defendant-Respondent's Motion for Judgment Not Withstanding the Verdict. Further the Plaintiff/Appellant maintains that the Circuit Court Judge erred in reversing the trial court's denial of the Defendant-Respondent's Motion for Judgment Not Withstanding the Verdict and the denial of the Plaintiff-Appellant's Motion for Reconsideration. Accordingly, the Plaintiff-Appellant seeks an Order of this Court reversing the Circuit Court's denial of her Motion for Reconsideration and which upholds the trial court's denial of the Defendant-Respondent's

Motion for Judgment Not Withstanding the Verdict, thus allowing the jury's verdict to stand.

Respectfully submitted,
THE DEAS LAW FIRM, LLC

A handwritten signature in black ink, appearing to read "Garryl L. Deas", written over a horizontal line.

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August 8, 2012
Sumter, South Carolina

FORM 16
CERTIFICATE OF COUNSEL IN FINAL BRIEF

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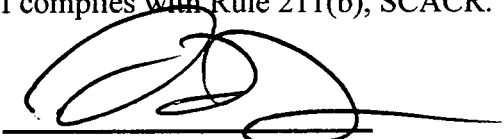
Piggly Wiggly Central, Inc.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

August 8, 2012



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