

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

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Case No. 2010-CP-10-8631

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Cynthia D. Bales, as Personal Representative  
of the Estate of Frank R. Bales.....Respondent,

v.

Abel Martinez Martinez and the South  
Carolina Department of Transportation,

Of whom Abel Martinez Martinez is Appellant .....Appellant.

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FINAL BRIEF OF RESPONDENT

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SC Court of Appeals

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## STATEMENT OF ISSUES ON APPEAL

- I. **Is “life value” a recognized or recoverable item of economic damage in a wrongful death case?**
- II. **Was the evidence presented sufficient to justify the award of punitive damages?**

## STATEMENT OF CASE

This wrongful death action was filed on October 15, 2010 by Cynthia D. Bales, as Personal Representative of the Estate of Frank Bales (herein referred to as “Respondent”) against Abel Martinez-Martinez (herein referred to as “Appellant”). (See R. p. 11-18). Appellant was properly served on May 16, 2011, but failed to submit a responsive pleading. (See R. p. 19-20). Respondent therefore moved for an entry of default pursuant to Rule 55(a) of the South Carolina Rules of Civil Procedure (herein referred to as “S.C.R.P.C.”). (See R. p. 21-32). The entry of default was signed by the Honorable Kristi L. Harrington on October 4, 2011 and a hearing was set to determine the amount of liquidated damages and to enter judgment in that amount. (See R. p. 1-3). Prior to the damages hearing, Appellant’s counsel made an appearance and moved to have the default set aside under the “good cause” standard of Rule 55(c), but said motion was denied. On January 11, 2012 a default damages hearing was held. (See R. p.136-82). Judge Harrington entered her final order on March 2, 2012, and determined Respondent’s damages to total \$1,900,000, including \$1,700,000 in actual damages and \$200,000 in punitive damages. (See R. p. 6-10).

Appellant filed a Motion to Reconsider the award of damages on March 15, 2012. (See R. p. 35-60). The trial court denied this motion after hearing arguments on April 3, 2012. (See Hearing Transcript and Order denying Motion to Reconsider).

Appellant appeals the damages awarded. Appellant requests that actual damages be reduced by \$417,046 and believes the \$200,000 awarded in punitive damages should be reduced or vacated.

### **STATEMENT OF FACTS**

This case arises from a motor vehicle/motorcycle accident that occurred on October 15, 2008 when Appellant ran through a red light, causing a collision and the death of Frank Bales. (R. p. 149, lines 14-23). Appellant was not a licensed driver. (See Id.). Appellant was subsequently charged with disregarding a traffic signal, and driving without a license. (R. p. 149, lines 24-25).

Respondent provided evidence at the default damages hearing from Ms. Bales (R. p. 143 line 8–p. 159, line 7), and Mr. Clyde Hiers, an economic expert qualified by the court without objection (R. p. 159, line 10–p. 174, line 25). Respondent also introduced a written report of Mr. Hiers. (See R. p. 183-90). The report included a total economic loss of \$1,502,166.

Judge Harrington weighed the evidence presented and issued an order of damages, including a non-itemized \$1,700,000 in actual damages and \$200,000 in punitive damages. (See R. p. 6-10).

## STANDARD OF REVIEW

In a default damages hearing, “[t]he trial judge has considerable discretion regarding the amount of damages, both actual or punitive.” Austin v. Specialty Transp. Svces, Inc., 358 S.C. 298, 310, 594 S.E.2d 867, 873 (Ct. App. 2004) (citations omitted). As a result, the review on appeal “is limited to the correction of errors at law.” Id. The trial court has jurisdiction “to render any judgment which plaintiff is entitled under the relief demanded in the Complaint” against a party in default. Hopkins v. Hopkins, 266 S.C. 23, 27, 221 S.E.2d 113, 115 (1975). This Court’s task “in reviewing a damages award is not to weigh the evidence, but to determine if there is any evidence to support the damage award.” Id. “The appellate court will intervene *only* where the verdict is so grossly excessive and the amount awarded *is so shockingly disproportionate to the injuries* to indicate that it was the result of caprice, passion, prejudice, or other considerations not found on the evidence.” Miller v. City of Columbia, 322 S.C. 224, 231, 471 S.E.2d 683, 687 (1996) (emphasis added) (citations omitted). Furthermore, “[t]his Court cannot address an issue not raised to the trial court.” Austin, 358 S.C. at 315, 594 S.E.2d at 876.

## ARGUMENT

### **I. The Trial Court did not err in determining the default damages award.**

In a wrongful death action, beneficiaries are entitled to “all damages, present and prospective, which are naturally the proximate consequence of the wrongful act, including (1) pecuniary los[s] [sic], (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the intestate’s society, including the loss of his experience, knowledge, and

judgment in managing the affairs of himself and of his beneficiaries.” Smith v. Wells, 258 S.C. 316, 319, 188 S.E.2d 470, 471 (1972). Plaintiffs must provide sufficient evidence to “enable the court . . . to determine the amount [of damages] thereof with reasonable certainty or accuracy.” Whisenant v. James Island Corp., 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981). “Participation by the defending party [in a default damages hearing] will give to the judge . . . a broader understanding of the amount which should be awarded and will tend to insure a more fair verdict and judgment.” Lewis v. Cong. of Racial Equal. &/or C.O.R.E., Inc., 275 S.C. 556, 561, 274 S.E.2d 287, 289 (1981). The Defendant can participate in the damages hearing “by cross-examining witnesses and objecting to evidence.” Howard v. Holiday Inns, Inc., 271 S.C. 238, 242, 246 S.E.2d 880, 882 (1978).

In addition, the award of damages must be consistent with the allegations of the complaint, prayer for relief, and the proof that has been submitted. Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 204, 73 S.E.2d 597, 603 (Ct. App. 2012) (quoting Jackson v. Midlands Human Resources Center, 296 S.C. 526, 529, 374 S.E.2d 505, 506 (Ct. App. 1988)). Moreover, this Court should uphold the trial court’s findings if the findings are with evidentiary support. Jordan v. Holt, 362 S.C. 201, 205, 608 S.E.2d 129, 131 (2005). In the present case, this Court should affirm the trial court’s order of actual and punitive damages because the Trial Court relied upon appropriate evidentiary support and the awards were not disproportionate to the injuries sustained.

**A. The Trial Court correctly evaluated Plaintiff’s actual damages.**

“Actual or compensatory damages include compensation for all injuries which are the result of the alleged wrongful conduct of the defendant.” Austin at 312, 594

S.E.2d at 874 (citing Rogers v. Florence Printing Co., 233 S.C. 567, 106 S.E.2d 258 (1958)). The measure of actual or compensatory damages is the amount necessary to compensate plaintiffs for losses proximately caused by the defendant, insomuch to put plaintiffs in the same position they would have been if there had been no wrongful injury. Id. “In a wrongful death case, the issue of damages is not directed toward the value of the human life that was lost, but rather the damages sustained by the beneficiaries as a result of the death.” Welch v. Epstein, 342 S.C. 279, 304, 536 S.E.2d 408, 421 (Ct. App. 2000) (citing Zorn v. Crawford, 252 S.C. 127, 165 S.E.2d 640 (1969); Self v. Goodrich, 300 S.C. 349, 387 S.E.2d 713 (Ct. App. 1989)).

Respondent submitted sufficient evidence to support the Trial Court’s award of actual damages. Plaintiff produced an expert witness, Mr. Clyde Larry Hiers, at the damages hearing. Mr. Heirs is a certified public account, certified financial planner, and certified forensic financial analyst. (See R. p. 159, lines 19-21). He testified that he had been qualified as an expert regarding calculations of economic loss “in many different courts in South Carolina and also in numerous other states.” (R. p. 160, line 23–p. 161, line 1). He was introduced in the damages hearing as an expert on calculating economic loss, without objection from opposing counsel. (See R. p. 161, lines 8-14). Mr. Hiers determined that Mr. Bales’ economic loss for pretrial and future damages were \$1,502,166 – a conservative figure in that his calculations included only a work life expectancy of 16 years, when Mr. Bales’ statutory life expectancy was nearly 29 years. (See R. p. 163, line 12–p. 165, line 16).

Furthermore, Mr. Hiers’ economic loss calculations did not include “any amounts for mental shock and suffering, wounded feelings, grief and sorrow, loss of

companionship, or deprivation of the use and comfort of the deceased's society . . . ." (R. p. 7). Instead, Judge Harrington relied on allegations as admitted in the Complaint as a result of the Appellant defaulting, Mr. Hiers' expert testimony, and the testimony of the decedent's wife, Cynthia Bales. (See R. p. 6-10). Ms. Bales testified that her life had change as a result of her husband's death by "having to take care of [her son] by herself and the stress and stuff of everyday life on [her] own trying to . . . take care of bills and hop[ing] that nothing unexpected happens." (R. p. 151, lines 6-9). Also, Ms. Bales "had very good medical insurance through [her husband's] company" and since her "employer does not offer medical insurance" she has to take out greatly expensive private policies that are not "good insurance." (R. p. 153, lines 18-22). As a result, she finds herself not going to the doctor for ailments because of the expense. (R. p. 153, line 18-p. 154, line 2). Moreover, she testified that she personally "lost [her] soulmate, [her] best friend, the love of [her] life" and feels that "there's no closure [with her husband's death] because [she] never [has] addressed the man that killed [her] husband, [her] child's father . . . ." (R. p. 152, lines 14-22). The fact that the Appellant, who killed her husband, "was let out [of jail] with a 474-dollar bond" continues to hurt her because Appellant "got out, scot-free . . . [and is] nowhere to be found." (R. p. 152, line 24-p. 153, line 2). Ms. Bales also testified that her son, the decedent's beneficiary, has been very withdrawn and "misses his daddy," because "[his daddy] was his life." (R. p. 152, lines 5-6). Since his father's death, Ms. Bales feels her son is "just not a happy, smiling kid like he used to be." (R. p. 153, lines 12-13). Holidays are no longer the same as they once were for the family as it is "very depressing." (R. p. 155, lines 8-10).

On the above testimony, the Trial Court entered judgment on actual damages in the amount of \$1,700,000. This figure was not broken down or itemized by specific category of loss.

Appellant argues that the damages award should be reduced on the basis of Mr. Hiers' testimony and report that briefly discussed two cases involving "life value" that Appellant alleges are inapplicable in South Carolina. "The decision to admit or exclude expert testimony rests within the trial court's sound discretion and will not be reversed absent an abuse of that discretion." Gazes v. Dillard's Dep't Store, 341 S.C. 507, 512, 534 S.E.2d 306, 309 (Ct. App. 2000). More fundamentally, however, Appellant assumes in this appeal that the trial court's order of \$1,700,000 in actual damages included Respondent's expert, Mr. Hiers, "Life Value" calculation and that Judge Harrington "awarded Plaintiff the exact amount of the pecuniary damages asserted by Mr. Hiers . . . ." (See R. p. 37). This assertion is made in error. In no place does the Trial Court indicate that the Court accepted and awarded the full amount of pecuniary loss as suggested by Mr. Hiers. Instead, the Court found his calculations to be reasonable and took the suggestions under advisement, along with Cynthia Bales' testimony, and the admissions under the Complaint before ordering the amount of actual damages. (See R. p. 6-10). The final judgment necessarily includes compensation for elements of damage to which Mr. Hiers did not opine. Specifically, the Court noted "Based on [the testimony of Mrs. Bales] it is clear to the Court that the decedent's beneficiaries have suffered a great deal of mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship and deprivation of the use and comfort of the deceased's society." (R. p. 7).

Judge Harrington's order of actual damages is not itemized and in no way suggests that all of Mr. Hiers' calculations were incorporated into the full award. Instead, it is likely that she included pecuniary damages in excess of Mr. Hiers' calculations, as she noted in her order that "his estimate was on the conservative side" as well as other non-pecuniary damages because his testimony did not even broach the subject of mental shock, loss of companionship, etc. (See R. p. 6-10). Therefore, Appellant's argument that the Trial Court even considered or relied upon the "life value" calculation of Mr. Hiers is wholly unsupported by the record.

Instead, Appellant asks this Court to impliedly itemize Judge Harrington's actual damages award and reduce it by \$417,000 – asserting without evidentiary support that Judge Harrington included all of Mr. Hiers' calculations in the actual damages awarded. In fact, Appellant brought this matter to the Trial Court's attention by way of Motion to Reconsider. After raising these issues, the Trial Court refused to reduce the award, again without doing anything to suggest that "life value" was even considered.

Stated differently, Mr. Hiers calculated and testified to \$1,085,166.00 worth of pecuniary damages to which Appellant has raised no objection, such as lost future income, etc. The Trial Court's final judgment, as to actual damages, amounted to 1,700,000.00. Therefore, as to the difference of \$614,834.00, the Appellant now suggests that the Trial Court factored \$417,000 for "life value" and, by extension, only \$197,834.00 for mental shock and the other non pecuniary losses. However, this is not supported by the record. Because the Trial Court does not explicitly incorporate any amount of "life value" into the final judgment, there is no error of law for this Court to correct. Therefore, the award of actual damages should not be disturbed except upon a

showing that it is grossly excessive or shockingly disproportionate. Here, as demonstrated during the hearing on Appellant's Motion to Reconsider, the Trial Court's judgment was perfectly in line with reported jury verdicts in factually similar cases that are tried to verdict. Indeed, given the testimony of Mrs. Bales, and the \$1,085,166.00 of pecuniary damages to which all parties agree, it would not be at all excessive to believe that the Trial Court awarded and allocated the entirety of the remaining \$614,834.00 to mental shock, loss of companionship and other emotional damages and suffering. Ms. Bales lost her husband, her friend, a financial supporter, and the father of her child. A young son has to grow up without his father. In fact, the Trial Court's award seems to be in line with, and perhaps even slightly lower, than comparative jury verdicts in similar cases. (See Transcript of Hearing on Motion to Reconsider). Accordingly, this Court should not reduce the amount of actual damages awarded at all – or in any event, not by \$417,000 where there is no evidentiary support for the conclusion that the Trial Court made an error of law in this exact amount.

**B. The Trial Court reviewed and considered sufficient evidence to justify the award of punitive damages.**

Punitive damages can be awarded when plaintiffs prove that defendants' misconduct was willful, wanton, or in reckless disregard of plaintiffs' rights by clear and convincing evidence. Austin, at 313, 594 S.E.2d at 875 (citations omitted). "This Court must affirm the trial court's punitive damages finding for the Respondents if *any* evidence reasonably supports the judge's factual findings. A factual question as to punitive damages is presented when there is evidence of a statutory violation." Id. 314, 594 S.E.2d at 875 (emphasis added) (citations omitted). Although the violation of a statute does not in and of itself constitute willfulness, wantonness, and recklessness per

se, “punitive damages are sustainable if there is *any* evidence supporting a violation of a statute.” Id. at 315, 594 S.E.2d at 876 (emphasis added) (citations omitted). Respondent presented sufficient evidence to justify the punitive damage award of \$200,000.

Because Appellant defaulted, the Appellant “is deemed to have admitted the plaintiff’s allegations and [] have conceded liability.” Roche v. Young Bros., Inc., 322 S.C. 75, 81, 504 S.E.2d 311, 314 (1998), citing Howard v. Holiday Inns Inc., 271 S.C. 238, 246 S.E.2d 880 (1978); Schenk v. National Health Care, Inc., 322 S.C. 316, 471 S.E.2d 736 (Ct. App. 1996); State ex rel. Medlock v. Love Shop, Ltd., 286 S.C. 486, 334 S.E.2d 528 (Ct. App. 1985). Respondent pleaded that Respondent’s “damages were directly and proximately caused and occasioned by the negligent, reckless, willful and wanton conduct of the Defendant . . . a) in failing to keep a proper lookout; b) in failing to operate his motor vehicle at a safe speed; c) in failing to maintain proper control over Defendant’s vehicle; d) in failing to seasonable and effectively utilize Defendant’s vehicle brakes; e) in failing to take any evasive action, by any means, to avoid the lawful path vehicle on which the Plaintiff’s decedent was operating; f) in failing to obey posted speed limit; g) in then and their failing to obey the traffic laws of the State of South Carolina; h) in then and there failing to exercise a degree of care and caution, which a reasonable and prudent person would have exercised under the same circumstances; i) Which negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of the Defendant, directly and proximately caused the injuries of the Plaintiff . . . .” (See R. p. 11-18). Respondent specifically pled that Appellant violated statutes, and that his actions were willful, wanton, and reckless. Because these allegations are

admitted by the Appellant as a result of his failure to respond to the Complaint, punitive damages are appropriate.

Appellant further argues that the Respondent's evidence was insufficient to justify the award of punitive damages. However, the evidence presented at the damages hearing tended to establish that Appellant disregarded a traffic signal and collided with the decedent at a high rate of speed (See R. p. 149, lines 19-20). Furthermore, the record establishes that the Appellant "was charged with disregarding traffic signal, and . . . driving without a license." (See R. p. 149, lines 24-25). Judge Harrington "consider[ed] [Appellant] had two traffic tickets . . . and [] pled guilty." (R. p. 150, lines 9-13).


There is ample evidence on the record that defendant violated statutes, and was reckless, willful and wanton. Because of the judge's discretionary power in awarding punitive damages, as well as the evidence provided and the allegations admitted in the Complaint, this award should not be overturned or reduced.

### CONCLUSION

For the forgoing reasons, Respondent respectfully requests this Court affirm the default judgment entered by the Trial Court.

Respectfully Submitted,

January 3, 2013



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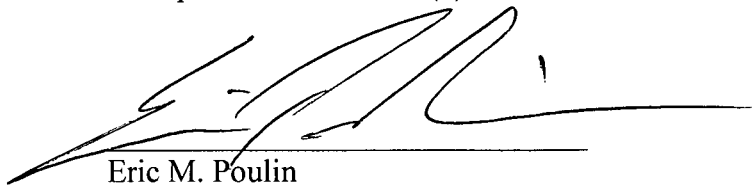
Abel Martinez Martinez and the South  
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CERTIFICATE OF COUNSEL

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

February 14, 2013



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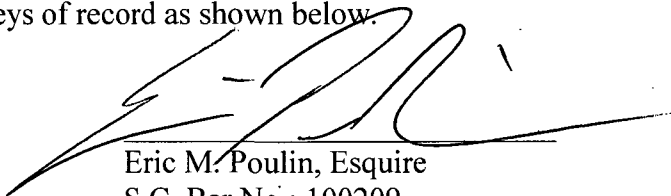
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Of whom Abel Martinez Martinez is Appellant .....Appellant.

PROOF OF SERVICE

I certify that I have served Respondent's Final Brief and Certification of Counsel on Abel Martinez-Martinez by depositing a copy of it in the United States Mail, postage prepaid, on February 19, 2013, addressed to his attorneys of record as shown below.

February 19, 2013



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