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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
COURT OF COMMON PLEAS

D. Craig Brown, Circuit Court Judge

Case No. 2011-CP-33-598

Ashley Outing Appellant

v.

Velmetria Chante Weeks. Respondent,

APPELLANT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE CIRCUIT COURT JUDGE ERRED IN AFFIRMING THE TRIAL MAGISTRATE'S DENIAL OF APPELLANT'S MOTION FOR DIRECTED VERDICT WHEN THE EVIDENCE CLEARLY MANDATED A FINDING OF NEGLIGENCE AS A MATTER OF LAW ON THE PART OF THE RESPONDENT.

STATEMENT OF THE CASE

Ashlie Outing brought this action for negligence and damages in regard to an automobile accident against the Defendant Velmetria Chante Weeks on May 4, 2006. The Defendant Weeks answered interposing a general denial and an affirmative comparative negligence defense. A trial was held on July 20, 2011 before the Honorable Mackie D. Hayes, Magistrate for Marion County Summary Court.

At the close of the evidence, Appellant moved for a directed verdict on the issue of Defendant's negligence. This Motion was denied. The jury returned a verdict for the Defendant on July 20, 2011. At that time, the Plaintiff made a motion for judgment notwithstanding the verdict or in the alternative a new trial which motion was denied.

Appellant served her notice of appeal to the Circuit Court on August 18, 2011. A hearing was held before the Honorable D. Craig Brown, Circuit Court Judge sitting as an Appellate Court from the decision of the Magistrate's Court on April 22, 2013.

STATEMENT OF THE FACTS

On January 30, 2006, a vehicle driven by Respondent, Velmetria Chante Weeks, rear ended a vehicle driven by the

Appellant Ashlie Outing. At the time of the collision, Outing's car was slowing down when it was struck in the rear by the Respondent's vehicle.

ARGUMENTS

- I. IT WAS ERROR FOR THE CIRCUIT COURT JUDGE TO AFFIRM THE MAGISTRATE'S COURT DENIAL OF APPELLANT'S MOTION FOR A DIRECTED VERDICT AND JUDGMENT NOTWITHSTANDING THE VERDICT WHERE ALL THE EVIDENCE CLEARLY MANDATED A FINDING OF NEGLIGENCE AS A MATTER OF LAW ON THE PART OF THE RESPONDENT.

When reviewing the denial of a motion for directed verdict, a Court must apply the same standard as the trial court and view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. Pond Palace Partners, Inc., v. Poole, 351 S.C. 1, 15, 567 S.E.2d 881, 888 (Ct. App. 2002). "In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or non-existence of evidence." Sims v. Giles, 343 S.C. 708, 714, 541 S.E.2d 857, 861 (Ct. App. 2001). However, the trial court can be reversed by an appellate court when no evidence supports the ruling below. Law v. S.C. Dep't of Corr., 369 S.C. 424, 434-5, 629 S.E.2d 642, 648 (2006).

The only reasonable inference that could be drawn from the evidence presented at trial was that Defendant breached her duty to the Plaintiff as a matter of law and the Circuit Court's affirmation of the Magistrate Court's denial of Plaintiff's

motion for a directed verdict constitutes reversible error. All of the evidence presented in this case pointed unquestionably to Respondent's negligence and she did not present any evidence to support the denial asserted in her pleadings. In fact, Respondent specifically admitted as stated in the Magistrate's Return that she was negligent in the present (sic) of the Court. The Magistrate's Return further stated "therefore the motion for a directed verdict on the issue of negligence was denied." These statements contained in the Return are obviously contradictory on their face as the admission of negligence by the Defendant would be the most obvious grounds for granting a directed verdict on the issue of negligence.

Viewing the evidence and reasonable inferences in the light most favorable to the Defendant on the motion for directed verdict as to Defendant's breach of duty in this case, the only reasonable conclusion that can be reached is that the Defendant did in fact breach said duty. Consequently, the Circuit Court's affirmation of the Magistrate's Court's denial of a directed verdict and judgment notwithstanding the verdict and allowing the issue to go to the jury was erroneous as a matter of law and constitutes reversible error.

All motorists have a duty to keep a reasonable lookout to avoid hazards when on the highway. Thomasko v. Poole, 349 S.C. 7, 12, 561 S.E.2d 597, 599 (2002). A person who fails to see

what a person of ordinary care and prudence would have seen is guilty of negligence. Id. Where the evidence shows conclusively that Respondent failed to exercise care commensurate with the conditions of travel, the issue of liability is a matter of law and the jury should be directed to consider only the issue of damages. See Lufkin v. Kyle, 275 S.C. 90, 267 S.E.2d 533 (1980). Based on the statement contained in Magistrate's Return that the Defendant admitted negligence in the presence of the Court, such failure indisputably took place here. At no point did Defendant offer any evidence tending to prove that she did not breach her duty to keep a reasonable lookout while on the highway and, in fact, specifically admitted such a breach.

In elevating would had been a given throughout the trial i.e., Defendant's negligence, to the level of a prerequisite to a verdict in favor of the Plaintiff, the Magistrate's Court's decision to deny Plaintiff's motion for directed verdict and resultant jury charge on the issue of negligence created the inescapable likelihood that the jury would place an inappropriate and inordinate amount of importance on proof of negligence without reaching the issues of proximate cause and damages, the evidence of which overwhelmingly and uncontrovertedly militated in favor of a verdict for Plaintiff. "A jury charge consisting of irrelevant and inapplicable principles may confuse the jury and constitutes reversible error where the jury's confusion

affects the outcome of the trial." Fettler v. Gentner, 396 S.C. 461, 722 S.E.2d 26 (SC App. 2012) quoting Berberich v. Jack, 392 S.C. 278, 285, 709 S.E.2d 607, 611 (2011) (quoting Cole v. Raut, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008)). Thus, the Circuit Court's decision to affirm the Magistrate's Court's denial of a directed verdict on the issue of negligence had the effect of violating and corrupted the whole process and was reversible error. See Lufkin. Id.

The Circuit Court's Order states:

"Upon hearing the appeal the Appellate Court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the Court may affirm or reverse the judgment of the Court below, in whole or in part, as to any or all the parties and for errors of law or fact."

Therefore, it appears that the Circuit Court decided the appeal on the basis that the Magistrate's rulings were mere technical errors and defects - a finding which is patently misplaced in that negligence is the defining threshold issue in a case such as the one at hand.

CONCLUSION

Appellant respectfully requests that this Court reverse the judgment of the Circuit Court affirming the Magistrate Court and

remand this matter for a new trial on the issue of damages.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Everett H. Garner", written over a horizontal line.

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January 10, 2014

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief contains all material proposed to be included by any of the parties and not any other material.

January 10, 2014


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