

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

Ashlie Outing Appellant

v.

Velmetria Chante Weeks. Respondent,

APPELLANT'S FINAL REPLY BRIEF

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REPLY TO ARGUMENTS

I. The Circuit Court improperly affirmed the Trial Magistrate's denial of Appellant's Motion for a Directed Verdict on the issue of negligence.

Respondent in her Initial Brief posits "facts" that are not in the record. It certainly appears that Respondent is reciting "facts" as she wants them to be not as they are.

The Respondent correctly cites the Section 18-7-170 of the Code of Laws of South Carolina (1976, as amended) as being applicable to appeals such as the one herein. Again, the failure to direct a verdict on the issue of negligence is hardly a technical error which does not affect the merits. It is most assuredly the threshold issue in a case such as the one at hand.

Respondent further states - citing Hadfield v. Gilchrist, 343 S.C. 88, 538, S.E.2d 268 (Ct. App. 2000) - that "the Court of Appeals will presume that an affirmance by a Circuit Court of a Magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the Magistrate and there are no facts that show the affirmance was influenced by an error of law. "Hadfield" further states unless the Court of Appeals finds an error of law, it will affirm the judge's holding if there are any facts supporting his decision."

The only factual record in this case is the Magistrate's Return which succinctly states that Defendant admitted that she was negligent in the present (sic) of the Court therefore the Motion for Directed Verdict on the issue of negligence was denied. Thus, there is no testimony in the record upon which a determination of sufficiency or insufficiency of the evidence can be based and no way to satisfy the criteria elucidated in Stanford v. Cudd, 93 S.C. 367, 76 S.E. 986 (1913). The contradictory nature of the statement in the return is illustrative of the absence of facts to support the Judge's decision. The Magistrate's Return shows pointedly that his denial of the directed verdict was based on improper legal reasoning thus constituting an error of law.

The Circuit Court can not abdicate its responsibility to meaningfully consider an appeal because the Magistrate's Return provides no insight into the proceedings in the inferior Court. Appellant should not and can not be punished and denied a meaningful review by the Appellate Court under these circumstances.

CONCLUSION

Appellant respectfully requests that this Court reverse the judgment of the Circuit Court and Magistrate's Court and remand.

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

Respectfully Submitted,



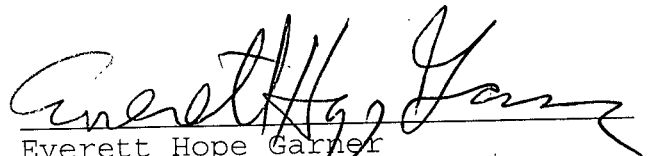
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January 10, 2014

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Reply 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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