

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTER COUNTY
Court of Common Pleas


J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2013-CP-32-00267

T. B. Patterson, Jr.,

Appellant,

vs.

Justo  Carmona Ortega,

Respondent,

FINAL BRIEF OF RESPONDENT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. **The Circuit Court Was Correct In Upholding The Decision Of The Magistrate Court.**
 - A. **The Circuit Court's Decision Regarding Loss Of Use Was Not Controlled By An Error Of Law And Is Supported By The Facts**
 - B. **The Circuit Court's Decision Regarding Loss Of Income Was Not Controlled By An Error Of Law And Is Supported By The Facts**

STATEMENT OF THE CASE

The Appellant, T.B. Patterson, Jr. (hereinafter "Patterson"), commenced this action against Respondent, Justo P. Carmona Ortega (hereinafter "Ortega") in the Chester County Magistrate Court on September 10, 2012. R. pp. 13 - 14. The Complaint sought damages for loss of use and loss of income arising out of an automobile accident. Ortega filed an Answer on October 15, 2012. R. pp. 15 - 19.

A bench trial was held before the Honorable Yale Zamore, Chester County Magistrate, on April 12, 2013, in Great Falls. After taking the matter under advisement, Judge Zamore issued an Order finding for the Patterson in the amount of \$706.39. R. pp. 6 - 12. Thereafter, Patterson filed a Notice of Appeal to the Circuit Court. R. pp. 20 - 22. Magistrate Zamore filed a Return. R. pp. 4 - 5. Ortega filed a brief in response to the appeal. R. 23 - 28. Patterson filed a brief in support of his appeal. R. pp. 29 - 34. The appeal was heard by the Honorable J. Ernest Kinard on July 17, 2013. Judge Kinard ultimately upheld the decision of the Magistrate. R. p. 3. This appeal followed.

STATEMENT OF FACTS

This matter arises out of an automobile accident on September 21, 2009 in Lancaster, SC. R. pp. 13. Liability for the accident was not disputed and the only issue for

trial was the allowable amount of uncompensated damages sustained by Patterson. R. pp. 7 – 8.

Patterson testified he was without his vehicle for twenty-three days, at least part of which was attributable to defective repairs by the auto shop Appellant selected. Those repairs had to be redone. R. pp. 8 – 9. Patterson calculated his lost use based on the daily rental rate for a comparable vehicle (Patterson’s vehicle was a Chevrolet Suburban; the rental vehicle was a Chevrolet Tahoe) for the twenty-three day period, or \$1776.27. R. p. 8. His actual out-of-pocket rental expense was \$526.39, since he only rented a replacement vehicle for a single week. R. p. 9.

Patterson testified that he spent 16 hours and 25 minutes of his time, (exclusive of time spent at trial) dealing with the consequences of the accident – i.e. dealing with repairs, picking up his vehicle, speaking with insurance adjusters, cleaning out the vehicle following the accident, preparing for trial, etc.). He calculated this “lost time” at a value of \$4,925.00 based on his standard civil attorney rate of \$300.00 per hour. R. pp. 8 – 10. However, Patterson failed to provide any evidence of lost business, lost business opportunities, or even detrimental effect on existing clients. R. pp. 9 – 11.

ARGUMENT

1. The Circuit Court Was Correct In Upholding The Decision Of The Magistrate Court.

When reviewing an appeal from the Circuit Court of an affirmance of a Magistrate Court’s Order, the Appellate Court must sustain the ruling of the Circuit Court unless it was controlled by an error of law or was unsupported by the facts. Hadfield v. Gilchrist, 343 S.C. 88, 538 S.E.2d 268 (Ct.App. 2000).

A. The Circuit Court's Decision Regarding Loss Of Use Was Not Controlled By An Error Of Law And Is Supported By The Facts

Patterson appears to argue that both the decision of the Magistrate Court and the affirmance of that decision by the Circuit Court were controlled by an error of law because he was not awarded loss of use damages for the entire time claimed. This is not the law in South Carolina, and Patterson has failed to cite a single authority that supports his claim he is somehow entitled to the entire time claimed. Rather, Patterson cites the correct rule of law, which states that a Plaintiff is entitled to recover "for the loss of the use of her automobile for a *reasonable length of time*. . ." Newman v. Brown, 228 S.C. 472, 476, 90 S.E.2d 649, 651 (1955) (emphasis added). This is the rule of law followed by the Magistrate Court and the Circuit Court.

The record shows that Patterson submitted into evidence a receipt for a rental vehicle for a period of one week at a cost of \$526.39. R. p. 8. Further, the record shows that Patterson conceded that the one week rental was his only out-of-pocket expense related to loss of use. R. p. 9. Clearly there is evidence in the record to support the Circuit Court's decision to affirm the Magistrate's award as to loss of use.

B. The Circuit Court's Decision Regarding Loss Of Income Was Not Controlled By An Error Of Law And Is Supported By The Facts

Patterson appears to argue that both the decision of the Magistrate Court and the affirmance of that decision by the Circuit Court were controlled by an error of law because he was not awarded damages for his alleged loss of income while dealing with the consequences of the accident. Not only has Patterson failed to cite any legal authority to support this proposition other than some general cites to the law of negligence, but he

also argues squarely against precedent. The South Carolina Supreme Court has previously determined that:

Where the rights, or asserted rights, of parties are in conflict, it is inevitable that each party desiring to protect his rights must give time and attention to that end. To do so is not generally an element of damage[.]

See Rimer v. State Farm Mut. Auto. Ins. Co., 248 S.C. 18, 27, 148 S.E.2d 742, 746 (1966). See also Pricket v. A&B Elec. Service, Inc., 280 S.C. 123, 125, 311 S.E.2d 402, 403 (Ct. App. 1984). Absent discernible, tangible lost earnings, this is the law of the land. Prickett at 125, 311 S.E.2d at 403. Patterson's contention that his time spent dealing with the everyday headaches following an accident are compensable in the absence of evidence of a discrete loss is without merit.

In addition, the record shows that Patterson failed to submit any tangible evidence of any lost earnings. Rather the record shows that Patterson conceded he completed all of his work, that Patterson could not specify any case or other work he failed to obtain as a proximate result of this accident and that there was no detrimental effect on any existing clients as a proximate result of this accident. R. pp. 9 – 11. Clearly there is evidence in the record to support the Circuit Court's decision to affirm the Magistrate's refusal to award damages for the alleged loss of income.

CONCLUSION

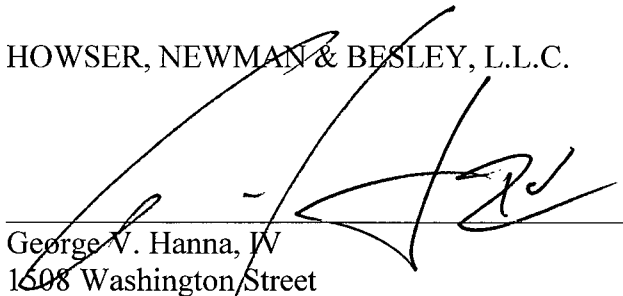
The Circuit Court properly upheld the decision of the Magistrate Court. As to the loss of use issue, the record clearly demonstrates that the Circuit Court utilized the correct rule of law as South Carolina law only requires that a plaintiff be compensated for a reasonable length of time for any alleged loss of use. Furthermore, the record shows

that the decision was supported by the facts in that Patterson admitted that his only out of pocket expenses were the one-week rental awarded by the Court.

As to the alleged loss of income issue, the record again demonstrates that the Circuit Court followed the correct rule of law in that South Carolina law does not allow for the recovery of lost income for the time spent dealing with the consequences of an accident, absent evidence of a tangible and discrete loss. In addition, the record contains ample evidence to support the decision to deny an award for this alleged element of damage because Patterson admitted that he completed all of his work, could not point to an specific lost business opportunities and conceded that there was not detrimental effect on any of his clients.

Therefore, for the foregoing reasons Respondent respectfully requests that the Court uphold the Circuit Court's affirmance of the Magistrate Court and dismiss this Appeal. In addition, the Respondent would ask the Court to affirm for any other reason appearing in the record as provided by Rule 220(c).

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May 12, 2014

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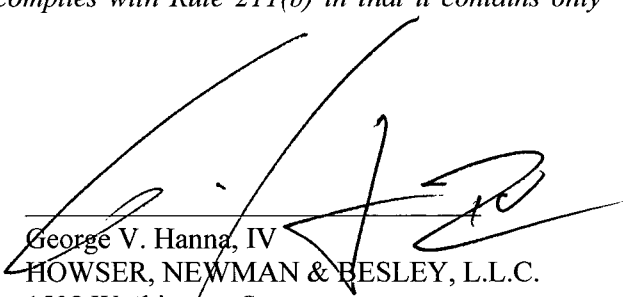
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CERTIFICATE OF COMPLIANCE WITH RULE 211(b)

I hereby certify that this Final Brief complies with Rule 211(b) in that it contains only corrections to obvious typographical errors.



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