

STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

)

FIFTH JUDICIAL CIRCUIT

Bridgette Keeley,

)

CIVIL ACTION No.: 2018-CP-40-3590

Plaintiff,

)

AMENDED ORDER AND ENTRY OF JUDGMENT

vs.

)

Keon Mitchell,

)

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Defendant.

)

APR 18 2019

SC Court of Appeals

Procedural History

The Court entered default against the Defendant on September 5, 2018. By Order of Circuit Court Judge Robert E. Hood dated September 18, 2018, this matter was referred to the undersigned to conduct a damages hearing and to hear any motions related to default.

A damages hearing was originally held on November 15, 2018 after written notice was provided to the Defendant. Following the entry of the Order and Entry of Judgment on November 16, 2018, it was discovered that Attorney Joshua Hudson had filed a notice of appearance and a Motion to Set Aside the Default prior to the hearing. Counsel for the Plaintiff was not served with the Notice of Appearance and a Motion to Set Aside the Default via U.S. Mail or electronic filing notification. Further, Counsel for the Defendant, Attorney Josh Hudson, did not receive the electronic filing notification of the Order and Entry of Judgment. Based on the parties failure to receive electronic filing notifications, counsel for Plaintiff agreed to allow the Motion to Set Aside the Default be heard and, in the event that motion was denied, to have a rehearing on damages for the Defendant to appear and defend. As such, the parties agreed to schedule a hearing on these matters for February 22, 2019.

Defendant's Motion to Set Aside Default

The standard for granting relief from an entry of default under Rule 55(c) is "good cause." Rule 55(c), SCRCP. This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App.1989). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995). A motion under Rule 55(c) is addressed to the sound discretion of the trial court. *Williams v. Stalaker*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct.App.1994).

Attorney Joshua Hudson, on behalf of the Defendant, conceded that default should not be set aside stating "I've admitted that we don't have a defense to set aside default" and agreed to proceed with a damages hearing. Based on this stipulation, I conclude that the entry of default cannot be set aside, and the motion is respectfully denied.

Further, counsel for the Plaintiff presented exhibits showing that excusable neglect cannot be demonstrated. Plaintiff issued a letter to the Defendant's auto insurance carrier, ACCC Insurance Company, on June 20, 2018 entitled "Final Tyger River Demand - Policy Limit" in an attempt to resolve all claims against the Defendant for a tender of insurance coverage limits due to the likelihood of exposure to the Defendant in excess of the policy. ACCC Insurance Company responded on June 27, 2018, declining the offer to settle for policy limits, and instead, offered \$7,000.00. Thereafter Plaintiff filed this action and served the Defendant on July 24, 2018.

Defendant sent the Summons and Complaint to ACCC Insurance Company on August 7, 2018 and also contacted the adjuster via telephone to advise of the lawsuit. ACCC Insurance Company did not provide Defendant a timely response to the Complaint, resulting in the default. *See Richardson v. P.V., Inc.*, 383 S.C. 610, 682 S.E.2d 263 (2009) (“Negligence of an insurance company is imputed to a defaulting litigant and cannot constitute good cause to relieve Appellants from the entry of default. (citing *Roberts v. Peterson*, 292 S.C. 149, 355 S.E.2d 280 (Ct.App.1987) (observing that the “courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant”). I find the negligence of ACCC Insurance Company resulted in the default of the Defendant, and neither ACCC Insurance Company or Defendant provided evidence to the contrary. Accordingly, Defendant’s Motion to Set Aside the Default is denied.

Damages Hearing

As Defendant’s Motion to Set Aside the Default was denied, the parties proceeded with a hearing to determine the amount of damages to award the Plaintiff. The Plaintiff and a neurosurgeon Dr. Jason Highsmith testified at the hearing. Plaintiff introduced four (4) exhibits into evidence, without objection. Based on the testimony of the witnesses and the materials made exhibits during the hearing, I hereby make the following findings of fact and conclusions of law:

1. Defendant was negligent, grossly negligent, and negligent *per se* in causing this collision on January 6, 2017. As a result, Plaintiff sustained bodily injuries and property damage as a result of this collision.
2. Plaintiff is a 56 years old female. She described herself as being very active and in good health for her age prior to this collision.
3. On January 6, 2017, Plaintiff was traveling East on U.S. Highway 176 / Broad River Road. While Plaintiff was traveling at a normal speed in the left lane, a vehicle driven

by Defendant sped quickly out of an intersecting road; running a stop sign and failing to yield to oncoming traffic. The Defendant collided into the driver's front side of Plaintiff's vehicle, and the severe impact from that collision caused Plaintiff's vehicle to spin twice in the roadway.

4. The impact of the vehicles was significant.
5. As a result of the collision, the Plaintiff experienced an immediate onset of pain and discomfort to her body, with the most severe pain in her neck. Plaintiff was transported by Richland County EMS to Palmetto Health Baptist Parkridge.
6. Plaintiff sought treatment for her neck and back pain with a chiropractor. Plaintiff underwent this conservative treatment which helped, but only temporarily.
7. She treated with Dr. Jason Highsmith, a neurosurgeon at Columbia Orthopedics and Neurosurgery for her neck and low back pain.
8. Plaintiff testified that her low back condition appeared to improve but her neck condition continued to get progressively worse. She was experiencing headaches and bilateral upper extremity radiculopathy.
9. Following an MRI of her cervical spine, it was revealed that Plaintiff was suffering from disc injuries noted at the C3 through C7 with impingement against the anterior thecal sac, central cord, and bilateral neural foraminal openings, with the most notable disc disruption at C4-5. Her treating neurosurgeon recommended surgery to her neck, referred to as an Anterior Cervical Discectomy and Arthroplasty at C4-5.
10. Dr. Jason Highsmith testified that he believed, to a reasonable degree of medical certainty, that Plaintiff's neck condition was solely caused by injuries from this collision. Further, Dr. Highsmith opined that Plaintiff needed to undergo an Anterior

Cervical Discectomy and Arthroplasty at C4-5 for this condition. This surgery would remove her disc at this level and replace it with an artificial disc implant.

11. I find that Plaintiff's neck condition, including her cervical disc injuries that require surgery and further medical care, were proximately caused by this collision.
12. Plaintiff has incurred \$13,778.09 in medical expenses as a result of her injuries that were directly caused by this collision. The medical expenses incurred appear to be reasonable, customary, and necessary for the injuries sustained.
13. Dr. Highsmith testified that the costs of the surgery costs are approximately \$120,000.00 – \$130,000.00, which I find to be reasonable and customary based on the extent of this type of spinal procedure.
14. It is reasonable that Plaintiff will need further follow up care and will incur additional medical expenses following the surgery. Dr. Highsmith testified that Plaintiff most probably is expected to incur an additional \$40,000.00 for pain management following the surgery.
15. Plaintiff continues to have pain, weakness, and significant discomfort in her neck, which radiates into her extremities and head. She experiences bad headaches. She testified that her neck pain is daily and severe, and that it substantially interferes with her activities of daily living and her ability to sleep and work. When Plaintiff was testifying about how these injuries have affected her life, she was visibly upset and crying. Her injuries are life-altering. She has been unable to afford this necessary surgery, and in turn, she has had to endure significant pain and suffering from this collision without much relief.
16. I find that Plaintiff has sustained permanent injury to her spine from this injury and will have continued impairment and disability.

17. In addition to what she has already received to try to fix her vehicle, Plaintiff testified that her vehicle continues to not drive correctly and she has incurred depreciation of her vehicle and loss of use. She had to have additional paint and body work performed as the repaired paint peeled off.
18. Due to work restrictions from this collision, Plaintiff lost her job and had to relocate to live in Florida with her daughter. At the time of the collision, she was working at Fort Jackson earning \$8.99 an hour and working on average 40 hours a week. I find that her lost wages from the date of the collision to present total \$39,915.60.
19. Plaintiff suffered a great deal of pain, suffering, discomfort, anxiety, loss of enjoyment of life, and loss of earning capacity as a result of this collision is a significant element of her damages, and therefore, she is entitled to be compensated for these non-economic losses.
20. Due to the nature of her injury and future treatment, Plaintiff will have future pain, suffering, discomfort, anxiety, and a loss of enjoyment of life and earning capacity, for which she is entitled to be compensated.
21. I find that Plaintiff's actual damages for her bodily injuries and property damage, to include both economic and non-economic damages, sustained total \$685,000.00.
22. Based on clear and convincing evidence, Defendant violated both common law duties to exercise due care in the operation of a motor vehicle and the South Carolina Code of Laws, S.C. Code 56-5-10 *et. seq.* referred to as the "Uniform Act Regulation Traffic on Highways." A violation of a statute constitutes negligence *per se* and is evidence of recklessness, and may be considered as evidence to award punitive damages. *Austin v. Specialty Transp. Services, Inc.*, 358 S.C. 298, 594 S.E.2d 867 (Ct. App. 2004).

23. In *Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90, 727 S.E.2d 407 (2012) the Supreme Court affirmed long standing precedent in South Carolina that an alleged violation of traffic statutes amounted to evidence of recklessness, which could form basis for a finder of fact to award punitive damages.
24. I find, by clear and convincing evidence, Defendant disregarded a stop sign or otherwise failed to yield the right of way at an intersection; *See* S.C. Code Section 56-5-2339 (“[E]very driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line but, if none,....then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.”); S.C. Code Section 56-5-2350 (“The driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right-of-way to all vehicles approaching on the roadway to be entered or crossed.”).
25. I find by clear and convincing evidence that Defendant acted with recklessness when he disregarded a stop sign or otherwise failed to yield the right of way at an intersection, and that these violations of statutory laws were the proximate cause of the accident.
26. I find based on clear and convincing evidence that the Defendant’s actions were grossly negligent, reckless, or in violation of the statutory requirements of the S.C. Uniform Act Regulation Traffic on Highways, and this collision resulted as a direct and proximate result of this reckless conduct.

27. I find that Plaintiff is entitled to punitive damages in the amount of \$100,000.00 for the damages sustained.

THEREFORE, based on these findings of fact and conclusions of law, I hereby find that the Plaintiff is entitled to judgment against the Defendant in the amount of \$785,000.00, plus taxable costs.

IT IS SO ORDERED.

By:



D. Reece Williams, III
Special Referee

Date:

March 6, 2019

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-40-3590

Bridgette Keeley

Keon Mitchell

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: D. Reece Williams, Special Referee

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Bridgette Keeley	Keon Mitchell	\$785,000.00
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

D. Reece Williams
 Special Referee

March 6, 2019
 Judge Code Date

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