

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SAMANTHA L. ANTLEY,

Plaintiff,

vs.

DART SHELTER, LLC d/b/a THE
SHELTER KITCHEN & BAR and
PRESTON YELVERTON,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-6176

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SC Court of Appeals

**ORDER DENYING
DEFENDANT DART SHELTER,
LLC's MOTION TO ALTER OR
AMEND PURSUANT TO RULE
59(e), SCRPC**

PRESIDING JUDGE:

The Honorable William H. Seals, Jr.

PLAINTIFF'S ATTORNEYS:

Daniel S. Slotchiver, Esq.
Edward L. Phipps, Esq.
Andrew J. McCumber, Esq.

DEFENDANT'S ATTORNEYS:

Benjamin B. Davis, Esq.
Mark A. Mason, Esq.
Salah H. Hibri, Esq.

FILED
2019 JUN 12 PM 3:26
JULIE A. CHRISTENSEN
CLERK OF COURT

THIS MATTER comes before this Court by way of Defendant Dart Shelter, LLC's motion to Alter / Amend Pursuant to Rule 59(e), SCRPC.

The Summons and Complaint in this action were filed on December 4, 2017. An Amended Summons and Complaint were filed on December 11, 2017. Defendant Dart Shelter, LLC was served via its registered agent on or about December 12, 2017. The Affidavit of Service was filed on January 11, 2018.

Having failed to answer or otherwise defend the Complaint, Defendant was declared in default by Order of this Court dated February 5, 2018. Thereafter, Defendant moved to set aside the default. The Court denied Defendant's motion after a hearing and extensive briefing was conducted with respect to same. (See, January 15, 2019 Order Denying Defendant's Motion to Set Aside Default).

Defendant Yelverton was dismissed from this action by stipulation on April 10, 2018. Notice of the damages hearing was sent to all parties by the Court. With the Defendant in Default and having been duly served with all pleadings as well as the notice of the damages hearing, the matter proceeded with a hearing determine Plaintiffs' damages as prayed for in the Complaint on or about March 13, 2019. At the conclusion of same, and after careful review of all evidence and testimony presented, this Court awarded a judgment for Plaintiff in the amount of \$882,035.00. Defendant subsequently filed the present motion to reconsider pursuant to Rule 59(e), SCRPC.

Having considered the entire record of this case, including the memorandum in support and opposition to, filed by the respective parties, I make the following Findings of Fact and Conclusions of Law as required by Rule 52, SCRPC. Any Finding of Fact, which is more appropriately denominated as a Conclusion of Law shall be treated as such, and vice-versa.

FINDINGS OF FACT

1. I FIND that each of the above sentences in this Order are incorporated herein by reference as if they were reproduced verbatim, and that each are deemed to be findings of fact by this Court.
2. I FIND that the parties hereto and the subject matter hereof are within the jurisdiction of this Court.
3. I FIND that the Plaintiff is a resident of South Carolina at time of the commencement of this action.
4. I FIND that Defendant is a resident of the State of South Carolina and was so residing at the commencement of this action.
5. I FIND that service of process of the Summons and Complaint was proper as to Defendant.

6. I FIND that Defendant failed to timely respond and that the Entry of Default was proper, and that denial of the Defendant's Motion to Set Aside Default was proper.

7. I FIND that this damages hearing was properly noticed and served upon Defendant and that it satisfies the requirements of Rule 55(b)(2), SCRCP and Defendant's due process rights.

8. I FIND that each of the parties were represented at that hearing, and that each party was properly given the opportunity to present evidence, testimony and arguments on behalf of their respective clients.

CONCLUSIONS OF LAW

1. A Rule 59(e) motion is not only a vehicle to request the trial court "alter or amend the judgment," but also as a vehicle to seek "reconsideration" of issues and arguments. *Elam v. S.C. Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992); *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 585 S.E.2d 272 (2003).

2. "A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial." *In re Beard*, 359 S.C. 351, 597 S.E.2d 835 (S.C. App., 2004) (citing *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995)); *Barr v. City of Rock Hill*, 330 S.C. 640, 644, 500 S.E.2d 157, 159 (Ct.App.1998)

3. "[B]y suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and have conceded liability." *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 319 (Ct. App. 2004) (quoting *Roche v. Young Bros.*, 332 S.C. 75, 81 (1998)).

4. "The purpose of actual or compensatory damages is to compensate a party for injuries suffered or losses sustained. The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he or she was in before the wrongful injury occurred." *Clark v. Cantrell*, 339 S.C. 369, 378 (2000).

5. This Court remains convinced that by a preponderance of the evidence the injuries and damages sustained by the Plaintiff were a direct and proximate result of the negligent and reckless conduct of the Defendant in Default.

6. Further, this Court remains convinced that that the evidence presented at the hearing was more than sufficient to justify the Court's award of actual damages.

7. There was extensive testimony by Plaintiff as to the pain and terror she felt during and immediately after the initial attack.

8. Plaintiff also testified as to the injurious effects of this incident on her personal, mental, emotional and physical well-being.

9. Plaintiff testified extensively as to continuing issues with facial pain caused by certain muscle movements, as well as respiration in general.

10. Plaintiff presented evidence of past medical expenditures, along with testimony regarding an estimate of future medical care, all of which this Court has determined to be reasonable, necessary and related to the treatment of Plaintiff's injuries.

11. Further, Plaintiff testified that she has continued difficulty with obstructed breathing.

12. Plaintiff's expert witness, Dr. Craig Rowen, testified that the pain Plaintiff experiences is nerve pain which cannot be repaired by surgical means and is therefore a permanent issue.

13. Dr. Rowen further testified that while Plaintiff can undergo surgery to correct the disfigurement caused by the attack, as well as the obstructed breathing, undergoing the open-rhinoplasty procedure will be an involved and painful process with significant recovery time.

14. Plaintiff presented in the Court with scarring and permanent disfigurement consistent with photographs taken just after the injuries sustained in the underlying incident.

15. Taking into account each of the above factors, along with Plaintiff's life expectancy of fifty-five (55) years, the Plaintiff has proven her entitlement to actual damages by a preponderance of the evidence.

16. I FIND that this Court's award of actual damages is proper under the circumstances, and that said award is both consistent with, and supported by, the evidence presented at the hearing.

17. The arguments presented by Defendant regarding a hearsay objection to certain evidence was not timely made, and in accordance with the jurisprudence of this State, any such arguments will not be entertained by this Court for the first time in a Rule 59(e) motion.

18. Likewise, Defendant's attempts to introduce new evidence into the record after the conclusion of the hearing regarding the Defendant's financials will not be entertained by this Court for the first time in a Rule 59(e) motion.

19. This Court is well aware of the requirement for review of punitive damages on the record as set out in *Gamble v. Stevenson* (305 S.C. 104, 406 S.E.2d 350 (1991)). However, the *Gamble* requirements apply to jury trials, and this particular proceeding was a damages hearing conducted by way of a bench trial. Accordingly, it appeared senseless to this Court to review these factors on the record.

20. The Court, in addition to considering each of the *Gamble* factors and those enumerated in S.C. Code Ann. § 15-32-520, takes notice of the following:

- i. Similar conduct had taken place at Defendant's premises for an extended period of time in the past as established by the testimony of Plaintiff's witness, Mr. B.J. Kalé, a SLED licensed security officer previously employed by the Defendant.
- ii. It appears based on the number of 911 calls to the Defendant's premises, that many of the same or similar problems have taken place there in the past and continue to take

place, even today evidencing a willful failure by Defendant to address or remedy these issues.

- iii. This Court is of the opinion that a punitive damages award will send a message to both Defendant and other similarly situated alcohol serving establishments to be more proactive and responsible, and to hopefully deter similar future events.
- iv. Finally, the award is directly related to the harm.
- v. No testimony was provided regarding the Defendant's ability to pay for the Court to consider. However, it should also be noted that the punitive damages award was approximately one times the actual damages—well within the constitutional limits imposed by our State's courts.

21. In light of the foregoing, and in reconsideration of all of the evidence presented and arguments presented by Counsel, I find there is clear and convincing evidence that supports a substantial award of punitive damages, and that such an award is proper under the circumstances.

BASED UPON THE FOREGOING,

IT IS ORDERED, ADJUDGED and DECREED that the Defendant's Motion for Reconsideration pursuant to Rule 59(e), SCRCP is **DENIED**

AND IT IS SO ORDERED!



The Hon. William H. Seals, Jr.
Presiding Judge
Court of Common Pleas for the Ninth Judicial Circuit

June 10, 2019

Charleston County, South Carolina