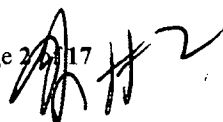


them with the instruction for comparative negligence, which indicated that any recovery would be barred if Karrie Gurwood was found to be more than 50% negligent.

After further deliberations, the jury returned a verdict and found GCA negligent and awarded Karrie Gurwood total damages of \$170,629.10. On the verdict form, the jury expressly declined to award Karrie Gurwood her damages for lost wages and benefits. The jury also expressly declined to find in favor of Howard Gurwood's claims for lost consortium and found that Karrie Gurwood was 50% at fault. After the verdict was read, counsel for GCA asked this Court to question the jury as to whether the jury had reduced their award to Karrie Gurwood by the percentage of Karrie Gurwood's fault. Without objection from Plaintiffs' counsel, this Court made the inquiry and the foreperson stated that the jury had not reduced the total damages awarded by 50%, explaining that the jury expected this Court to reduce their award by 50%. This Court advised that a 50% reduction in their award would result in a total award of \$85,314.55, which the foreperson advised was the total sum the jury intended to award Karrie Gurwood after taking into account her degree of fault. Judgment was then entered in the amount of \$85,314.55.

This Court granted Plaintiffs ten (10) days to file post-trial motions. Plaintiffs' Motion filed on May 6, 2019, seeks a new trial, contending as follows:

1. The jury's damages award was inadequate, inconsistent, reflected jury confusion and was contrary to the evidence; and
2. The following rulings amount to errors of law resulting in prejudice to the Plaintiffs:
 - a. Allowing cross-examination of Karrie Gurwood as to her medical insurance;
 - b. Limiting the testimony of Plaintiffs' expert, Dr. Zdenek Hejzlar;
 - c. Admitting the expert testimony of defense expert, Dr. Leah Hartman;
 - d. Excluding evidence on cross-examination of defense expert, Alan Campbell;



- e. Denying Plaintiffs' directed verdict motion as to assumption of the risk;
- f. Charging the jury on assumption of the risk; and
- g. Granting GCA's directed verdict motion as to punitive damages.

On May 28, 2019, GCA filed a memorandum opposing Plaintiffs' Rule 59 motion. After reviewing the Plaintiffs' motion, and GCA's response, and based upon the evidence and testimony presented at trial, this Court denies Plaintiffs' motion for the following reasons.

STANDARD OF REVIEW

Rule 59 of the South Carolina Rules of Civil Procedure authorizes the granting of a new trial "on all or part of the issues [] in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State." "The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." *Howard v. Roberson*, 376 S.C. 143, 149, 654 S.E.2d 877, 880 (Ct. App. 2007) (quoting *Chapman v. Upstate RV & Marine*, 364 S.C. 82, 88-89, 610 S.E.2d 852, 856 (Ct. App. 2005)).

Motions for a new trial on the ground of either excessiveness or inadequacy of a jury verdict are addressed to the sound discretion of the trial judge who "*alone* has the power to [alter] the verdict by the granting of a new trial *nisi*." *Nestler v. Fields*, 426 S.C. 34, 40, 824 S.E.2d 461, 464 (Ct. App. 2019), reh'g denied (Mar. 29, 2019) (quoting *Riley v. Ford Motor Co.*, 414 S.C. 185, 192, 777 S.E.2d 824, 828 (2015)). To grant a motion for *additur*, the trial judge must find and state compelling reasons as to why it is necessary to invade the province of the jury, since a jury's verdict should be upheld when possible. *Camden v. Hilton*, 360 S.C. 164, 173, 600 S.E.2d 88, 93 (Ct. App. 2004) (citing *Anderson v. Aetna Cas. & Sur. Co.*, 175 S.C. 254, 283-284, 178 S.E. 819,

830 (1934) (“A jury’s verdict should be upheld when possible to do so and to carry into effect what was clearly jury’s intentions.”).

To grant a new trial absolute, a court must determine if the jury’s verdict is “grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives.” *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (1996). Alternatively, under the thirteenth juror doctrine, a court may grant a new trial if it determines the jury’s verdict is “contrary to the fair preponderance of the evidence.” *Dent v. Redd*, 270 S.C. 585, 586, 243 S.E.2d 460 (1978).

Finally, the granting or denying a motion for a new trial absolute based on an occurrence during trial is addressed by the sound discretion of the trial judge. “The admission of evidence is within the sound discretion of the trial judge and will not be disturbed on appeal absent a clear showing of an abuse of discretion, commission of a legal error, and prejudice to the appellant’s rights.” *Bonaparte v. Floyd*, 291 S.C. 427, 443, 354 S.E.2d 40, 50 (Ct. App. 1987). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or is not supported by the evidence.” *Id.* “[O]rdinarily, conduct of trial, including admission and rejection of testimony, is largely within the trial Judge’s sound discretion, exercise of which will not be disturbed, unless abuse of such discretion, commission of legal error in its exercise, and resulting prejudice to appellant’s rights can be shown.” *Fetner v. Aetna Life Ins. Co.*, 199 S.C. 79, 18 S.E.2d 521, 523 (1942).

DISCUSSION

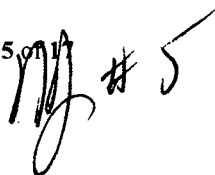
For the following reasons, this Court finds the jury’s verdict to be supported by the evidence in the case. There are no compelling reasons not to uphold the jury’s verdict and, based

upon the evidence and testimony introduced at trial, nothing suggests that the verdict was the result of passion, caprice, prejudice or any other improper motive. Finally, this Court finds that no errors of law were made during the trial of this case, and if any were made as the Plaintiffs contend, such errors were harmless and did not prejudice the Plaintiffs' case.

Over the course of a week, this case was tried before a Charleston County jury. Counsel for both parties was given ample opportunity to argue before the jury, call witnesses, present evidence, and to make and respond to motions, including numerous motions concerning the admission of evidence and expert witnesses. The parties called all witnesses they wished to call, and, with limited exception, this Court admitted the evidence that the parties wished to introduce, including damages summaries and a stipulation regarding certain damages. The attorneys were also given the ability to submit and discuss the jury charges, which were read to the jury without objection, and to draft and discuss the verdict form.

1. Motion for a New Trial *Nisi Additur* or, in the Alternative, New Trial Absolute as to the Damages Awarded by the Jury

Plaintiffs argue that the jury's damages award was inadequate, inconsistent and not supported by the evidence. Plaintiffs contend the jury, having awarded past medical expenses, was "required" to award pain and suffering. This Court disagrees. Through the first several days of trial, Plaintiffs presented evidence in support of their case. That evidence included the testimony of Bonnie Every, GCA's janitorial employee, Howard Gurwood, Karrie Gurwood, Karrie Gurwood's treating physician, Dr. Timothy Lubenow, Dr. Robert J. Blackwell, and Plaintiffs' human factors expert, Dr. Zdenek Hejzlar. The evidence of those witnesses concerned GCA's policies and procedures, the circumstances of the floor waxing that was done prior to Karrie Gurwood's fall, the facts and circumstances of Karrie Gurwood's employment and her fall on August 5, 2012, the causal connection of the slip-and-fall to Karrie Gurwood's claimed injuries,

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her pain and suffering, her loss of enjoyment of life and ability to work, and the likelihood that her injuries will not improve. There was also testimony of the pain and suffering she claims to experience as a result of her injuries. Indeed, Karrie Gurwood appeared at trial in a reclining wheelchair and was positioned next to the jury each day at trial. Plaintiffs were also able to offer testimony of all of Karrie Gurwood's past and future medical damages, the latter over GCA's objections, as well as stipulated damages for her claimed loss of wages and benefits, and Howard Gurwood's claimed lost value of home services.

Evidence was also elicited by GCA, some of which cast doubt on Karrie Gurwood's credibility. GCA's evidence focused on the subjective nature of a diagnosis of Complex Regional Pain Syndrome (CRPS) (Karrie Gurwood's claimed condition) and raised issues about the reasonableness of her actions concerning treatment of that condition, her employment history, and the effect of her injuries upon the Gurwoods' lives. There was also testimony from witnesses suggesting that Karrie Gurwood was on actual and constructive notice of the condition of the floor prior to her fall.

Because the testimony was so conflicting, counsel for both sides argued at closing that the credibility of the witnesses was a critical aspect of their respective cases and each urged the jury to give their witnesses more credibility.

In assessing Plaintiffs' motions, this Court's obligation is to determine if the jury's verdict is supported by the evidence. In this case, this Court finds the jury's verdict is supported by the evidence presented at trial. This Court also finds that there are no compelling reasons to justify invading the province of the jury with respect to its verdict, including the finding of comparative fault on the part of Karrie Gurwood, or the decisions of the jury regarding what damages to award.

Plaintiffs argue that the jury failed to award Karrie Gurwood pain and suffering damages after it awarded her actual damages in the amount of her medical costs, which were \$170,629.10, and which Plaintiffs contend is inconsistent with South Carolina law. However, Plaintiffs failed to provide any law that requires an award of pain and suffering damages where a jury awards damages for medical costs. In fact, South Carolina law does not require a jury to award non-economic damages if it awards medical damages nor is this the first case in which a jury awarded only the amount of a plaintiff's medical expenses. *See e.g., Nestler v. Fields*, 426 S.C. 34, 41, 824 S.E.2d 461, 465 (Ct. App. 2019), reh'g denied (Mar. 29, 2019) and *Todd v. Joyner*, 385 S.C. 509, 517-518, 685 S.E.2d 613, 618 (Ct. App. 2008). The fact that the jury found GCA was negligent and awarded Karrie Gurwood the cost of some of her medical expenses without awarding any other category of damages is not a valid basis for a decision to grant a new trial.

Further, Plaintiffs' post-trial motion was the first time Plaintiffs' counsel suggested that an award of medical costs must be accompanied by an award of pain and suffering damages. Plaintiffs did not propose, much less demand, that this Court charge the jury that if medical damages were awarded, pain and suffering must also be awarded. Therefore, this argument has been waived. *See generally* Rule 51, SCRPC, ("No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds for his objection"); *see also, McGee v. Bruce Hosp. Syst.*, 321 S.C. 340, 347, 468 S.E.2d 633, 637 (1996) (a party may not raise an issue for the first time in a post-trial motion).

Based upon the evidence introduced at trial, the testimony of all the witnesses, and the questions asked by the jury while in deliberation, this Court finds the jury's verdict is supported by, and not contrary to, the fair preponderance of the evidence. This Court does not find reason to

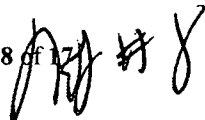
invade the province of the jury. Therefore, this Court denies Plaintiffs' motion as to the jury's damages award.

2. Motion for a New Trial Absolute as to Errors of Law Made During Trial

Upon consideration of Plaintiffs' Rule 59 motion and the response of GCA, this Court does not find, as Plaintiffs contend, errors of law prejudicial to Plaintiffs' case warranting a new trial.

Plaintiffs first contend that it was error to allow Karrie Gurwood to be cross-examined on the issue of her insurance coverage in violation of the collateral source rule. *Covington v. George*, 359 S.C. 100, 103, 597 S.E.2d 142, 144 (2004) (citing *Citizens and S. Natl. Bank of South Carolina v. Gregory*, 320 S.C. 90, 92, 463 S.E.2d 317, 318 (1995) ("that compensation received by an injured party from a source wholly independent of the wrongdoer will not reduce the damages owed by the wrongdoer"). Despite this rule, "[O]ur courts have created a clear exception to the collateral source rule when the admission of such testimony is relevant to the witness's credibility." *Stewart v. Flynn*, No. 2006-UP-240, 2006 WL 7285973, at *2 (Ct. App. May 15, 2006).

Here, counsel for GCA elicited testimony on cross-examination that at the time of trial, Karrie Gurwood had not sought the treatment recommended by her treating physician, Dr. Lubenow, in 2016. On re-direct, Plaintiffs' counsel asked Karrie Gurwood why she had not sought treatment and she testified that she could not afford it. That opened the door to questions about the truth of that statement, and this Court allowed defense counsel, on re-cross-examination, to cross-examine Karrie Gurwood regarding her medical insurance coverage to impeach her credibility. The admission falls within the *Stewart* exception referenced above since the evidence was relevant to the witness's credibility. *See also, Bonaparte v. Floyd*, 291 S.C. 427, 443, 354 S.E.2d 40, 50 (Ct. App. 1987) (The court allowed cross-examination about the plaintiff's medical insurance for purposes of impeaching the witness and finding, "Where such evidence has relevance



to the witness's credibility, it has been held admissible"). In short, Karrie Gurwood opened the door on the issue of her ability to afford the suggested treatment when it was first recommended, and it would have been unfair not to allow defense counsel an opportunity to impeach her credibility on that issue.

Plaintiffs also argue that this Court committed errors with respect to the admission of evidence concerning three of the five expert witnesses who testified. As to expert witness testimony, this Court believes it properly admitted, and in some instances limited, the testimony of expert witnesses in this case after thorough examination through proffer. As a threshold matter, the admission of all expert testimony is based on the qualifications and reliability of the expert, as well as the relevance of the testimony such that it will assist the trier of fact. Rule 702, SCRE; and see *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009). The qualification of a witness as an expert is within the trial court's discretion, and the appellate court will not reverse that decision unless there was an abuse of discretion that resulted in prejudice. *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 557, 658 S.E.2d 80, 86 (2008). In considering Plaintiffs' motion, this Court must also consider whether any prejudice would result from the alleged errors. "Prejudice is a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof." *Id.*

Plaintiffs contend this Court improperly limited the testimony of Dr. Zdenek Hejzlar, Plaintiffs' safety and human factors expert. Dr. Hejzlar testified about the Safety Hierarchy he suggested applied to GCA's floor waxing process, which admittedly created a hazardous condition. The Safety Hierarchy requires, in order of priority, that hazards be eliminated, guarded against, or, if those cannot be done, that warnings of the hazardous conditions be arranged. Dr. Hejzlar then tried to testify about various ways GCA could have eliminated the hazardous

condition. GCA objected to such testimony as being merely hypothetical, since Dr. Hejzlar's testimony in that regard was not based upon or referencing any applicable standard of care for the janitorial industry. One example of Dr. Hejzlar's proposed testimony was that GCA could have used fans to more quickly dry the waxed floor and eliminate the hazard. However, in *voir dire* outside of the presence of the jury, Dr. Hejzlar admitted that fans were not required to be used by any applicable industry standard. After hearing the proffered testimony of Dr. Hejzlar on that specific objection, outside the presence of the jury, and listening to the arguments of counsel, this Court limited the testimony of Dr. Hejzlar regarding hypotheticals about what GCA could have done to eliminate the hazard and thereby comply with the Safety Hierarchy. This Court does not find that any limitation of Dr. Hejzlar's testimony in this regard was in error. Further, even if it was in error, it was harmless error because, in the end, the jury found GCA negligent.

Plaintiffs also argue that this Court committed an error by limiting their cross-examination of defense expert Alan Campbell, P.E., about an order in a case from 26 years ago. Plaintiffs' counsel also acknowledged that the portion of the earlier order had also been subsequently removed, 11 years ago, by the judge, upon the request of Mr. Campbell. In seeking to cross-examine Mr. Campbell on that order, Plaintiffs could not point to any evidentiary rule allowing admission. This Court did not find the evidence to be probative of any issue before this Court, and any probative value would have been greatly outweighed by the prejudice to the Defendants. Moreover, the ruling did not result in any prejudice to the Plaintiffs. Mr. Campbell was a liability expert for GCA and testified that GCA complied with the applicable standards of care. Despite his testimony, the jury found GCA negligent, so any error in this regard was harmless.

Plaintiffs also contend that this Court erred by admitting the testimony of Dr. Leah Hartman, who testified as a human factors expert regarding her observations of Karrie Gurwood's

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movements in the surveillance video showing her fall. Those observations led Dr. Hartman to conclude that Karrie Gurwood was aware of the hazardous condition of the floor when she entered the hallway and fell.

First, the Plaintiffs erroneously challenge the admission of Dr. Hartman's testimony on the basis that it amounts to scientific expert testimony. In their Rule 59 motion, Plaintiffs argue, in part, that Dr. Hartman's testimony was based upon an unpublished technique with no quality control procedures; there was no margin of error for her results; and she had no baseline or control with which to compare her analysis. These challenges are grounded in the *Council* factors, which goes to the reliability of *scientific* expert testimony. *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999) (the factors for assessing scientific testimony are: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures).

As stated above, Dr. Hartman's testimony amounted to nothing more than an analysis of how Karrie Gurwood interacted with her environment as seen in the video of her fall. Like Dr. Hejzlar's testimony, Dr. Hartman's was non-scientific and, therefore, fell under a non-*Council* rubric as to reliability. *See State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 688 (2009) ("The foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the *Council* factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony.")

Because her testimony was not scientific, this Court was required to evaluate her testimony under Rule 702, SCRE, which required consideration of the following factors: 1) whether Dr. Hartman was qualified as an expert in her field; 2) whether her testimony was relevant; and 3)

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whether her testimony was sufficiently reliable to assist the trier of fact with respect to the issues it was being asked to decide.

Plaintiffs opposed the admission of Dr. Hartman's testimony, so this Court allowed extensive *voir dire* of her before admitting her testimony to the jury. During *voir dire*, both GCA and Plaintiffs' counsel asked questions of Dr. Hartman concerning her qualifications, the basis for her opinions and the methodology employed to create a graph she wished to show to the jury. Outside of the presence of the jury, Dr. Hartman explained her analysis of the video, which had been shown to the jury numerous times by Plaintiffs and GCA up to that point. In the video, Karrie Gurwood walks into the hallway, takes steps, falls, gets up and then exits the hallway. In her testimony, Dr. Hartman explained her interpretation of Karrie Gurwood's step pattern/length, her arm placement, and where she was looking as she walked into the hall, before she fell, all of which suggested cautious movement by Karrie Gurwood when she entered the hall.

Dr. Hejzlar had also testified about the length of Karrie Gurwood's steps, concluding they were small or short as she entered the hallway, and offered his interpretation of her steps. Dr. Hartman's interpretation was different than Dr. Hejzlar's. While both Dr. Hejzlar and Dr. Hartman agreed the steps she took before and after the fall were small or short, Dr. Hartman testified that the small steps were cautious movements. She then compared Karrie Gurwood's step length upon entering the hall, before the fall, and immediately after the fall, when she unquestionably knew the floor was slippery. Dr. Hartman found the step length when Karrie Gurwood first entered the hall and after the fall to be the same. Because the step lengths were the same before and after the fall, Dr. Hartman's opinion was that Karrie Gurwood appreciated the condition of the floor when she entered the hall, before falling.

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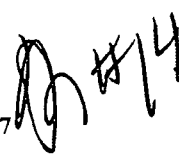
During *voir dire*, Dr. Hartman also testified that she endeavored to graphically depict the length of Karrie Gurwood's steps in the hall, which both she and Dr. Hejzlar agreed were small. To do so, Dr. Hartman marked the location of Karrie Gurwood's steps onto a graph of the hallway floor and explained how the graph was created at her office. She was cross-examined extensively during *voir dire* about the methodology of creating the graph but there was no testimony by Dr. Hejzlar or anyone else that the graphic depiction of the steps on the floor as graphed by Dr. Hartman was incorrect or in error. Further, Dr. Hartman testified that the graph was merely an illustration of Karrie Gurwood's steps that she, Dr. Hejzlar, and anyone else seeing the video could observe. She testified that her opinions were not based on the graph but instead were based upon what she observed in the video, which was the same basis of analysis used by Dr. Hejzlar. The graph merely illustrated, more clearly, what was shown on the video.

Upon completion of the *voir dire* of Dr. Hartman, this Court evaluated the admissibility of her testimony under Rule 702, SCRE. Having a Ph.D. in Human Factors Psychology, Dr. Hartman is clearly qualified to testify about the subject of human factors. The relevance of her testimony had been established by Dr. Hejzlar, who had previously interpreted the steps taken by Karrie Gurwood as reflected in the video. The final factor for this Court to consider was whether Dr. Hartman's testimony was sufficiently reliable to assist the trier of fact. Based upon her testimony in the extensive *voir dire*, and before the jury, this Court found her testimony to be sufficiently reliable and allowed her to offer her opinions to the jury.

This Court also notes that Dr. Hartman's testimony was only relevant on the issue of Karrie Gurwood's comparative fault. Whether the jury relied on Dr. Hartman or not is unknown because other substantial evidence was introduced establishing that Karrie Gurwood was on notice of the waxed condition of the floor before she fell, which would have supported the jury's verdict of

comparative fault. GCA presented witnesses who testified that Karrie Gurwood was told of the waxing that was being done over the weekend when she fell. There was also testimony that GCA placed warnings prior to waxing, and that a black mat Karrie Gurwood knew to normally be in place at the door she entered was not in place the morning she entered and fell. The jury also watched the video in question dozens of times during the trial and was free to draw their own conclusions about what they saw as Karrie Gurwood entered the area where she ultimately fell. In short, this Court cannot say that it is probable that the jury relied on the testimony of Dr. Hartman in finding Karrie Gurwood comparatively at fault; thus, the admission of Dr. Hartman's testimony cannot be said to have been prejudicial even if in error.

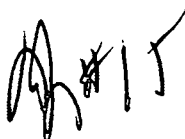
Next, Plaintiffs argue that there was no evidence to support a jury charge on assumption of the risk and that this Court should have granted Plaintiffs' directed verdict motion on that issue. This Court disagrees. To establish an assumption of the risk defense in South Carolina, the defense must show the: 1) plaintiff had knowledge of the facts constituting a dangerous condition; 2) plaintiff knew the condition was dangerous; 3) plaintiff appreciated the nature and extent of the danger; and 4) plaintiff voluntarily exposed herself to the danger. *Singleton v. Sherer*, 377 S.C. 185, 206, 659 S.E.2d 196, 207 (Ct. App. 2008). Assumption of risk also no longer serves as a complete bar to a negligence claim; rather, the defense is simply another factor to consider in comparing the parties' negligence. *Id.* "The doctrine is predicated on the factual situation of a defendant's acts alone creating the danger and causing the accident, with the plaintiff's act being that of voluntarily exposing himself to such an obvious danger with appreciation thereof which resulted in the injury." *Senn v. Sun Printing Co.*, 295 S.C. 169, 173, 367 S.E.2d 456, 458 (Ct. App. 1988).



Here, there was evidence to support an instruction for the assumption of the risk. Evidence was presented that Karrie Gurwood was made aware of the hazardous condition that led to her fall, and that GCA took steps to place warning signs at the entrance of the school, which Karrie Gurwood would have walked past to get to her office before her fall. Additionally, there was evidence that GCA verbally warned Karrie Gurwood of the hazardous condition. Finally, testimony was elicited from Karrie Gurwood that she knew of the slippery floor when she said the black floor mat, which was usually placed on the floor at the entrance, was not present because it was usually removed for waxing. As such, this Court properly charged the jury on the assumption of the risk and denied the Plaintiffs' directed verdict motion for the same.

Finally, the Plaintiffs argue that it was error not to charge the jury with the law of punitive damages. Again, this Court disagrees. The plaintiff bears the burden of proving that the defendant's conduct was willful, wanton, or reckless. *Solanki v. Wal-Mart Store No. 2806*, 410 S.C. 229, 237, 763 S.E.2d 615, 619 (Ct. App. 2014) (quoting *Bell v. Atl. Coast Line R. Co.*, 24 S.E.2d 177, 182 (1943)); and see *Martin v. Martin*, 262 S.C. 168, 174, 203 S.E.2d 385, 387 (1974) (where willful, wanton, or reckless conduct is the conscious invasion into the rights of the plaintiff). In 2011, the South Carolina legislature also codified the law relative to punitive damages. S.C. Code Ann. § 15-32-520 requires that the proof of willful, wanton or reckless conduct be proven by clear and convincing evidence and also requires that the court assess the evidence to determine whether the evidence introduced at trial is sufficient to meet that standard and, therefore, be submitted to the jury.

Here, the evidence presented at trial, even when viewed in the light most favorable to the Plaintiffs, did not support a finding, by clear and convincing evidence, that GCA's conduct was reckless, willful, or wanton, or a conscious invasion into the rights of Karrie Gurwood. The



evidence was that on the Thursday or Friday before the weekend waxing, Bonnie Every, the GCA janitor, told the principal of the school, Sarah Jamme, that the floors were to be waxed over the weekend and asked her to make an announcement about it to warn anyone who might work on the weekend. Mrs. Jamme verified this and testified that she made the announcement, which she believes Karrie Gurwood heard. Mrs. Every also testified that she told Karrie Gurwood about the waxing before the relevant weekend and testified that she placed signs up warning of wet wax before she left the school after waxing on Sunday morning, shortly before Karrie Gurwood walked into the school and fell. Mrs. Jamme also testified that when she left the school for the weekend, she saw signs up concerning the waxing. Karrie Gurwood denied hearing an announcement, denied being told of the waxing by Mrs. Every and denied seeing any signs. The liability aspect of the case was simply about conflicting testimony concerning what was said to whom, and whether and what signage was put up. There was nothing about those facts, or any others introduced at trial, that supported a finding of reckless, willful and wanton behavior of GCA, and certainly not to the clear and convincing evidence standard. There was no testimony that Mrs. Every or anyone else at GCA acted recklessly or intentionally disregarded an applicable standard, or that GCA acted in a way that illustrated and consciously disregarded the rights of Karrie Gurwood. For those reasons, this Court properly granted GCA's directed verdict motion excluding the Plaintiffs' claim for punitive damages.

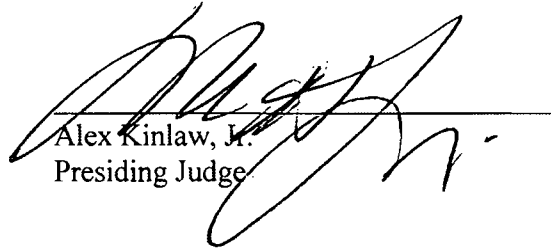
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CONCLUSION

After carefully considering the submissions of counsel and their arguments at trial, and considering the evidence introduced at trial, Plaintiffs' Motion for a New Trial *Nisi Additur*; or, in the Alternative New Trial Absolute is DENIED.

IT IS SO ORDERED!

7-25-19
June 25, 2019


Alex Kinlaw, Jr.
Presiding Judge



State of South Carolina
The Circuit Court of the Thirteenth Judicial Circuit

Alex Kinlaw, Jr.
Judge

Greenville County Courthouse
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Greenville, SC 29601
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July 25, 2019

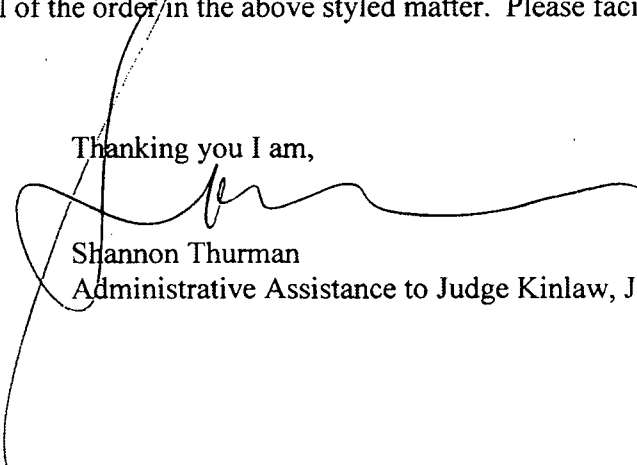
Charleston County Clerk of Court
Court of Common Pleas
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Re: Karrie Gurwood and Howard Gurwood
vs. GCA Services Group Inc. and GCA
Services Group of North Carolina, Inc

Dear Clerk:

Please find enclosed the original of the order in the above styled matter. Please facilitate a copy to counsel on both sides.

Thanking you I am,


Shannon Thurman
Administrative Assistance to Judge Kinlaw, Jr.