

I. Motion for a New Trial

The “decision to grant a new trial is left to the sound discretion of the trial court and ordinarily will not be disturbed on appeal.” McAlhaney v. McEveven, 413 S.C. 299, 303, 775 S.E.2d 411, 413 (Ct. App. 2015), reh’g denied (Aug. 20, 2015). “The motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter.” Rule 59, SCRCP.

At the conclusion of the trial, the Court required post-trial motions. Plaintiff made a Motion for Judgment Notwithstanding the Verdict on the grounds that the jury must have been confused in some way because there was no explanation for the jury having come to the verdict that they did. The Court made contemporaneous findings of fact and conclusions of law at that time. This Court denied Plaintiff’s Motion in its Order dated November 19, 2019.

The Court must deny a motion for JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. Strange v. S.C. Dep’t of Highways & Pub. Transp., 314 S.C. 427, 445 S.E.2d 439 (1994). Moreover, a motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. Gastineau v. Murphy, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). In considering a motion for JNOV, the court is concerned with the existence of evidence, not its weight. Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003). The Court made contemporaneous findings of fact and conclusions of law for the record and incorporates those findings as if stated verbatim therein. The Court further found that viewed in the light most favorable to Plaintiff, sufficient evidence existed to support the jury’s finding in favor of the Defendant. The Court also found that the verdict was well within the evidence

presented, was not unduly liberal, and was not actuated by passion, prejudice, caprice or some motive outside of the evidence of the case.

The Court stands by this decision and finds that Plaintiff has presented no argument that would justify disregarding the verdict of the jury. The jury heard testimony from Daniel E. Coy via deposition, Doretta McHugh, and two (2) eyewitnesses to the accident. As the finders of the fact, the jury is “imbued with broad discretion in determining credibility or believability of witnesses.” Small v. Pioneer Machinery, Inc., 329 S.C. 448, 465, 494 S.E.2d 835, 843 (Ct. App. 1997). Sufficient evidence existed from the witness testimony to support the jury’s finding that Defendant was not negligent, and the Court will not disturb the findings of the jury when sufficient evidence existed to support its verdict.

No other motions were made and were accordingly waived. “The motion for a new trial shall be made promptly after the jury is discharged, *or in the discretion of the court* not later than 10 days thereafter.” Rule 59 (b), SCRCP (emphasis added). The Court, in its discretion, deemed all motions not made at the close of the case waived. Alternatively, Plaintiff has offered no argument as to why the Court should grant the Motion. Plaintiff has not cited any deficiencies in the record such as misconduct, lack of evidence, newly discovered evidence that would entitle Plaintiff to relief. By its verdict, the jury in its fact-finding province found the Defendant was not culpable in comparative negligence. Their findings are amply supported by the any evidence standard. See Parker v. Evening Post Pub. Co., 317 S.C. 236, 247, 452 S.E.2d 640, 646 (Ct. App. 1994) (holding that in reviewing a motion for new trial, the standard of review is limited to whether any evidence supports the trial court’s decision); Proctor v. Dept. of Health and Environmental Control, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006) (“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.”).

Plaintiff also seeks a new trial pursuant to Rule 404, SCRE. However, Plaintiff does not present any specific arguments as to Rule 404, SCRE. All objections as to the admissibility of evidence were heard and ruled upon at trial. The Court made contemporaneous findings of fact and conclusions of law for the record as to evidentiary issues and incorporates those findings as if stated verbatim therein. Accordingly, Plaintiff’s Motion is Denied.

II. Motion to Alter or Amend

“The purpose of Rule 59(e), SCRCF, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). “A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). “A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.” Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

As explained supra all motions not made at the close of the case were deemed waived by the parties. See Rule 59 (b), SCRCF. Plaintiff’s Motion seeks only to reargue the issues on the same basis previously presented to the Court and presents no novel facts, arguments, or theories in support of the Motion to Alter or Amend the Judgment. Plaintiff has not highlighted any portions

of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, Plaintiff's Motion is heard and respectfully Denied.

For the foregoing reasons, Plaintiff's Motion for a New Trial or Motion to Alter or Amend Judgment is respectfully Denied.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

November _____, 2019
Moncks Corner, South Carolina



Berkeley Common Pleas

Case Caption: Daniel E Coy , plaintiff, et al VS John Doe

Case Number: 2017CP0802153

Type: Order/Form 4

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128