THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
The Hon. Paul M. Burch, Circuit Court Judge

Appellate Case No.: 2020-00989

Daisy Frederick,.....Respondent,

v.

Daniel Lee McDowell,.....Appellant.

INITIAL APPELLANT'S BRIEF

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II. Did the trial court err in not granting McDowell a directed verdict or judgment notwithstanding the verdict, where unchallenged evidence demonstrated that Frederick's own negligence contributed to cause the accident, and under North Carolina law, which is controlling in this case, Frederick was therefore barred from any recovery?

III. Did the trial court err in admitting evidence of the full amount of medical bills, where allowing the jury to see that full amount violated the controlling law of North Carolina?

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STATEMENT OF THE CASE

This case arose from an automobile accident that occurred in North Carolina on April 29, 2015. Both drivers in involved in the accident were South Carolina residents. The Respondent Daisy Frederick ("Frederick") filed her Summons and Complaint in the Court of Common Pleas for Marlboro County on April 1, 2016. [Summons and

Complaint.] The Appellant Daniel Lee McDowell ("McDowell") filed and served a timely Answer on May, 25, 2016. [Answer.] The parties then conducted full discovery.

The case was called to trial before the Honorable Paul M. Burch on January 29, 2018. During a pre-trial hearing, Judge Burch ruled that the substantive law of North Carolina would apply because the subject accident occurred in that state. Frederick has not challenged that ruling on appeal. [Trial Trans. pp. 35-26.]

At trial, Frederick testified on her own behalf. She also presented testimony by (1) McDowell, (2) Christine Howard, her mother, (3) Dr. Stephen Sims, one of her treating physicians, and (4) engineer Ken Richardson. During his testimony, Richardson was permitted to testify about measurements and other conclusions drawn by the North Carolina law enforcement officer who responded to the accident scene, even though that officer did not testify. McDowell's attorney made timely objections to that testimony, which were overruled. [Trial Trans. p. 139; Aff. of David Sligh.]

Following the testimony of those witnesses, counsel for McDowell moved for a directed verdict. [Trial Trans. pp. 161-162.] Counsel based the directed verdict motion on the following grounds: (1) the only reasonable inference from the evidence was that Frederick's negligence contributed to cause the accident, and therefore she was barred from any recovery under the North Carolina law of contributory negligence, (2) there was no evidence to support an award of punitive damages, and (3) there was no evidence of any permanent impairment or disability that would justify an award of future damages. [Trial Trans. pp. 161-162.] The judge granted the motion as to punitive damages, but denied it on the other two grounds. [Trial Trans. pp. 162-164.]

Because he had already testified during Frederick's case, McDowell's case consisted only of testimony by engineer Don Roberts, who was admitted as an expert without objection. Based on his examination of the accident site, Roberts testified that there was a line-of-sight of at least 700 feet from the place on the roadway where Frederick's vehicle was before the accident occurred. [Trial Trans. pp. 173-178.] Roberts further testified that a driver traveling at 40 miles per hour (the speed at which Frederick testified she was traveling before the collision) would have needed only 213 feet to stop the vehicle to avoid something in the roadway. [Trial Trans. pp. 178-183.] Frederick did not challenge or dispute either of those conclusions.

McDowell's counsel renewed the motions for a directed verdict at the close of the evidence. [Trial Trans. p. 195.] The judge again denied the motions. [Trial Trans. p. 195.]

During his closing argument, Frederick's attorney identified the following special damages: (1) $171,909.87 in medical expenses due,[1] (2) and $53,460 in lost wages. [Trial Trans. pp. 221-223.] However, Frederick's attorney did not refer to any basis or need for an award of <u>future</u> medical bills or lost wages, as there was no record evidence to support any such damages. Indeed, Frederick's attorney expressly told the jury that future lost wages were not warranted, saying, "I don't think it's necessary to give her lost wages for the rest of her life or anything like that cause [sic] she's going to find work." [Trial Trans. p. 223, lines 12-14.] The attorney did request an award for future pain, even though there was no medical evidence to support such a claim, and even the attorney could only argue that Frederick would "probably" have pain in the future. [Trial Trans. pp. 225-226.]

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[1] Under the controlling law of North Carolina, Frederick was not allowed to claim the full amount of her medical bills, only the amounts that her medical insurer had not paid.

After the closing arguments were concluded, counsel for McDowell again renewed the directed verdict motions based on contributory negligence and the absence of any evidence to support awards for future damages. [Trial Trans. p. 257.] The judge denied those motions. [Trial Trans. p. 257.] Following the jury instructions, McDowell's attorney objected to the charges regarding permanent disability, future damages, and the statutory life expectancy, but the judge overruled the objection. [Trial Trans. pp. 287-288.]

The jury deliberated for a little more than one hour before returning a verdict in Frederick's favor for $5,000,000. [Trial Trans. p. 292.] Following that verdict, the judge granted the parties 10 days to make post-trial motions. [Trial Trans. p. 294.]

McDowell filed timely post-trial motions on February 14, 2018. [Defendant's Post-Trial Motions.] McDowell sought a judgment notwithstanding the verdict for the same reasons he moved for a directed verdict at trial. [Defendant's Post-Trial Motions, pp. 1-3.] Alternatively, McDowell moved a new trial absolute and/or a new trial *nisi remittitur* based on the following grounds: (1) the absence of evidence to support the verdict, (2) the lack of any medical evidence to support a claim for permanent impairment or disability, (3) improper testimony by Frederick's expert about the subjective opinions and information contained in the police report for the accident, (4) the improper admission of an exhibit that showed the full amount of Frederick's medical bills, (5) the erroneous decision to charge the mortality table given the absence of any evidence of permanent impairment or disability, and (6) the grossly excessive or merely excessive amount of the verdict. [Defendant's Post-Trial Motions.]

The trial judge conducted a hearing on the post-trial motions on August 21, 2019. [Hearing Trans.] However, the judge did not rule on the motions until May 12, 2020, when he filed an order denying them. [Original Post-Trial Order.] Because the order contained an inaccurate statement about the law applied to the case, McDowell made a timely motion under Rule 59(e), SCRCP, asking the judge to amend the previous order and also to reconsider his rulings. [Defendant's Rule 59(e) Motion.] The judge denied the motion to reconsider, but did file an amended order that corrected the earlier misstatement. [Amended Post-Trial Order.] McDowell then filed a timely Notice of Appeal in this Court.

STATEMENT OF THE FACTS

On August 29, 2015, the Appellant Daniel Lee McDowell ("McDowell") was traveling from his home in South Carolina to his workplace in Wadesboro, North Carolina. [Trial Trans. pp. 72, 106.] McDowell was operating on his normal schedule, was not late for work, and was not in a hurry. [Trial Trans. p. 129.] It had been raining that day, and the roads were wet. [Trial Trans. pp. 129-130.] McDowell was traveling approximately 40 miles per hour. [Trial Trans. p. 130.] There is no evidence that McDowell's speed exceeded the posted speed limit for that road.

McDowell came to a portion of the two-lane road that had a slight curve to the right followed by another slight curve to the left and then a straight away. [Trial Trans. p. 130.] As he was coming out of the second curve, his truck suddenly spun around and came to rest in the opposite lane of travel. [Trial Trans. pp. 130-131.] After composing himself from the shock of the spinout, McDowell placed his truck in reverse, checked for traffic, and tried to back up into his original lane of travel. [Trial Trans. pp. 130-131.]

Before he could complete that maneuver, another vehicle collided with his truck. [Trial Trans. p. 131.]

The other vehicle was a car being driven by the Respondent Daisy Frederick ("Frederick"). At the time of the collision (around 3:00 pm), Frederick, who had been up since 5:00 am, was on her way back to her home in Cheraw, South Carolina, after working a full shift at her job in North Carolina. [Trial Trans. pp. 72-78.] According to Frederick, as she approached an area where the road curved, she saw a truck appear in her lane of travel. [Trial Trans. pp. 77-78.] Frederick testified that she did not see the truck until it was about three car lengths away from her vehicle. [Trial Trans. pp. 77-78.] However, there was uncontested evidence that the line of sight in that area of the road was at least 700 feet, and Frederick admitted that she could see a safe distance down the road and certainly farther than three car lengths. [Trial Trans. pp. 100-102, 173-178.] Yet, Frederick never applied her brakes or took any other measure to try to avoid colliding with the truck. [Trial Trans. p. 102.]

Frederick sustained physical injuries as a result of the collision. Specifically, she broke her left femur and her right ankle, and she also had numerous cuts and abrasions on her arms, back and neck. [Trial Trans. p. 85.] Surgical procedures were necessary to repair the damage to her leg and ankle, and she had an extended recovery period following those procedures that involved physical therapy. [Trial Trans. pp. 86-89.] As a result, she incurred medical expenses of $171,909.87 that were not paid by her health insurer. [Trial Trans. p. 95.] She also claimed she was also unable to work from the date of the accident until the date of trial (January 29, 2018). [Trial Trans. p. 93.] However, she stopped receiving medical treatments for her injuries in December of 2016, and her

treating surgeon did not conclude that Frederick had any permanent impairment or disability or that she would require any future medical care. [Trial Trans. p. 103; Depo. of Dr. Stephen Sims.]

STANDARDS OF REVIEW

(A) New Trial, New Trial Absolute and New Trial *Nisi Remittitur*

Under South Carolina common law, "[a] trial judge may grant a new trial upon the facts if the judge determines the verdict is contrary to the fair preponderance of the evidence." *McEntire v. Mooregard Exterminating Service, Inc.*, 353 S.C. 629, 633, 578 S.E.2d 746, 748 (Ct. App. 2003). The question of whether or not to grant a new trial upon the facts is one addressed to the sound discretion of the trial judge, and the appellate court reviews that decision on an abuse of discretion standard. *Id.* at 633, 578 S.E.2d at 748.

A trial court must grant a new trial absolute "if the verdict is so grossly excessive that it shocks the conscience of the court and clearly indicates the amount of the verdict was the result of caprice, passion, prejudice, partiality, corruption, or other improper motive." *Knoke v. S.C. Dept. of Parks, Recreation & Tourism*, 342 S.C. 136, 141, 478 S.E.2d 256, 258 (1996). When a verdict is "grossly excessive and the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury acted out of passion, caprice, prejudice, or other consideration not founded on the evidence, it becomes the duty of [the appellate court], as well as the trial court, to set aside the verdict." *Sanders v. Prince*, 304 S.C. 236, 238, 403 S.E.2d 640, 642 (1991). "The grant or denial of new trial motions rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the

evidence or the conclusions reached are controlled by error of law." *Brinkley v. S.C. Dept. of Corrections*, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009).

A trial court has the authority to grant a new trial *nisi remittitur* when it finds the amount of the verdict to be merely excessive. *RRR, Inc. v. Toggas*, 378 S.C. 174, 182, 662 S.E.2d 438, 442 (Ct. App. 2008). "Compelling reasons, however, must be given to justify invading the jury's province in this manner." *Id.* at 183, 662 S.E.2d at 442-43. Nevertheless, "[t]he circuit court has wide discretionary power to reduce the amount of a verdict which, in its judgment, is excessive." *Id.* at 183-84, 662 S.E.2d at 443. An appellate court reviews a decision to grant or deny a motion for a new trial *nisi remittitur* on an abuse of discretion standard. *Id.*

The decision to admit or exclude evidence is within the sound discretion of the trial court. *Hollins v. Wal-Mart Stores, Inc.*, 381 S.C. 245, 250-51, 672 S.E.2d 805, 807 (Ct. App. 2008). Therefore, an appellate court will not reverse the trial court's decision "absent an abuse of discretion." *Id.* at 251, 672 at 807. "An abuse of discretion occurs when the trial court's ruling is based on an error of law." *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

(B) Directed Verdict / Judgment Notwithstanding the Verdict

"In ruling on a motion for directed verdict and JNOV, a court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party." *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 476, 514 S.E.2d 126, 130 (1999). The trial court should deny the motion where either the evidence yields more than one inference or its inference is in doubt. *Jinks v. Richland County*, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003). An appellate court will reverse the trial

court's ruling on a directed verdict motion only where there is no evidence to support the ruling or where the ruling is controlled by error of law. *Hinkle v. National Cas. Ins. Co.*, 354 S.C. 92, 96, 579 S.E.2d 616, 618 (2003)." *Clark v. S.C. Dept. of Pub. Safety*, 362 S.C. 377, 382-83, 608 S.E.2d 573, 576 (2005).

ARGUMENT

I. The trial court erred in failing to grant a new trial or a new trial *nisi remittitur* because the evidence submitted at trial did not support the verdict, which was grossly excessive or merely excessive in light of the record evidence.

Frederick presented only the following special damages at trial: $171,909.87 in outstanding medical bills and $53,460 in lost wages. Thus, the total amount of specials submitted to the jury was $225,369.87. Although that is certainly not an insignificant number, it cannot justify the $5,000,000 verdict returned in this case. The other evidence of intangible damages also fails to support that award. To the contrary, when the totality of the evidence is viewed fairly, the amount of the verdict is clearly excessive. Therefore, the trial court erred in failing to grant a new trial or a new trial *nisi remittitur*, and this Court should reverse.[2]

There is no dispute that Frederick sustained serious injuries in the accident. She had a broken femur and a broken ankle, which required more than one surgery to repair, and she had an extended recovery period that required additional care and physical therapy. As a result, she incurred a little over $170,000 in medical bills, and she lost just over $50,000 in income during the time when she could not work. Those facts do appear

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[2] McDowell moved for a new trial pursuant to the "thirteenth juror doctrine," a new trial absolute based on a grossly excessive verdict, and a new trial *nisi remittitur* based on a merely excessive verdict. McDowell does not abandon, and expressly preserves, all of those grounds for relief in this appeal. However, because the supporting arguments are the same for all three grounds, McDowell will present those arguments collectively in this section. This will avoid repetition of arguments and authorities.

in the record, and McDowell does not claim otherwise. But all of those damages were in the past by the time this trial occurred. There was no evidence whatsoever that Frederick would sustain or experience any compensable damages in the future. That absence of evidence makes the verdict unsupported and excessive, and it entitles McDowell to relief on appeal.

Frederick testified that she was still experiencing some pain as of the trial date. Yet, there was no evidence even to suggest, let alone prove, that her pain would continue into the future. Frederick's treating surgeon, whose video deposition was played at trial, never expressed an opinion that she would have future problems with pain. [Depo. of Dr. Stephen Sims.] In fact, he was not even asked to give that opinion. No other medical experts testified, which means the medical evidence was completely silent on the issue of future pain. As a result, the jury had no evidentiary basis to determine whether and to what extent a person who had sustained those types of injuries would have pain in the months or years following the trial.

That lack of evidence is crucial because it opened the door for impermissible speculation by the jury. It is very likely that the jury heard Frederick say she was still having pain at the time of trial and then made the leap on its own to a conclusion that her pain would continue. But any such conclusion was necessarily based on guesswork, not evidence. This fact renders the verdict invalid. *See Carlyle v. Tuomey Hosp.*, 305 S.C. 187, 193, 407 S.E.2d 630, 633 (1991) ("Neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation.").

The same reasoning applies to the issue of future medical care and related expenses. Frederick's surgeon did not testify that she would need any accident-related

medical care in the future, and Frederick did not present any other testimony, medical or otherwise, to that effect. As a result, there was no life care plan, and Frederick submitted no evidence of future treatments or expenses to the jury. She did not testify that she had any plans or intentions to seek such care in the future. To the contrary, she testified that she had not seen a medical provider for her injuries since December 2016, which was more than a year before the trial began. [Trial Trans. p. 103.]

Similarly, there was no evidence that Frederick had any permanent impairment or disability as a result of her injuries. The treating surgeon did not even hint at the existence of any permanent condition, and he certainly did not give Frederick a disability or impairment rating. Again, this means that the jury could not have permissibly considered any impairment or disability when arriving at its verdict.

There was also no evidence that Frederick would have any future lost income. She did not present a vocational rehabilitation expert to opine that she could not work in the future, nor did her treating surgeon give that type of opinion. Frederick herself did not even claim that she would not be able to return to work in the future. In fact, during his closing argument, Frederick's attorney stated that she would be able to work, and he disavowed any claim for future lost income. [Trial Trans. p. 223.]

The total absence of evidence regarding future damages is significant for two reasons. First, it demonstrates the trial court's error in charging the jury on the mortality tables. A party objecting to a jury charge is entitled to a new trial if the substance of the charge was both erroneous and prejudicial. *See Burroughs v. Worsham*, 352 S.C. 382, 574 S.E.2d 215 (Ct. App. 2002). Here, that portion of the charge was both erroneous and prejudicial. It was erroneous because without any actual evidence of future damages,

there was no basis for the court to give that charge. It was prejudicial because it invited the jury to speculate on what damages Frederick would experience for the years remaining in her life expectancy, even though no evidence of such damages existed. Thus, the jury charge on that issue, in and of itself, entitles McDowell to a new trial.

Second, the absence of future damages evidence reveals the reversible error in the trial court's decision not to grant a new trial or a new trial *nisi remittitur*. If future damages are removed from the equation, as they must be based on the lack of evidence, all that remains are the following: (1) serious but non-permanent injuries; (2) a course of treatment that lasted roughly a year-and-a-half and then ended; (3) pain during that period; (4) a finite amount of medical bills; and (5) a finite amount of lost wages. Although those factors are not insignificant, they cannot possibly support a verdict that was more than twenty-two times the amount of the combined total specials.

Given specials of roughly $225,000, the verdict of $5,000,000 was grossly excessive. Without any evidence of a permanent impairment or disability, there is simply no way to explain such a verdict without concluding that the jury based its decision on factors other than the record evidence. Perhaps the jurors heard the charge regarding the mortality table and concluded, erroneously, that they were obligated to give Frederick an award for unspecified and speculative future damages. Perhaps the jurors sought to punish McDowell even though no claim for punitive damages was before them. Or perhaps the jurors simply allowed sympathy for a young single mother to sway their decisions. Regardless of what actually motivated the jury, it could not have been only the evidence presented at trial. No reasonable jury could have awarded such an excessive amount based on such a comparably small amount of special damages and no evidence of

any additional damages. Therefore, the trial court erred in refusing to grant a new trial absolute. *See James v. Horace Mann Ins. Co.*, 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006) ("If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial court must grant a new trial absolute.") (emphasis added); *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 635, 529 S.E.2d 758, 761 (Ct. App. 2000) ("The trial court must set aside a verdict only when it is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded.").

Even if the verdict were considered not to be grossly excessive, it was nonetheless merely excessive for purposes of a new trial *nisi remittitur*. South Carolina's courts have loosely defined "merely excessive" verdicts as those that are "unduly liberal" under the circumstances. *See Becker*, 339 S.C. at 635, 529 S.E.2d at 761. As previously discussed, McDowell asserts that the verdict amount was so excessive as to shock the conscience of the court and, thus, justify a new trial absolute. But assuming *arguendo* it did not meet than standard, it would clearly be "merely excessive" so as to warrant a new trial *nisi remittitur*. This is a lower standard that the present circumstances undoubtedly satisfy.

Becker v. Wal-Mart, *supra*, is instructive on this issue. The following facts from *Becker* were relevant to the eventual appeal:

> On October 12, 1995, Becker was shopping in a Wal-Mart store on Hilton Head Island. Becker, seventy-three at the time, was pushing a shopping cart down an aisle in the appliance section when a box containing a space heater fell from a shelf to her left and struck her left foot. Becker immediately experienced numbness as a result, and the assistant manager noticed a red mark on her foot. At the time, Becker refused medical attention and left the store after completing a company incident report. Over the next thirty-six

> hours, however, Becker's injury progressively worsened. On October 14, Becker sought help from her former family physician, who referred her to several specialists. In time it was determined that Becker had developed "reflex sympathetic dystrophy," or RSD, a painful disorder involving the peripheral and sympathetic nerves of the extremity.
>
> As a result of the RSD, Becker endured constant, intense pain in her foot over several months, eventually necessitating the surgical implantation of an epidural "portacath" to obtain relief. She also suffered from depression associated with the pain. Becker achieved some improvement, however, and finally reached a plateau at which the pain eased to a chronic, lower level. One treating physician analogized her discomfort factor as "sort of like having a chronic [foot] fracture that just won't heal, hasn't healed, and won't ever heal . . . ." Becker was ultimately assigned a four per cent impairment rating to the lower extremity, which corresponded to a two per cent impairment rating to the whole body.

339 S.C. at 633, 529 S.E.2d at 760. At trial, Becker presented the testimony of multiple experts and submitted $30,538.44 in medical bills. *Id.* After the jury returned a verdict for $1,750,000, Wal-Mart moved for a new trial absolute or a new trial *nisi remittitur*. *Id.* at 634, 529 S.E.2d at 760. The trial judge denied the motion for a new trial absolute, but granted a new trial *nisi remittitur*. *Id.*

Becker is significant because it found a verdict to be excessive despite the existence of evidence that Becker was permanently impaired and would continue to have damages in the future. A treating physician assigned Becker a 4% impairment rating to her lower extremity and testified that her foot would never fully heal. Despite that evidence of future damages, the trial court found the verdict amount to be excessive, and this Court affirmed.

As discussed above, the record in the present case contains no evidence of any impairment, disability or other future damages. Thus, if the verdict for Becker, who had

those kinds of damages, was excessive, then the current verdict must also be excessive. Consequently, *Becker* supports McDowell's position on appeal and warrants a finding that the verdict were merely excessive, even if this Court affirms the trial court's decision that it was not grossly excessive.

In summation, Frederick sustained serious injuries, but ones that were successfully treated. She presented no evidence of any permanent impairments or disabilities. She presented no evidence of any need for future medical care. She presented no medical evidence that she would continue to experience pain in the future. She presented no evidence of future lost wages and, in fact, disclaimed any such damages at trial. Rather than offering those kinds of evidence, Frederick submitted only claims about past pain and suffering and specials totaling a little over $225,000. That is a large number, but not nearly large enough, without more, to justify a $5,000,000 verdict.

If the specials are removed from consideration, the jury basically awarded Frederick $4,775,000 for intangible damages such as pain and suffering for a 20-month period (i.e. from the day of the accident to the date of trial). That amount is "shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded." *Becker*, *supra*. And even if it does not meet that standard, it is certainly "merely excessive" so as to warrant a new trial *nisi remittitur*. Therefore, the trial court erred in denying McDowell's post-trial motions, and this Court should reverse and remand with instructions to grant a new trial absolute or a new trial *nisi remittitur*.

II. The trial court erred in not granting McDowell a directed verdict or judgment notwithstanding the verdict because unchallenged evidence demonstrated that Frederick's own negligence contributed to cause the accident.

During a pre-trial conference, the trial court determined that the substantive law of North Carolina applied to the case because the subject accident occurred in that state. [Trial Trans. pp. 35-36.] This decision was correct. *See Nash v. Tindall Corp.*, 375 S.C. 36, 39, 650 S.E.2d 81, 83 (Ct. App. 2007) ("'Under traditional South Carolina choice of law principles, the substantive law governing a tort action is determined by the lex loci delicti, the law of the state in which the injury occurred.'") (quoting *Boone v. Boone*, 345 S.C. 8, 13, 546 S.E.2d 191, 193 (2001)).

North Carolina law recognizes the defense of contributory negligence. "Contributory negligence, as its name implies, is negligence on the part of the plaintiff which joins, simultaneously or successively, with the negligence of the defendant alleged in the complaint to produce the injury of which the plaintiff complains." *Jackson v. McBride*, 270 N.C. 367, 372, 154 S.E.2d 468, 471 (1967). "[A] plaintiff's contributory negligence is a bar to recovery from a defendant who commits an act of ordinary negligence." *Mohr v. Matthews*, 237 N.C. App. 448, 452, 768 S.E.2d 10, 13 (Ct. App. 2014). "The negligence of the plaintiff ... need not be the sole proximate cause of the injury; if such negligence contributes as one of the proximate causes of the injury then it is sufficient to bar any recovery." *Industries, Inc. v. Tharpe*, 47 N.C. App. 754, 761, 268 S.E.2d 824, 829 (Ct. App. 1980) (emphasis in original).

At the close of Frederick's case, and again at the close of all evidence, McDowell moved for a directed verdict on the ground that the only reasonable conclusion based on the evidence was that Frederick's own negligence contributed to cause the accident. The

trial court denied those motions and later denied McDowell's motion for judgment notwithstanding the verdict based on the same argument. Those decisions were erroneous and should be reversed.

"In an action for personal injury, the [directed verdict] motion should be granted in favor of the defendant 'if the jury could have drawn no conclusion from the evidence but that ... the contributory negligence of [the plaintiff] was a proximate cause of the [injury.]'" *Williams v. Odell*, 90 N.C. App. 699, 701, 370 S.E.2d 62, 64 (Ct. App. 1988) (quoting *Shay v. Nixon*, 45 N.C. App. 108, 109-10, 262 S.E.2d 294, 296 (1980)). Even under this standard, North Carolina's appellate courts have upheld directed verdicts based on contributory negligence on numerous occasions. *See, e.g.*, *Williams v. Davis*, 157 N.C. App. 696, 580 S.E.2d 85 (Ct. App. 2003); *Hutton v. Logan*, 152 N.C. App. 94, 566 S.E.2d 782 (Ct. App. 2002); *Culler v. Hamlett*, 148 N.C. App. 372, 559 S.E.2d 195 (Ct. App. 2002); *Kutz v. Koury Corp.*, 93 N.C. App. 300, 305, 377 S.E.2d 811, 814 (Ct. App. 1989); *Williams v. Odell*, 90 N.C. App. 699, 370 S.E.2d 62 (Ct. App. 1988); *Helvy v. Sweat*, 58 N.C. App. 197, 292 S.E.2d 733 (Ct. App. 1982); *Riddick v. Whitaker*, 13 N.C. App. 416, 185 S.E.2d 602 (Ct. App. 1972); *Sadler v. Purser*, 12 N.C. App. 206, 182 S.E.2d 850 (Ct. App. 1971); *Anderson v. Mann*, 9 N.C. App. 397, 176 S.E.2d 365 (Ct. App. 1970).[3]

Although Frederick and McDowell presented competing versions of exactly how the accident occurred, the differences between their respective accounts are not germane

[3] The same result was possible in South Carolina when this State still recognized the doctrine of contributory negligence. *See, e.g.*, *Mishoe v. DNP Amusement*, 307 S.C. 251, 414 S.E.2d 584 (Ct. App. 1991) (affirming a directed verdict for the defendant based on contributory negligence).

to the contributory negligence defense. For this issue, the key facts are not actually in dispute. To the contrary, there were plainly established through undisputed testimony.

McDowell's expert testified that even in the worst case scenario, a sight-line of at least 700 feet existed, and a driver traveling at Frederick's rate of speed could have stopped her vehicle within 213 feet after spotting a hazard in the road.[4] [Trial Trans. pp. 173-181.] Frederick's attorney did not challenge those opinions, and Frederick admitted on the stand that she could see a safe distance down the road before the accident occurred. [Trial Trans. p. 100.] Frederick further testified that she did not see McDowell's truck until it was three car lengths away, and she never attempted to apply her brakes. [Trial Trans. pp. 78, 102.]

In light of the undisputed facts regarding the line of sight and the ability to stop a vehicle well short of that distance, the only reasonable conclusion or inference from Frederick's testimony is that her own negligence contributed to cause the accident. Had she been maintaining a proper lookout, she certainly could have seen McDowell's truck in time to stop her car or take some other evasive action. Her failure to do that constitutes negligence. *See Riddick v. Whitaker*, 13 N.C. App. 416, 419, 185 S.E.2d 602, 604 (Ct. App. 1972) (directed verdict for the defendant was proper because the evidence showed the plaintiff "either saw the oncoming vehicle and ignored it or failed to see what she should have seen"); *accord Kutz v. Koury Corp.*, 93 N.C. App. 300, 305, 377 S.E.2d 811, 814 (Ct. App. 1989) (directed verdict was proper in a premises liability case because the

[4] North Carolina's appellate courts have found that undisputed physical evidence that supports a finding of contributory negligence can establish the defense as a matter of law, even if there is conflicting testimony about the event in question. *See, e.g., Helvy v. Sweat*, 58 N.C. App. 197, 292 S.E.2d 733 (Ct. App. 1982).

invitee plaintiff "had the duty to see that which could be seen in the exercise of ordinary prudence").

For purposes of this analysis, it is not necessary to debate whether or to what extent McDowell was negligent. "The term 'contributory negligence' *ex vi termini* implies or presupposes negligence on the part of the defendant." *Rodgers v. Thompson*, 256 N.C. 265, 274, 123 S.E.2d 785, 790 (1962). Thus, it does not matter why McDowell's truck was in the other lane of travel. The Court can assume that some act of negligence caused McDowell to cross the center line prior to the accident. The real issue is whether the evidence demonstrates that Frederick's negligence contributed with McDowell's conduct to cause the accident. As discussed above, the only reasonable answer to that question is yes. The evidence shows that Frederick had plenty of time and road to see McDowell's vehicle and take action to avoid a collision. Her failure to do that constitutes negligence that contributed to the accident. Consequently, her claim against McDowell is barred under North Carolina law.

Contributory negligence can be a harsh doctrine, and, of course, South Carolina law no longer recognizes it. But South Carolina law does adhere to the established rule that the substantive law of the location of the incident applies in tort cases. Under that rule, North Carolina law – including contributory negligence – applies to this case. The trial court was correct in deciding to apply North Carolina law, but incorrect in how it applied the doctrine of contributory negligence to the evidence presented at trial. Therefore, this Court should reverse and remand with instructions for the trial court to grant McDowell judgment notwithstanding the verdict.

III. The trial court erred in admitting evidence of the full amount of medical bills because allowing the jury to see that full amount violated the controlling law of North Carolina.

During a pre-trial conference, the trial court ruled that North Carolina law, including Rule 414 of the North Carolina Rules of Evidence, would apply to the trial because the subject accident occurred in North Carolina. [Trial Trans. pp. 35-36.] However, during Frederick's testimony, she offered into evidence an exhibit that violated Rule 414. McDowell's trial counsel made a timely objection, which the trial judge overruled. [Trial Trans. p. 95.] That decision was both erroneous and prejudicial to McDowell. Therefore, this Court should reverse and remand for a new trial.

Rule 414 of the North Carolina Rules of Evidence was amended in 2011, in large part to create an exception to the collateral source rule with regard to medical bills. The amended, and current, version of Rule 414 states:

> Evidence offered to prove past medical expenses shall be limited to evidence of the amounts actually paid to satisfy the bills that have been satisfied, regardless of the source of payment, and evidence of the amounts actually necessary to satisfy the bills that have been incurred but not yet satisfied. This rule does not impose upon any party an affirmative duty to seek a reduction in billed charges to which the party is not contractually entitled.

Rule 414, North Carolina Rules of Evidence (emphasis added). The effect of this rule has been summarized as follows:

> For all claims arising on or after October 1, 2011, the General Assembly created a new rule of evidence (Rule 414) which limits the amount that can be claimed for an injured person's medical bills to "the amounts actually paid to satisfy the bills" and "the amounts actually necessary to satisfy the bills that have been incurred but not satisfied." Prior to this legislative change and for all claims arising prior to October 1, 2011, an injured person could claim the total amount of the bill as part of his damages. Under this

> new provision, which is commonly referred to "billed vs. paid," the injured person cannot include any amounts written off by Medicaid, Medicare, private health insurance, or a similar plan. For example, assume Joe incurs a $7,500 hospital bill following a car accident. Joe submits the bill to his health insurance company, which pays $2,000 towards the bill, and Joe pays a $500 co-payment. The remaining $5,000 is written off by the insurance company. Under "billed vs. paid," Joe only can claim $2,500 (the insurance payment plus the co-payment) for his accident-related medical bills.

McCabe, John M. *1 Personal Injury Practice in North Carolina* 1.4 (H)(2).

The plain language of Rule 414 limits not only what medical expenses a plaintiff can claim as damages, but also what evidence of medical expenses a plaintiff can present at trial. The opening phrase ("Evidence offered to prove past medical expenses shall be limited to ...") clearly demonstrates that the rule limits what a plaintiff can introduce as evidence, not just the amount that plaintiff can seek as damages. There is no other logical way to read the rule.

This point is significant because it demonstrates the trial court's error in allowing Frederick to present the challenged evidence. The exhibit in question did contain what was purported to be the amount of medical bills that were still unpaid. But it also contained the total billed amount of Frederick's medical expenses. Although Frederick's counsel attempted to explain to the jury that she was claiming only the lower, "unpaid" amount as damages, the jury was still able to see – and, thus, consider – the total amount of medical expenses. That is precisely what Rule 414 is supposed to prevent.

Frederick has previously argued that the challenged exhibit was proper because McDowell had the ability to cross-examine her about the amounts of medical bills that were actually paid and/or still outstanding. Yet, Frederick did not cite any authority for

the proposition to the trial court, and the plain language of Rule 414 does not support it. The rule does not state that a plaintiff can present evidence of both the full, billed amount and the amount actually paid, with the defendant having a right to cross-examine the plaintiff about the difference. Rather, the rule expressly limits evidence of medical expenses to the amount actually paid. Nothing in the four corners of the rule suggests that it is anything other than a prohibition on presenting the full, billed amount of medical bills to a jury. Thus, any reliance on an argument that McDowell could have handled this issue through cross-examination is without merit.

In addition to being legally erroneous, the decision to admit the exhibit was clearly prejudicial to McDowell. The total, billed amount of Frederick's medical expenses was $268,809.14. [Trial Trans. p. 220.] That is almost $100,000 more than the reduced amount that Rule 414 allowed Frederick to present. In a case where the only numbers given to the jury were medical expenses and past lost wages, that is far more than a trivial difference. By allowing the higher number to go to the jury on an exhibit, the trial court created a very real risk of the jury basing its verdict on damages that were not properly recoverable under the controlling law. That, in turn, prejudiced McDowell's defense as to damages.

Frederick might argue that her attorney minimized that risk by stating and emphasizing the lower number in his closing argument. Although the attorney did identify the lower amount being claimed as damages, he also repeated the larger number. [Trial Trans. p. 220.] Thus, the closing argument did not provide the kind of clarity that was necessary in light of the erroneous decision to admit the exhibit. Furthermore, the judge's charge to the jury did not explain the impact of Rule 414 or the irrelevance of the

total, billed amount of medical expenses. Accordingly, the prejudicial impact of the error remained intact.

Of course, there is no way to prove that the inadmissible higher number actually impacted the jury's verdict. But in situations like this one, that cannot possibly be a requirement. It is enough to demonstrate, as McDowell has, that the erroneous decision allowed the jury to see evidence of nearly $100,000 in unrecoverable specials. Regardless of whether the jury used that higher number in its deliberations, the error was facially prejudicial. Therefore, this Court should reverse and remand for a new trial in which only the lower amount of medical bills can be presented to the jury, in accordance with Rule 414.

IV. The trial court erred in allowing Frederick's expert to use and rely upon the subjective opinions and information contained in the accident report completed by the investigating law enforcement officer.

Frederick presented testimony by engineer Ken Richardson in support of her liability position as to how the accident occurred. In developing his opinions, Richardson admitted that he relied in large part on calculations made and conclusions drawn by the investigating North Carolina law enforcement office. The trial court permitted Richardson to express those opinions despite the lack of any basis for determining the reliability of those underlying subjective opinions. That decision was prejudicial error, and this Court should reverse.

As a threshold matter, an irregularity regarding the trial transcript must be addressed. Counsel for McDowell made a timely order for a copy of the trial transcript, as well as the transcript of the hearing on the post-trial motions. The court reporter, Hattie

O. Gordon,[5] sent counsel copies of those transcripts. Although the transcripts otherwise appear to be complete, the volume containing Richardson's testimony has several large gaps. Pages 139, 141 and 142 contain the following statement: "WHEREUPON, testimony not included in this record due to an audio problem that was experienced." [Trial Trans. pp. 139, 141, 142.] As a result, significant portions of Richardson's testimony (both direct and cross-examination) do not appear in the transcript. The absence of that testimony is not due to any act or omission by McDowell or his counsel. Rather, they appear to stem from problems with the audio recording of that part of the trial.

Addressing an analogous scenario, this Court has stated that "[w]hen portions of stenographic notes are lost prior to transcription, it is appropriate for the [court] to accept affidavits of counsel and the court reporter to determine what transpired." *Adams v. H.R. Allen, Inc.*, 397 S.C. 652, 656, 726 S.E.2d 9, 12 (Ct. App. 2012). A "reconstructed record" assembled from such other sources is acceptable in those circumstances, as long as it "allow[s] for meaningful appellate review." *Id.* (citing *State v. Ladson*, 373 S.C. 320, 321, 644 S.E.2d 271, 271 (Ct. App. 2007)).

Here, for purposes of this appellate issue, it is not difficult to develop a "reconstructed record" of Richardson's testimony. An affidavit by McDowell's trial counsel demonstrates that he made a timely objection to Richardson's conclusions that were based on the investigating officer's opinions, and that the trial court overruled that objection. [Aff. of David Sligh.] Richardson's deposition in this case then reveals the nature and bases of his opinions. Although that deposition does not precisely replicate

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[5] Counsel for McDowell is informed and believes that Ms. Gordon retired from her position as a court reporter after producing the transcripts in this case.

Richardson's trial testimony, it does give this Court sufficient information to determine the issue on appeal – i.e. whether it was error to allow him to express opinions based on the investigating officer's conclusions.

In his deposition, Richardson acknowledged that he relied upon "information in the police report, which tells me an approximate location of impact, as well as motion post-impact." [Depo. of Richardson, p. 9, lines 9-11.] Richardson used that information as a basis for forming his opinions about the vehicles' respective speeds. [Depo. of Richardson, p. 9, lines 16-25.] Richardson also relied on the investigating officer's opinions about the post-collision resting positions for the two vehicles. [Depo. of Richardson, p. 14, lines 13-16.] Most significantly, Richardson used the officer's accident report as the basis for his opinion that McDowell's vehicle was "sliding along the road toward Ms. Frederick at the point of impact." [Depo. of Richardson, p. 17, lines 9-24.] That conclusion was a vital component of Richardson's overall opinion, which was that Frederick's version of the accident made more sense from an engineering standpoint than McDowell's. Although Richardson claimed he could have developed that theory in other ways, he conceded that without the officer's conclusions in the accident report, his opinion would not have "the same strength" and "certainly wouldn't have the science to back it up, as far as mathematical calculation and that sort of thing." [Depo. of Richardson, p. 18, lines 18, 24-25; p. 19, line 1.]

Despite relying heavily on the police officer's opinions and conclusions, Richardson admitted that he knew nothing about that officer. Richardson never spoke to the officer, or even attempted to contact the officer. [Depo. of Richardson, p. 12.] Richardson had no knowledge about what training, if any, the officer had in accident

reconstruction, and he did not know whether or not the officer conducted a proper investigation. [Depo. of Richardson, pp. 28-29, 40.] In short, Richardson had no information that would allow him to evaluate the reliability and credibility of the officer's opinions.

More significantly, the trial court also lacked that crucial information. This, in turn, made it impossible for the trial court to exercise its gatekeeping function with regard to Rule 702, SCRE. Because the trial court could not possibly have performed that function in this situation, it was error to admit the challenged testimony of Richardson.

"[E]xpert testimony receives additional scrutiny relative to other evidentiary decisions." *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). As part of that heightened scrutiny, "the trial court must evaluate the substance of the testimony and determine whether it is reliable." *Id.* "The trial court must examine the substance of the testimony to determine if it is reliable, regardless of whether the expert evidence is scientific, technical or other specialized knowledge." *Id.* at 449, 699 S.E.2d at 177. If the proposed testimony does not meet that reliability test, it must be excluded. *Id.* at 446-47, 699 S.E.2d at 175.

In the present case, the trial court did not properly evaluate the reliability of Richardson's testimony. As discussed above, Richardson based his opinions about how the accident occurred on the opinions and conclusions of the investigating police officer. He did so without conducting any investigation to determine whether the officer was qualified to reach those conclusions, or whether the officer performed the investigation correctly. Rather, Richardson simply accepted the officer's conclusions at face value and then used them as the bases for his own opinions.

Under those circumstances, the trial court could not possibly have determined that Richardson's testimony was reliable. The court did not know who the investigating officer was, what qualifications the officer did not did not have, or exactly how the officer reached the conclusions upon which Richardson relied. Accordingly, the record fails to reveal any basis to support the trial court's apparent conclusion that the basis for Richardson's opinions, and, thus, his testimony, met the reliability threshold of Rule 702.

The lack of any rigorous scrutiny as to the reliability of Richardson's opinions was particularly erroneous in light of the Supreme Court's recent decision in *Hamrick v. State*, 426 S.C. 638, 828 S.E.2d 596 (2019). In *Hamrick*, the Court reversed a trial court's decision to allow an investigating law enforcement officer to testify as to reconstruction of an accident.[6] The Court concluded that the officer, who testified that he had taken some courses on accident reconstruction, was not qualified to give expert testimony on that subject. Explaining its decision, the Court stated:

> Accident reconstruction is a highly technical and specialized field in which experts employ principles of engineering, physics, and other knowledge to formulate opinions as to the movements and interactions of vehicles and people, under circumstances lay people—even trained officers—simply cannot understand. A law enforcement officer who attended several classes on the subject does not possess the necessary qualifications to satisfy the "qualified as an expert" element of the Rule 702 foundation.

426 S.C. at 649, 828 S.E.2d at 602. Thus, Rule 702 prohibited the officer from providing his opinion as to the point of impact in the subject accident, and the trial court's decision to admit that testimony was prejudicial error.

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[6] Although the Court focused on the "qualification" test of Rule 702, rather than on reliability, the reasoning of *Hamrick* is still instructive for the present case.

Hamrick demonstrates the degree of scrutiny required to evaluate a police officer's qualifications in accident reconstruction and, thus, the reliability of that officer's conclusions. A party seeking to introduce such evidence must demonstrate that the officer is fully qualified in that "highly technical and specialized field." As *Hamrick* makes clear, that is neither an easy standard to satisfy, nor one the trial court should apply lightly.

As previously noted, the trial court in the present case made no effort to evaluate the officer's qualifications or the reliability of the officer's conclusions. Nor could the court have done so. There was no evidence in the record that would have allowed the trial court to make that determination. It necessarily follows that the trial court erred in essentially skipping that crucial step and admitting expert testimony that constituted an effort to repackage the officer's conclusions.

Any attempt to separate Richardson's testimony from the officer's conclusions for purposes of Rule 702 admissibility must fail. Richardson expressly and exclusively relied on the officer's findings as the bases for his own opinions about where and how the accident occurred. Without the officer's findings, Richardson could not have reached the opinions he provided. In other words, this is not a situation in which an expert took information from a source of undetermined reliability and then subjected that data to additional, independent tests to ensure it was correct before using it to form opinions. Richardson simply accepted the officer's conclusions "as is" and based his opinions on them without further tests or studies. As a result, the officer's conclusions and Richardson's opinions are inextricably linked. If those conclusions are not reliable, then

the resulting opinions are also unreliable. The trial court erred in failing to recognize that point.

Rule 703, SCRE, also provided no basis for admitting Richardson's testimony. "Under Rule 703, SCRE, an expert may rely on inadmissible evidence if the trial judge 'examines the reliability of the inadmissible evidence and excludes opinions not deserving of reliance in the specific instance and/or those that rely on grossly unreliable data.'" *Jamison v. Morris*, 385 S.C. 215, 228, 684 S.E.2d 168, 175 (2009) (emphasis added). Thus, Richardson could rely on the officer's conclusions, but only if the trial court examined those conclusions and found them to be reliable. This takes the analysis right back to the starting point. Even under Rule 703, the trial court was still required to ensure that the officer's conclusions had the requisite reliability. The lack of information about the officer's qualifications and/or methodology made that an impossible task. Assuming the trial court made a determination on reliability – implicit or otherwise – any such ruling was without any evidentiary basis. The decision was, therefore, erroneous, as it was controlled by an error of law – i.e. the failure to follow the requirements established by Rules 702 and 703, SCRE.

The trial court's decision to allow Richardson's challenged testimony was not only erroneous, but also prejudicial. Richardson used the officer's unreliable conclusions as the bases for his opinions on where and how the collision occurred. As a result, Richardson was able to put an "expert stamp" on Frederick's theory of liability. That is sufficient to establish the necessary prejudice to McDowell.

Hamrick v. State, *supra*, supports the existence of prejudice. In *Hamrick*, a key issue was whether a point of impact between a vehicle and a construction worker

occurred inside the designated construction zone or within the criminal defendant's lane of travel. 426 S.C. at 644-45, 828 S.E.2d at 599. The trial court allowed the investigating police officer to state an opinion as to the point of impact. *Id.* As discussed above, the Supreme Court concluded that decision was erroneous because the record did not support a conclusion that the officer was qualified to give an expert opinion in the field of accident reconstruction. *Id.* at 649, 828 S.E.2d at 602. The Court then proceeded to conclude that the error was prejudicial. As the Court explained:

> We quickly dispense with any suggestion the trial court's error was harmless. Officer Harris's opinion testimony was critical to the State's ability to prove an "act forbidden by law" or that Hamrick "neglect[ed] any duty imposed by law in the driving of the motor vehicle," and on that basis prove Hamrick "proximately cause[d] great bodily injury" to Garland. § 56-5-2945(A). While the State also presented evidence Hamrick was driving five miles per hour over the speed limit and failed to keep a proper lookout, the burden of proving proximate cause would have been much more difficult for the State to meet if the point of impact was in the lane of travel. Therefore, we find the error in admitting Officer Harris's opinion testimony regarding the point of impact could not have been harmless.

Id. at 650, 828 S.E.2d at 602 (emphasis added).

The same situation exists in the present case. Frederick relied on Richardson's opinion as evidence that the collision took place while McDowell's truck was still moving forward, a fact that, if true, could support Frederick's version of how the accident happened. Frederick also offered her own testimony on that point, but her ability to meet her burden of proof would have been much more difficult with Richardson's opinions to bolster her testimony. Therefore, just as the erroneous decision to admit the testimony in *Hamrick* was prejudicial, it is equally so in this case.

The trial court should not have admitted Richardson's challenged opinions. Those opinions were based on conclusions by a police officer whose qualifications and methodology were completely unknown, both to Richardson and to the trial court. This meant there was no way for the trial court even to conduct an inquiry about whether or not the conclusions were reliable, let alone conclude that they were. As a result of the court's erroneous decision to admit that testimony, Frederick was able to support her liability arguments with expert testimony that should have been excluded under Rule 702. Accordingly, the trial court's decision constituted prejudicial error, and this Court should reverse and remand for a new trial.

CONCLUSION

The trial court committed multiple legal and evidentiary errors that were prejudicial to McDowell. Those errors entitle McDowell to a new trial. Yet, even if the Court determines there were no such errors, a new trial is still warranted because the staggeringly high amount of the verdict, as compared to the relatively small amount of damages in evidence, plainly demonstrates that the verdict was motivated by passion, prejudice, sympathy or something else beyond the actual evidence. At the very least, the verdict amount was "merely excessive," such that the trial court should have granted McDowell's motion for a new trial *nisi remittitur*.

Therefore, the Court should reverse, vacate the verdict, and remand with instructions to grant judgment in McDowell's favor. Alternatively, the Court should reverse, vacate the verdict and remand for a new trial, or with a directive for the trial court to grant a new trial *nisi remittitur*.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
The Hon. Paul M. Burch, Circuit Court Judge

RECEIVED
Oct 16 2020
SC Court of Appeals

Appellate Case No.: 2020-00989

Daisy Frederick,.....Respondent,

v.

Daniel Lee McDowell,.....Appellant.

PROOF OF SERVICE

The undersigned, an attorney in this matter for the Appellant, certifies that I have this **16th day of October, 2020**, served copies of the **Initial Appellant's Brief** and **Designation of Matter to be Included in the Record on Appeal** upon counsel for the Respondent by causing them to be deposited in the United States mail with sufficient postage attached, addressed to: Eric M. Poulin, Roy T. Wiley, J. Camden Hodge; Anastopoulo Law Firm, LLC; 32 Ann St., Charleston, SC 29403.

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October 16, 2020

The Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

Re: Frederick, Daisy v. McDowell, Daniel
Appellate Case No. 2020-00989
Our File No. 01464.07429

Dear Ms. Kitchings:

Attached to this email are the following materials: (1) the Initial Appellant's Brief, (2) the Designation of Matter to be Included in the Record on Appeal, and (3) the Proof of Service. These materials are being submitted for filing via email pursuant to section (c)(6) of the Supreme Court's Order re: Operation of the Appellate Courts During the Coronavirus Emergency (as amended May 29, 2020). Thank you for your kind assistance.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

R. Hawthorne Barrett

R. Hawthorne Barrett

RHB
Attachments

cc: Eric M. Poulin
Roy T. Wiley
J. Camden Hodge