THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2017-CP-10-02758
Appellate Case No. 2019-001716

RECEIVED
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SC Court of Appeals

Jeane Whitfield,

Appellant,

v.

Dennis K. Schimpf, M.D. and Sweetgrass Plastic Surgery, LLC,

and

Patrick O'Neil, M.D. and O'Neil Plastic Surgery, LLC,

Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE TRIAL COURT ERRED IN ALLOWING DEFENDANT'S PREVIOUSLY-IDENTIFIED EXPERT WITNESSES TO OFFER TESTIMONY REGARDING THEIR PHYSICAL AND MENTAL EXAMINATIONS OF THE PLAINTIFF.

2. WHETHER THE TRIAL COURT ERRED IN NOT PERMITTING PLAINTIFF TO IMPEACH THE CREDIBILITY OF DEFENDANT'S OFFICE MANAGER AND ELICIT EVIDENCE OF BIAS BY EXAMINING HER ABOUT HER COMPENSATION AND SEXUAL RELATIONSHIP WITH DEFENDANT AND DEFENDANT'S WIFE.

3. WHETHER THE TRIAL COURT ERRED IN FAILING TO GRANT PLAINTIFF'S DIRECTED VERDICT MOTION AS TO NEGLIGENCE PER SE FOR ADMITTEDLY DESTROYED AND/OR MISSING MEDICAL RECORDS.

STATEMENT OF THE CASE

On May 30, 2017, Jeane Whitfield brought this medical malpractice action against Dennis K. Schimpf, M.D. and Sweetgrass Plastic Surgery, LLC. The Amended Complaint alleged, *inter alia*, that the Defendants were negligent in rendering medical care to Mrs. Whitfield and in failing to keep and/or destroying medical records, including photographs, results of physical examinations, surgical notes, documentation of visits, documentation of care provided, assessments, plans, and diagnostic materials in violation of S.C. Code of Regulations R. 61-16 and S.C. Code § 40-47-110. The Amended Complaint further alleged that as a direct and proximate result of the acts and omissions of Defendants, Mrs. Whitfield sustained physical injuries, and was caused to endure additional surgical procedures, medical expenses, physical pain and suffering, scarring, disfigurement, shame, humiliation, mental anguish, emotional distress, and that she will continue to suffer these damages.

On October 4, 2017, Defendants filed *Defendants' Amended Answer to Plaintiff's Amended Complaint*, generally denying the allegations made against them and raising various affirmative defenses.

A five-day jury trial was held in Charleston, South Carolina from August 26, 2019 to August 30, 2019, whereafter the jury found for the Defendant. Judgment was entered on September 11, 2019 and written notice of entry of this Judgment was mailed to Mrs. Whitfield's counsel on or about September 16, 2019. On October 8, 2019, Mrs. Whitfield served the *Notice of Appeal* on Defendants.

On October 28, 2019, the trial court held a post-trial hearing on *Defendants' Motion for Costs* and Non-Party Patrick O'Neil and O'Neil Plastic Surgery LLC's *Motion to Compel Compensation to Non-Party Witness Patrick O'Neill, M.D.*

On November 7, 2019, the trial court entered its *Order Granting Non-Party O'Neill Plastic Surgery's Motion to Compel Compensation*. On November 18, 2019, Mrs. Whitfield served the *Notice of Appeal* for this post-trial order on Non-Party Respondents Patrick O'Neil, M.D. and O'Neill Plastic Surgery, LLC.

On December 11, 2019, the trial court entered its *Order Granting Defendant's Motion for Costs*. Mrs. Whitfield served the *Notice of Appeal* for this post-trial order on Defendants Dr. Schimpf and Sweetgrass Plastic Surgery, LLC on December, 19, 2019.

This appeal follows.

STANDARD OF REVIEW

An appellate court has the power to affirm, reverse, or modify the judgment of the trial court. *See generally Detheridge v. Earle.* 3 S.C. 396, 399 (1872). In an appeal of a trial by jury of an action at law, the jurisdiction of the appellate court generally extends to correcting errors of law. *Townes Assocs. Ltd v. Greenville.* 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976). The appellate court, however, may also modify or reverse the factual finding of a trial court where no evidence reasonably supports the finding. *Id.* at 85-86, 221 S.E.2d at 775.

Although the admission or exclusion of evidence is within the sound discretion of the trial court, "the exercise of a trial court's discretion implies conscientious judgment, not arbitrary action, and takes account of the law and particular circumstances of the case, being directed by the reason and conscience of the judge to a just result." *Horn v. Davis Elec. Constructors.* 312 S.C. 363, 366, 440 S.E.2d 398, 400 (Ct. App. 1994) (citing *Nienow v. Nienow.* 268 S.C. 161, 232 S.E.2d 504 (1977); *State v. Hill.* 266 S.C. 49, 221 S.E.2d 398 (1976)). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell.* 339 S.C. 369, 389, 529 S.E.2d

528, 539 (2000) (citing *Fontaine v. Peitz.* 291 S.C. 536, 354S.E.2d565 (1987)).

Physical and Mental Examinations of Parties

Rule 35 of the South Carolina Rules of Civil Procedure governs requests for physical and mental examinations and provides in relevant part as follows:

> In any case in which the amount in controversy exceeds $100,000 actual damages, and the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown....
>
> The physician of the party to be examined may be present at the examination. Unless the parties agree, or the court for good cause shown determines otherwise, the examination shall be in the county where the person to be examined, or his physician, resides.... Upon *reasonable objection* to the physician designated to make the examination, and if the parties shall fail to agree as to who shall make the examination, the court may designate a physician; but the fact that a physician was so designated shall not be admissible upon the trial.

Fairchild v. S.C. Dep't of Transp., 727 S.E.2d 407, 416-417, 398 S.C. 90, 108 (2012), citing Rule 35(a), SCRCP.

"The purpose of the rule for an IME is to materially aid the jury, not just the defendant, in evaluating the actual damages sustained and arriving at a just verdict. […] Thus, the better rule is that the physician should not be affiliated with either party in order to serve the purposes of Rule 35." [Emphasis added]. *Fairchild v. S.C. Dep't of Transp.*, 727 S.E.2d at 417, 398 S.C. at 109-110.

Eliciting Evidence of Bias to Impeach Witness

Our courts have followed the "general rule: that "'anything having a legitimate tendency

to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony,' "so that "'on cross-examination, any fact may be elicited which tends to show interest, bias, or partiality' of the witness." *Smalls v. State*, 810 S.E.2d 836, 840, 422 S.C. 174, 182-183 (2018). "Rule 608(c) [of the South Carolina Rules of Evidence] 'preserves [this longstanding] South Carolina precedent.'" *Id.*, citing *State v. Sims* , 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002). Specifically, Rule 608(c), SCRE, states: "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced."

Considerable latitude is generally allowed in the cross-examination of an adverse witness for possible bias. *North Greenville College v. Sherman Const. Co*., Inc., 243 S.E.2d 441, 442, 270 S.C. 553, 556 (1978), citing *Martin v. Dunlap*, 266 S.C. 230, 222 S.E.2d 8 (1976). As noted by McCormick: "The law recognizes the slanting effect upon human testimony of the emotions or feelings of the witness toward the parties or the self-interest of the witness in the outcome of the case. Partiality, or any acts, relationships or motives reasonably likely to produce it, may be proved to impeach credibility." *Id*., citing McCormick on Evidence, § 40, p. 78 (1972).

Directed Verdicts

When evidence presented at trial yields only one conclusion concerning liability, the trial court may properly grant a motion for directed verdict. *Fairchild v. Dept. of Transp*., 683 S.E.2d 818, 385, 823 S.C. 344, 353 (Ct. App. 2009), aff'd,398 S.C. 90, 727 S.E.2d 407 (2012). "A motion for directed verdict goes to the entire case and may be granted only when the evidence raises no issue for the jury as to liability." *Ecclesiastes Prod. Ministries v. Outparcel Assocs*., 374 S.C. 483, 490, 649 S.E.2d 494, 497 (Ct. App. 2007)

Negligence Per Se and Punitive Damages

"The causative violation of a statute constitutes negligence per se and is evidence of recklessness and willfulness, requiring the submission of the issue of punitive damages to the jury." *Wise v. Broadway*, 433 S.E.2d 857, 315 S.C. 273 (1992)

FACTS

This is a medical malpractice action arising out of treatment of Jeanne Whitfield ("Mrs. Whitfield") by Dennis K. Schimpf, M.D. ("Dr. Schimpf") and Sweetgrass Plastic Surgery, LLC ("SPS"). (Am. Compl., R. p. 67). In 2013, Mrs. Whitfield began experiencing discomfort and pain under the right side of her breast and around her ribs. (Trial Tr., R. p. 658, lines 20-24). Thereafter, she was evaluated by her gastroenterologist, Dr. Arron Domm, who recommended that she consider removal of scar tissue by a plastic surgeon. (Trial Tr., R. p. 659, line 21 – p. 660, line 3). Mrs. Whitfield had previously undergone a breast augmentation procedure in 2009 with a physician named Dr. Kline and had been satisfied with that procedure. (Trial Tr., R. p. 658, lines 8 – 16).

While leaving Dr. Domm's office, Mrs. Whitfield encountered an old acquaintance of hers named Vickie Tolbert (hereinafter, "Ms. Tolbert" or "Office Manager"). (Trial Tr., R. p. 660, lines 9-13). Ms. Tolbert happened to work in the building as an office manager for Dr. Schimpf at SPS. (Trial Tr., R. p. 660, lines 14-22, p. 679, lines 17-23, R). Upon Ms. Tolbert's recommendation, Ms. Whitfield set up a consultation with Dr. Schimpf, who diagnosed her breast with heavy encapsulation and heavy scar tissue. (Trial Tr., R. p. 660, lines 14-22, p. 661, line 15- p. 86, line 2). Dr. Schimpf recommended a procedure known as a mastopexy, wherein he would remove the larger implants, clean out the encapsulation and scar tissue, and insert smaller breast implants to remove some weight and reduce pain. (Trial Tr., R. p. 661, lines 15-

21, p. 663, line 24 – p. 664, line 5).

On Friday, June 6, 2014, Mrs. Whitfield underwent surgery with Dr. Schimpf at SPS. (Trial Tr., R. p. 673, lines 21-23). She was advised to return to the office for a follow-up visit on June 10, 2014 to have eye sutures removed and her incisions checked. (Trial Tr., R. p. 676, lines 6-19). As set forth in greater detail below, Mrs. Whitfield began experiencing a plethora of ever-increasing complications following her surgery. Yet despite here concerns and deteriorating physical conditions, she was repeatedly told that her symptoms were part of "the natural progression of healing". (Trial Tr., R. p. 679, lines 17-19, p. 680, lines 1-4, p. 694, lines 1-3, p. 696, lines 7-9, p. 765, lines 11-16, p. 807, lines 1-8, p. 812, lines 10-14). Mrs. Whitfield's surgical wounds did not heal. (Trial Tr., R. p. 679, lines 7-23; p. 680, lines 5-7; p. 693, line 20 – p. 694, line 8; p. 695, line 18-23; p. 695, line 18 to p. 697, line 24; Pl's Photo Exhs. 1, 6-11, 14s, 15, 16, 18s, 19s, 20s, 21s, R. pp. 1681, 1702-1706, 1707, 1708, 1710, 1711, 1712, 1713). Ultimately, her right implant blew through the inadequate stitches placed upon her breast by Dr. Schimpf. (Trial Tr., R. p. 701, line 24 to p. 704, line 2). She was later forced to undergo further surgery to remove her left breast and reconstruct her chest with fat-grafting surgery. (Trial Tr., R. p. 749, line 20 to p. 751, line 23; p. 754, lines 1-21). She continues to need medical care as a result. (Trial Tr., R. p. 1045, line 14 – p. 1047, line 25; p. 1123, lines 1-18).

ARGUMENTS

I. BECAUSE A PARTY MAY NOT USE HIS OR HER OWN PREVIOUSLY-IDENTIFIED EXPERT TO PERFORM AN INDEPENDENT MEDICAL EXAMINATION OF AN OPPOSSING PARTY, THE TRIAL COURT ERRED IN ADMITTING TESTIMONY FROM DEFENDANT'S PSYCHIATRIC AND PLASTIC SURGERY EXPERTS REGARDING THEIR EXAMINATIONS OF THE PLAINTIFF.

On December 14, 2018, Defendants filed a Rule 35 Motion for Physical and Mental Examination of Plaintiff, seeking that Mrs. Whitfield "make herself available for a medical

examination by Defendant's [sic] plastic surgery expert and for a mental examination by Defendant's [sic] psychiatry expert." (Motion, R. p. 100) Prior to filing their motion, Defendants' plastic surgery expert and psychiatry expert had already been retained and identified by Defendants as expert witnesses, reviewed Mrs. Whitfield's medical records, been deposed by her counsel, written extensive notes on their findings, reached conclusions, and rendered opinions as to Mrs. Whitfield's physical and mental state. (Trial Tr., R. p. 1383, line 10 -13; p. 1394, lines 1-7; p. 1507, lines 6-9; p. 1508, line 13 – p. 1509 line 9; p. 1544, lines 3-5; p. 1553, lines 8-17). In addition, Defendants had already paid their experts thousands of dollars for their time and evaluations. (Trial Tr., R. p. 1507, lines 6-18).

In response to Defendants' Motion, Mrs. Whitfield filed a Memorandum in Opposition arguing that Defendants cannot force Plaintiff to undergo an intimate physical examination of her breasts and/or mental examinations by Defendants' already-retained experts. (Memo in Opp., R. p. 110). In support of her position, Plaintiff cited the well-settled case of *Fairchild v. S.C. Dep't of Transp.*, 727 S.E.2d 407, 398 S.C. 90 (2012), wherein the South Carolina Supreme Court found that an adversary's listed expert may **not** perform an independent medical examination on the opposing party under Rule 35, SCRCP. "The purpose of the rule for an IME is to **materially aid the jury**, not just the defendant, in evaluating the actual damages sustained and arriving at a just verdict. […] Thus, the better rule is that **the physician should not be affiliated with either party in order to serve the purposes of Rule 35**." [Emphasis added]. *Fairchild v. S.C. Dep't of Transp.,* 727 S.E.2d at 417, 398 S.C. at 109-110.

In rendering its decision in *Fairchild*, the South Carolina Supreme Court cited a series of guidelines holding that the medical evaluation under Rule 35 must be independent, and not performed by an opposing party's previously-designated expert. "**The physician must be**

selected by the court, not the defendant, and must be competent and disinterested. […] [I]t is clear that the power so vested in the Court is a discretionary power, and not an absolute right in the applicant, and that **the physician or physicians so appointed act as officers of the court, and not as agents of either party**." [Emphasis added] *Id.*, quoting *Richardson v. Johnson*, 60 Tenn.App. 129, 444 S.W.2d 708, 718 (1969). "**When the court makes such an appointment, [it] does so because [it] determines in [its] discretion that the case calls for the opinion of disinterested and unbiased physicians, not friends of either parties, whose testimony is likely to be biased**." [Emphasis added] *Fairchild v. S.C. Dep't of Transp.*, 727 S.E.2d at 418, 389 S.C. at 110, quoting *Atkinson v. United Rys. Co.*, 286 Mo. 634, 228 S.W. 483, 485 (1921).

The South Carolina Supreme Court also noted that "**a court could not compel [a] plaintiff to submit to [a physical] examination by witnesses for the other side**," and **"[t]he physicians appointment is such cases are the officers of the Court."** *Id.*, quoting *Atkinson*, 286 Mo. 632, 228 S.W., 485.

Despite the clear holding in *Fairchild*, the Circuit Court granted Defendants' Rule 35 Motion and ordered that Mrs. Whitfield submit herself to a physical examination of her breasts by Defendants' previously-retained plastic surgery expert, Jorge Perez, M.D., and a three-hour long psychiatric examination by Defendants' previously-retained psychiatric expert, James Ballenger, M.D. [1] (Order, R. p. 11). In reaching its decision, the Circuit Court rendered its own divergent interpretation of Rule 35, SCRCP, expressly rebuking the South Carolina Supreme Court for holding that physical examinations of an opposing party must be conducted by an independent physician: "The Fairchild court too is guilty of the perpetuation of this language in

[1] It is notable that Dr. Ballenger is the **same** expert that both the South Carolina Court of Appeals and Supreme Court disallowed from performing a psychiatric medical evaluation of an opposing party in *Fairchild*.

the context of Rule 35." (Order, R. p. 16). Thereafter, Plaintiff filed a Rule 59(e) Motion to Alter or Amend the Order, which the Circuit Court denied. (Motion, R. p. 115; Order, R. p. 19).

On June 21, 2019, prior to any physical examination of Mrs. Whitfield by Defendants' experts, Plaintiff's counsel wrote Defendants' counsel, Todd Smyth, to put him on notice that Plaintiff would move to exclude any expert testimony offered by Defendants' experts at trial:

> Todd, understanding that you are insisting on moving forward with the IMEs and utilizing your designated experts for same, please know that we will move to exclude the testimony of both of your experts based on improper qualifications for the medical examinations. Although the court has authorized you to use them for the IMEs, it does not mean that their testimony will be admissible. We believe it will be the decision of [the Judge] as to whether or not to exclude them. I say this to you now because I want there to be no surprise when we raise it before trial. You have an opportunity now to retain experts who have not previously given opinions in this case. Although we will certainly comply with the courts order to allow the IMEs to go forward, I want it to be expressly clear that nothing in our communications should be viewed as acquiescence or a waiver of our right to object to the introduction of their findings and, based on their improper examination, their testimony in total. (Trial Tr., R. p. 618, line 14 - p. 627, line 4).

Despite being put on notice about the prospective evidentiary challenge, Defendants insisted on using their own, previously-retained experts to conduct the medical examinations. Accordingly, pursuant to the Circuit Court's order, Mrs. Whitfield submitted herself to physical examination of her breasts by Defendants' plastic surgery expert, Jorge Perez, M.D. and a psychiatric

examination by Defendants' psychiatric expert, James Ballenger, M.D.[2]

As anticipated, on July 17, 2019, Mrs. Whitfield filed a Motion in Limine Regarding Defense Examinations of Plaintiff, wherein she moved to prevent Defendants from introducing any evidence to the jury regarding medical examinations performed on her by Defendants' experts on the grounds that the examinations were a direct violation of the standard set forth by the South Carolina Supreme Court in *Fairchild*. (Motion, R. p. 169). Mrs. Whitfield argued, *inter alia*, that Defendants' previously-retained experts could not aid the jury by providing the type of impartiality and independence required of a medical examiner appointed under Rule 35, SCRCP; that Plaintiff had reasonably objected to physical examination by Defendants' experts on the grounds that they had been previously-retained by Defendants, reviewed records, and are not disinterested and/or unbiased physician; and that expert witness testimony should not be allowed because *Fairchild* expressly forbids a court from compelling a Plaintiff to submit to physical examination by a witnesses from the other side. (Memo in Opp., R. p. 110; Hr'g Tr., p.404, line 4 – p. 408, line 20). Plaintiff further noted that Defendants' psychiatric expert, James Ballenger, M.D., had been the very expert disallowed by both the South Carolina Court of Appeals and the Supreme Court in *Fairchild* from medically examining an opposing party under Rule 35, SCRCP. (Memo in Opp., R. p. 110; Hr'g Tr., R. p.404, line 4 – p. 408, line 20). See *Fairchild v. Dept. of Transp*., 683 S.E.2d 818, 826, 385 S.C. 344 (Ct. App. 2009), affirming the

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[2] It is worth noting that Defendants' plastic surgery expert was not licensed to practice medicine in the State of South Carolina, yet conducted the court-ordered medical examination of Plaintiff's breasts within the state. (Trial Tr., R. p. 1528, lines 4-8, line 25 – p. 1529, line 3). Defendants' psychiatric expert—who lacked even a semblance of baseline trust with Plaintiff—insisted that as part of his examination Plaintiff rehash and delve into painful memories of a decades old sexual assault. (Trial Tr., R. p. 776, lines 12-25; p. 1124, line 4 – p. 1126, line 2). Defendants' psychiatric expert proceeded with this line of questioning despite the fact that Plaintiff had handed him a hand-written letter at the onset of his questioning, begging that he not perform such an examination. (Trial Tr., R. p. 1384, lines 15 - 25; p. 1387, lines 8 - 18).

trial court's finding that, "independent means independent and that means no witness has previously been identified by the Plaintiff or the Defendant gives the independent medical exam."

On the first day of trial, Mrs. Whitfield's Motion in Limine was heard by the Honorable Bentley D. Price and summarily denied. (Trial Tr., R. p. 618, line 14 to p. 627, line 4). The trial court did not make any findings or offer any legal rationale to support its ruling. (R. at Id.) Because the trial court's ruling runs in <u>direct</u> contravention to the holdings in *Fairchild*, cited *supra*, it committed an error of law in allowing Defendants' experts to testify to the jury about their physical and mental examinations of Mrs. Whitfield. Contrary to the requirements set forth in *Fairchild*, Dr. Perez and Dr. Ballenger were not "disinterested and unbiased physicians." They could not "serve the purposes of Rule 35" by "materially aiding the jury". The opposite was true. Dr. Perez and Dr. Ballenger were clearly "affiliated with" and "friends of" Defendants; the types of witnesses—under *Fairchild*—"whose testimony is likely to be biased." *Fairchild v. S.C. Dep't of Transp.*, 727 S.E.2d 407, 417-418, 398 S.C. 90, 109-110 (2012).

"The exercise of a trial court's discretion implies conscientious judgment, not arbitrary action, and takes account of the law and particular circumstances of the case, being directed by the reason and conscience of the judge to a just result." *Horn v. Davis Elec. Constructors.* 312 S.C. 363, 366, 440 S.E.2d 398, 400 (Ct. App. 1994) (citing *Nienow v. Nienow.* 268 S.C. 161, 232 S.E.2d 504 (1977); *State v. Hill.* 266 S.C. 49, 221 S.E.2d 398 (1976)). In the present case, the trial court failed to take into account the law or the particular circumstances of the case. By allowing Defendants' experts to testify to a jury about their physical and mental examinations of Mrs. Whitfield, the trial court afforded them the same privileges reserved for independent, disinterested, and unbiased physicians contemplated under both Rule 35, SCRCP and the holding

in *Fairchild*. A court cannot compel a plaintiff to submit to a physical examination by a witnesses for the other side. *Fairchild v. S.C. Dep't of Transp.*, 727 S.E.2d at 418, 389 S.C. at 110. As a result, Mrs. Whitfield was extremely prejudiced by the testimony.

Further, because the trial court arbitrarily denied Mrs. Whitfield's Motion in Limine and did not make any finding or offer any legal rational to support its ruling, it abused its discretion. "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell.* 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (citing *Fontaine v. Peitz.* 291 S.C. 536, 354S.E.2d565 (1987)). Here, the trial court failed to address or apprehend any aspect of the law or ground its ruling on any discernable facts. Accordingly, this Court should reverse the trial court's ruling and remand this case for a new trial on the merits.

II. THE TRIAL COURT ERRED IN NOT PERMITTING PLAINTIFF TO IMPEACH THE CREDIBILITY OF DEFENDANT'S OFFICE MANAGER AND ELICIT EVIDENCE OF BIAS BY CROSS-EXAMINING HER ABOUT HER COMPENSATION AND ONGOING SEXUAL RELATIONSHIP WITH DEFENDANT AND DEFENDANT'S WIFE.

At trial, Defendant's Office Manager testified as to Defendants' record-keeping practices. (Trial Tr., R. p. 867, line 7 – 879, line 16; p. 884, line 21 – p. 893, line 25; p. 900, line 17 – p. 919, line 9; p. 921, line 4 – p. 933, line 20) She admitted that Mrs. Whitfield's medical records were incomplete, that there were no preoperative or postoperative records in Mrs. Whitfield's file, that photographs were missing, and that Defendants' had failed to maintain organized medical records for her. (Trial Tr., R. p. 867, line 23 – p. 868, line 9; p. 903, lines 4-7; p. 903, lines 13-17). Despite the foregoing admissions, the Office Manager gave starkly different testimony than Plaintiff as to what transpired when Mrs. Whitfield requested a copy of her medical file and as to Dr. Schimpf's treatment and behavior towards the Mrs. Whitfield once

complications arose.

Post-Operative Treatment of Plaintiff

Mrs. Whitfield testified that she had begun experiencing complications the day following her surgery and immediately contacted Dr. Schimpf's office:

> Q. To the best of your abilities, walk us through what happened next. What was the next day you would have seen Dr. Schimpf or had any interaction with him or his practice?
>
> A. Well, the next morning I called them. It was on the 11th, because the suture right here (motioning) on my eyelid came open. And when I looked down -- because when I was in there, he removed a piece -- one of the pieces of tape up top and I could see the nipple and the areola. And I noticed the skin wasn't seamed. It wasn't touching and there were no stitches and it looked gooey. And so I immediately called. And I spoke with Vicky; and she said, don't worry, natural progression of healing, we can tweak it later.
>
> Q. Vicky is Vicky Tolbert?
>
> A. I'm sorry. Yes.
>
> Q. The office ---
>
> A. The office manager, yes. (Trial Tr., R. p. 679, lines 7-23)

Plaintiff's condition did not improve:

> Q. What's the next thing that happened?
> A. That was on the 11th. And I'm doing exactly what they tell me to do. And I -- on the 16th, over the weekend, I noticed it was starting to smell funny and it wasn't healing. As a matter of fact, it was pulling away more. It was -- the seam was opening more.
>
> And I called them on the 16th and I left a message. I said I really think I need to come in because this isn't looking the way it's supposed to.
>
> I've already had a breast surgery. I already knew to keep an eye on things. And this was not -- it was going the other way. It was just not seaming. I did not get a call

> back on the 16th.
>
> I waited the 17th. Still heard nothing. So on the 18th I called and I -- and I got a hold of the office manager again.
>
> Q. Vicky?
>
> A. Vicky Tolbert. And I'm like, something's happening, my chest is hurting now, it smells really bad. And when she asked me to explain it, it smells like the meat pad underneath the hamburger that's been in your refrigerator. That's what it smelt like. It was -- and I'm like, something's going on here.
>
> The skin was angry red. It was starting to turn, and the Tape was black. Actually, I shouldn't say angry. It was redder. She gave me two cell phone numbers to send -- to text pictures to, and I did. And that went on a couple of times, I believe, that day. Well, the very next day ---
>
> (Trial Tr., R. p. 680, line 5 to p. 681, line 7)

Plaintiff texted the photographs as instructed, but did not receive a call back until the following day. Again, she was refused an appointment and her condition continued to deteriorate:

> Then I had -- then on -- let's see, that was on the 18th when I texted two pictures to two different cell phone numbers. He was in surgery. And she -- they got back to me on the 19th and said there's -- that my chest hurt, it smelt bad. And, oh, my God, my chest was hurting. It felt like it was ripping open.
>
> I begged to please come in. And I was told it was a natural progression of healing, there was nothing that was done by their -- by Sweetgrass that was causing my discomfort. And so on the 20th when my chest was -- it was hot. It was like the chest area was hot and it was almost like something was stabbing me.
>
> I went to Roper St. Francis Hospital and they kept me in the cardiac-care wing for three days […]
>
> (Trial Tr., R. p. 693, line 20 to p. 694, line 8)

After being released from the cardiac care unit, Mrs. Whitfield contacted Defendants' office, wherein Dr. Schimpf finally agreed to see her.

> Okay. The next morning I called Sweetgrass O'Neill Plastic Surgery and I spoke to Dawn. And they had me come in because I was crying. I told them my chest hurt and it was feeling like it was splitting open, I really needed to be seen. And they said, come on in.
>
> And so I came in, and Dr. Schimpf came in.
>
> (Trial Tr. p., R. 695, lines 18-23)

At trial, Mrs. Whitfield described a very perfunctory visit in which Dr. Schimpf cleaned and anesthetized the area, inserted two small stitches using a little cat needle, and prescribed here some antibiotics. (Trial Tr., R. p. 696, lines 3-15, p. 699, lines 21-23) Again, she was informed that her condition was "part of the natural progression of healing." (Trial Tr., R. p. 696, lines 8-15).

Mrs. Whitfield's condition continued to deteriorate thereafter:

> It wasn't getting any better. I called again on the 30th of June where I -- they was a message saying they were going to be closed for the 2nd, 3rd and 4th of July. So I called them. And it was like evening, like five o'clock. I called and said, this isn't getting any better, somebody please see me, please see me. And no call back.
> So I called back in on the 2nd of July, somebody's really got to see me. And nobody called. They were closed. Over that timeframe I was getting worse, the chest was -- by the -- by the 6th of July, the stitches, those two little stitches, were just like really, really done holding me together. Oh, God.
>
> And so the morning of the 7th I called and I spoke to Sweetgrass Plastic Surgery on Daniel Island. I spoke to them

> for like six minutes. And I said I -- this is -- this hurts,
> I feel like I'm ripping open, please, God, somebody just see
> me, see me.
>
> I got two phone calls back from Dr. Schimpf leaving me a
> message -- one was for one minute, the other was for two
> minutes leaving me a message to come by the office. That was
> Monday the 7th.
>
> I went by the office thinking, thank God, somebody's
> going to see me. I get in there and there was a lady behind
> the counter with brown hair, and she handed me two
> prescriptions. And I'm like, well, is somebody going to see
> me, please somebody see me. There was nobody there to see me.
> So I was given two prescriptions.
>
> And I went home, cried my eyes out. I laid in the bed.
> And I was just getting so sick. The smell was putrid, is the
> word. And something said inside of me, you have got to get
> help. (Trial Tr., R. p. 695, line 18 to p. 697, line 24)

As a result of her worsening condition and lack of care, Mrs. Whitfield performed a web search for plastic surgeons that dealt with radicals and mastectomies. (Trial Tr., R. p. 697, line 25 to p. 698, line 3). She made an appointment with Dr. Ram Kalus the following day. (Trial Tr., R. p. 698, lines 11-14). By the time she met with Dr. Kalus, the two stitches placed by Dr. Schimpf had popped. (Trial Tr., R. p. 698, lines 19-20) As a result of that visit, a concerned Dr. Kalus called Dr. Schimpf and advised him that he needed to see Mrs. Whitfield. (Trial Tr., R. p. 699, lines 13-20). Dr. Schimpf's Office Manager called Mrs. Whitfield and scheduled an appointment with Dr. Schimpf for the following day. (Id. at R. p, 699, lines 13-20)

Mrs. Whitfield and Office Manager's accounts of that visit diverged dramatically at trial. Plaintiff testified that Dr. Schimpf was very angry, physically aggressive, and admonished

her for consulting another physician:

> When I went on to Sweetgrass Plastic Surgery on the 11th I was placed in a room at the end of the hall and Vicky came in in her little white jacket, and then he -- Dr. Schimpf comes through the door.
>
> And he was very angry. Why did you go to someone else? Why did you go there? Why did -- why did you let someone else see this? Why didn't you come to me?
>
> And my answer to him was you wouldn't call me back, you wouldn't bring me in, this is four weeks, just a four-week timeframe, and one of them being the week of the Fourth of July where nobody works, it is like I wanted to be seen, I wanted you to see me.
>
> And he was just so angry. And he was sucking this little mint. And he was just so angry. He took -- he put out his instruments. He put silvadene on some kind of pad. He opened up my wound, the area. And I was on that reclining chair; and he proceeds to stitch me up with no anesthetic, no little cat needle, no cream or anything, no spray.
>
> And I start screaming, stop, it hurts, stop, it hurts, please stop, it hurts. And I looked at Vicky, whose eyes were big and brown - you are probably going to see her - and he said these stitches. And he is tugging and putting in these three stitches.
>
> And he wasn't happy with me. And he kept muttering about the fact I can't believe you went somewhere else and you wouldn't see me, I can't believe that you went somewhere else, you didn't -- you didn't come here.

> No one would call me back. They had all of these cell phones numbers. Nobody would call me back. That's why I went to Dr. Kalus. (Trial Tr., R. p. 699, line 24 – p. 701, line 3)

Mrs. Whitfield testified that Dr. Schimpf was visibly incensed when he left room:

> And when he got done he was so incensed with me he threw the tray into the sink. He took the pad with the silvadene on it, stuck it to my breast, taped it down, took off his gloves, threw them in the sink, and he goes get out of here. And out the door he went. I saw his back. The door was still open.
>
> Vicky left the room and left me -- just left me there. So I got myself dressed, and I walked out. And she handed -- Still not saying anything. And she handed me two pieces of paper, which were prescriptions. Not a word. And she turned around and walked off. That was it. That was it.
>
> I went home, got in the bed, and cried my eyes out. I could not believe that just happened to me.
>
> (Trial Tr., R. p. 701, lines 4 to 15)

Defendant's Office Manager, however, testified to having a very different recollection of the office visit. The Office Manager testified that she had no recollection of Dr. Schimpf stitching Mrs. Whitfield without anesthesia or of Defendant crying. (Trial Tr., R. p. 920, lines 1-13). When asked if Dr. Schimpf was angry during the visit, she testified "No. He would never be angry." (Trial Tr., R. p. 920, lines 22-25). When asked if Dr. Schimpf had slammed his surgical utensils in the sink and told Mrs. Whitfield to leave, she testified "No. Dr. Schimpf would never do that." (Trial Tr., R. p. 921, lines 1-3). Defendants' Office Manager also testified that she had a good working relationship with Dr. Schimpf. (Trial Tr., R. p. 866, lines 11-13).

Missing Records and Withholding of File

Mrs. Whitfield and Office Manager also offered conflicting testimony as to what transpired when Mrs. Whitfield requested a copy of her medical file. Mrs. Whitfield testified that after her last visit with Dr. Schimpf she contacted the practice and requested a copy of the medical records (Trial Tr. p. 176, lines 7-122, R.___). She further testified that she needed the medical records for Dr. Kalus, who had taken over her post-operative care and was going to perform additional surgeries to address the aforementioned complications. (Trial Tr., R. p. 751, line 22 to p. 752, line 22; p. 753, line 1 to p. 754, line 4, R.__)

Mrs. Whitfield testified that an employee at the practice told her that the medical records would be available the next day for pickup. (Trial Tr., R. p. 752, line 18-24) However, when Mrs. Whitfield called the next day to confirm their availability, a hesitant employee told her that the records could not be released until she spoke with the Office Manager; the employee assured her that the records would be made available to her. (Trial Tr., R. p. 752, line 24 – p. 753, line 4). Mrs. Whitfield testified that she spoke with the Office Manager the following day and was told that she would not be receiving her medical records and that the file had been forwarded to Defendants' attorneys for review:

> A. She told me they've been sent to our attorneys, Josh Whitley of Smith Whitley, my entire record was, for them to review them before I could have them for my surgery that I needed to have. And I told her I need these, they are mine, I've got to have them, my doctor has to have them. Nope, you're not getting them. (Trial Tr., R. p. 753, lines 15-20).

Mrs. Whitfield also testified that she never received the missing medical records:

> Q. Jeane, you asked for the miss -- for the records to be given; and you said they weren't given to you, they were sent to counsel. Have you ever seen those records?
>
> A. I have never seen those records. (Trial Tr., R. p. 758, lines 1-3).

At trial, Office Manager testified that she had no recollection of speaking with Mrs. Whitfield about her medical records. (Trial Tr., R. p, 910, lines 12-15). The Office Manager also denied telling Mrs. Whitfield that her medical records had been forwarded to Defendants' attorneys for review, but that it was possible that the records were sent to Defendants' attorneys after Mrs. Whitfield had requested them. (Trial Tr., R. p, 910, line 16 to p. 911, line 4). In addressing why the records were missing, the Office Manager testified that it was possible that the records were incomplete due to a malfunctioning recorder used by Dr. Schimpf. (Trial Tr., R. p. 868, lines 6-9; p. 884, line 21 – p. 887, line 10) When asked if she had erased the tapes on the record, Office Manager testified, "No. We had no ability to erase the tapes. (Trial Tr., R. p. 876, lines 9-10).

Impeaching Credibility and Eliciting Evidence of Bias

On August 26, 2019, Defendants' counsel filed Defendant's Motion in Limine to Seal and Exclude Certain Inadmissible Evidence, wherein they sought to preclude Mrs. Whitfield's counsel from eliciting any testimony regarding Dr. Schimpf's personal life, **including any evidence of an admitted, nine-year sexual relationship with Office Manager**. (Motion, R. p. 179). During her deposition on February 11, 2019, **Office Manager testified that she had been engaged in a sexual relationship with Dr. Schimpf and his wife since 2010, and had engaged in sexual relations with Dr. Schimpf as recently as a week before her deposition** (Depo. Tr., 2/11/19, R. p. 376, line 5 – p. 377, line 9).

Defendant's Motion in Limine was heard at trial, at which point, Defendant's counsel also argued that Mrs. Whitfield's counsel should be precluded from eliciting any testimony from Office Manager regarding **the amount of money she is being paid by Dr. Schimpf**, or about **any of the various complementary cosmetic procedures he has performed on her**

throughout the years. (Trial Tr., R. p. 933, line 21 – p. 941, line 5). During her deposition, Office Manager had testified that Dr. Schimpf performed various complementary cosmetic procedures on her, including a breast augmentation, liposuction, fillers, and laser treatments. (Depo. Tr., 2/11/19, R. p. 377, line 10 to p. 385, line 22).

Mrs. Whitfield's counsel argued that Office Manager's relationship with Dr. Schimpf and the compensation she received from him were relevant for purposes of establishing bias and impeaching Office Manager's credibility. (Trial Tr., R. p. 934, line 9 to p. 941, line 5). Specifically, Plaintiff's counsel noted that Office Manager's observation regarding Dr. Schimpf's post-operative care were starkly at odds with Plaintiff's observations. (Id. at R. p. 934, line 9 to p. 941, line 5). Plaintiff's counsel also noted that Office Manager had offered innocent explanations as to why the medical records had gone missing, blaming their absence on a malfunctioning recorder, and denying that she or Dr. Schimpf could have destroyed the alleged recordings. (Id. at R. p. 934, line 9 to p. 941, line 5). Her account of what transpired when Plaintiff requested a copy of her medical file was also at odds with Plaintiff's testimony. (Trial Tr., R. p. 920, lines 1-13). As noted above, when asked if Dr. Schimpf was angry during his last visit with Plaint, Office Manager testified, "No. He would never be angry." (Trial Tr., R. p. 920, lines 22-25). When asked if he slammed his surgical utensils in the sink and told Plaintiff to leave, Office Manager testified, "No. Dr. Schimpf would never do that." (Trial Tr., R. p. 921, lines 1-3).

After hearing arguments from the parties, the trial court granted Defendants' Motion in Limine and prohibited Mrs. Whitfield's counsel from eliciting any testimony from Office Manager regarding her nearly decade-long sexual relationship with Dr. Schimpf. (Trial Tr., R. p. 938, line 6 – p. 940, line 23). The trial court also barred Mrs. Whitfield's counsel from eliciting

any testimony regarding the amount of money she was receiving from Dr. Schimpf or the number of complementary cosmetic surgeries she received. (Trial Tr., R. p. 941, lines 4-5). In making its ruling, the trial court stated, "I don't think she's biased, in my opinion at this point in time. And I don't think anything has been elicited as to fact that she's been untruthful in any way." (Trial Tr., R. p. 939, lines 9-12). The trial court also reasoned, "I mean, this is a trial. There's going to be differences of testimony and there's going to be conflicting evidence in the case. But I don't think that we need to get into her personal life as to the bias of anything. So I'm not going to let you get into it. Now whether -- do you consider the fact that he asks her how much that she's paid -- I mean, I don't know really what the relevance of that is." (Trial Tr., R. p. 940, line 16 – line 23).

In making its ruling, however, the trial court failed to acknowledge and/or apply the general rule for establishing bias. The standard is not whether the Court deems the sought-after evidence "relevant" to the proceedings, but rather whether the testimony can demonstrate the witness is biased in rendering her testimony. "[O]ur courts have followed the "general rule" that "'anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony,'" so that "'on cross-examination, **<u>any</u> fact may be elicited which tends to show interest, bias, or partiality' of the witness**." [Emphasis added] *Smalls v. State*, 810 S.E.2d 836, 840, 422 S.C. 174, 182-183 (2018). "Rule 608(c) [of the South Carolina Rules of Evidence] 'preserves [this longstanding] South Carolina precedent.'" *Id.*, citing *State v. Sims* , 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002). Specifically, Rule 608(c), SCRE, states: "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced."

"**Considerable latitude is generally allowed in the cross-examination of an adverse witness for possible bias.**" [Emphasis added] *North Greenville College v. Sherman Const. Co*., Inc., 243 S.E.2d 441, 442, 270 S.C. 553, 556 (1978), citing *Martin v. Dunlap*, 266 S.C. 230, 222 S.E.2d 8 (1976). As noted by McCormick: "**The law recognizes the slanting effect upon human testimony of the emotions or feelings of the witness toward the parties or the self-interest of the witness in the outcome of the case. Partiality, or any acts, relationships or motives reasonably likely to produce it, may be proved to impeach credibility.**" [Emphasis added] *Id*., citing McCormick on Evidence, § 40, p. 78 (1972).

Here, Office Manager's long-standing sexual relationship with Dr. Schimpf and her "emotions or feelings toward him" are likely to have "a slanting effect" upon her testimony. Her "self-interest in the outcome of the case" can be directly tied to maintaining her personal and professional relationship with Dr. Schimpf. Minimally, a fact exists which tends to show "interest, bias, or partiality of the witness."

The trial court failed to take into account the law and particular circumstances of the case, and, instead, based its ruling on the conclusory findings: "I don't' think she's biased" and "I don't think anything has been elicited as to fact that she's been untruthful in any way." (Trial Tr., R. p. 939, lines 9-12). In doing so, the trial court abused its discretion and prejudiced the Plaintiff who could not otherwise demonstrate that Office Manager's testimony was clearly biased and not credible. "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell.* 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (citing *Fontaine v. Peitz.* 291 S.C. 536, 354S.E.2d565 (1987)). Accordingly, the trial court's ruling should be reversed and the case should be remanded for a new trial on the merits.

III. THE TRIAL COURT ERRED IN FAILING TO GRANT PLAINTIFF'S DIRECTED VERDICT MOTION AS TO NEGLIGENCE PER SE FOR ADMITTEDLY DESTROYED AND/OR MISSING MEDICAL RECORDS.

At trial, Office Manager testified that she was in charge of maintaining medical records for the Defendant Sweetgrass. (Trial Tr., R. p. 900, lines 22-25). As such, Mrs. Whitfield's counsel examined her regarding S.C. Code of Regulations 61-91, Standards for Licensing and Ambulatory Surgical Facilities, Section 700, titled Patient Records. (Trial Tr., R. p. 900, line 17 to p. 903, line 17). With regard to Mrs. Whitfield's medical records, Office Manager admitted that Defendant SPS did not comply with Section A of the Code, which states:

> The facility shall initiate and maintain an organized record for each patient. The record shall contain: sufficient documented information to identify the patient; the person responsible for each patient; the description of the diagnosis and the care, treatment, procedures, surgery, and/or services provided, to include the course of action taken and results; and the response and reaction to the care, treatment, procedures, surgery, and/or services provided. All entries shall be indelibly written, authenticated by the author, and dated.

Office Manager testified:

> Q. Would you agree with me that Sweetgrass did not follow that section with regards to Mrs. Whitfield?
>
> A. As I said before, we do our best.
>
> Q. And I understand that you've done -- you try. But what I'm specifically trying to get an answer to is did Sweetgrass comply with Section A as it pertains to Mrs. Whitfield's medical records?
>
> A. No. (Trial Tr., R. p. 901, line 21 – p. 902, line 3)

Office Manager also testified that Defendant SPS did not comply with Section B of the Code, which states in relevant part:

> Specific entries/documentation shall include at a minimum:
>
> 1. Consultations by physicians or other legally authorized healthcare providers;

> […]
>
> 3. Orders and recommendations for all care, treatment, procedures, surgery, and/or services from physicians or other legally authorized healthcare providers, completed prior to, or at the time of patient arrival at the facility, and subsequently, as warranted;
>
> 4. Care, treatment, procedures, surgery, and/or services provided;
>
> 5. Record of administration of each dose of medication;
>
> 11. Signed informed consent;

Office Manager testified:

> Q. Okay. So what I'm asking you is did Sweetgrass comply with Paragraph B because of not keeping those records?
> A. The records were incomplete.
> Q. Okay. Did they comply with Paragraph B?
> A. No.
>
> Q. Would you agree with me that Sweetgrass failed to maintain an organized record for Mrs. Whitfield?
> A. Yes. But we -- we treat patients, not medical records.
> Q. Are medical records important?
> A. Yeah. (Trial Tr., R. p. 903, lines 8- 17)

In addition to the Office Manager's admissions regarding medical records, Dr. Schimpf testified that there was no signed informed consent form for the procedure he performed on Ms. Whitfield neck. (Trial Tr., R. p. 1335, line 17 to p. 1336, line 8). Mrs. Whitfield's Medical Expert, Dr. Michael Rosenberg, testified that Defendants' failure to maintain records caused the patient harm and damage. (Trial Tr., R., p. 1035, line 20 to p. 1036, line 14; p. 1037, lines 2-19). Lastly, Plaintiff's psychiatrist, Dr. Sara Marcino, offered testimony that Mrs. Whitfield experienced psychological trauma from having a nonconsensual procedure performed on her. (Trial Tr., R. p. 1122, line 21 – p 1124, line 3).

Based on the foregoing factors, Mrs. Whitfield's counsel moved for a direct verdict on

the issue of negligence per se. (Trial Tr., R. p. 1559, line 8 to p. 1560, line 9). The trial court denied the Motion. In doing so, it did not make any findings or offer any legal rationale to support its ruling, merely stating, “Alright. I’m going to deny the motion. And I’m not charging it either.” (Trial Tr., R. p. 1561, lines 13-15).

It was an error of law to deny Plaintiff’s Motion for a Directed Verdict. When evidence presented at trial yields only one conclusion concerning liability, the trial court may properly grant a motion for directed verdict. *Fairchild v. Dept. of Transp*., 683 S.E.2d 818, 385, 823 S.C. 344, 353 (Ct. App. 2009), aff’d,398 S.C. 90, 727 S.E.2d 407 (2012).

With regard to claims for negligence per se, the South Supreme Court has held, “The causative violation of a statute constitutes negligence per se and is evidence of recklessness and willfulness, requiring the submission of the issue of punitive damages to the jury.” *Wise v. Broadway*, 433 S.E.2d 857, 315 S.C. 273 (1992) Here, Defendants’ office manager admitted that records were not properly maintained and that Defendant Sweetgrass had violated both Section A and Section B of S.C. Code of Regulations 61-91, Section 700. Further, Dr. Schimpf admitted that there was not a signed informed consent form for the procedure he performed on Ms. Whitfield neck. (Trial Tr., R. p. 1335, line 17 to p. 1336, line 8). Because there was an admitted violation of the statute and there can only be one conclusion concerning liability, it was error for the Court not to grant Plaintiff’s Motion for a Directed Verdict as to the negligence per se. Accordingly, the ruling should be reversed, Plaintiff’s Motion for Directed verdict should be granted.

CONCLUSION

Based on the foregoing, Appellant Jeane Whitfield respectfully requests that this Court reverse the trial court’s rulings and remand this case for a new trial on the merits. It was

reversible error for the trial court to allow Defendants' previously-retained experts to testify to a jury about their physical and mental examination of Mrs. Whitfield. It was also reversible error for the trial court to prohibit Mrs. Whitfield's counsel from eliciting evidence of bias from the Office Manager by examining her about her compensation from and sexual relationship with Dr. Schimpf. Finally, it was error for the trial court to deny Mrs. Whitfield's Motion for a Directed Verdict as to Negligence Per Se.

[Signature on following page]

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November 2, 2020
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2017-CP-10-02758
Appellate Case No. 2019-001716

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SC Court of Appeals

Jeane Whitfield,

Appellant,

v.

Dennis K. Schimpf, M.D. and Sweetgrass Plastic Surgery, LLC,

and

Patrick O'Neil, M.D. and O'Neil Plastic Surgery, LLC,

Respondents.

APPELLANT'S RULE 211 CERTIFICATION

The undersigned certifies that the *Final Brief of Appellant* and *Appellant's Final Reply Brief to Respondent's Brief* comply with Rule 211(b), SCACR.

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