

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CA#: 2016-CP-10-5379

THE ESTATE OF DELILA PARROTT,)
)
Plaintiff,)

ORDER DENYING DEFENDANT’S
POST-TRIAL/JUDGMENT
MOTION FOR RELIEF

vs)

SANDPIPER INDEPENDENT AND)
ASSISTED LIVING-DELAWARE,)
LLC)
Defendant.)

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Dec 17 2020

SC Court of Appeals

This matter is before the court upon the Defendant Sandpiper Independent and Assisted Living-Delaware, LLC’s (hereinafter “Sandpiper”) motion for relief pursuant to Rules 52 and/or 59, SCRCP and /or to the extent applicable, Rules 41 and/or 50, SCRCP. By consent of the parties, this negligence action came before this Court for a bench trial, and at the conclusion of the three-day trial, on September 10, 2020, I rendered a verdict from the bench in favor of the Plaintiff and awarded actual damages of \$500,000 on the survival cause of action and \$500,000 on the wrongful death action. Thereafter, my formal written Order containing my findings of fact and conclusions of law was filed and entered on October 16, 2020. On October 26, 2020, Sandpiper filed its posttrial motion and on November 4, 2020, this Court held a hearing on Sandpiper’s motion. Paul Reeves, Esq and Todd Lyle, Esq. appeared for and were present for the Plaintiff, and Donald Jay Davis, Jr., Esq., Matthew Riddle, Esq. and Russell G. Hines, Esq. appeared for and were present for the Defendant.

This Court has carefully reviewed the entire record in this matter to include the recent submissions by Sandpiper for the November 4 hearing as well as arguments made by both parties at this same hearing. After reviewing each and every argument made by Sandpiper in its motion

and memorandum of law as well as oral arguments made at the hearing, this Court denies Sandpiper's motion to alter the verdict or grant a new trial.

As to the argument that this Court's order fails to comply with Rule 52(a), SCRPC, I have confidence that I have articulated my findings of fact specially and separately stated my conclusions of law to substantially comply with the Rule and adequately state the basis for my verdict so that the Appellate Court can conduct an appropriate review on appeal. In re Treatment and Care of Luckabaugh, 351 S.C. 122, 131, 568 S.E.2d 338, 342 (2002); Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 320, 698 S.E.2d 773, 784 (2010).

As to the arguments that I failed to consider and address all the asserted defenses, I considered and rejected each of those defenses in rendering my verdict for the Plaintiff. In addition to the detailed factual findings and legal conclusion set forth in my prior order, I offer these further explications of my verdict.

First, I found overwhelming evidence that Sandpiper had a wellness check policy. Ms. Carrington, an employee of Sandpiper's, testified that the Wellness Check Policy was well known by all of Sandpiper's staff and residents and the Policy was adhered to on a daily basis. Furthermore, despite the fact that Sandpiper either intentionally or recklessly tried to deny the existence of the wellness policy throughout discovery, the written policy finally was produced by the Defendant on the eve of trial¹ which policy irrefutably establishes the existence of a wellness policy. Under the precedent of Miller v. City of Camden, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997) and related caselaw, that Policy created a duty on behalf of Sandpiper and that duty was

¹ I found that the delay in producing the policy before the trial is extremely telling of Sandpiper's desire to hide the Policy's existence.

breached when Sandpiper failed to check on the well-being of Ms. Parrott on June 4th and June 5th.

In addition, I did take into account the Defendant's arguments that there was only a landlord-tenant relationship between the parties and that Sandpiper's wellness check policy did not create a legal duty to the deceased Ms. Parrott, but I rejected those arguments in making the findings of fact and conclusions of law as stated in my prior order. To reaffirm my findings, irrespective that the policy was not explicitly mentioned in the lease agreement, the existence of the policy was established by the written document and Ms. Carrington's testimony. In addition, I found the testimony of the deceased's daughter, Joan Acosta credible and extremely compelling. Ms. Acosta's testimony was clear that they knew of Sandpiper's Policy regarding wellness checks and the policy was influential and compelling towards Ms. Parrott and Ms. Acosta's decision to select Sandpiper over other similar living facilities.

As to the Defendant's argument about the evidentiary support for my finding of proximate cause, I offer these additional comments that I placed a lot of emphasis on Dr. Mills' testimony concerning the wrongful death claim and almost completely dismissed the testimony of Dr. Wagner as it shocked the conscience of this Court that Dr. Wagner would opine that Ms. Parrott did not suffer any form of trauma from this event and that Ms. Parrott's death was probably caused by her immobility from her fractured hip.

Finally, as to the Defendant's argument that amount of the damages awarded were speculative and excessive, the trial record contains evidence more than sufficient to support this Court's verdict as well as to determine the appropriate damages in this matter. Edwards v. Lawton, 244 S.C. 276, 281, 136 S.E.2d 708, 710 (1964) (The assessment of unliquidated damages is left

for the sound discretion of the factfinder.). This Court further affirms that I reached my verdict while analyzing and rejecting Sandpiper's argument that Ms. Parrott was contributorily negligent.

IT IS HEREBY ORDERED that the Defendant's Motion for Relief Pursuant to Rules 52 and/or 59, SCRPC and /or to the Extent Applicable, Rules 41 and/or 50, SCRPC is DENIED.

AND IT IS SO ORDERED

Bentley Price, Circuit Judge
Charleston County Court of Common Pleas

November ____, 2020
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Delila Parrott , plaintiff, et al VS Premier Senior Living LLC ,
defendant, et al

Case Number: 2016CP1005379

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766