THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
Feb 08 2021
SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Walton J. McLeod, Circuit Court Judge

Circuit Court Case No. 2018-CP-32-1750
Appellate Case No.: 2020-001089

Diane Connell .....Respondent,

v.

Lexington County Health Services District, Inc.
d/b/a Lexington Medical Center.....Appellants.

FINAL BRIEF OF RESPONDENT

Robert F. Goings (SC Bar # 74855)
Jessica L. Gooding (SC Bar # 101210)
Goings Law Firm, LLC
1510 Calhoun Street
Post Office Box 436 (29202)
Columbia, South Carolina 29201
Phone: (803) 350-9230
Fax: (877) 789-6340
Email: rgoings@goingslawfirm.com
jgooding@goingslawfirm.com

Attorneys for Respondent

Columbia, South Carolina
February 8, 2021

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

ISSUES ON APPEAL

1. Did the Court properly deny Lexington Medical Center's Motion for Directed Verdict and find in favor of Diane Connell based on the evidence presented at trial?

2. Did the Court act within the scope of its discretion in considering expert witness testimony from Plaintiff's Life Care Planner, Lindsay Moore?

3. Did the Court act within the scope of its discretion in denying Lexington Medical Center's Motion for Leave to Deposit in Court?

STATEMENT OF THE CASE

This case is a premises liability action, filed on May 22, 2018, and tried in a bench trial, before Judge Walton J. McLeod, on March 2, 2020. Plaintiff Respondent Diane Connell (hereinafter "Mrs. Connell") asserted that Defendant Appellant Lexington County Health Services District, Inc. d/b/a Lexington Medical Center (hereinafter "LMC") was negligent in creating and/or failing to warn of or remedy a known hazard on its property—a greater-than-six-inch curb between two concrete walking surfaces in its parking garage without any paint or demarcation of the elevation change. (R. pp. 28-30). The camouflaging effects of the unpainted concrete make it difficult to see the curb's drop-off from the discerning eye. (R. p. 27).

LMC asserted defenses under the South Carolina Tort Claims Act and pled contributory negligence. At trial, the parties entered thirteen exhibits by stipulation (R. p. 56, lines 15-20), the circuit court admitted one additional exhibit (R. p. 58, lines 19-20), and Mrs. Connell presented testimony from eight witnesses, three by deposition.[1] In lieu of closing arguments, both parties submitted proposed orders and made additional arguments to the circuit court via email. (R. pp. 263-269). In addition, Mrs. Connell filed her Trial Brief (R. pp. 628-638), and LMC filed its Memorandum of Law in Support of Defendant's Motion for Directed Verdict (R. pp. 620-627), both of which were submitted to the circuit court at trial. On July 10, 2020, the circuit court entered an Order and Entry of Judgment, awarding $225,000.00 in favor of Mrs. Connell. (R. pp. 1-19). LMC's only post trial motion was a Motion for Leave to Deposit in Court, which the circuit court denied by order dated July 31, 2020. (R. pp. 21-24). On August 11, 2020, LMC filed its Notice of

[1]Mrs. Connell presented 30(b)(6) deposition testimony from Dale Thompson and Cory Andrews, as well as *de benne esse* deposition testimony from Dr. James Loging.

Appeal from both orders, but amended the notice on August 18, 2020. (R. pp. 649-650). Mrs. Connell was served with the Amended Notice of Appeal on August 21, 2020.

STATEMENT OF THE FACTS

On September 26, 2017, Mrs. Connell accompanied her husband to a doctor's appointment on the LMC campus. (R. p. 60, lines 1-5). It was a sunny day. Mr. Connell dropped Mrs. Connell off at the entrance to the doctor's office building and went to park the car. (R. p. 60, lines 5-8). After the appointment, Mr. and Mrs. Connell followed the sidewalk into Parking Garage 3, where their vehicle was parked. (R. p. 60, lines 9-15). Not far from the pedestrian entrance to the garage, there is a curb and a greater-than-six-inch elevation drop to the driveway utilized by vehicles leaving the garage. (R. p. 63, line 20-p. 64, line 11; p. 243, lines 2-24). However, both the sidewalk and the driveway are gray concrete, and there was no paint or other demarcation on the top of the curb signaling the sudden elevation change. (R. p. 61, line 24-p. 62, line 12; p. 243, lines 2-24). Mrs. Connell was unable to see the curb or visually recognize the change in elevation, and she tripped while stepping off the curb, causing her to fall forward and strike her left knee and head on the concrete. (R. p. 174, lines 6-23; 178 line 7-p. 179, line 13). She immediately had severe pain in her left knee. (R. p. 176, lines 6-14). Mr. Connell, who was walking just behind Mrs. Connell, testified that his wife was screaming in agony, and he was unable to get her to her feet. (R. p. 60). Others in the parking lot came to assist the couple, and they were able to get Mrs. Connell to a seated position on the curb. (R. pp. 52, 60). Mrs. Connell was transported to the emergency room about one hundred yards away on a golf cart, as she was totally unable to walk. (R. p. 54, lines 4-8; 60 line 16-p. 61, line 4; 177, line 12-p. 178, line 6).

In the LMC Emergency Room, Mrs. Connell was diagnosed with a right ankle sprain and displaced comminuted fracture of the left patella. (R. p. 484). She was required to spend two

nights in the hospital and undergo an open reduction internal fixation surgery, where screws and metal wire were used to repair her knee. (R. p. 484; p. 181, lines 4-8).

After her hospitalization, Mrs. Connell completed in-home rehabilitation and continued treatment with Dr. James Loging, an orthopedist at Palmetto Bone and Joint, PA. (R. p. 65, lines 10-13; p. 186, line 13-p. 187, line 15). At the time of trial, Mrs. Connell had incurred $55,839.38 in medical costs,[2] and she is still treating with Dr. Loging for ongoing pain and discomfort in her left knee. (R. pp. 474; 564-586). Dr. Loging performed a hardware removal surgery on Mrs. Connell on February 11, 2020.[3] (R. pp. 564-566). While Dr. Loging expressed hope that this surgery would reduce Mrs. Connell's discomfort, he also testified that the incongruity of her joint where the patella fracture healed would cause "grinding" and "mechanical symptoms," resulting in post-traumatic arthritis, which will "progressively get worse to the point where the pain would be intolerable," and she will require a knee replacement surgery. (R. p. 374, line 6-p. 376, line 14). Although he indicated that he would consider a partial knee replacement for Mrs. Connell, Dr. Loging testified to a reasonable degree of medical certainty that he would "recommend a full knee replacement . . . just because the longevity and the decreased chance of having to have a revision of that knee in the future and the success rate [of a total knee replacement] would be higher [than a partial knee replacement]." (R. p. 389, lines 14-19). Dr. Loging also recommended Supartz injections and physical therapy. (R. p. 377, line 20-p. 378, line 25). LMC did not present

---

[2] Although the hardware removal surgery was performed prior to trial, the bill was not received until after trial, and the updated medical records and bill were filed as an additional exhibit on April 6, 2020. (R. pp. 564-586).

[3] Dr. Loging's *de benne esse* deposition was taken November 25, 2019. He testified that almost "hundred percent of the time" a hardware removal is needed "because of the high incidence of hardware irritation and problems from the hardware." (R. p. 390, lines 8-21). Because trial was delayed, Dr. Loging actually performed the hardware removal surgery prior to trial. (R. p. 187, lines 11-13).

any expert testimony or other evidence showing that the treatment recommended by Dr. Loging was unreasonable or unrelated to Mrs. Connell's patella fracture. Thus, Mrs. Connell's claim for future medical treatment was uncontested.

The only aspect of Mrs. Connell's damages LMC disputed was the cost estimate for Mrs. Connell's future medical damages. Based on Dr. Loging's recommendations, Lindsay Moore, PA-C, a Certified Nurse Lifecare Planner, prepared two Future Cost Analysis reports estimating Mrs. Connell's future medical cost needs. (R. pp. 547-553). The first report, dated June 20, 2019, was based on Mrs. Connell's medical records from Palmetto Bone and Joint and included two scenarios: Scenario A included a hardware removal surgery and Scenario B included a partial knee replacement surgery. (R. pp. 547-549). The second report, dated December 6, 2019, was an updated analysis Ms. Moore created with the benefit of Mrs. Connell's complete medical records related to the patella fracture, as well as Dr. Loging's trial testimony, where he clarified his future recommendations for Mrs. Connell. (R. p. 127, line 1-p. 128, line 6). The second report also includes two scenarios, but both include a hardware removal surgery; one scenario assumes Mrs. Connell will have a partial knee replacement, and the other includes a full knee replacement. (R. pp. 550-553). The other major difference between the reports was that the updated report included the cost estimate for an inpatient knee replacement surgery rather than an outpatient procedure, as was assumed in the first report. (R. pp. 547-553). In explaining this change, Ms. Moore testified that Mrs. Connell's knee replacement surgery, whether it is a partial or full replacement, would most likely be an inpatient procedure. (R. p. 129, line 9-p. 130, line 23). She based this opinion on her research, which indicated that knee replacement surgeries are most often done in the inpatient setting, and on Mrs. Connell's medical records, which showed that Mrs. Connell had a history of comorbidities such as atrial fibrillation, increasing her risk factors for surgery and

general anesthesia. (*Id.*). Further, Mrs. Connell testified that she would prefer to have the knee replacement surgery in a hospital. (R. p. 159, lines 8-12).

Charles Alford, PhD utilized Ms. Moore's report and, accounting for inflation, provided the present value of Mrs. Connell's future medical costs.[4] (R. pp. 558-563). The report sets forth that the present value of the pain management injections she will most probably need is $9,854.00, and the present value of the knee replacement surgery ranges from $162,479.00 to $216,163.00 depending on when it takes place.[5] (R. p. 559). This surgery estimate is based on an inpatient surgery, as was included in Ms. Moore's updated report. (*Id.*). On cross examination, Dr. Alford testified that the present value of an outpatient surgery, based on the numbers provided in Ms. Moore's June 20, 2019 report, would be in the $17,000 to $40,000 range, depending on when it took place. (R. p. 164, line 4-p. 166, line 14).

In addition to the medical expenses, Mrs. Connell sustained permanent injuries. She has suffered immense pain and been very limited by her injuries. Christopher Brewer, an investigator for the Allen University Police Department, who rendered aid at the scene, testified that Mrs. Connell was clearly in agony while she sat on the ground following her fall. (R. p. 52, line 25-p. 53, line 7). Mrs. Connell and her husband testified that she was essentially bedridden for the first week after being discharged from LMC. (R. p.66, lines 13-22; p. 183, lines 16-22). p.184, line 7).

---

[4] Because Ms. Moore's report is based on the recommendations Dr. Loging made in his deposition in November 2019, both Ms. Moore's report and Dr. Alford's report include the hardware removal surgery as a future cost. As trial was delayed and took place after the hardware removal was completed, those costs are now included in the past medical costs. The circuit court noted that it took this fact into consideration in awarding damages. (R. p. 5, fn.1).

[5] Although Ms. Moore's report included alternate scenarios depending on whether Mrs. Connell had a full or partial knee replacement, the expenses in the two scenarios were very similar. Therefore, Dr. Alford's report assumed that Mrs. Connell will have a full knee replacement. (R. p. 558).

She was unable to shower and used a bedside commode with assistance. (R. p. 183, line 23-p.184, line 7). After the first week, she began in-home rehabilitation, which consisted of frequent painful exercises to regain the use of her knee. (R. p. 184, lines 10-25). She was required to use a walker for months and continued to rely upon her husband to prepare her meals, help her from the bed into a chair, assist her with bathing, handle the housework and laundry, take care of the grocery shopping, etc. (R. p. 32, lines 2-15; p. 185, lines 4-14). The pain and discomfort limited her ability to spend time with her family and her grandchildren, prevented her from hosting family gatherings, prevented her from caring for her special needs grandson, and prohibited gardening, which she testified she loved doing before this occurred. (R. p. 185, line 19-p. 188, line 8; p. 191, line 5-p. 192, line 6). The pain she continued to have whenever she attempted to walk on an uneven surface or incline, go up and down stairs, stoop or kneel led Mrs. Connell to a second open knee surgery to remove the hardware in her knee more than two years following the injury. (R. p. 187, lines 9-25; p. 191, line 1).

Mrs. Connell presented evidence at trial that the curb where she fell was a hazard to pedestrians, and LMC breached its duty to remedy or warn of the hazard. When Mrs. Connell entered the garage that day, she was behaving reasonably, looking where she was going, and not distracted. (R. p. 175, line 9-p. 176, line 3; p. 303, line 5-p. 35, line 9). The curb was painted on its face (i.e. the rise), so it could be seen by vehicular traffic or pedestrians exiting the garage, but it was <u>not</u> painted on top (i.e. the run). (R. p. 243, line 16-p. 244, line 5). Importantly, the remainder of the curbing throughout the parking garage is painted yellow on the top and the side. (R. p. 53, lines 8-17; p. 62, line 21-p. 27, line 7; p. 295, lines 17-25). The top side painting was left off in the location where Mrs. Connell fell. (R. p. 53, lines 13-17; p. 62, lines 8-12; p. 243, lines 20-23).

There was no demarcation of the change in elevation that could be seen by a person walking in the direction Mrs. Connell was walking. (R. p. 61, line 24-p. 62, line 12; p. 298, lines 6-20).

Testimony from LMC's representatives support Mrs. Connell's claims. Cory Andrews, LMC's Director of Risk Management, agreed that elevation changes on concrete are hard to see without demarcations such as paint, and he testified the purpose of painting curbs in parking garages is to make them visible. (R. p. 299, lines 10-22). He further admitted that Mrs. Connell would not have been able to see any yellow paint on the curb where she fell from the direction she was walking. (R. p. 298, line 8-p. 299, line 2).

Dale Thompson, LMC's Vice President of Facilities and Property, also agreed that curbing or elevation changes can cause a trip hazard and that they are most hazardous when pedestrians cannot see or appreciate that a curb is present. (R. p. 250, line 22-p. 251, line 11). He further admitted that when the concrete curb is the same color as the concrete ground, it has a "camouflaging effect," such that a person walking cannot see it unless it is painted. (R. p. 244, line 20 – p. 245, line 11 ("Q. . . . but you can't see it because it's not painted, correct? A. Correct.")). Mr. Thompson testified that he believed the yellow paint on the curbing was required by code. (R. p. 242, lines 19-23). On cross examination, counsel asked Mr. Thompson to compare a photograph of the location where Mrs. Connell fell, as it existed on the day of the fall, with a computer simulated photograph showing yellow paint:

Condition on Date of Fall – September 26, 2017

Visible if Curb Painted (Simulation/Computerized)

(R. p. 249, line 25-p. 250, line 17). Mr. Thompson conceded that the curb and its change in elevation would be more visible and safer to pedestrians if the top were painted yellow, and "the reasonable and prudent thing" to do is to "paint all curbs, tops and sides, so a pedestrian could actually see and appreciate the hazards." (R. p. 250, lines 13-25).

ARGUMENT

In the case below, Mrs. Connell asserted a claim of negligence, and more specifically, premises liability, against LMC. "To prove a cause of action for negligence, a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached that duty by a

negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages." *Roddey v. Wal-Mart Stores E., LP*, 415 S.C. 580, 589, 784 S.E.2d 670, 675 (2016). In a premises liability case, the duty of care a landowner owes to a person upon its premises depends upon the classification of the individual; she may be an invitee, licensee, adult trespasser, or child. *Larimore v. Carolina Power & Light*, 340 S.C. 438, 444, 531 S.E.2d 535, 538 (Ct. App. 2000). "[A] person is an invitee on the land of another if he enters by express or implied invitation, his entry is connected with the owner's business or with an activity the owner conducts or permits to be conducted on his land, and there is a mutuality of benefit or a benefit to the owner." *Sims v. Giles*, 343 S.C. 708, 716–17, 541 S.E.2d 857, 862 (Ct. App. 2001). The parties agreed at trial that Mrs. Connell was an invitee on LMC's property at the time she fell. Further, LMC did not dispute that Mrs. Connell injured her knee when she fell in the LMC parking garage. Thus, the circuit court, sitting as the fact finder as well as the authority on the law, was primarily required to determine whether LMC breached its duty to Mrs. Connell and the amount of the damages that were proximately caused by the breach. Based on the evidence presented at trial, the circuit court found that LMC breached its duty and awarded Mrs. Connell $225,000 in damages.

For the reasons set forth herein as well as in the circuit court's Order dated July 10, 2020, the circuit court did not err, and this case should be affirmed.

I. The Trial Court Properly Denied LMC's Motion for Directed Verdict and Found in Favor of Mrs. Connell.

The circuit court correctly found, when viewing all the facts and circumstances in the light most favorable to Mrs. Connell, there is evidence in this case that LMC breached its duty to Mrs. Connell, resulting in her suffering significant damages. Thus, the circuit court properly denied LMC's Motion for Directed Verdict, and its decision must be upheld.

A. Standard of Review

"When reviewing the denial of a motion for directed verdict or JNOV, this Court applies the same standard as the trial court." *Pridgen v. Ward*, 391 S.C. 238, 243, 705 S.E.2d 58, 61 (Ct. App. 2010). "The Court is required to view the evidence and inferences that reasonably can be drawn from the evidence in the light most favorable to the non-moving party." *Id.* "An appellate court will only reverse the [circuit] court's ruling when there is **no evidence to support the ruling** or when the ruling is controlled by an error of law." *Id.* (emphasis added); *see also e.g. Creech v. S.C. Wildlife & Marine Res. Dep't*, 328 S.C. 24, 29, 491 S.E.2d 571, 573 (1997) ("The trial court can only be reversed by this Court when there is not evidence to support the ruling below.").

When a "case is tried by a judge without a jury, his findings of fact have the force and effect of a jury verdict upon the issues and are conclusive upon appeal when supported by competent evidence." *Chapman v. Allstate Ins. Co*., 263 S.C. 565, 567, 211 S.E.2d 876, 877 (1975). If there is "any evidence which reasonably supports the factual findings of the judge," the decision must be affirmed. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 776 (1976).[6]

B. LMC's Argument that it Cannot Be Liable Based on Creating the Hazard is Not Preserved for Appeal.

LMC did not argue before the circuit court that (1) it cannot be held liable for the acts of an independent contractor in building the garage but failing to paint all the curbs or (2) the creation of hazardous condition, by itself, is insufficient to establish liability without evidence of negligence. Therefore, neither arguments A nor B under LMC's "I. TRIAL COURT ERRED IN DENYING LMC'S MOTION FOR DIRECTED VERDICT AND FOR FINDING IN FAVOR OF

---

[6] This case was abrogated on other grounds in *Matter of Estate of Kay*, 423 S.C. 476, 816 S.E.2d 542 (2018).

RESPONDENT" are preserved for appellate review. "It is well settled that an issue must have been raised to and ruled upon by the [circuit] court to be preserved for appellate review." *S.C. Dep't of Transp. v. M&T Enters. of Mount Pleasant, LLC*, 379 S.C. 645, 658, 667 S.E.2d 7, 14 (Ct. App. 2008). Under our preservation rules, a "losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred." *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). "This principle underlies the long-established preservation requirement that the losing party generally must both present his issues **and arguments** to the lower court and obtain a ruling before an appellate court will review those issues and arguments." *Id.* (emphasis added). If an appellant "did not raise [a] specific argument to the trial court," the argument cannot be considered by the appellate court. *Langehans v. Smith*, 347 S.C. 348, 353, 554 S.E.2d 681, 684 (Ct. App. 2001) (citing *Noisette v. Ismail,* 304 S.C. 56, 403 S.E.2d 122 (1991)) (issue was not preserved for appellate review where the trial court did not explicitly rule on the appellant's argument and the appellant did not raise the issue in a Rule 59(e), SCRCP, motion to alter or amend the judgment)).

LMC did not argue, in its Memorandum in Support of Defendant's Motion for Directed Verdict or otherwise, that LMC could not be held liable for creating this hazard under the South Carolina Tort Claims Act because the garage was constructed by an independent contractor. Similarly, LMC never argued that the evidence that LMC created the hazardous condition was insufficient to establish its negligence.[7] Because these arguments were not raised, the circuit court

[7] Even if this argument were preserved, the argument fails because a plaintiff can prove negligence by showing that a property owner created a hazardous condition. *See Cook v. Food Lion*, Inc., 328 S.C. 324, 327, 491 S.E.2d 690, 691 (Ct. App. 1997). In the case LMC cites, *Pringle v. SLR Inc. of Summerton*, 382 S.C. 397, 675 S.E.2d 783 (Ct. App. 2009), it was undisputed that the property owner created a condition – placing residential chairs in a commercial setting – that was not hazardous at the time it was created. The plaintiff presented evidence that the condition became

did not have an opportunity to rule upon these issues, and they were not preserved for appeal. Accordingly, this Court should not consider LMC's arguments regarding the creation of a hazardous condition. Further, because LMC did not preserve these arguments for appeal, the circuit court's finding that LMC created the hazardous condition must stand, and this case must be affirmed on that basis.

C. There is Evidence Supporting the Circuit Court's Findings.

Even if this Court were to consider LMC's arguments regarding creation of the hazardous condition and find in its favor, the circuit court's decision must be upheld because there is evidence that LMC had notice of the hazard that caused Mrs. Connell to fall. In a premises liability case, "the invitee is offered the utmost duty of care by the landowner." *Sims v. Giles*, 343 S.C. at 715, 541 S.E.2d at 861. "[A]lthough the operator of a parking lot is not an insurer of the safety of those who use the lot, reasonable care must be used by the operator to keep the premises used by invitees in a reasonably safe condition." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 331, 673 S.E.2d 801, 803 (2009). A property owner "owes the customers the duty of exercising ordinary care to keep the passageways, sidewalks and such other parts of the premises as are ordinarily used by the customers in transacting business in a reasonably safe condition." *Bruno v. Pendleton Realty Co.*, 240 S.C. 46, 51, 124 S.E.2d 580, 582 (1962). "A landowner owes an invitee a duty of due care to discover risks and to warn of or eliminate foreseeable unreasonable risks." *Landry v. Hilton Head Plantation Prop. Owners Ass'n, Inc.*, 317 S.C. 200, 203, 452 S.E.2d 619, 621 (Ct. App. 1994). If

---

hazardous after excessive commercial use, but there was no evidence the defendant knew or should have known the chair would collapse and injure the plaintiff. *Id.* at 405, 675 S.E.2d at 787. Because there was no evidence that the condition the defendant created was indeed hazardous, there was not sufficient evidence of negligence to survive summary judgment. *Id.* at 405, 675 S.E.2d at 788. The case is not applicable here because the unpainted curb has been hazardous since its creation.

a risk of injury is "reasonably foreseeable," the landowner must take action to prevent the injury. *Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382, 392, 701 S.E.2d 776, 781 (2010).

Again, LMC admitted at trial that it owed Mrs. Connell the above-described duty and that she suffered damages when she fractured her patella in the LMC parking garage. Therefore, to survive the Motion for Directed Verdict, Mrs. Connell had to set forth some evidence showing that it was reasonably foreseeable someone might fall as a result of the unpainted curb, and LMC either (1) created the hazard or (2) had actual or constructive knowledge of the hazard and failed to remedy it. *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001). Constructive notice may be proven by showing that the dangerous condition existed long enough that the defendant should have discovered it. *Wimberly v. Winn Dixie Greenville Inc.*, 252 S.C. 117, 121, 165 S.E.2d 627, 629 (1969); *see also LeFont v. City of Myrtle Beach*, 430 S.C. 534, 545, 846 S.E.2d 355, 360 (Ct. App. 2020) ("[T]here was sufficient evidence of constructive notice to allow the jury to resolve the question of . . . liability" because "the jury could infer the [hazard] had existed long enough for the [defendant's] employees to discover it.").

In *Bruno v. Pendleton Realty Co.*, 240 S.C. 46, 124 S.E.2d 580 (1962), our supreme court upheld a verdict in favor of a store patron who fell "as a result of stepping on the edge of a curbing, which was concealed by a heavy growth of grass." *Id.* at 48, 124 S.E.2d at 581. In that case, there was a sidewalk and a walkway that intersected in the parking lot, and grass had grown in the crack at the intersection, which "gave the appearance that the walkway and sidewalk were on the same level." *Id.* at 52, 124 S.E.2d at 583. Testimony established that the patron had not used that particular walkway before, the patron had the impression that the sidewalk and the walkway were the same height, and the walkway and the sidewalk were the same color, "giving the impression that it was one continuous walk." *Id.* at 52-53, 124 S.E.2d at 583. Although evidence showed the

property owner inspected the premises two or three times per week, the condition had existed for a month or more at the time the patron fell. *Id.* The court held, "[t]he mere fact that there is a difference between the levels in the different parts of the premises does not, in itself, indicate negligence unless, owing to the character, location and surrounding condition of the change of level, a reasonably careful person would not be likely to expect or see it." *Id.* at 51, 124 S.E.2d at 582. However, the court pointed out that where a property owner knew or should have known of a dangerous condition that is unknown to an invitee, "the owner is required to give proper warning in order to relieve himself from liability for injuries incurred by reason thereof." *Id.* at 52, 124 S.E.2d at 583. The *Bruno* court held that the jury could reasonably find the change in elevation was hazardous based on both the sidewalk and the walkway being "a grayish white concrete, . . . giving the impression that it was one continuous walk" and noted that the grass hiding the change in elevation had been there for a month or so. *Id.* at 53, 124 S.E.2d at 583. Because a fact finder could reasonably conclude that the property owner, "in the exercise of ordinary care to make its premises reasonably safe, . . . should have given warning of the situation, or taken other precautions to guard against injury to the [patron]," it was proper for the trial judge to deny the motion for directed verdict. *Id.* at 54, 124 S.E.2d at 584.

This case is very similar to the *Bruno* case. The court need look no further than the testimony from LMC's representatives to find evidence that LMC created and/or had notice of the hazardous unpainted curb that caused Mrs. Connell's fall. Dale Thompson, LMC's Vice President of Facilities and Property, admitted on cross examination at trial that the unpainted curb that caused Mrs. Connell to fall was a trip hazard. (R. p. 252, line 25 – p. 253, line 1) (Q. "You agree that this

can create a trip hazard?" A. "Yes. Based on that picture, I agree with you."[8]). LMC built the garage in 2008.[9] (R. p. 246, ll. 15-17). It conducts monthly inspections of the premises to look for hazards. (R. p. 241, ll. 9-22). Mr. Thompson testified that LMC uses yellow paint to mark the curbs in its garage because it makes them visible and indicates to people that they should use caution. (R. p. 244, ll. 6-16). He also admitted that concrete can have a "camouflaging effect" on elevation changes and that a person cannot see such changes in elevation when they are not painted:

> Q. The camouflaging effect can occur with concrete; isn't that true?
> A. Yes. I would say that is correct.
> Q. All right. And, in fact, from the naked eye, you can have concrete that is all one color of that grayish tone, and there may be changes in the elevation, but you can't see it because it's not painted, correct?
> A. Correct.
> Q. All right. And concrete, in and of itself, can cause that camouflaging effect to occur to the eye, right?
> A. Yes. I would say so.
> Q. And that's why curbing is painted all throughout the parking garage, right?
> A. In the other locations, yes. Yes. I would say yes.

(R. p. 244, line 20 – p. 245, line 11). Mr. Thompson went on to testify that elevation changes or curbing can be hazardous, that they are most hazardous when people cannot see or appreciate that the curbing is there, and that the reasonable and prudent thing to do is to paint the side and top of all the curbs to make them visible to pedestrians. (R. p. 250, line 22-p. 251, line 1). Cory Andrews, LMC's Director of Risk Management, also testified that yellow paint is used to make curbs visible to invitees in the garage and that Mrs. Connell would not have been able to see

---

[8] LMC did not contest the authenticity of the photographs. It consented to them being included as an exhibit at trial. (R. p. 55, line 8-p. 56, line 11).

[9] LMC argues that it did not create the hazard because an independent contractor built the garage, but, as discussed above, this argument is not preserved for appeal.

any markings denoting a change in elevation from the direction she was walking. (R. p. 298, line 8 – p. 299, line 22).

In addition, Mrs. Connell's testimony showed that, like the patron who fell in *Bruno*, she was unfamiliar with the pedestrian walkway leading into the parking garage at LMC. Testimony from Mrs. Connell, Mr. Connell, and Mr. Brewer established that both the walkway and the driveway were concrete, and it gave the appearance that they were one level. It is foreseeable that a reasonably prudent person walking into the garage, as Mrs. Connell was, would not expect or observe the curb or elevation change of the walking surface. LMC knew or should have known that pedestrians would use that walkway to enter the garage and would be unable to discern the change in elevation because it was unpainted, unmarked, and both surfaces were the same grayish concrete color. The fact that LMC painted both the top and side of the curbing/elevation changes on walking surfaces throughout the parking garage is further evidence that LMC created the hazardous condition, or at the very least, knew or should have known this condition existed. It is undisputed that LMC did nothing to alert pedestrians to this change in elevation, in spite of its knowledge that the concrete pedestrian walkway suddenly dropped down to the concrete driveway, with no color change or other distinguishing characteristics. Because all this evidence, when viewed in the light most favorable to Mrs. Connell, supports a finding that LMC breached its duty to her, it was proper for the circuit court to deny LMC's Motion for Directed Verdict.

The arguments LMC makes in its brief are unpersuasive. LMC cited *Bruno* in support of its Motion for Directed Verdict, noting that it was "similar to our case here." (R. p. 624). The circuit court held that *Bruno* supported Mrs. Connell's claim and cited to it in the Order and Entry of Judgment. (R. pp. 10-12). Then, on appeal, LMC declares, "*Bruno* is, in fact, a foreign

substance case and is inapplicable here."[10] There is no authority to support LMC's argument that foreign substance cases are inapplicable in this context. In an attempt to support its argument, LMC mischaracterizes the holding in *Cook v. Food Lion*, Inc., 328 S.C. 324, 491 S.E.2d 690 (Ct. App. 1997). In *Cook*, the plaintiff tripped and fell on a floor mat a Food Lion employee placed near the exit of the store because the mat was not flush with the floor. *Id.* at 326, 491 S.E.2d at 691. Three employees testified that the mat used tended to wrinkle or bunch up, but the trial judge in that case granted directed verdict for the defendant, holding that there was no evidence that any Food Lion employee had seen the mat wrinkled up on that day, and therefore, according to the trial judge, there was no evidence of notice. *Id.* The Court of Appeals reversed, holding the plaintiff did not have to provide evidence that the employees had notice of the mat being wrinkled just before the plaintiff fell **because "Food Lion's employees created the allegedly dangerous conditions by placing the mats by the exit doors.**" *Id.* at 327-28, 491 S.E.2d at 691-92 (emphasis added). The law requires a plaintiff to show that a property owner *either* created the hazard or had notice of same; it does not require both. *E.g. Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001). The case did not hold, as LMC proposes, that a plaintiff in a premises liability action cannot rely on the length of time a hazardous condition existed to prove constructive notice unless she fell on a foreign substance. In fact, both this court and the South Carolina Supreme Court have considered the length of time a condition existed as evidence of constructive notice in uneven surface cases. *Bruno v. Pendleton Realty Co.*, 240 S.C. 46, 51, 124 S.E.2d 580, 582 (1962) (noting that the grass had been hiding the elevation change between the two concrete walking

[10] Mrs. Connell disagrees that *Bruno* is a foreign substance case because it was the uneven walking surface, not any foreign substance, that caused the plaintiff to fall in that case. However, more importantly, Mrs. Connell argues that *Bruno*'s relevance does not depend on whether it is classified as a foreign substance case.

surfaces for a month or so before the plaintiff fell); *LeFont v. City of Myrtle Beach*, 430 S.C. 534, 545, 846 S.E.2d 355, 360 (Ct. App. 2020) (finding there was "evidence from which the jury could infer the hole had existed long enough for the [defendant's] employees to discover" the pothole in which the plaintiff tripped). Because there is evidence that LMC – at the very least – should have known that its unpainted parking garage curbing was hazardous, the Directed Verdict Motion was properly denied.

D. Mrs. Connell is Not Required to Show that LMC Violated a Statute, Ordinance, or Building Code to Prove Liability.

In attempting to distinguish *LeFont v. City of Myrtle Beach*, 430 S.C. 534, 846 S.E.2d 355, (Ct. App. 2020) from the case at hand, LMC argues that Mrs. Connell was required to produce expert testimony regarding the hazard of an unpainted curb in order to establish notice. First, this argument conflates the issue of whether a condition is hazardous with whether the property owner has notice of the hazard, but nonetheless, a code violation is not required to prove negligence in a premises liability case. As the circuit court held in this case, a violation of statute or code is relevant because, if a violation is found, it may establish the duty as a matter of law and give rise to negligence *per se*. However, that does not mean the inverse is true; there may still be negligence without a code violation. *See Bruno*, 240 S.C. at 54, 124 S.E.2d at 584 (finding the question of negligence was properly submitted to the jury, even in the absence of evidence pertaining to a statutory or code violation). LMC has a duty to warn of or make safe any condition that it should anticipate could be harmful. *See Larimore v. Carolina Power & Light*, 340 S.C. 438, 446, 531 S.E.2d 535, 539 (Ct. App. 2000) (holding where "the landowner should have anticipated the harm," it can be held liable even for obvious defects). LMC's representatives' testimony established that (1) yellow paint is used on parking garages to demarcate changes in elevation, (2) visible yellow painting on the top and side of the curbs is prevalent throughout the remainder of

the garage in which Mrs. Connell fell,[11] and (3) unmarked changes in elevation are hazardous to pedestrians. Further, Cory Andrews testified that curbs were generally painted in order to make changes in elevation visible to the human eye (R. p. 298, lines 10-22), and Dale Thompson testified both in his deposition and at trial that he believed there was a building code that required the yellow paint on curbs (R. p. 242, lines 19-23). This evidence shows that the unpainted curb was a breach of the standard of care, and LMC should have anticipated the harm caused by this hazard during the nine years it managed and maintained the garage prior to Mrs. Connell's fall. It is more than sufficient to support the denial of the Motion for Directed Verdict.

Further, LMC's arguments pertaining to *res ipsa loquitor* are misplaced. *Res ipsa loquitor* means "the thing speaks for itself," or "the very fact of injury indicates negligence." *King v. J. C. Penney Co.*, 238 S.C. 336, 340, 120 S.E.2d 229, 230 (1961). In other words, a plaintiff who presents evidence of an injury, but no evidence that the condition that caused the injury was hazardous and known to the property owner, must rely on the doctrine of *res ipsa loquitor*. In this case, as discussed at length, the evidence that the unpainted curb presented a hazard and constituted a breach of LMC's duty to keep its premises safe comes from LMC's representatives' testimony, as well as testimony from other witnesses. In a case where the defendant's own representatives, persons designated as knowledgeable on the relevant topics for a 30(b)(6) deposition, testify that the place where the plaintiff fell was hazardous, it would be nonsensical to hold that there was no evidence of a hazard. It is equally nonsensical to find that LMC had no notice that a pedestrian walkway in a garage it had been maintaining and inspecting for nine years contained a change in elevation that was not marked by yellow paint. LMC criticizes the circuit court for "treat[ing] the

[11] Exhibit 3 contains photographs showing that the tops and sides of the curbs are painted in other areas of the garage. (R. pp. 458-466).

curb as obvious to LMC yet camouflaged to [Mrs. Connell,]" but the hazard **should** have been obvious to and anticipated by LMC because LMC **knew the curb was there.** *Larimore v. Carolina Power & Light*, 340 S.C. 438, 448, 531 S.E.2d 535, 540 (Ct. App. 2000) ("The entire basis of an invitor's liability rests upon his superior knowledge of the danger that causes the invitee's injuries."). It is precisely because Mrs. Connell did not know the curb was there—and because LMC did nothing to warn her of it—that the walkway and curb were hazardous. Because there is ample evidence of LMC's negligence, it cannot be said that the circuit court relied on *res ipsa loquitor* in denying LMC's Motion for Directed Verdict; there is more than sufficient evidence to support the denial.

II. IT WAS WITHIN THE COURT'S DISCRETION TO ADMIT LINDSAY MOORE'S TESTIMONY

LMC argues that the Circuit Court should be reversed because it errantly admitted expert testimony from Plaintiff's life care planner, Lindsay Moore, MSPAS, PA-C, CLCP. Because it was reasonable for the judge to consider Ms. Moore's testimony, there is no abuse of discretion, and the ruling must be affirmed.

A. Standard of Review

"Qualification of an expert and the admission or exclusion of [her] testimony is a matter within the sound discretion of the trial court." *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 25, 609 S.E.2d 506, 509 (2005). When the circuit court rules on the admission of expert testimony, its "decision will not be disturbed on appeal absent an abuse of discretion." *Pike v. S.C. Dept. of Transp.,* 343 S.C. 224, 234, 540 S.E.2d 87, 92 (2000); *Gooding v. St. Francis Xavier Hosp.,* 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997); *Means v. Gates,* 348 S.C. 161, 166, 558 S.E.2d 921, 923 (Ct. App. 2001). "A trial court's ruling on the admissibility of an expert's testimony constitutes

an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair." *Fields*, 363 S.C. at 25–26, 609 S.E.2d at 509 (citing *Means,* 348 S.C. at 166, 558 S.E.2d at 924).

B. LMC's Argument That the Damages Must be Reduced is Not Preserved for Appeal

To the extent LMC argues the Court should reduce the damages award (App. Br. P. 17), its argument is not preserved for appeal because it did not make a Motion for New Trial *Nisi Remittitur* or any motion pursuant to Rule 59(e), SCRCP. If "an issue has not been ruled upon by the [circuit court] nor raised in a post-trial motion, such issue may not be considered on appeal." *Caldwell v. Wiquist*, 402 S.C. 565, 576, 741 S.E.2d 583, 589 (Ct. App. 2013) (quoting *Pelican Bldg. Ctrs. of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993)). "Although a Rule 59(e)[, SCRCP,] motion may effectively seek a reconsideration of issues and arguments, this type of motion is often required for issue preservation purposes." *Home Med. Sys., Inc. v. S.C. Dep't of Revenue*, 382 S.C. 556, 562, 677 S.E.2d 582, 586 (2009). LMC did not ask the circuit court to alter or reduce its award, once entered, based on LMC's objection to the future medical cost evidence, so it cannot now ask this Court to do so.

Moreover, because LMC has offered no legal authority supporting this request for relief, it must be considered abandoned on appeal. *See Bryson v. Bryson,* 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) (holding an issue is deemed abandoned and will not be considered on appeal if the argument in the brief is unsupported by authority); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.,* 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (holding short conclusory statements unsupported by authority are abandoned on appeal and not presented for review); *Butler v. Butler,* 385 S.C. 328, 343, 684 S.E.2d 191, 198–99 (Ct. App. 2009) (finding appellant abandoned certain issues when he "cited no statute, rule, or case in support of [his]

arguments in either his argument section or his 'Background Legal Principles' section" of his brief). Therefore, the award of $225,000 must not be reduced.

C. Lindsay Moore's Testimony Was Properly Admitted.

Ms. Moore was qualified to give the testimony offered, and the circuit court was well within its discretion in admitting her testimony. "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields*, 363 S.C. at 26, 609 S.E.2d at 509. In this case, LMC can show neither.

i. Any Deficiency in Lindsay Moore's Education and Experience Goes to the Weight of Her Testimony, Not the Admissibility

A party seeking to use expert testimony must show that the witness possesses the necessary learning, skill, or practical experience to enable the witness to give opinion testimony. *State v. Von Dohlen*, 322 S.C. 234, 471 S.E.2d 689 (1996). South Carolina recognizes many areas in which an expert "has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge." *State v. Henry,* 329 S.C. 266, 273, 495 S.E.2d 463, 466 (Ct. App. 1997). Essentially, for an expert to be competent to testify, she must be better qualified than the fact finder to form an opinion on the subject matter of her testimony. *Gooding v. St. Francis Xavier Hosp.,* 326 S.C. 248, 252-53, 487 S.E.2d 596, 598 (1997). "Generally, however, defects in the amount and quality of the expert's education or experience go to the weight to be accorded the expert's testimony and not to its admissibility. *State v. White*, 372 S.C. 364, 375, 642 S.E.2d 607, 612 (Ct. App. 2007); *see also Brown v. Carolina Emergency Physicians, P.A*., 348 S.C. 569, 580, 560 S.E.2d 624, 629 (Ct. App.

2001) ("Any defect in the education or experience of an expert affects the weight and not the admissibility of the expert's testimony.").

LMC argues that because Ms. Moore is a physician's assistant rather than a medical doctor, she was not qualified to give testimony regarding whether Mrs. Connell will be admitted to the hospital for the future surgery recommended by her orthopedist. Our supreme court addressed a similar issue in *Gooding v. St. Francis Xavier Hosp.,* 326 S.C. 248, 487 S.E.2d 596 (1997). In *Gooding*, the plaintiff sought to introduce expert witness testimony from an EMT asserting that an anesthesiologist breached the standard of care for intubating a patient. *Id.* at 253, 487 S.E.2d at 598. The trial court refused to qualify the EMT as an expert because he was not a licensed medical doctor. *Id.* However, both the Court of Appeals and the Supreme Court held that what the EMT lacked in medical training and education was relevant only to his credibility and affected the weight, **not the admissibility** of his testimony. *Id*. (emphasis added). The supreme court went so far as to hold that it was an abuse of discretion to exclude expert testimony on these grounds. *Id.*

In this case, Mrs. Connell presented testimony from Ms. Moore regarding the cost of the future treatment recommended by her orthopedist, Dr. Loging. Dr. Loging testified that Mrs. Connell would need a knee replacement surgery, among other future treatment. Ms. Moore's role, then, as a Certified Nurse Life Care Planner, was to determine what costs Mrs. Connell is reasonably certain to incur. *See Pearson v. Bridges,* 344 S.C. 366, 371, 544 S.E.2d 617, 619 (2001) (holding that plaintiffs must prove that their future damages are "reasonably certain to occur").

LMC argues that Ms. Moore should not have been able to testify regarding her opinion that Mrs. Connell's future surgery would be an inpatient procedure because she is "unqualified to

determine" whether Mrs. Connell will require future surgeries in the inpatient setting.[12] (App. Br. p. 16). In making this argument, LMC asked the circuit court to make the same error admonished in the *Gooding* case. That is, to exclude an expert's testimony based on the expert not being a licensed medical doctor. Ms. Moore was not recommending treatment for Mrs. Connell that she was unqualified to recommend. Rather, she determined what the treatment recommended by Dr. Loging would entail and cost based on her training and clinical experience. Ms. Moore testified that Mrs. Connell would most likely have a knee replacement surgery inpatient because (1) in the Southeast, knee replacements are most often done in the inpatient setting and (2) Mrs. Connell has some comorbidities that increase her risk factors for surgery and general anesthesia, which would be required for the knee replacement surgery. (R. p. 129, line 9 – p. 130, line 15; p. 138, line 16 – p. 139, line 1). Regardless of her ability to admit a patient to a hospital without oversight from a physician,[13] Ms. Moore is more knowledgeable and better able to form an opinion on this issue than the factfinder in this case, making her opinion entirely appropriate. She has training and clinical experience that inform her opinion. What she may lack in credentials is properly considered when weighing the strength of her testimony, but it is insufficient to preclude her testimony from being considered. Most significantly, it cannot be said that it was manifestly arbitrary, unreasonable, or unfair for the fact finder to consider this evidence. The circuit court acted within its discretion in ruling that the licensure or qualification objection LMC raised went

[12] LMC argued at trial that as a Physician's Assistant, Ms. Moore did not have "admitting privileges." (R. p. 110, lines 2-5; p. 111, lines 5-26).

[13] LMC has not identified any code, statute, or regulation showing that a Physician's Assistant cannot admit patients to a hospital, but the Court need not determine whether that's true to decide this issue.

to the weight of Ms. Moore's testimony, rather than the admissibility. Therefore, this ruling must not be overturned.

ii. Even If the Circuit Court Erred in Admitting Lindsay Moore's Testimony, There Was No Prejudice.

As noted above, even if it were error to admit Ms. Moore's testimony, LMC would have to show prejudice caused by this error to warrant a reversal on these grounds. *Fields*, 363 S.C. at 26, 609 S.E.2d at 509. LMC can make no such showing. LMC objected to Ms. Moore being allowed to give her opinion on whether Mrs. Connell's future surgery would be inpatient, largely because the cost for an inpatient procedure was so much higher than the cost for an outpatient procedure. However, Mrs. Connell introduced both Ms. Moore's updated report, which included the inpatient procedure cost, and a prior report, which included the cost of an outpatient procedure. (R. p. 547-553). Further, Dr. Alford, Mrs. Connell's economist, provided testimony regarding how his cost projections would change if he used the outpatient procedure costs Ms. Moore provided in her first report. The circuit court judge, sitting as fact finder, had the benefit of all this information when making his decision. Although the circuit court specifically found that Mrs. Connell proved by a preponderance of the evidence that she incurred $55,839.38 in past medical expenses, the circuit court did not set forth an amount proven for future damages or delineate between special damages and general damages in making its award. The court's award of $225,000 was significantly less than the statutory maximum award of $300,000, which could be easily reached if the circuit court accepted all the future medical costs Mrs. Connell presented. Based on the permanent and painful nature of Mrs. Connell's injury and the evidence before the court, the circuit court could reasonably have awarded $225,000 in non-economic damages alone without considering future medical costs. Put simply, there is no indication that the circuit court awarded an amount for a future inpatient surgery, so there is no indication that LMC was

prejudiced because of this admission. Thus, even if Ms. Moore's testimony was errantly admitted, this is not grounds for reversal.

III. IT WAS WITHIN THE COURT'S DISCRETION TO DENY LMC'S MOTION FOR LEAVE TO DEPOSIT IN COURT

LMC does not have a right to pay judgments into the court to avoid statutory interest — it is a matter left to the discretion of the trial judge. Rule 67, SCRCP. Because the circuit court did not abuse its discretion in denying LMC's Motion, this ruling must be affirmed.

A. Standard of Review

As LMC correctly points out, "the granting of leave to deposit money with the court pursuant to Rule 67, SCRCP is a matter within the discretion of the trial court and will not be overturned absent an abuse of that discretion." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006). Such an abuse only occurs "when the ruling is based on an error of law or a factual conclusion without evidentiary support." *Id.* Our supreme court "has repeatedly held that [it] will not disturb a ruling made by a circuit judge, when the matter is one within his discretion, unless it plainly appears that as a matter of law such discretion was erroneously exercised." *Wade v. S. Ry. Co.*, 186 S.C. 265, 195 S.E. 560, 560 (1938). Interference from appellate courts is not proper unless the Court "is convinced that the action of the circuit judge was so opposed to a sound discretion as to amount to a ***deprivation of the legal rights of the complaining party***." *Griffin v. Owens*, 171 S.C. 276, 172 S.E. 221, 222 (1934) (emphasis added).

B. The Circuit Court Did Not Abuse Its Discretion in Denying the Motion.

In the instant case, the circuit court rightly determined that Rule 67, SCRCP leaves to the court's discretion whether a party against whom judgment has been entered may deposit funds into the court. *See Brown v. Buttz*, 15 S.C. 488, 492 (1881) (holding that a statute permitting a party to take a certain action with leave of the court does not require a court to grant such a request);

Hentges v. Hentges, No. 2011-UP-513, 2011 WL 11735805, at *2 (S.C. Ct. App. Nov. 28, 2011) (affirming a court's refusal to allow funds awarded to be deposited into the court because there was no "question of entitlement to the funds" under the applicable order). Finding that the intent of Rule 67 is to benefit the judgment creditor and considering the facts and circumstances of this case, the circuit court held LMC should not be allowed to deposit said funds. (Order dated July 31, 2020).

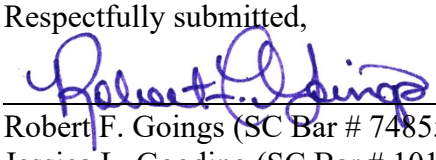
LMC has not identified any error of law or unsupported factual conclusion on which the trial court based its denial. Further, LMC cannot point to any legal right it has been deprived of because the circuit court denied its Motion to Deposit In Court. Instead, LMC speculates that the interest rate for post-judgment interest established by S.C. Code § 34-21-20(B) "may exceed the interest Defendant is actually able to earn on the judgment amount during the pendency of this appeal" and concludes, "it was an abuse of discretion for the trial court to deny LMC's Motion based on inaccurate factual assumptions." (App. Br. p. 19). In short, LMC disagrees with the circuit court's denial of its Motion and declares that the court's decision must be overturned. However, the abuse of discretion standard requires LMC, as the Appellant, to show that the court's decision was so outside the bounds of what is allowed under the law as to deprive LMC of a legal right. LMC has no absolute right to deposit funds into the court, and the circuit court properly denied LMC's Motion based on the facts and circumstances of this case. Therefore, the decision must be upheld.

CONCLUSION

Mrs. Connell presented evidence at trial that LMC created and had notice of the hazardous condition that proximately caused her fall and fractured knee, which led to significant pain, suffering, and permanent injury. The circuit court properly denied LMC's Motion for Directed

Verdict and acted within its discretion in admitting expert testimony and denying LMC's Motion for Leave to Deposit in Court. For the foregoing reasons, Mrs. Connell respectfully requests this Court affirm the circuit court and require LMC to pay the judgment entered against it.

Respectfully submitted,

By: 

Robert F. Goings (SC Bar # 74855)
Jessica L. Gooding (SC Bar # 101210)
Goings Law Firm, LLC
1510 Calhoun Street
Post Office Box 436 (29202)
Columbia, South Carolina 29201
Phone: (803) 350-9230
Fax: (877) 789-6340
Email: rgoings@goingslawfirm.com
jgooding@goingslawfirm.com

Attorneys for Respondent

Columbia, South Carolina

February 8, 2021