

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )  
) )  
Thomas Lovelace and )  
Carol Lovelace, )  
Plaintiffs, )  
vs. )  
) )  
The Center for Oral and Maxillofacial )  
Surgery, P.A. and Mark Billman, )  
DMD, MD, )  
Defendants. )

IN THE COURT OF COMMON  
PLEAS FOR THE SIXTEENTH  
JUDICIAL CIRCUIT

Case No. 2019-CP-46-01736

SC Court of Appeals

AUG 20 2021

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ORDER DENYING ALL  
POST-TRIAL MOTIONS

This matter came before the Court by way of Defendant’s Motion for Judgment Notwithstanding Verdict/Motion for a New Trial and Plaintiff’s Motion for a New Trial on the Sole Issue of Recklessness. For the reasons set forth below, all post-trial motions are DENIED.

The Court finds Plaintiffs presented evidence which reasonably supported a finding that Defendant was the proximate cause of Plaintiffs’ injuries. A trial judge cannot disturb findings of a jury unless the record contains no evidence which reasonably supports them. *Horry County v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (1993); *Force v. Richland Mem’l Hosp.*, 322 S.C. 283, 471 S.E.2d 714 (Ct. App. 1996).

The Court further finds no error in any of the rulings or actions outlined in Defendants’ motion. First, the excluded evidence of Plaintiff’s smoking and drinking was irrelevant to any issue in the case. The principal issue was whether Dr. Billman met the standard of care in his treatment of Mr. Lovelace. Whether Mr. Lovelace was at higher risk of mouth ulcers or cancer due to his medical history has no bearing on this issue. Smokers and drinkers are entitled to reasonable medical care, just as non-smokers and teetotalers are. The exclusion of this irrelevant evidence cannot be prejudicial. See *Otis Elevator, Inc. v. Hardin Const. Co. Group, Inc.*, 316 S.C. 292, 450 S.E.2d 41 (1994).

Defendants also object to the method of redaction, which “whited out” the answers to “Pertinent FMH/SHX.” This objection is meritless for several reasons. First, there is no evidence these cryptic abbreviations were even understandable to the jury. Second, Plaintiffs never argued that Defendant failed to consider Plaintiff’s past medical history so the related portion is irrelevant. Finally, Defendants agreed to the redaction method.

The Court’s refusal to place nonparties on the verdict form was not error and did not prejudice Defendant. See *Machin v. Carus Corp.*, 419 S.C. 527, 799 S.E.2d 468 (2017); *Smith v. Tiffany*, 419 S.C. 548, 799 S.E.2d 479 (2017). Similarly, the failure of the jury to determine what constituted actual versus noneconomic damages in awarding a verdict was not prejudicial, as the verdict can be sustained solely on the uncontested evidence of economic loss presented by Plaintiffs. Finally, the charge that, “[t]he negligence of a later treating doctor is foreseeable,” is a correct statement of law and did not prevent the jury from considering intervening or superseding

causes. See *Payton v. Kearsse*, 319 S.C. 188, 460 S.E.2d 220 (Ct. App. 1995) rev'd on other grounds, 329 S.C.511, 495 S.E.2d 205 (1998); *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984); *Fairchild v. SC DOT and William Palmer*, 398 S.C 90, 727 S.E.2d 407 (2012).

As to Plaintiffs' motion, the Court finds Plaintiffs presented no evidence showing Defendant's actions were willful, wanton, or reckless. A "conscious failure to exercise due care" must mean more than the Defendant doctor made a conscious decision which was detrimental to the plaintiff, else all medical malpractice actions would support punitive damages. The Court finds no reason to alter its prior ruling on punitive damages. See S.C. Code Ann. Section 15-33-135 (Supp. 1999); *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996).

All post-trial motions are DENIED.

The \$2 million verdict in favor of Mr. Lovelace is reduced to \$1.2 million according to the 40% comparative negligence finding by the jury.

IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hon. William A. McKinnon  
Presiding Judge



York Common Pleas

**Case Caption:** Thomas Lovelace , plaintiff, et al VS Center For Oral And  
Maxillofacial Surgery Pa , defendant, et al  
**Case Number:** 2019CP4601736  
**Type:** Order/Other

So Ordered

/s William A. McKinnon, Chief Judge for  
Administrative Purposes, 16th Cir., #2761