

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Betty McDade as Guardian *ad litem*)
 for Matthew McDade,)
 Plaintiff,)

Case No.: 2018CP4200063

vs.)

Order Regarding Plaintiff's
 Motion for Judgment Notwithstanding
 Verdict; Motion for a New Trial
 Absolute; and Motion for a New Trial
 Pursuant to the Thirteenth Juror Doctrine

Roger Caldwell,)
 Defendant.)

RECEIVED

Nov 05 2021

SC Court of Appeals

Hearing Judge: Grace Gilchrist Knie
 Counsel for Plaintiff(s): Roy T. Willey, IV, & Alexis W. McCumber
 Counsel for Defendant(s): Michael T. Coulter
 Court Reporter: n/a (decided on written submissions)

This matter is before the Court based upon Plaintiff's post-trial motions made pursuant to Rules 50 and 59 of the SCRPC filed with the Court on August 20th, 2021. This matter was scheduled on the Common Pleas Non-Jury docket to be heard by the Court at a hearing on September 30th, 2021, however Counsel agreed for the motions to be decided upon the record and the written submissions of Counsel without oral argument. Attorneys Roy T. Willey, IV, and Alexis W. McCumber of the Anastopoulo Law Firm, LLC, represent the Plaintiff. Attorney Michael T. Coulter of Clarkson, Walsh & Coulter, P.A., represents the Defendant.

PROCEDURAL HISTORY:

Plaintiff filed the Summons and Complaint on January 8th, 2018, alleging that on October 16th, 2015, Defendant was negligent, negligent *per se*, grossly negligent, reckless, willful and wanton when a collision resulting in injuries to Plaintiff occurred. Plaintiff requested actual and punitive damages. Defendant filed an initial Answer to the Complaint on March 13th, 2018, filed

an Amended Answer on March 22nd, 2018, and filed a Second Amended Answer on March 5th, 2021, denying the allegations of Plaintiff's Complaint and asserting comparative negligence as a complete bar to Plaintiff's recovery, and in the alternative asserting comparative negligence as a set-off to any recovery of Plaintiff. The action was tried before a jury and the jury returned its verdict on August 10th, 2021. The jury found that Defendant was not negligent.

This matter is before the Court pursuant to Plaintiff's post-trial motions filed on August 20th, 2021, the motions before the Court are Plaintiff's Motion for Judgment Notwithstanding the Verdict, Plaintiff's Motion for a New Trial Absolute, and Plaintiff's Motion for a New Trial Pursuant to the Thirteenth Juror Doctrine. Defendant replied to all motions by a responsive memorandum on August 30th, 2021.

LAW:

When ruling on a judgment notwithstanding the verdict (JNOV) motion, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. Williams Carpet Contractors, Inc., v. Skelly, 400 S.C. 320, 734 S.E.2d 177(Ct. App. 2012). When deciding a motion for new trial absolute on the ground that the verdict is excessive or inadequate, the jury's determination of damages is entitled to substantial deference. Circuit court should grant a new trial absolute on the excessiveness of the jury verdict only if the amount is so grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption, or some other improper motives. SCRCP 59 (2021); Brinkley v. South Carolina Dept. of Corrections, 386 S.C. 182, 687 S.E.2d 54 (Ct. App. 2009). The "thirteenth juror doctrine" allows the circuit court judge to grant a new trial absolute when the judge finds the

evidence does not justify the verdict. Trivelas v. South Carolina Dept. of Transp., 357 S.C. 545, 593 S.E.2d 504 (Ct. App. 2004).

ARGUMENTS OF COUNSEL:

Plaintiff submitted a Motion for Judgment Notwithstanding the Verdict (JNOV) arguing that the evidence is insufficient to support a verdict of no negligence of Defendant and the evidence affirmatively demonstrates that Defendant was negligent and Plaintiff is entitled to judgment as a matter of law on that basis and that it was error to force Plaintiff to testify despite incompetence.

The Plaintiff submitted a Motion for a New Trial Absolute arguing that the Court erred in issuing curative instructions during the trial, in allowing the Plaintiff to be called to testify by opposing counsel, in failing to qualify a witness as an expert witness in the area of accident reconstruction, in refusing to allow certain reply testimony on behalf of the Plaintiff, in refusing to permit the use of certain documents during the trial, by sustaining an objection/s as to testimony elicited regarding insurance coverage, in releasing a juror and seating the alternate, and because the Court did not have jurisdiction to conduct the trial following adjournment.

Plaintiff submitted a Motion for a New Trial pursuant to the Thirteenth Juror Doctrine arguing that the evidence reasonably supports a verdict that the Defendant was negligent and that the improperly admitted impeachment testimony of Plaintiff regarding speed was a critical factor the jury's deliberation.

Defendant submitted his response to Plaintiff's motions asserting that Plaintiff's motions should be denied because evidence of negligence as to the Defendant was not established and that reasonable persons could have, and did find, that Defendant committed zero percent (0%) of fault Defendant further argued that prior to trial, Plaintiff's counsel was properly instructed that the mention of any traffic citation/s would be improper and Plaintiff's counsel failed to comply with

that ruling. Defendant contends that the Court's charge to the jury regarding expert testimony was proper and that Plaintiff's counsel failed to object to the charge at trial. Defendant also asserts that it was necessary for the Court to give curative instructions based upon the actions of Plaintiff's Counsel. In response to Plaintiff's Counsel's assertion that the Plaintiff was incompetent, the issue of Plaintiff's incompetence was not raised until the day of the commencement of the jury trial. There was no evidence presented that a competency proceeding had ever been initiated by Plaintiff's Counsel. There was no evidence that Plaintiff was incompetent.

CONCLUSION:

The Court acknowledges and appreciates the amount of research and preparation for the issues before the Court by Counsel. After consideration of the record, memoranda of Counsel, and the applicable law, the Court, upon review of the record and all reasonable inferences to be derived therefrom, considered in the light most favorable to the non-moving party, finds that there exists no basis to grant Plaintiff's Motion for Judgment Notwithstanding the Verdict, Plaintiff's Motion for a New Trial Absolute, and Plaintiff's Motion for a New Trial Pursuant to the Thirteenth Juror Doctrine filed with the Court on August 20th, 2021, made pursuant to Rules 50, and 59, of the SCRCF, and the motions should be and are therefore denied.

IT IS SO ORDERED.

/s/Grace Gilchrist Knie
Honorable Grace Gilchrist Knie
Resident Judge, Seventh Judicial Circuit

October 8th, 2021
Spartanburg, South Carolina



Spartanburg Common Pleas

Case Caption: Matthew Mcdade VS Roger Caldwell

Case Number: 2018CP4200063

Type: Order/JNOV

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760