

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
)
)
Angela Patton, as Next Friend of Alexia,)
Lumpkin, a minor, Plaintiff,)
vs.)
)
Gregory A. Miller, MD, Rock Hill)
Gynecological & Obstetrical Associates,)
P.A., Defendants.)

IN THE COURT OF COMMON
PLEAS FOR THE SIXTEENTH
JUDICIAL CIRCUIT

Case No. 2009-CP-46-05195

POST TRIAL ORDER AND JUDGMENT

This matter comes before the Court by the way of the Defendant’s Motion for a New Trial, and in the alternative, Motion to Reduce the Non-economic Damages awarded by the jury along with the Plaintiff’s Motion to Recover Interest, Administrative, Filing, and Other Court Costs pursuant to Rule 68, SCRPC. The Defendant’s Motions for a New Trial and a Reduction of Non-economic Damages are DENIED. Plaintiff’s request for interest pursuant to her Offer of Judgment is GRANTED, and judgment is entered accordingly.

In the Court’s view no prejudicial errors were committed during trial as a matter of fundamental fairness to justify granting a new trial. *See Ex parte Kent*, 379 S.C. 633, 640-41, 666 S.E.2d 921, 925 (Ct. App. 2008) (citing *Howard v. State Farm Mut. Auto. Ins. Co.*, 316 S.C. 445, 449, 450 S.E.2d 582, 584-85 (1994)).

First, the Court ruled that the Emergency Medical and Obstetrical Care Exception in S.C. Code § 15-32-230 was an affirmative defense in which the Defendant should have amended the pleadings prior to trial. Under S.C. Rule of Civil Procedure 15 (b), “the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the

merits.” Here, the Court did not allow the pleading to be amended during trial after the Plaintiff rested because the Court ruled that the Plaintiff would be prejudiced by this amendment which would have changed the Plaintiff’s necessary proof to prevail from simple negligence to gross negligence. The Court ruled that altering what the Plaintiff would need to prove to recover, after she had rested her case, would have been unfairly prejudicial. This is especially so when the request was made during the second week of trial in a case which has been pending for more than twelve years.

The Defendant cites *Lee v. Bunch*, 373 S.C. 654 (2007) for the proposition that the motion to amend should have been granted. That case actually favors Plaintiff. In *Lee*, our Supreme Court wrote: “The prejudice that would warrant denial of a motion to amend the pleadings is a lack of notice that a new issue is to be tried and a lack of opportunity to refute it. . . . Prejudice occurs when the amendment states a new defense which would require the opposing party to introduce additional or different evidence to prevail in the amended action” (internal citation omitted). In this case there is a both a “lack of opportunity to refute” the defense, because the motion was made after the close of Plaintiff’s case, and the motion to amend also would also require “additional or different evidence” because the Plaintiff would have to have expert testimony of gross negligence. Prejudice is clear under the *Lee* analysis.

Second, the denial of Defendants’ motion to exclude the expert causation opinion of Dr. Armenta was not a legal error. Even though Dr. Armenta was first formally disclosed as a causation expert less than 30 days prior to trial, the Defense was aware of this witness as a possible damages expert and was aware of other causation experts which they were prepared to cross-examine. In the Court’s view allowing Dr. Armenta to testify on causation did not

prejudice the Defendants. Further, even if it was error to allow Dr. Armenta to testify on causation, this testimony was cumulative to other testimony and does not warrant a new trial.

Third, the Court did not commit reversible legal error by permitting Dr. Resnik to physically examine the minor plaintiff in the jury's presence. The Court ruled that probative value of the examination was not substantially outweighed by the danger of unfair prejudice. See Rule 403. Consequently, the testimony and examination were allowed at trial.

Lastly, the Court's failure to recuse his Honor over this trial because the Court previously represented plaintiffs in medical malpractice cases at McGowan, Hood and Felder in Rock Hill¹, SC, the use of "safety rules" as references to the standard of care, the cumulative error doctrine, and the thirteenth juror doctrine are not grounds for a new trial.

The Defendant's Motions for a Reduction of Non-economic Damages based on the statutory caps is DENIED. SC Code 15-32-210(5) defines "health care provider" and "health care institution." Both defendants fall within the definition of "health care provider," which makes no distinction between providers who are directly liable and those whose liability is vicarious.

The non-economic damages cap of SC Code 15-32-220(C) provides:

In an action on a medical malpractice claim when final judgment is rendered against more than one health care institution, or more than one health care provider, or any combination thereof, the limit of civil liability for noneconomic damages for each health care institution and each health care provider is limited to an amount not to exceed three hundred fifty thousand dollars for each claimant, and the limit of civil liability for noneconomic damages for all health care institutions and health care providers is limited to an amount not to exceed one million fifty thousand dollars for each claimant...

¹ The Court notes its last day as an attorney with McGowan, Hood & Felder was in October of 2016, more than five years ago, and in any case, that firm had no involvement at all in the matter before the Court.

(emphasis added). Pursuant to SC Code 15-32-210(5), both Dr. Miller and his practice are “health care providers,” and therefore the cap is doubled. The fact that liability for the practice is vicarious is not mentioned in the statute as a factor to be considered and is immaterial. Pursuant to SC Code 15-32-220(F), the published inflation-adjusted cap in effect when the verdict was rendered in this case was \$479,064 per “health care provider”, or \$958,128 for two defendants. As the non-economic damage award after setoff was \$950,000, the cap has no bearing on the judgment in this matter.

Plaintiff sent a Rule 68 Offer of Judgment for \$1,000,000 which was filed on October 4, 2011. Giving the defendant the maximum possible five days for service, interest began accruing on October 11, 2010. Interest has therefore accrued on the verdict for eleven years and 143 days at 8% per annum. Interest on the verdict is \$196,000 per year and \$536.99 per day, for a total interest sum of \$2,232,789.57. The Court finds no support in South Carolina law for Defendant’s argument that the filing of an amended complaint nullified the offer of judgment.

Judgment is therefore entered for the Plaintiff, and against Defendants Gregory A. Miller, MD, Rock Hill Gynecological & Obstetrical Associates, P.A. in the amount of: \$4,682,789.57.

IT IS SO ORDERED.

York, South Carolina
March __, 2022

The Honorable William A. McKinnon
Resident Circuit Judge