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SC Court of Appeals

ELECTRONICALLY FILED - 2022 Apr 22 4:44 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201442

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
SUZAN GARLAND,)
)
)
)
vs.)
)
ROBERT CADE AND)
CHRISTY CADE)
)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2019-CP-32-01442

**ORDER DENYING
DEFENDANT'S MOTION FOR
NEW TRIAL**

This matter comes before this court on Defendant's Motion for New Trial, New Trial Nisi and Judgment Notwithstanding the Verdict filed on Wednesday April 6, 2022. On April 1, 2022, a jury found the Defendants liable for nuisance and negligence. The jury awarded the Plaintiff \$125,000 in actual damages and \$8,000 in punitive damages.

After the verdict was pronounced, Defendants filed a timely Motion for a New Trial, New Trial Nisi and Judgment Notwithstanding the Verdict on April 6, 2022. After reviewing Defendants' Motion in whole, this Court denies it for the following reasons:

1. The Defendants renewed all motions made at the conclusion of the Plaintiff's case. For the same reasons indicated in the record, these motions are denied.
2. The Defendants allege the Court erred in dismissing the Third-Party Defendant, Roger Singleton. As indicated by the Court on the record, the decision to dismiss Mr. Singleton from the case was based on the testimony of the Defendants and the required elements needed to be proven as to the actions alleged against Mr.

Singleton. The record was largely empty regarding Mr. Singleton's involvement; therefore, the Court dismissed the Third-Party Defendant.

3. The Defendants allege the Court erred in allowing the engineering testimony from Bill Matthews, an engineer from Greenville. The Plaintiff's witness met the standards the Court applies when considering whether an expert opinion is appropriate or not. Additionally, the Defense counsel was afforded the opportunity to voir dire the proposed expert prior to the Court's acceptance of his credentials. Lastly, the Court instructed the jury that they did not have to hold the expert witness's opinion in any greater or lesser regard simply because of his expert status.
4. The Defendants allege the Court erred in submitting both punitive damages and the Lexington Stormwater Ordinance to the jury. First, the record reflects the Defendants relied on individuals and contractors other than Mr. Singleton to perform work on their property. Therefore, the Court ruled that punitive damages were appropriate for the jury's consideration. Second, the Lexington Stormwater Ordinance was submitted to the jury as an exhibit in evidence by agreement of the attorneys. During jury charges, the Court explained the necessary elements for a finding of negligence per se and noted the Lexington Stormwater Ordinance would be in evidence for their review should they wish to read it to assist in their deliberations.
5. Defense counsel alleges the expert from Greenville was allowed to testify to proximate cause when there were no documents or facts in the record from which he could glean any expert opinion. As previously stated, Defense counsel had the opportunity to voir dire this witness prior to the Court's acceptance of him as an

expert. Once the witness was qualified as an expert, he was allowed to testify as to his opinion while relying on his education, experience, and information received regarding the pond at issue and the means through which it could be remedied. The Court did not find then and does not find now any improper basis from which the expert gleaned his opinion.

6. Defense counsel alleges the Court erred in failing to allow a jury view of the Plaintiff's pond. The Court disagrees. Defense counsel asked for a jury view at the close of the day on April 5, 2022. Defense counsel stated he would bring case law to support his position that a jury view was necessary and Plaintiff's counsel was prepared to argue his position. Defense counsel failed to present any case law regarding this issue. Instead, he later stated he wished to use a drone video he retrieved and created on April 5, 2022. The drone footage was played for the jury after Plaintiff's counsel had an opportunity to review it. The only "admonishment" the Court placed upon counsel was for not complying with discovery rules. Plaintiff's counsel did not see the drone video prior to Defense counsel's attempt to introduce it. Additionally, there were other instances throughout the course of the trial regarding discovery rules and the methods by which lawyers are to share and produce discovery to opposing counsel. This led to the Court reminding both lawyers of their responsibility to follow discovery rules.

The Court denies the Defendants' Motion for a new trial absolute or JNOV nisi. When reviewing JNOV motions, courts must "review the evidence and the inferences deducible from it in the light most favorable to the non-moving party." *Rewis v. Grand Strand Gen. Hosp.*, 290 S.C. 40, 41, 348 S.E.2d 173, 174 (1986). The trial court lacks "the authority to decide credibility issues

or to resolve conflicts in the testimony or the evidence.” *RFT Management Co. LLV v. Tinsley & Adams LLP*, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012). A JNOV motion should be denied “if the evidence is susceptible to more than one reasonable inference.” *Henderson v. St. Francis Cmty. Hosp.*, 303 S.C. 177, 179, 399 S.E.2d 767, 768 (1990). In other words, JNOV can be granted only “if no reasonable jury could have reached the challenged verdict.” *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). In the case at hand, the jury heard the testimony and evidence regarding the pond before the Defendants’ began working on their property, the pond during the Defendants’ work on their property, and the status of the pond today. Issues were raised by the Defense concerning rainfall and hurricane season that were alleged to have led to the Plaintiff’s problems with silt in her pond. Conversely, testimony was presented that the amount of silt in the pond was largely attributed to the agricultural work performed by the Defendants. Thus, this factual issue was properly submitted to be determined by the jury. Based on the evidence and testimony, the Court concludes that in the light most favorable to the non-moving party, the evidence was susceptible to more than one reasonable inference; thus, it was reasonable for the jury to reach this verdict.

For the reasons previously laid out by this Court in this Order and within the trial record as whole, the Defendants’ Motions for New Trial, New Trial Nisi, and Judgment Notwithstanding the Verdict are denied.

AND IT IS SO ORDERED.

Debra R. McCaslin
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

Dated: April __, 2022



Lexington Common Pleas

Case Caption: Suzan Garland VS Robert Cade , defendant, et al
Case Number: 2019CP3201442
Type: Order/Other

So Ordered

Debra R. McCaslin