

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS
THE HONORABLE DANIEL F. PIEPER
CIRCUIT COURT JUDGE

Opinion No. 4440
(S.C. Ct. App. Filed October 7, 2008)

Ted Corbett.....Petitioner,

v.

Jordan William Weaver, a minor over the age of fourteen (14) years,
and Michael Joel Weaver, Defendants,
of whom Michael Joel Weaver is theRespondent.

BRIEF OF RESPONDENT

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QUESTIONS PRESENTED

- I. DID THE TRIAL COURT PROPERLY DENY APPELLANT'S MOTION FOR DIRECTED VERDICT AGAINST MICHAEL JOEL WEAVER FOR LIABILITY UNDER THE FAMILY PURPOSE DOCTRINE AND DID THE TRIAL COURT PROPERLY DENY APPELLANT'S MOTION FOR A NEW TRIAL AS TO THE JURY VERDICT IN FAVOR OF MICHAEL JOEL WEAVER?
- II. DID THE COURT OF APPEALS PROPERLY CONSIDER THE ISSUES RAISED ON APPEAL BY THE APPELLANT AND ISSUE ITS DECISION IN ACCORDANCE WITH EXISTING PRECEDENTS?

STATEMENT OF THE CASE

This negligence action was commenced by the Plaintiff on January 25, 2005 wherein the Plaintiff sought damages from the Defendants asserting that Jordan William Weaver was negligent in the operation of a 1994 Jeep vehicle and asserting vicarious liability on the part of Michael Joel Weaver under the family purpose doctrine. The Defendants filed a timely Answer admitting that the accident had occurred but denying liability for the accident and denying that Michael Joel Weaver should be vicariously responsible for the accident under the family purpose doctrine. This case was tried before the Honorable Daniel F. Pieper and a jury on April 2, 2007. Prior to trial, counsel for the parties stipulated to the court that: (1) liability was being admitted by the minor Defendant, Jordan William Weaver; (2) the Plaintiff was waiving any claim for punitive damages; (3) vicarious liability of Michael Joel Weaver under the family purpose doctrine was not being admitted and was contested and that issue would be tried before a jury; and (4) the amount of Plaintiff's actual damages proximately caused by the accident would be determined by the jury. At the conclusion of all evidence, Plaintiff moved for a directed verdict as to liability against Michael Joel Weaver asserting he was vicariously liable for the actions of Jordan William Weaver under the family purpose doctrine. The Plaintiff's motion for directed verdict was denied and the case was submitted to the jury on only two issues: (1) the amount of Plaintiff's actual damages caused by the admitted negligence and liability of Jordan William Weaver; and (2) whether or not Michael Joel Weaver would be vicariously liable under the family purpose doctrine. The jury returned a verdict on April 2, 2007 against Jordan William Weaver for \$2,000,000.00 and a separate verdict in favor of Michael Joel Weaver on the issue of asserted vicarious

liability against him under the family purpose doctrine. Plaintiff moved for a new trial as to the Plaintiff's action against Michael Joel Weaver. The Plaintiff did not move for judgment notwithstanding the verdict. A Form 4 Jury Verdict Form and Judgment dated April 2, 2007 was entered on April 3, 2007 and attached to that Form were the two verdict forms from the jury on the two issues submitted to the jury. The judgment against Jordan William Weaver was entered in the amount of \$1,975,000.00 after having been set off by \$25,000.00 for liability insurance proceeds already received by Plaintiff. On April 12, 2007, Plaintiff filed and served his Notice of Appeal. The Court of Appeals affirmed the decision of the Trial Court by Opinion filed October 7, 2008. Appellant filed a Petition for Rehearing, which was received by the Court of Appeals on October 20, 2008. On December 19, 2008, the Petition for Rehearing was denied.

ARGUMENT

I. THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION FOR DIRECTED VERDICT AS TO MICHAEL JOEL WEAVER FOR LIABILITY UNDER THE FAMILY PURPOSE DOCTRINE AND PROPERLY DENIED APPELLANT'S MOTION FOR NEW TRIAL AS TO THE JURY VERDICT IN FAVOR OF MICHAEL JOEL WEAVER.

In this case, four (4) stipulations were agreed upon by counsel before the trial began: (1) liability was being admitted by the minor Defendant, Jordan William Weaver; (2) the Plaintiff was waiving any claim for punitive damages; (3) vicarious liability of Michael Joel Weaver under the family purpose doctrine was not being admitted and was contested and that issue would be tried before a jury; and, (4) the amount of Plaintiff's actual damages proximately caused by the accident would be determined by the jury. See Respondent's Statement of the Case and the FACTS as set out in the opinion of the South Carolina Court of Appeals. This is also clear from

opening preliminary statements made by Judge Pieper (R. p.19) and by the opening statement of counsel for Respondent. (R. pgs. 26-29). Counsel for Respondent also admitted in opening statement that the 1994 Jeep vehicle was registered in the name of the father. (R.p.29, lines 5-7). Counsel for Respondent clearly stated that vicarious liability of the father, under the family purpose doctrine, was not admitted and was denied by Respondent. (R. p.28). Petitioner then presented Petitioner's case in chief and Petitioner introduced all evidence received in the record in the case. Respondent did not present nor introduce any evidence into the record at the trial of this case. At the conclusion of all evidence, Petitioner moved for directed verdict on the issue of the applicability of the family purpose doctrine. The only grounds stated for the motion for directed verdict was that the evidence that was introduced into the record entitled the Petitioner to a directed verdict. (R. p. 94, lines 4 - p. 95, line 6). There was no assertion that Respondent's Answer precluded consideration of evidence that Jordan Weaver was the owner of a 1994 Jeep Wrangler vehicle by reason of it being a gift. The trial court denied the motion for directed verdict on the grounds it was asserted and the Court of Appeals properly reviewed that issue based on the conflicting evidence that was in the record. The Court of Appeals affirmed the ruling of the trial court.

Then, after closing arguments were made to the jury and after Judge Pieper had fully charged the jury on the law and issues presented in the case, Petitioner asked that the Summons and Complaint and the Answer be sent to the jury room. (R. p. 131, lines 8-16). Judge Pieper did not allow the pleadings into evidence after the entire trial had been conducted including the presentation of all evidence, full closing arguments by both parties and the trial judge's charge on the law to the jury. Respondent also moved to

amend the answer to conform to the evidence that was already in the record. (R. p. 132 lines 3-10 and lines 13-15). The trial court ruled it made no difference because the Answer was not in evidence. (R. 132, lines. 11-12).

Then, after the jury's verdict, Petitioner made a motion for new trial only on the grounds that the verdict in favor of Michael Weaver was in contradiction to the testimony and evidence in the record. (R. p. 139, line 25 - p. 140, line 15). No motion for JNOV as to Michael Weaver was made by Petitioner. No other grounds or basis for a new trial was asserted or argued by Petitioner. The trial court denied the motion for a new trial on the grounds argued to the trial court and the Court of Appeals properly reviewed that issue based on the conflicting evidence that was in the record and affirmed the ruling of the trial court.

At no time did Petitioner assert or argue to the lower court in either his motion for directed verdict or his motion for a new trial that the Respondent's Answer precluded consideration of evidence that was put into the record by Petitioner about the ownership of the 1994 Jeep. The primary purpose of an appellate court is to correct errors of law by the trial court. Stated otherwise, Petitioner never presented, argued or preserved an appellate issue before the trial court that the Respondent's pleading precluded consideration of evidence that was in fact in the record. In general, issues not raised or ruled upon by the trial court should not be considered on appeal. Petitioner never presented, argued or preserved an issue of judicial estoppel to the trial court. As a matter of fact, the record shows the parties agreed that only two (2) issues would be tried and submitted to the jury as was said in the FACTS portion of the Court of Appeals' opinion:

“(1) the amount of damages Corbett was entitled to and (2) whether Michael was liable pursuant to the family purpose doctrine.”

The last sentence of the Statement of Facts as set out at page three (3) of the Final Brief of Appellant reads: “The Defendant Michael Joel Weaver contests liability under the family purpose doctrine.” This sentence is missing from the Statement of Facts by Petitioner in Petitioner’s brief to this court. Additionally, even in Petitioner’s Statement Of The Case found in the brief of Petitioner before this court, Petitioner states: “The Defendants filed an Answer dated March 11, 2005 which admitted the details of the accident, denied the extent of the damages, and denied that the Defendant Michael Joel Weaver (“Father”) should be vicariously responsible for the negligence of the minor Jordan William Weaver (“Son”), pursuant to the family purpose doctrine.” SCRAP 208 states: “Any matters stated or alleged in appellant’s statement shall be binding on appellant.” There can be no doubt, based on the stipulations as to what issues would be tried and these statements by Petitioner that the applicability of the family purpose doctrine was in dispute when this case went to trial.

Petitioner is now arguing that Respondent’s Answer precluded “consideration” of evidence that was in fact in the record that Jordan Weaver was the owner of the 1994 Jeep Wrangler. The evidence that Jordan Weaver was the owner of the Jeep was introduced into evidence and put in the record by Petitioner. Petitioner selected and published into the record the portions of the depositions of Jordan Weaver and Michael Weaver that created the issue of who owned the 1994 Jeep, and by reasonable inference, who controlled the use of the 1994 Jeep. This testimony in the form of excerpts of the depositions of Jordan Weaver and Michael Weaver was submitted into evidence during

trial by Petitioner and not by Respondent. These excerpts of depositions were read by Petitioner's attorney and not as additions by Respondent's attorney (R. p. 30, line 4- p. 35, line 6 and R. p. 39, line 11-p. 45, line 1). Respondent introduced no evidence in Respondent's case. (R. p. 93, lines 23-25). Therefore, Petitioner is not claiming that the evidence about the ownership of the 1994 Jeep was objectionable or improperly admitted or offered by Respondent, but is claiming that such evidence, after being placed in the record by Petitioner, should not have been considered by the jury, the lower court, the Court of Appeals or this court. This is not an evidentiary question where Respondent was attempting to put this conflicting factual evidence into the record about the ownership of a 1994 Jeep over objection by Petitioner that such evidence was contrary to the pleadings. This is a case where Petitioner put this evidence of a gift into the record in Petitioner's case in chief. Petitioner's arguments A and B argue that the pleadings by Respondent should have precluded "consideration" of evidence about the ownership of the 1994 Jeep. Evidence that is admitted into the record cannot be precluded from "consideration" by a jury, the lower court, the Court of Appeals or this court. Evidence may be objectionable at trial when offered by an adverse party, but evidence that is introduced by Petitioner himself cannot be objectionable by Petitioner. Once the evidence was presented by Petitioner (and not introduced or offered by Respondent), Petitioner cannot then argue that this evidence should have been precluded from "consideration" yet this is exactly what Petitioner has asserted in arguments A and B of his brief.

On this point, it should also be noted that the Answer of Respondents was not admitted into evidence at the trial of this case. Generally, pleadings are not "evidence". Petitioner did not publish any portion of Respondent's Answer at trial. The first time any

discussion of Respondent's Answer being offered as evidence at the trial of this case occurred after all evidence had been presented by all parties and after Petitioner and Respondent had rested their case and after Petitioner had made his motion for directed verdict and after Petitioner and Respondent had made full closing arguments to the jury and after the trial court had fully charged the jury on the law applicable to the case. At that time (after Petitioner's motion for directed verdict had been argued before the lower court and denied, and after closing arguments and jury charge), Petitioner offered to introduce the Answer of Respondent into evidence and Respondent objected. (R. p. 131, line 8 - p. 132, line 2). Respondent also immediately moved to amend the Answer to conform to the evidence. Specifically, Respondent moved to amend the Answer on two (2) points to conform to the evidence that the ownership of the Jeep vehicle be amended so that it was owned by or a gift to Jordan Weaver and not owned by Michael Weaver; and the Jeep was not being used by a family member within the family purpose doctrine. (R. p. 132, lines 3-12). The argument by Petitioner that SCRPC 8 precludes "consideration" of evidence was not specifically raised nor argued by Petitioner in the lower court nor briefed or argued by Petitioner on appeal. SCRPC 8(d) has no applicability even though this argument or point was not previously raised or argued by Petitioner in the lower court.

As stated above, Petitioner did not make a motion for judgment notwithstanding the verdict as allowed under SCRPC 50(b). Generally, a motion for JNOV under SCRPC 50(b) is a renewal of a directed verdict motion. *Wright v. Craft*, 372 S. C. 1, 640 S. E. 2d 486 (Ct. App., 2006). The only post-trial motion made by Petitioner was for a new trial as to the verdict in favor of Michael Joel Weaver. Yet, Petitioner claims error by the

lower court in failing to direct a verdict in favor of Petitioner at the close of evidence at trial. In Petitioner's brief, Petitioner requests this court to reverse the verdict against Michael Joel Weaver. It is unclear if Petitioner is asking this court to enter judgment in favor of Petitioner against Michael Joel Weaver or simply seek a new trial. Petitioner's only post trial motion was for a new trial. Regardless, Petitioner's assertion that the verdict in favor of Michael Joel Weaver be reversed is incorrect and should be denied.

It is well established that when considering a motion for directed verdict, the trial court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. If the evidence as a whole is susceptible of more than one reasonable inference, the case should be submitted to the jury. In ruling on a directed verdict motion, the trial court is concerned only with the existence or non-existence of evidence and the court does not have the authority to decide credibility issues or to resolve conflicts in testimony. *Jones v. General Electric*, 331 S. C. 351, 503 S. E. 2d. 173 (Ct. App. 1998); *Collins v. Bisson Moving and Storage, Inc.* 332 S. C. 290, 504 S. E. 2d. 347 (Ct. App. 1998); *Genovese v. Bergeron*, 327 S. C. 567, 490 S. E. 2d. 608 (Ct. App. 1997). When reviewing the denial of a motion for directed verdict, an appellate court must employ the same standard as the trial court---that is the appellate court must consider the evidence in the light most favorable to the non-moving party. A directed verdict should not be granted unless only one reasonable inference can be drawn from the evidence. When considering a directed verdict motion, neither the appellate court nor the trial court has the authority to decide credibility issues or to resolve conflicts in the testimony or evidence. *Sauers v. Poulin Brothers Homes, Inc.* 328 S. C. 601, 493 S. E. 2d. 503 (Ct. App. 1997). If the evidence is susceptible of more than one reasonable

inference, the trial court should deny the motion for directed verdict and the case should be submitted to the jury. Scoggins v. McClellan, 321 S. C. 264, 468 S. E. 2d. 12 (Ct. App. 1996). If the evidence as a whole is susceptible of more than one reasonable inference, a jury issue is created and the directed verdict motion should be denied. Shelton v. Oscar Mayer Foods Corporation, 319 S. C. 81, 459 S. E. 2d 851 (Ct. App. 1995), affirmed 325 S. C. 248, 481 S. E. 2d 706 (1997). The trial court should deny a directed verdict motion if the evidence presents more than one reasonable inference or if its inferences are in doubt. Genovese v. Bergeron, *supra*. When considering a motion for directed verdict, the trial court must eliminate from its consideration all evidence contrary to or in conflict with the evidence favorable to the non-moving party and give the non-moving party every reasonable inference that the facts reasonably suggest. Small v. Pioneer Machinery, Inc., 316 S. C. 479, 450 S. E. 2d 609 (Ct. App. 1994).

Petitioner asserts this case was tried in light of the admissions and answer to paragraph 2 of the Plaintiff's Complaint. This is incorrect. This case was tried based on the stipulations to the court about which limited issues would be presented for determination by the jury. Specifically, liability was admitted by Jordan William Weaver and the jury would decide the amount of the Plaintiff's actual damages proximately caused by the accident. Additionally, it was agreed Plaintiff waived any claim for punitive damages. Lastly, it was stipulated and agreed that any vicarious liability on the part of Michael Joel Weaver under the family purpose doctrine was not being admitted and was being contested. The pleadings were not admitted into evidence and were not presented to the jury. The pleadings were not in evidence and were not evidence to be considered by the jury. Generally, pleadings in a case are not "evidence." Doe v. Doe,

324 S. C. 492, 478 S. E. 2d. 854 (Ct. App. 1996). Even paragraph four (4) of Respondent's Answer denies Michael Joel Weaver is responsible for the actions of Jordan William Weaver under the family purpose doctrine. Extensive discovery had been completed before this case was tried, including the depositions of Michael Joel Weaver and Jordan William Weaver. Petitioner's counsel had properly designated portions of both Defendants' depositions to be published in accordance with SCRCP 32(a)(5). Portions of both Defendants' depositions were received into evidence. Jordan William Weaver testified as follows:

Q. "And you indicated I thought in a conversation between you and your father during his deposition that it was given to you as a gift?"

A. "Yes, sir."

Q. "And your best recollection of when it was given to you is when?"

A. "I would say around August or September of 2003." (R. p. 23, lines 14 -20)

Likewise, Michael Joel Weaver testified as follows:

Q. "And from the change (sic) between the two of you was was sort off a present?"

A. "It was." (R. p. 42, lines 22-24)

This testimony by the Defendants introduced by Petitioner by way of publishing portions of the Defendants' depositions must be considered in the light most favorable to the Defendants when considering Petitioner's motion for directed verdict. If the evidence is susceptible of any reasonable inference that contradicts an essential element of the Petitioner's claim, a jury issue is created, the directed verdict motion should be denied, and the case should be submitted to the jury. This is precisely what the trial court

decided when denying Petitioner's motion for directed verdict and submitting the issue of vicarious liability under the family purpose doctrine to the jury. (R. p. 94, line 1 - p. 99, line 17). The trial court correctly only concerned itself with the existence or non-existence of evidence on the issue in question and did not consider credibility issues about such evidence or any conflicts in such evidence. Since a reasonable inference that could be drawn from the evidence presented at trial was that Jordan William Weaver owned the 1994 Jeep and that vehicle was given to him as a present from his father, the applicability of vicarious liability under the family purpose doctrine was a question of fact for the jury to decide. Even if the inferences to be drawn from the evidence received at trial are in doubt, all evidence contrary to or in conflict with the evidence favorable to Michael Joel Weaver should not be considered by the trial court in ruling on a directed verdict motion. The non-moving party must be given the benefit of every reasonable inference that the facts reasonably suggest. Ownership of the vehicle in question by the father is an essential element of proof that must be established and proven by the Petitioner to prevail against Michael Joel Weaver under a theory of vicarious liability under the family purpose doctrine. *Thompson v. Michael*, 315 S. C. 268, 433 S. E. 2d. 853 (1993). With this testimony in the record, the trial court properly denied Petitioner's motion for directed verdict and submitted the case to the jury on that issue. The ruling by the trial court was and is, in fact, supported by evidence in the record and should be affirmed. Petitioner's motion for directed verdict was properly denied and that ruling should be affirmed by this court.

Petitioner also contends he should have been granted a new trial by the trial court. In an action at law on an appeal of a case tried before a jury, the jurisdiction of the

appellate court extends merely to correction of errors of laws and a factual finding of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings. Wall v. Suits, 318 S. C. 377, 458 S. E. 2d 43 (Ct. App. 1995). The appellate court must view the evidence and all reasonable inferences which can be drawn therefrom in a light most favorable to the prevailing party. An appellate court is not at liberty to pass upon the veracity of the witnesses or determine this case according to what it might think is the weight of the evidence. Wilson v. Wilson, 312 S. C. 172, 439 S. E. 2d. 323 (Ct. App. 1993).

Petitioner apparently asserts the jury's verdict is totally and wholly unsupported by any evidence in the record. The trial judge has the authority to grant a new trial when, sitting as the thirteenth juror charged with the duty of seeing that justice is done, he is convinced that a new trial is necessitated on the basis of the facts in the case. Wall v. Suits, supra; Graham v. Whittaker, 282 S. C. 393, 321 S. E. 2d. 40 (1984). The decision of whether to grant a new trial is within the discretion of the trial judge and his discretion will not be disturbed absent a clear abuse of that discretion. Vinson v. Hartley, 324 S. C. 389, 477 S. E. 2d. 715 (S. C. App. 1996). Wall v. Suits, supra. Traditionally, in South Carolina, circuit judges have the authority to grant a new trial upon the judge's finding that justice has not prevailed. Vincent v. Hartley, supra.

In the case at hand, the trial judge refused to grant a new trial to Petitioner. The trial court exercised its discretion to deny Petitioner's motion for new trial. Petitioner did not make a motion for JNOV. In a law case, a jury's verdict may only be reversed on appeal when the only reasonable inference to be drawn from the evidence is contrary to the factual findings implicit in the jury's verdict. Watson v. Suggs, 312 S. C. 291, 437 S.

E. 2d. 172 (Ct. App. 1993). This is not the situation in the case *sub judice*. There was ample evidence that the father had given the son the 1994 Jeep as a gift or present and the father therefore no longer “owned” the vehicle at the time the accident occurred. Therefore, there is evidence in the record that would indicate the family purpose doctrine would not be applicable to the facts of the case so as to render Michael Joel Weaver vicariously responsible for the actions of Jordan William Weaver.

The appellate court is not concerned with the weight to be accorded the evidence but only with the existence of evidence to support the jury’s verdict. *Connelly v. Wometco Enterprises, Inc.*, 314 S. C. 188, 442 S. E. 2d. 204 (Ct. App. 1994) Stated another way, if there is any evidence to sustain the factual findings implicit in the jury’s verdict, the appellate court will affirm. *Hilton Head Island v. Skull Creek Club*, 287 S. C. 530, 339 S. E. 2d. 890, (Ct. App. 1986). An appellate court can reverse a jury verdict only if it is without evidentiary support. *Bishop Logging Company v. John Deere Industrial Equipment Company*, 317 S. C. 520, 455 S. E. 2d 183 (Ct. App. 1995). There is ample evidence to sustain the factual findings implicit in the jury’s verdict. The testimony by both Defendants introduced by Petitioner by way of publishing portions of Defendants’ depositions as cited above makes it clear that there was evidentiary support for the jury’s verdict. As such, there can be no error of law on the part of the trial court in denying the Plaintiff’s motion for new trial. Therefore, the trial court’s discretion in denying the Plaintiff’s motion for new trial is not a clear abuse of that discretion and should not be disturbed by this court.

Under the thirteenth juror doctrine, a trial judge may grant a new trial if the judge believes the verdict is unsupported by the evidence. *Johnson v. Hoest Celanese*

Corporation, 317 S. C. 415, 453 SE 2d 908 (S.C. App. 1995), Sorin Equipment Company, Inc. v. The Firm, Inc. 323 S. C. 359, 474 S. E. 2d. 819 (Ct. App. 1996). Also, under the “thirteenth juror doctrine”, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. Such a ruling has been termed granting a new trial upon the facts. Vincent v. Hartley, *supra*; Norton v. Norfolk Southern Railway, 341 S. C. 165, 533 S. E. 2d 608 (Ct. App. 2000). The decision of whether to grant a new trial is left to the sound discretion of the trial judge. Johnson v. Hoest Celanese, *supra*. Such discretion is founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict and the judge’s view of them. In ruling on a new trial motion as the thirteenth juror, the trial judge may weigh the evidence and rely on his or her view of the circumstances. Basically, the circumstances are as though the judge, as the thirteenth juror, “hangs” the jury. Vincent v. Hartley, *supra*; Sorin Equipment Company, Inc. v. The Firm, Inc., *supra*.

The trial court did not “hang” this jury as the thirteenth juror and the trial court did not believe that the verdict was unsupported by the evidence. Likewise, the trial court did not find that the evidence did not justify the verdict. Similarly, the trial court did not feel that a new trial was necessary or proper to see that justice was done in this case. There is ample evidence in the record when viewed in the light most favorable to Michael Joel Weaver to justify the verdict in his favor. Since there is evidentiary support for the jury’s verdict, that verdict should be affirmed as a new trial is not warranted under the facts of this case.

The burden to show an abuse of discretion lies with Petitioner. Johnson v. Hoest Celanese Corporation, *supra*. The trial court refused to grant Petitioner a new trial as the

thirteenth juror or otherwise. When the evidence in the record is viewed in the light most favorable to Michael Joel Weaver, there is ample evidentiary support for the jury's verdict and the findings implicit in the jury's verdict. Therefore, there is no error of law in the trial court's exercise of its discretion in denying Petitioner's motion for a new trial. Since there has been no error of law, the decision of the trial court to deny Petitioner's motion for a new trial was within the trial court's discretion and that discretion should not be disturbed as there has been no showing of a clear abuse of that discretion. Without an error of law, there can be no showing of any abuse of the trial court's discretion. Since there has been no abuse of discretion, the jury's verdict should be affirmed as a new trial is not warranted under the facts of this case. As there is evidence to sustain the factual findings of the jury's verdict, the appellate court should affirm the jury verdict and affirm the trial court's denial of Petitioner's motion for a new trial. No abuse of discretion has been shown by Petitioner. The lower court found that the evidence justified the verdict and the jury verdict was not without any evidentiary support. The motion for a new trial was properly denied by the lower court and this court cannot conclude that the jury's verdict is totally and wholly without evidentiary support. Based on the above, the jury verdict should be affirmed and the lower court's denial of Plaintiff's motion for a new trial should be affirmed.

Petitioner next asserts that Respondent should be judicially estopped or judicially barred from asserting that Michael Joel Weaver was not the owner of the 1994 Jeep. This argument by Petitioner inserts a new legal concept of judicial estoppel into this matter that was not raised in the lower court nor ruled on by the lower court, nor raised, briefed or argued by Petitioner on appeal to the South Carolina Court of Appeals. The legal

doctrine of judicial estoppel was not raised in the lower court, ruled on by the lower court, briefed by Petitioner on appeal or argued by Petitioner at oral argument. Petitioner asserts that “the proof offered by a party at trial is dictated by the matters admitted or denied in the pleadings.” This simply is too simple a statement. This case was tried on the two stipulated issues that the parties agreed would be tried when this case went forward. One of those issues was the applicability of the family purpose doctrine so as to render Michael Joel Weaver vicariously responsible for the actions of Jordan William Weaver pursuant to the family purpose doctrine. Additionally, the Respondent in paragraph four (4) of the Respondent’s Answer clearly denied that the family purpose doctrine was applicable to the facts of this case. When this case was tried, Respondent did not offer the proof or evidence about the ownership and use of the 1994 Jeep. As stated above, this evidence was presented by Petitioner and not by Respondent. Respondent did not offer any evidence at all at trial. This issue of fact was therefore created by Petitioner when Petitioner published this deposition evidence from the depositions of Michael Weaver and Jordan Weaver and these issues were therefore tried by express or implied consent of the parties. After all, this appeal is not to decide what Petitioner could have tried to do at the trial of this case but only to correct any claimed errors of law by the lower court based on what Petitioner actually did in the presentation of evidence at the trial of this case.

There has been and there was no change in Respondent’s position in this case. Paragraph four (4) of Respondent’s Answer denied Michael Weaver is responsible for the actions of Jordan Weaver under the family purpose doctrine. Counsel for Respondent made it clear that Michael Weaver did not admit responsibility or liability under the

family purpose doctrine for the actions of Jordan Weaver. After Petitioner (not Respondent) put the evidence in the record about the 1994 Jeep being a gift from Michael Weaver to Jordan Weaver, jury issues were in fact created about the ownership of the 1994 Jeep and the applicability of the family purpose doctrine. Additionally, because there was evidence put in the record by Petitioner (not Respondent) that the Jeep was not provided by Michael Weaver for the general use and convenience of the family but was rather a gift to Jordan Weaver, a jury question of fact existed as to whether or not Michael Weaver should be held liable under the family purpose doctrine. Since the evidence as a whole was susceptible of more than one reasonable inference, the case was properly submitted to the jury on those issues.

Petitioner also asserts that the Court of Appeals misapprehended the testimony in the record regarding the use of the 1994 Jeep by family members and control of the Jeep by either Michael Weaver and/or Jordan Weaver. The Court of Appeals correctly ruled on page five (5) of its opinion that because there was evidence the Jeep was not provided by Michael for the general use and convenience of the family but rather was a gift to Jordan, a question of fact existed as to whether Michael should be liable under the family purpose doctrine. This was nothing more than the Court of Appeals viewing the evidence and all reasonable inferences in the light most favorable to the non-moving party when deciding whether or not a motion for directed verdict or a motion for a new trial should have been granted. As stated above, the trial court and the appellate court should be concerned only with the existence or non-existence of evidence and the court does not have the authority to decide credibility issues or to resolve conflicts in testimony. Thus, this was not a misapprehension of evidence but a review of the record to determine if

there was evidence in the record that created a jury issue of fact. The trial court found such an issue of fact as did the Court of Appeals and this court should as well. The only issues presented at trial were whether or not Petitioner was entitled to a directed verdict or whether or not Petitioner was entitled to a new trial based on the evidence that was in fact presented at trial and not evidence that possibly could have been utilized at the trial of this case. The fact that the Jeep was a gift to Jordan Weaver created an inference that Jordan Weaver controlled the use of the Jeep and not Michael Weaver. The fact that conflicting evidence or other evidence on this issue was presented by Petitioner does not change the fact that some evidence existed in the record that, when viewed in the light most favorable to Respondent, required those issues to be submitted to a jury for determination. Petitioner does assert that there should have been some necessity of evidence of a complete and unconditional delivery of the Jeep in order to complete a gift or the need for evidence of a gift to be made by complete and unconditional delivery of a gift. This is a totally new argument and a new point that was not raised in the lower court, ruled upon by the lower court, nor briefed nor argued by Petitioner on appeal. The first time this argument appears in this matter is in the Petition for Writ of Certiorari.

In short, no issues properly raised by Petitioner in the lower court were overlooked or misapprehended by the Court of Appeals and the decision of the Court of Appeals should be affirmed.

II. THE COURT OF APPEALS PROPERLY CONSIDERED THE ISSUES RAISED ON APPEAL BY THE APPELLANT AND ISSUED ITS DECISION IN ACCORDANCE WITH EXISTING PRECEDENT.

Petitioner asserts again there was no conflicting evidence in the record as to whether Respondent Michael Weaver was the owner of the vehicle involved in the

accident. The Court of Appeals dealt fully with this argument at length when discussing Petitioner's directed verdict motion and again when discussing Petitioner's motion for a new trial. The Court of Appeals decision carefully analyzed the same argument by Petitioner and decided as follows with regard to Petitioner's motion for directed verdict:

“In support of his directed verdict motion Corbett argued the testimony at trial supported Michael's liability under the family purpose doctrine. Corbett argued that Michael was the owner of the vehicle because he purchased and had the title to the Jeep. He also argued in the alternative that although Michael had given Jordan the Jeep, it was still used for family purposes. Corbett also made the argument that '[a] young person can't own a vehicle.' In response to Corbett's argument, the Weavers argued there was evidence that Jordan owned the Jeep. Michael and Jordan both testified the Jeep was a gift from Michael to Jordan.”

“Viewing the evidence in the light most favorable to Michael, a jury issue existed regarding the ownership of the Jeep. The trial court was presented with conflicting evidence concerning ownership of that Jeep, allowing for two reasonable inferences about which party was the owner of the Jeep. The Jeep being titled in Michael's name was not conclusive evidence Michael was the owner of the Jeep because title alone is not dispositive of ownership. See id. at 528, 636 S. E. 2d at 636 (explaining a vehicle titled in one's name is not always indicative of ownership of the vehicle.). Furthermore, because there was evidence the Jeep was not provided by Michael for the general use and convenience of the family but rather was a gift to Jordan, a question of fact existed as to whether Michael should be held liable under the family purpose doctrine. See Thompson v. Michael, 315 S.C. 268, 273, 433 S. E. 2d 853, 856 (1993) (“Since there is evidence the car was not provided by [the father who is the title-owner] for the general use and convenience of the family but rather was a gift to [the driver's sister], a question of fact exists whether [the father] is liable under the family purpose doctrine.”).”

“One of the elements that must be proven for the family purpose doctrine to apply is that the head of the household owns the vehicle. Evans, 370 S. C. at 527, 636 S. E. 2d at 635. With the conflicting evidence, ownership was a proper issue for the jury to determine, making the trial court's decision to deny the directed verdict motion proper. Pond Place Partners, Inc., 351 S. C. at 15, 567 S. E. 2d at 888 (“If the evidence as a whole is susceptible of more than one reasonable inference, the case should be submitted to the jury.”).”

The Court of Appeals decision also carefully analyzed this same argument by Petitioner and decided as follows with regard to Petitioner's motion for a new trial:

“A trial court's order granting or denying a new trial upon the facts will not be disturbed unless its decision is wholly unsupported by the evidence or the conclusion was controlled by an error of law. Folkens v Hunt, 300 S. C. 251, 254-55, 387 S. E. 2d 265, 267 (1990). When an order pertaining to a new trial is before this Court, our review is limited to the consideration of whether evidence exists to support the trial court's order. Id. at 255, 387 S. E. 2d at 267.”

“As explained above, the record contains conflicting evidence as to who owned the Jeep, which was the basis for the trial court sending that issue to the jury. There was evidence Michael owned the Jeep, but there was also evidence Jordan owned the Jeep because it was a gift. The jury was required to make the decision as to who was the owner and decided Jordan was the owner of the Jeep. Sufficient evidence in the record supports this finding which makes the trial court's denial of Corbett's motion for a new trial proper. See Proctor v. Dep't of Health & Env'tl. Control, 368 S. C. 279, 293, 628 S. E. 2d 496, 504 (Ct. App. 2006) (stating if there is any evidence that could support the jury's findings, a motion for new trial is properly denied.)”

The Court of Appeals and its decision fully and carefully analyzed the evidence in the record that was put in the record by Petitioner. The Court of Appeals first considered whether or not Petitioner's motion for directed verdict should have been granted on the grounds stated by Petitioner. The precise grounds for that motion and that issue were fully considered by the trial court and properly decided by both the trial court and the South Carolina Court of Appeals. These other assertions by Petitioner that judicial estoppel and SCRCP 8(d) should have eliminated these issues from consideration were never raised at trial, never argued to the trial court, never ruled on by the trial court and were not brief of argued by Petitioner on appeal before the South Carolina Court of Appeals.

The Court of Appeals likewise considered whether or not Petitioner's motion for a new trial should have been granted on the grounds stated by Petitioner. The precise grounds for that motion and that issue were likewise fully considered by the trial court and properly decided by both the trial court and the Court of Appeals.

Petitioner asserts the family purpose doctrine has effectively been decimated by the Court of Appeals' decision. That is simply a misstatement of the ruling, decision, analysis and holding of the opinion by the South Carolina Court of Appeals. The Court of Appeals simply concerned itself with the existence or non-existence of evidence and did not decide credibility issues or resolve any conflicts in testimony. From the evidence in the record (put into evidence by Petitioner and not Respondent), a question of fact existed as to whether Michael Weaver should be held liable under the family purpose doctrine. With the conflicting evidence in the record about the ownership of the vehicle, there was a proper issue for the jury to determine and Petitioner's motion for directed verdict was properly denied. Since there was conflicting evidence in the record about the ownership of the vehicle, there certainly was sufficient evidence in the record to support the finding of the jury which made the trial court's denial of Petitioner's motion for a new trial proper. Based on the conflicting evidence about ownership put into the record by Petitioner, the jury was required to decide who owned the vehicle and decided Jordan Weaver was the owner of the vehicle. If there is any evidence that could support a jury's finding in the record, a motion for new trial is properly denied.

The trial court and Court of Appeals ruling did not alter, change or disregard or conflict with any prior decisions of the Supreme Court. The family purpose doctrine is intact and was not changed, altered, or decimated in any way by the Court of Appeals

decision. The Court of Appeals simply ruled that based on the evidence presented by Petitioner at trial, a directed verdict in favor of Petitioner was not appropriate for the reasons stated above nor was a new trial appropriate for the same reason stated above. The family purpose doctrine has not been decimated as is asserted by Petitioner. The Court of Appeals decision does not change nor alter the family purpose doctrine in any way whatsoever. The applicability of the family purpose doctrine so as to make Michael Weaver vicariously responsible for this accident was not admitted and that issue was for trial. The applicability of the family purpose doctrine had to be proven by Petitioner at trial and if conflicting evidence exists in the record as to its applicability, that issue must properly be submitted to the jury. Such conflicting evidence was put in the record by Petitioner and therefore properly submitted by the trial court to the jury for determination. Both the trial court and the Court of Appeals properly considered the precise issues raised on appeal by Petitioner and the Court of Appeals properly issued its decision in accordance with existing precedent. Any other issues or matters not raised at the trial level or ruled upon by the trial court should not be considered on appeal. The decision of the Court of Appeals should therefore be affirmed.

CONCLUSION

This case was tried pursuant to a pre-trial stipulation between the parties that any vicarious liability on the part of Michael Weaver under the family purpose doctrine was not being admitted and that issue would be tried by a jury. Paragraph four (4) of Respondent's Answer denied Michael Weaver was responsible for the actions of Jordan Weaver under the family purpose doctrine. Discovery clearly showed the true facts about the ownership of the 1994 Jeep and that it had been a gift from the father to the son. This

was no surprise to anyone. Both the Trial Court and the Court of Appeals properly considered the evidence put in the record by Appellant (not Respondent) and ruled that that evidence created a jury issue as to the applicability of the family purpose doctrine. Appellant and not Respondent put the evidence in the record that created the jury issues at the trial of this case. Since the evidence as a whole must be considered in the light most favorable to Respondent, that evidence was susceptible to more than one reasonable inference and therefore this case was properly submitted to the jury on the issue of the applicability of the family purpose doctrine. Appellant's motion for directed verdict and motion for new trial were properly denied by the lower court and that ruling was properly affirmed by the Court of Appeals. At no time did Petitioner assert to the lower court that Michael Weaver should have been judicially estopped or barred from asserting that he was not the owner of the 1994 Jeep or that it was a gift to his son. This issue was not raised to the lower court nor ruled on by the lower court and should not be considered on appeal. The conflicting evidence about the ownership of the 1994 Jeep was put into the record by Petitioner and not Respondent. There was no change in Respondent's position at trial or otherwise. The Court of Appeals decision does not conflict with any controlling precedent in South Carolina. The Court of Appeals decision does not decimate the Family purpose doctrine as asserted by the Appellant. The Court of Appeals decision does not change or alter the family purpose doctrine in any way whatsoever. For reasons set forth hereinabove, the Respondent respectfully requests that the decision of the Court of Appeals be affirmed.

Respectfully submitted,

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August 21, 2009

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable Daniel F. Pieper
Circuit Court Judge

CASE NO.: 2005-CP-21-141

Ted Corbett Appellant,

v.

Jordan William Weaver, a minor over the age of fourteen (14) years,
And Michael Joel Weaver, defendants,

Of whom Michael Joel Weaver is Respondent.

CERTIFICATE OF COUNSEL

I, Robert C. Brown, certify that the Final Brief of Respondent complies
with Rule 211(b) and 208(b), SCACR.

August 21, 2009

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And Michael Joel Weaver, defendants,

Of whom Michael Joel Weaver is Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Brief of the Respondent complies with Supreme Court Order 2007-08-13-02 regarding Personal Data Identifiers and other sensitive information.

August 21, 2009,

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PROOF OF SERVICE

The undersigned attorneys for Appellant hereby certify that they have served three (3) true copy of the Respondent's Brief upon the Petitioner by depositing the same in the United States Mail, postage prepared this 21st day of August, 2009, addressed to opposing counsel as follows:

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