State of South Carolina
In the Supreme Court

Appeal from the Court of Common Pleas
for Orangeburg County

J. Derham Cole, Circuit Court Judge

Case # 2004-CP-38-222
South Carolina Court of Appeals Op. No. 4792

William D. Curtis, Respondent

v.

Sandra Morris Blake, as Personal Representative
of the Estate of Brandon T. Blake, Petitioner

Respondent's Brief

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Statement of Issues

1. In this action at law, the trial judge and the Court of Appeals concluded that the jury's verdict is supported by the evidence. May this Court on certiorari re-weigh the evidence or judge credibility?

2. The jury and the trial judge saw and heard testimony that Billy Curtis's physical injuries are permanent; that his pain and suffering, mental anguish, and loss of enjoyment of life are continual; and that he is expected to live until the year 2049. Is the trial judge's decision to honor the jury verdict an error of law?

3. Brandon Blake waited until after the jury was polled and discharged before claiming that it did not deliberate long enough. Is this issue preserved and, if so, does the length of the deliberations warrant a new trial?

Statement of the Case

On March 25, 2003, Brandon Blake ran a stop sign and crashed his pick-up truck into Billy Curtis's tractor-trailer. App. 4.[1] Curtis alleged that the crash injured him permanently and that he has and will continue to suffer pain, mental anguish, and emotional distress from the crash. R.p. 8 ¶ 4.

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[1]Blake's Amended Appendix contains two parts that are separately paginated. Curtis cites the first part as "App. ___." The second part is the Record of Appeal and is cited as "R.p. ___."

Blake contested damages but admitted negligence. App. 4; R.p. 2. At trial before the Honorable J. Derham Cole, Curtis and his wife testified; presented deposition testimony from Dr. David Campbell, his treating chiropractor; and presented a video deposition of Dr. Charles Nivens, his treating spine specialist. R.p. 43. Blake did not have Curtis examined by other doctors and did not call any witnesses. App. 45; R.p. 43, 151 ll.15-17.

At the close of trial, Curtis's counsel suggested to the jury that damages totaled $ 516,230.98. R.p. 175 ll.6-7. The Court then charged the jury on pain and suffering, mental anguish, and loss of enjoyment of life. R.p. 186 l.16 - 187 l.23. The jury awarded $ 450,000. R.p. 192 l.21 - 193 l.5.

Judge Cole polled the jury at Blake's request, found that the verdict is "wholly supported by the evidence," and denied Blake's motion for a new trial. R.p. 4-5, 192 l.21 - 195 l.3. The Court of Appeals agreed that the evidence supports the verdict and affirmed. App. 6-8. This Court granted certiorari.

Statement of Facts

Blake's crash into Curtis

Blake crashed his pick-up truck into Curtis's tractor-trailer hard enough to knock the 29,000 pound trailer into the air and drop it on to the other side of the road. R.p. 136 ll.9-18, 138 l.23 -139 l.7, 152 ll.15-18. The

impact broke the equalizers and hangers, which hold the axles to the trailer, as well as the beams and wells. R.p. 138 ll.8-13. The impact also jarred Curtis's head into the ceiling and his body into the door. R.p. 139 ll.8-16.

Blake's pick-up truck was demolished. R.p. 197-201. Curtis thought that Blake killed himself in the crash. R.p. 118 l.25 -119 l.11, 140 ll.15-24.

The physical injuries

The next morning, Curtis woke up with his neck and back achy and very stiff. R.p. 119 ll.12-19, 142 ll.17-21. He did not go to a doctor despite the pain because he did not want to lose time from his work driving a truck. His family is not independently wealthy and he is the only one to pay the bills for his wife and two children. R.p. 117 ll.20-24, 132 ll.13-14, 133 ll.6-12,143 l.21 - 144 l.9, 168 l.22 -169 l.1.

The pain continued. About a month later it grew so bad that Curtis went to an emergency room. R.p. 155 ll.16-24. The ER doctor prescribed a muscle relaxer and Ibuprofen, but instructed Curtis not to take either one if he was driving. R.p. 144 ll.10-17. Curtis, having to drive a truck for a living, did not take the prescription but continued to take Tylenol. R.p. 144 l.18 -145 l.1, 155 l.25 -156 l.3. The spine specialist testified that the failure to take this medication did not have a huge impact on Curtis's subsequent treatment and did not cause the bulging discs later uncovered by a MRI. R.p. 110 ll.9-22.

A couple of weeks later, Curtis began seeing Dr. David Campbell, a chiropractor. R.p. 55 ll.12-13, 158 ll.4-6. Curtis reported to Dr. Campbell that he was having pain and stiffness in his neck and constant pain in his lower back, was restless and irritable, was having difficulty concentrating and sleeping, and was paranoid while driving. R.p. 56 ll.8-16, 58 ll.10-16, 70 l.4 - 71 l.24, 145 ll.11-23. Dr. Campbell performed two tests. The results of the first test indicated disc involvement and the results of the second one was consistent with disc bulges. R.p. 74 l.24 - 75 l.19, 88 l.21 - 89 l.22.

Dr. Campbell rated Curtis's pain as a "category 3 +" and opined that Curtis was not malingering. He further diagnosed that Curtis had suffered a lumbosacral sprain and a cervical sprain with disc involvement. R.p. 59 ll.2-5, 60 l.11 - 61 l.19, 73 l.19 -74 l.2. The diagnosis of disc involvement was later confirmed by an MRI. R.p. 86 l.4 -87 l.15.

The chiropractor also offered mixed views on whether Curtis's injuries are permanent. He at one point testified that Curtis had recovered, in part because Curtis told him that he had no pain. R.p. 65 ll.14-23, 66 ll.15-24. But he also testified that he did not know if Curtis had recovered or was hiding his pain and simply stopped treatment. He likewise could not rule out the wreck as the cause of any problems that Curtis continued to have. R.p. 65 ll.11-15, 66 ll.4-14, 76 ll.7-13. Curtis and his wife explained that he was still

in pain even though he told Dr. Campbell that he was not, and that he quit going to the chiropractor because the treatments did not help. R.p. 129 ll.11-22, 145 ll.2-10, 146 ll.10-17, 160 ll.6-8.

Dr. Campbell also testified that an MRI is an objective test and the best diagnostic tool in determining an injury to a disc. R.p. 73 ll.6-12. Curtis later had a MRI while under Dr. Charles Niven's care. R.p. 86 ll.3-5. Dr. Nivens is a medical doctor who specializes in spine medicine. R.p. 79 ll.15-25, 81 ll.3-5.

Dr. Nivens testified that Curtis continued to report pain in his neck and back despite the chiropractic care. R.p. 82 l.18-21, 83 l.20 - 84 l.5. At other times, Curtis reported that he was not in pain or that his pain was resolved. R.p. 92 ll.6-20, 107 ll.6-11, 108 ll.4-8. Dr. Nivens explained that these periods without pain were only a "window" or "point" in time and opined without objection that Curtis's injuries are permanent. R.p. 92 ll.9-20, 93 l.22 - 94 l.19, 108 ll.20-23.

An MRI revealed three separate disc protrusions in Curtis's spine and a fourth one in his lower back. R.p. 86 l.19 -87 l.15, 90 ll.1-5. Dr. Nivens opined to a reasonable degree of medical certainty and without objection that the disc protrusions are directly related to the crash, are indeed permanent, and constitute a 10% whole body impairment rating. R.p. 93 l.14 - 94 l.19, 108 ll.20-23.

The disc protrusions further caused Curtis to suffer a loss of cervical lordosis, or curvature of the neck, and created a degenerative disc disease. R.p. 90 l.19 - 91 l.18. This degenerative disease is dehydration of the discs from the injury to them in the wreck. It is not something commonly seen in people Curtis's age, and generally "just get worse as time goes by." R.p. 88 ll.1-20, 104 l.3 -105 l.5. These injuries can further make Curtis more susceptible to more severe ailments in the future, including more disc problems, more degenerative changes, and arthritis. R.p. 94 l.20 - 95 l.5, 112 ll.3-25. It is not unreasonable to expect that he will need future spinal injections. R.p. 95 ll.10-20, 109 ll.8-11.

Ultimately, Curtis stopped treatment with Dr. Nivens because he cannot afford to keep going and paying doctors, and understands that there is nothing more that a doctor can do to help. R.p. 148 ll.17-20,151 ll.8-10.

The pain, suffering, mental anguish, and loss of enjoyment of life

Curtis's pain from the crash continues "still to this day" and has "every day" since the crash. R.p. 120 ll.11-15, 146 ll.18-21, 148 ll.12-13. It prevents him from sleeping well, and he has to get up and moving to avoid getting stiff. R.p. 122 ll.5-13,145 ll.16-20. He also continues to be achy when he wakes up each morning, and it takes him about an hour to loosen up and begin to move around. R.p. 121 l.22 -122 l.4. Some days the pain is as bad as it was shortly

after the wreck. R.p. 148 l.21-149 l.1. Curtis does not believe that this pain will ever get better, and understands that there is nothing more that a doctor can do to help. R.p. 148 ll.17-20,151 ll.8-10.

Curtis and his wife also explained that he continues to work driving a truck despite the pain because the bills must be paid. He has never really done anything else for a living. R.p. 133 ll.11-18. His family must also live off his income because his wife is a home maker and the couple is not independently wealthy. R.p. 117 ll.20-24, 132 ll.9-14, 144 ll.4-9, 168 l.22 -169 l.1. Outside his work, Curtis's pain requires that his wife drive him everywhere. R.p. 131 l.15 -132 l.8.

Curtis also suffers and continues to suffer mental anguish from the crash. Immediately after the crash, Curtis thought that Blake, a boy, had died. Curtis, himself a parent, vomited and was shaky, jittery, freaking out, very upset, and stressed. R.p. 117 ll.14-17, 118 ll.5-11, 118 l.25- 119 l.11,140 ll.23-24, 141 ll.1-9, 142 ll.2-4, 154 ll.20-25. The crash also affected Curtis so much that he, a truck driver, now becomes paranoid whenever he sees someone coming up to a red light or stop sign, believing that they will not stop. R.p. 146 l.22 -147 l.10. He does not believe that his paranoia will ever get better. R.p. 151 ll.11-14.

Curtis lastly endures loss of enjoyment of life. Dr. Nivens explained

that movement, strain, and vigorous exercise may cause Curtis pain. R.p. 95 ll.6-9. Curtis and his wife explained that such pain has rendered him unable to play with his children. R.p. 117 ll.14-17, 122 l.24 -123 l.22, 149 l.19 - 150 l.4. This upsets him because the children do not understand. R.p. 123 ll.8-13.

Curtis further becomes irritable and moody, with little things setting him off. R.p. 122 ll.19-22. He cycles through yelling at his family, slamming doors, and then becoming upset at himself for his behavior. R.p. 145 l.21 -146 l.9. He never acted like this before the crash. R.p. 146 ll.4-5.

Causation

Dr. Campbell and Dr. Nivens opined that Curtis's problems were most probably caused by the wreck. R.p. 69 ll.9-16, 88 ll.1-15, 93 ll.14-21, 104 l.3 - 105 l.5, 106 ll.13-16. Dr. Nivens added that Curtis's truck-driving job did not cause the disc protrusions, and that these protrusions in turn likely caused the degenerative disc disease. R.p. 88 ll.1-15, 110 l.23 -111 l.10. Curtis was also in fine health before the crash, had never injured his neck or back, and never had any problems with his neck or back, before the wreck. R.p. 119 l.17 - 120 l.2, 134 ll.6-16.

Blake presented nothing to rebut these expert opinions. He also never asked Curtis for an independent medical examination. R.p. 151 ll.15-17.

The 44-year life expectancy

In the October 2005 trial, the jury was charged without objection that Curtis has an approximately 44 year life expectancy, and that it could consider this in assessing damages if it determined that Curtis's injuries are permanent. R.p. 188 l.18 -189 l.17.

Argument

Blake wants the Court to disregard Dr. Nivens's testimony that Curtis's injuries are permanent and find that Curtis and his wife lied. But this is an action at law. In actions at law, review is limited to whether any evidence supports the jury verdict and the trial judge's discretion to honor the verdict.

Ample evidence does here. The jury and Judge Cole heard evidence that Curtis has suffered and will continue to suffer permanent physical injuries and continual pain and suffering, paranoia, and loss of enjoyment of life from the day of the crash on March 25, 2003 until his expected death in the year 2049. This evidence confirms that Judge Cole's decision to honor the jury's findings of fact is not an error of law.

The Court of Appeals properly concluded that Judge Cole acted within his discretion in denying a new trial. This Court should affirm or dismiss the writ as improvidently granted.

1. Blake misstates the standard of review.

Blake's primary theme is that Curtis and his wife lied and that this Court can disregard their lies under its "almost quasi-*de novo* review." Petitioner's Brief, p. 13. This is wrong on several levels.

It first ignores Judge Cole's role. Even in equity cases, the Court ordinarily defers to trial judges on credibility because they saw and heard the witnesses. *Lewis v. Lewis*, 392 S.C. 381, 388-389, 709 S.E.2d 650, 653-654 (2011). Here, Judge Cole saw and heard Curtis and his wife testify, eye-balled the jury as it was polled, and found that the evidence wholly supports the jury's verdict. R.p. 4-5, 193 l.11 - 195 l.3. Blake fails to explain why this Court should second-guess Judge Cole's view on credibility. R.p. 4-7.

More fundamentally, Blake ignores that this is an action at law. In actions at law tried to a jury, the Constitution limits the Court to correcting errors of law. Factual findings will not be disturbed unless "there is no evidence which reasonably supports the jury's findings." *Townes Assoc., Ltd. v. City of Greenville,* 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976).

This "no evidence" standard of review forbids weighing evidence or judging credibility. *Haltiwanger v. Barr*, 258 S.C. 27, 30, 186 S.E.2d 819, 820 (1972)("In determining whether the amount of the verdict resulted from prejudice and caprice we keep in mind that it is the duty of the jury to weigh

the evidence and judge the credibility of the witnesses."); *Parnell v. Carolina Coca-Cola Bottling Co.*, 231 S.C. 426, 428, 98 S.E.2d 834, 835 (1957)(in a negligence case, the Court "does not consider the weight of the evidence in such an appeal. We are without jurisdiction to do so.").

Nor may members of this Court apply their view of what they would have awarded as jurors. *Easler v. Hejaz Temple,* 285 S.C. 348, 356, 329 S.E.2d 753, 758 (1985)("Accordingly, this Court will not set aside a verdict for its possibly undue liberality."); *Mickle v. Blackmon*, 252 S.C. 202, 251, 166 S.E.2d 173, 196 (1969)(rejecting an attack on the verdict's excessiveness "[h]owever much any member of this court might disagree with the conclusion reached by the trial judge in the exercise of his discretion . . .."); *Brabham v. Southern Asphalt Haulers, Inc.*, 223 S.C. 421, 430, 76 S.E.2d 301, 305-306 (1953)("The Court must respect the verdict of the jury in fact as well as in pretense or theory and must not substitute its own judgment for that of the jurors.").

Review of the denial of both a motion for a new trial nisi and a new trial absolute is instead limited to whether the verdict is so grossly excessive that it reflects an improper influence – outside of the evidence. *O'Neal v. Bowles, M.D.*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993). "Manifestly, a verdict which may be supported by any rational view of the evidence, or as to which

reasonable and disinterested men might draw different inferences, is not of this class." *Mickle*, 252 S.C. at 248, 166 S.E.2d at 194.

This limited review is especially appropriate when tortfeasors inflict pain and suffering, mental anguish, and loss of enjoyment of life. Because such damages are fully compensable, yet lack market value, this Court pays "substantial deference" to the jury and "great deference" to the trial judge. *Rush v. Blanchard*, 310 S.C. 375, 379-381, 426 S.E.2d 802, 805-806 (1993).

2. Ample evidence supports the verdict.

Did Judge Cole abuse this great deference? The Court of Appeals correctly held that he did not. Blake's attack on Judge Cole's decision ignores Dr. Nivens's testimony that Curtis's injuries are permanent, and rest on inferences that the jury and Judge Cole could easily reject.

a. Curtis's injuries are permanent and his pain, paranoia, and loss of enjoyment of life are continual.

Dr. Nivens testified that a MRI revealed that Curtis has four disc protrusions that are permanent. He further opined that these permanent protrusions are directly related to the wreck, created a disc disease that is degenerative, and that the permanent and degenerative injuries make Curtis more susceptible to even more severe ailments. App. 6, R.p. 2-5, 93 l.14 - 95

l.5, 108 ll.20-23, 112 ll.3-25. Curtis is expected to endure these permanent and degenerative injuries until the year 2049. R.p. 188 l.18 -189 l.17.

Besides these physical injuries, Curtis and his wife testified about his pain and suffering, paranoia, and loss of enjoyment of life. His pain occurs daily, renders sleep difficult, makes him moody, and prevents him from playing with his two children and engaging in other activities that he once enjoyed. He – a truck driver by trade – also remains paranoid that other drivers will crash into him again. App. 6 (summarizing the evidence).

Each element of these intangible damages is fully and separately compensable. *Boan v. Blackwell*, 343 S.C. 498, 541 S.E.2d 242 (2001).

b. The jury was free to reject Blake's arguments.

Blake combats this evidence by ignoring or skewing it. He, for example, says nothing about Dr. Nivens's testimony that Curtis's injuries are permanent. He instead cherry-picks testimony to argue that Curtis has recovered. The jury was, however, free to credit Dr. Nivens's testimony that the injuries are permanent and that Curtis's periods without pain are only a "window" or "point" in time. R.p. 92 ll.9-20, 93 l.22 -94 l.19, 108 ll.20-23.

Blake similarly ignores the testimony on causation. He floats the idea that Curtis's problems stem from his family history or his work as a truck driver. Both Dr. Nivens and Dr. Campbell, however, opined that Curtis's

problems were most probably caused by the crash. R.p. 69 ll.9-16, 88 ll.1-15, 93 ll.14-21, 104 l.3 - 105 l.5, 106 ll.13-16, 110 l.23 - 111 l.10. And Blake never had any problems with his neck or back before the wreck. R.p. 119 l.17 - 120 l.2, 134 ll.6-16.

Blake next disregards Curtis's need to work to feed his family. This economic reality answers Blake's various arguments over Curtis's ability to continue working, the failure to take medication, the treatment gaps, and the limited medical bills. Unlike some, Curtis must work despite the pain. He cannot afford to take time off work for the pain or take medicine that prevents him from working. And he cannot afford to take time off to visit and pay doctors who do not help. R.p. 117 ll.20-24, 132 ll.9-14, 133 ll.6-18,143 l.21 -144 l.9, 148 ll.17-20, 151 ll.8-10, 168 l.22 -169 l.1. Outside of work, Curtis must rely on his wife to drive him everywhere. R.p. 131 l.15 -132 l.8.

This Court has confronted a similar situation. In *Parnell*, the defendant argued that the verdict was excessive in part because its tort victim was able to work. The victim explained, however, that he had to work while ill because his plant was short an experienced foreman. The Court declined to disturb the verdict. *Parnell*, 231 S.C. at 427, 98 S.E.2d at 834.

Lastly, Blake wants to use Curtis's limited income and lost wages as a benchmark to cap compensation for his pain and suffering, mental anguish,

and loss of enjoyment of life. This is bad public policy. Under it, a low wage earner's pain, distress, and inability to play with his or her children is worth less simply because he or she earns less. This disparate treatment is not, and should not, be the law.

In South Carolina, there is no link between a tort victim's pecuniary losses and his or her more intangible injuries. *See Elam v. South Carolina Dep't. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004)(affirming a $ 250,000 award for physical and mental injuries where the medical bills totaled $ 430.00);[2] *Knoke v. South Carolina Dep't. of Parks, Recreation and Tourism*, 324 S.C. 136, 478 S.E.2d 256 (1996)(affirming a $ 3 million award for mental injuries absent any pecuniary loss from the death); *Lynch v. Alexander*, 242 S.C. 208, 130 S.E.2d 563 (1963)(affirming a $ 40,000 award for mental injuries absent any pecuniary loss from the death).[3]

A tort victim's pain and suffering, mental anguish, and loss of enjoyment of life are also not even linked to each other – much less to his or her pecuniary losses. *Boan v. Blackwell*, 343 S.C. 498, 541 S.E.2d 242 (2001).

To impose Blake's proposed cap, the Court will have to overrule these

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[2]Curtis's counsel was counsel in *Elam* and brought the extent of Mr. Elam's medical bills to Judge Cole's attention. R.p. 5.

[3]*See also* App. 124-125 (describing other decisions that involve little or no pecuniary losses and sustain substantial awards for mental anguish).

decisions. And it would have to overrule the decisions despite Blake's failure to preserve the issue for appeal. The jury was not charged to link its award for Curtis's pain and suffering, mental anguish, and loss of enjoyment of life to his medical bills or lost wages. It was charged – without objection – that these damages have "no fixed rule or standard" and that an award "must be left to the sound discretion of you 12 jurors in consideration of your own life experiences and in the exercise of good judgment and common sense." R.p. 186 l.16 - 187 l.23.

c. Blake's case citations are inapt.

Besides skewing the record, Blake cites cases that are easily distinguishable. He, for example, dwells on a Louisiana case that he wrongly argues is "eerily similar." Petitioner's Brief pp. 22-25. His block quotes from the decision reveal that the medical records in that case did not support ongoing injuries. Petitioner's Brief, p. 24. Dr. Nivens opined here that Curtis's MRI revealed disc protrusions that are permanent and a disc disease that is degenerative. R.p. 93 l.14 - 95 l.5, 108 ll.20-23, 112 ll.3-25.

Blake also relies on decisions where trial judges reduced verdicts. These cases turn on their own facts and at best reflect the discretion that trial judges enjoy. Had Judge Cole granted a new trial nisi remittitur, or stepped in as a 13th juror, this Court would grant that decision deference. *Rush*, 310

S.C. at 381, 426 S.E.2d at 806. Judge Cole's discretion to honor the verdict is entitled to the same deference.

Blake next points to decisions involving disfigurements or other injuries to argue that Curtis's injuries are not that bad. This Court has, however, aptly noted the difficulty in comparing one person's pain and suffering with another's pain and suffering. *Cabler v. L.V. Hart*, 251 S.C. 576, 581-582, 164 S.E.2d 574, 577 (1968). In making these already difficult comparisons, Blake fails to explain why a disfigurement is worth more than a continually painful spine and back injury.

Lastly, Blake cites a decision involving undisputed, liquidated damages to lament, "It appears that South Carolina courts will willingly grant new trials in cases where the jury has not rendered a 'sufficient' verdict, but rarely follow the same principles when the verdict is attacked as 'excessive.'" Petitioner's Brief at 19-20 and n. 43.

The swipe is unfair. When undisputed, liquidated damages provide a fixed benchmark for review. If a jury finds liability yet fails to award all of the undisputed damages, one can fairly infer that something went wrong. No similar benchmark exists to measure a tort victim's pain and suffering, mental anguish, and loss of enjoyment of life. These intangible injuries are real yet lack mathematical certainty. Excessiveness is thus in the eye of the

beholder in a way that a verdict's sufficiency is not.

And in actions at law, the eye of the beholder belongs to the jury and the trial judge. That is why this Court pays "substantial deference" to the jury – and "great deference" to the trial judge – when tortfeasors inflict these intangible injuries. *Rush*, 310 S.C. at 379-381, 426 S.E.2d at 805-806.

3. The length of jury deliberations does not warrant a new trial.

Trying to link the nonmonetary damages to the pecuniary losses is not the only issue that Blake failed to preserve. After the jury was polled but before it was discharged, Blake responded "no sir" to Judge Cole's inquiry if there were any other matters to address with the jury present. R.p.195 ll.4-6. This waived his attack on the jury's purported haste in deliberating. *Bensch v. Davidson*, 354 S.C. 173, 179, 580 S.E.2d 128, 131 (2003)(holding that challenges to a jury's deliberations must be raised before its discharge).

The length of jury deliberations also does not by itself warrant a new trial. This point was throughly explored in *Youmans v. South Carolina Dep't. of Transp.*, 380 S.C. 263, 282-283, 670 S.E.2d 1, 10-11 (Ct.App. 2008), *cert. dismissed as improvidently granted* 386 S.C. 640, 690 S.E.2d 582 (2010). In this case, the Court of Appeals explained why *Youmans* applies. App. 7. Blake does not rebut this analysis.

Conclusion

Blake knew from Dr. Nivens's videotaped deposition that Curtis's disc protrusions are permanent and that the wreck created a disc disease that is degenerative. R.p. 78 ll.15-20, 88 ll.1-20, 93 l.14 - 94 l.19, 104 l.3 -105 l.5, 108 ll.20-23. Blake also knew from the beginning that Curtis was claiming ongoing pain and suffering, mental anguish, and loss of enjoyment of life. R.p. 8 ¶ 4. Armed with this knowledge, Blake chose not to put up any testimony or have Curtis examined by another doctor. R.p.151 ll.15-17.

Blake instead thought that he could persuade the jury that Curtis was lying about the pain and suffering, mental anguish, and loss of enjoyment of life that Curtis has endured since March 2003 and will continue to endure until his expected death in the year 2049. Blake miscalculated. The jury awarded damages commensurate with the testimony – and less than Curtis's counsel argued from the evidence.

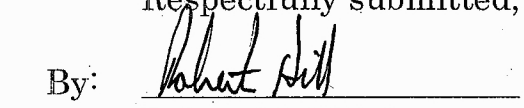
Blake now belittles the jury for "tricking" the judicial process by "treating" Curtis to an unmerited gift. Petitioner's Brief, p. 12. The Halloween metaphor is offensive. The jury did not trick the process. It weighed the evidence, judged the witnesses' credibility, and rendered a verdict that both the trial judge and the Court of Appeals found is supported by the evidence. App. 8, R.p. 4-5. That is what juries are supposed to do.

Blake is the one trying trick the judicial process by advocating a quasi-*de novo* review in which this Court re-weighs evidence, makes credibility findings, and substitutes its view for that of the jury and trial judge who saw and heard the witnesses. Our South Carolina Constitution forbids this in actions at law. In actions at law, this Court may not review issues of fact. Review is limited to whether Judge Cole committed an error of law.

Judge Cole did not commit an error of law. The Court of Appeals agreed with him that the evidence supports the verdict. App. 6-8. This confirms that reasonable people can at least disagree. That is where this Court's inquiry should end. *Mickle*, 252 S.C. at 248, 166 S.E.2d at 194.

This Court in an earlier case concluded, "It was for the jury to weigh the evidence, determine witness credibility and reach a verdict. A search of the entire record reveals nothing to suggest that any party failed to receive a fair and impartial trial." *Easler*, 285 S.C. at 358, 329 S.E.2d at 759. So too here. The Court should affirm the Court of Appeals or dismiss the writ as improvidently granted.

Respectfully submitted,

By: 

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