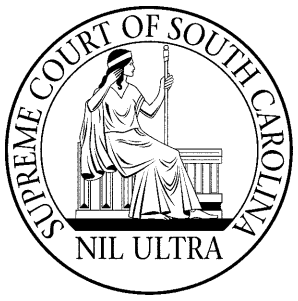

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 46
October 26, 2009
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of William H. Jordan, Respondent.

Opinion No. 26736
Submitted September 25, 2009 – Filed October 26, 2009

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and Barbara M. Seymour, Deputy Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Coming B. Gibbs, Jr., of Charleston, for respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR.[1] In the agreement, respondent admits misconduct and consents to a definite suspension from the practice of law from nine (9) months to two (2) years. He requests that the period of suspension be made retroactive to the date of his interim suspension.[2] We accept the agreement and impose a nine month suspension, not retroactive to the date of respondent's interim suspension. The facts, as set forth in the agreement, are as follows.

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[1] Respondent lives in Charleston.

[2] On January 5, 2009, the Court placed respondent on interim suspension. In the Matter of Jordan, 381 S.C. 141, 672 S.E.2d 104 (2009).

FACTS

On December 26, 2008, respondent was arrested and charged with possession of cocaine with intent to distribute, possession within close proximity of a school, possession of marijuana, possession of drug paraphernalia, following too closely, failure to surrender driver's license, and driving under suspension. Respondent's driver's license had been suspended for failure to pay traffic tickets.

Respondent entered into and successfully completed the pre-trial intervention program in order to dispose of the drug-related charges. The driving under suspension and failure to surrender license charges were dismissed.

Respondent admits that, at the time of his arrest, he was in possession of approximately 4.53 grams of cocaine, less than one ounce of marijuana, and a small marijuana pipe. Following his arrest, respondent consulted with Lawyers Helping Lawyers and completed an outpatient drug and alcohol program. He currently participates in a 12-step program. Respondent represents that he has abstained from drugs and alcohol since his arrest.

LAW

Respondent admits that by his misconduct he has violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 8.4(c) (it is professional misconduct for lawyer to commit a criminal act involving moral turpitude) and Rule 8.4(e) (it is professional misconduct for lawyer to engage in conduct that is prejudicial to the administration of justice). In addition, respondent admits that his actions constitute grounds for discipline under the following provisions of Rule 7, RLDE, Rule 413, SCACR: Rule 7(a)(1) (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct) and Rule 7(a)(5) (it shall be a ground for discipline for a lawyer to engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute).

CONCLUSION

We accept the Agreement for Discipline by Consent and suspend respondent from the practice of law for nine (9) months, not retroactive to the date of his interim suspension. Within fifteen days of the filing of this opinion, respondent shall file an affidavit demonstrating he has complied with the requirements of Rule 30 of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR.

DEFINITE SUSPENSION.

TOAL, C.J., WALLER, PLEICONES, BEATTY and KITTREDGE, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Frances Irene Todd, Appellant,

v.

Barbara C. Joyner, Respondent.

Appeal From Georgetown County
Thomas A. Russo, Circuit Court Judge

Opinion No. 4315
Submitted October 1, 2007 – Filed November 27, 2007
Withdrawn, Substituted, and Refiled January 18, 2008

AFFIRMED

Gene M. Connell, Jr., of Surfside Beach, for Appellant.

Linda Weeks Gangi, of Conway, for Respondent.

PER CURIAM: Frances Irene Todd appeals several evidentiary rulings of the trial court as well as the trial court's denial of her motion for a new trial nisi additur. We affirm.[1]

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

FACTS

On September 4, 2002, Todd and Barbara C. Joyner were involved in an automobile accident in Georgetown, South Carolina. As a result of injuries sustained in the accident, Todd brought this action. Joyner stipulated to her negligence in the case.[2]

On February 27, 2006, Joyner made Dr. Richard J. Friedman available for deposition as an expert in the field of orthopedic surgery. Friedman was not available to testify live at the trial, and a redacted version of his deposition was read into evidence. During the deposition, Todd questioned Friedman extensively about his private practice, the amount of his practice Friedman devoted to testifying as an expert witness, and the percentage of his income that came from testifying as an expert in an average year.

Friedman could not recall specifics in his responses at the time of the deposition, and Todd subsequently subpoenaed records from State Farm Insurance Company regarding payments made to Friedman. The records showed payments of between $50,000 and $60,000 to Friedman for the calendar years 2003 through 2005. The trial court denied their admission into evidence because of the prejudicial impact of injecting insurance into the proceeding.

Additionally, Todd objected to Friedman's use of Todd's medical records as the foundation of his testimony as well as Friedman's occasional reference to those records in his deposition. The trial court overruled this objection. Finally, Todd attempted to introduce, through cross-examination, a covenant not to execute entered into by Todd and State Farm. The trial court denied the covenant's introduction. The jury awarded Todd $37,191.11, the exact amount of her medical bills. Todd made a timely motion for a new trial nisi additur. The trial court denied the motion, and this appeal followed.

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[2] Although the terms liability and negligence appear to have been used somewhat interchangeably during the trial, it is clear that Joyner only stipulated to negligence as opposed to liability.

LAW/ANALYSIS

I. Admission of Evidence of Expert's Connection to State Farm

Todd maintains the court improperly excluded evidence of the prior payments State Farm made to Friedman, which would be evidence of bias in favor of the defendant.[3] We disagree.

The admission or exclusion of evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. Conner v. City of Forest Acres, 363 S.C. 460, 467, 611 S.E.2d 905, 908 (2005). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." Id.

Historically, South Carolina restricted the admission into evidence of defendants' insurance against potential liability in an action for damages before a jury. Dunn v. Charleston Coca-Cola Bottling Co., 311 S.C. 43, 45, 426 S.E.2d 756, 757 (1993). The reasoning behind this rule was to avoid prejudice in the verdict, which might result from the jury's knowledge that insurance, and not the defendant, would be responsible for paying any resulting award of damages. Id. at 45, 426 S.E.2d at 757-58. However, "Rule 411 modified this rule by providing that the admissibility of evidence of insurance depends upon the purpose for which such evidence is introduced." Yoho v. Thompson, 345 S.C. 361, 365, 548 S.E.2d 584, 585 (2001). Rule 411 of the South Carolina Rules of Evidence provides:

> Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

[3] This section addresses the arguments in Todd's brief labeled Arguments I and III.

Because Joyner stipulated to negligence, the records were not being offered to show that she was at fault. Rather Todd sought to use them to discredit the defense expert's testimony.

In Yoho v. Thompson, 345 S.C. 361, 365-66, 548 S.E.2d 584, 586 (2001) the court explained if Rule 411 does not require the exclusion of the insurance evidence, and we find in this case it does not, the court must then consider whether the probative value of the evidence substantially outweighs its prejudicial effect and any potential confusion for the jury under Rule 403. In order to accomplish this analysis, South Carolina has adopted the "substantial connection" test to determine whether an expert's connection to a defendant's insurer is sufficiently probative to outweigh the prejudice to the defendant resulting from the jury's knowledge that the defendant carries liability insurance. Id. at 366, 548 S.E.2d at 586 (citing Bonser v. Shainholtz, 3 P.3d 422 (Colo. 2000); Mills v. Grotheer, 957 P.2d 540 (Okla. 1998)). The substantial connection test has been adopted by a majority of the jurisdictions that have addressed this issue and is based upon the degree of connection between the expert and the insurance company. Id.

The court in Yoho did not articulate a defined test, but instead described the characteristics present in the case that led it to the conclusion a substantial connection existed, and ultimately that the evidence of bias should come in. These characteristics included: (1) the expert maintained an employment relationship with insurance companies; (2) the expert consulted for the insurance company in question in other cases and gave lectures to its agents and adjusters; (3) ten to twenty percent of the expert's practice consisted of reviewing records for insurance companies; and (4) the expert's yearly salary was based in part on his insurance consulting work. Id. Further, the Yoho court specifically found the expert "was not merely being paid an expert's fee in this matter." Id.

The trial court distinguished Yoho from this case in several important aspects. First, the court found it significant the expert in Yoho was present for live testimony during the trial. This allowed the expert to be confronted about his connection to the insurance industry, instead of merely submitting an itemized list of payments into evidence. As described above, Friedman was not available for cross-examination at trial. Friedman could have been cross-examined with the records at his deposition, but Todd had not acquired

the records at that point in time. We also note Friedman's bias was presented for the jury's consideration as his deposition testimony was read into the record. This recitation included the extensive cross-examination by Todd bringing out the issue of potential bias. As a result, the actual record of payments became less probative.

Next, the circuit court did not feel Friedman's relationship with State Farm rose to the level described in Yoho because the only available evidence of his connection to State Farm was an itemized list of payments totaling between fifty and sixty thousand dollars over the course of three years. The court found significant that no witnesses, including the two State Farm employees Todd called, could explain why these payments to Friedman were made. The combination of these factors led the circuit court to conclude "the prejudicial effect of injecting this insurance information into this case greatly outweighs the probative value because . . . there's no opportunity to really do anything probative with this information; and it's really open to great latitude for abuse." We find the circuit court did not abuse its discretion in so holding.

II. Covenant Not to Execute

Todd next contends the circuit court erred in refusing to admit into evidence the covenant between Todd and State Farm. We disagree.

Todd relies upon the lone South Carolina decision addressing the admissibility of a covenant not to execute, Poston v. Barnes, 294 S.C. 261, 363 S.E.2d 888 (1987). In Poston, the plaintiff was injured when another driver struck a school van in which the plaintiff was a passenger. The plaintiff, driver defendant, and the defendant's insurance company entered into a covenant not to execute. Id. at 263, 363 S.E.2d at 889. This covenant limited the defendant driver's liability for damages, while requiring her to remain a co-defendant, along with the school district, outwardly still subject to joint and several liability. Id. at 265, 363 S.E.2d at 890. The court found the covenant was a facade, and the failure to disclose it to the jury tainted the judicial process. Id.

> [T]he jury was denied information to which it was entitled as to the sources of remuneration available to

> the plaintiff and by whom such remuneration would be paid. The fact that the agreement was not disclosed to the jury in this instance facilitates inequity and injustice in the judicial process. . . . Under the circumstances of this case, the agreement should have been allowed into evidence to insure that an equitable verdict was reached. Id.

We find this case readily distinguishable from Poston. Todd and Joyner were both insured by State Farm. Todd entered into a covenant not to execute whereby she agreed not to execute against Joyner's personal assets and to take her recovery from Joyner's $25,000 liability policy, which was tendered, and Todd's own underinsured coverage. So, at trial, Todd was essentially proceeding against her own insurance company. Since naming the insurer is impermissible in this type of action, Joyner was the sole remaining party who could serve as the named defendant. The primary circumstance that compelled the admission of the covenant into evidence in Poston, i.e., the possibility of jury confusion due to multiple parties defendant, is simply not present here.

Todd's position is based in part upon her contention that during the opening statement, Joyner's counsel alluded to Joyner's responsibility to pay the entire amount of the damages award. We find this contention is misplaced and taken out of context, as the crux of Joyner's opening statement did not focus on Joyner's personal responsibility for the damages. Rather, Joyner questioned the reasonableness of the medical costs Todd claimed were necessitated by the automobile accident. Because we find no evidence of an abuse of discretion amounting to an error in law in the record, we affirm the circuit court's decision to exclude the covenant.

III. New Trial Nisi Additur

Todd next asserts the circuit court erred in not granting additur to the jury's damages award, which only reimbursed Todd for her medical expenses. We disagree.

A trial court may grant a new trial nisi additur whenever it finds the amount of the verdict to be merely inadequate. Green v. Fritz, 356 S.C. 566,

570, 590 S.E.2d 39, 41 (Ct. App. 2003). "While the granting of such a motion rests within the sound discretion of the trial court, substantial deference must be afforded to the jury's determination of damages." Id. To this end, the trial court must offer compelling reasons for invading the jury's province by granting a motion for additur. Id. An appellate court will only reverse if the trial court abused its discretion in deciding a motion for new trial nisi additur to the extent that an error of law results. Id. The denial of a motion for a new trial nisi additur is within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion. O'Neal v. Bowles, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993). "The consideration of a motion for a new trial nisi additur requires the court to consider the adequacy of the verdict in light of the evidence presented." Waring v. Johnson, 341 S.C. 248, 257, 533 S.E.2d 906, 911 (Ct. App. 2000). A trial court does not abuse its discretion in denying a motion for new trial nisi additur where evidence in the record supports the jury's verdict. See Steele v. Dillard, 327 S.C. 340, 345, 486 S.E.2d 278, 281 (Ct. App. 1997) (finding no abuse of discretion where the evidence in the record supports the amount of the jury award even though other evidence in the record indicated the jury could have awarded a larger verdict).

The jury awarded Todd $37,191.11, her exact medical costs. In the jury instructions, the circuit court provided the jury with a thorough explanation of how it could determine a monetary value for the damages to which it believed Todd was entitled. This included a full explanation of actual damages, including: "past and future medical charges related to the injury, pharmacy charges, related expenses, pain and suffering, loss of enjoyment of life, as well as mental anguish and impairment of health or physical condition." We find evidence in the record to support the jury's verdict. Joyner argued that all of Todd's claimed damages were not proximately caused by the accident and that all of the medical treatment was not reasonably necessary. Joyner cited the relatively low impact of the collision along with Todd's apparently limited injury immediately following the accident in support of her position. Because there was evidence in the record to support the jury's verdict, we find no error in the circuit court's denial of Todd's motion for new trial nisi additur.

IV. Expert's Reliance on Medical Records During Deposition

Finally, Todd contends the circuit court erred in allowing an expert to read medical records to the jury during his testimony. We disagree.

The admission or rejection of testimony is largely within the trial court's sound discretion, the exercise of which will not be disturbed on appeal absent an abuse of that discretion. Pike v. S.C. Dep't of Transp., 343 S.C. 224, 234, 540 S.E.2d 87, 92 (2000). Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 401, SCRE. Relevant evidence may be excluded, however, if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE.

Experts may testify regarding facts or data, not as substantive proof of the facts so stated, but rather as information upon which they have relied in reaching their professional opinions. Gentry v. Watkins-Carolina Trucking Co., 249 S.C. 316, 324, 154 S.E.2d 112, 117 (1967). Rule 703, of the South Carolina Rules of Evidence provides:

> The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Even if an expert's testimony is admissible under Rule 703, the determination of whether an expert may testify to the facts underlying an opinion must be analyzed under Rule 403. State v. Slocumb, 336 S.C. 619, 627, 521 S.E.2d 507, 511 (Ct. App. 1999). Because any evidence of Todd's medical history would have a minuscule prejudicial effect, if any, as opposed to the high probative value it lends as the basis of Friedman's opinion, we agree with the circuit court's determination.

Finding no error of law, we conclude the circuit court did not abuse its discretion in allowing Friedman to opine as to the evidence contained within Todd's medical records.

CONCLUSION

Based on the foregoing, we hold the circuit court did not err in failing to: (1) allow evidence to prove the bias of Joyner's expert; (2) admit the covenant not to execute between Todd and State Farm; and (3) grant Todd's new trial nisi additur motion. Further, the circuit court did not err in allowing Joyner's expert to testify as to the contents of Todd's medical records. The decision of the circuit court is accordingly

AFFIRMED.

SHORT and WILLIAMS, JJ., and CURETON, A.J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Gene Richard Hughes, Jr., Respondent,

v.

Western Carolina Regional Sewer Authority, Appellant.

Appeal from Greenville County
Edward W. Miller, Circuit Court Judge

Opinion No. 4625
Heard May 27, 2009 – Filed October 22, 2009

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

K. Lindsay Terrell, of Greenville, for Appellant.

David Alexander and Manning Y. Culbertson, both of Greenville, for Respondent.

THOMAS, J.: In this tort action, Western Carolina Regional Sewer Authority (WCRSA) appeals (1) the trial court's denial of motions for

directed verdict and judgment notwithstanding the verdict, based on an alleged lack of proximate cause; (2) the trial court's instruction to the jury; and (3) the trial court's denial of a motion to set-off the verdict by the amount the plaintiff received in settling with a negligent third party. We affirm in part, reverse in part, and remand.

FACTS

In December 2005, Gene Richard Hughes, Jr. was injured in an automobile accident consisting of two separate collisions. A WCRSA employee, Timothy Moser, caused the initial collision, which left Hughes uninjured but caused his vehicle to become stopped in an intersection. Roughly ten minutes after this initial collision, a third driver, James Coker, while drunk, negligently drove through the intersection, collided with Hughes, and caused him extensive injury.

On the night of the accident, an ice storm caused widespread power outages in Greenville County. In order to keep the sewer pumps running, WCRSA charged employees Timothy Moser and Benjie Burns with delivering fuel to emergency generators. WCRSA provided Moser and Burns with a Ford F350 pickup truck temporarily outfitted with a two-hundred-gallon, diesel-fuel tank. While making a delivery, Moser approached a four-way intersection where the power outage had caused the traffic signals to become disabled. At the same time, Hughes, after having made a complete stop at the intersection, made a left turn in front of Moser's lane of travel. Moser failed to stop at the intersection and collided with Hughes's vehicle. The collision caused Moser's vehicle to proceed a short distance through the intersection and come to a rest on the median. Hughes's vehicle came to a stop in the intersection.

Although Hughes stated he was "shaken up" as result of the collision, neither he nor his passenger was injured. Because the traffic signals and street lights were out, a witness to the accident parked her vehicle with its headlights pointed to illuminate Hughes's vehicle stopped in the intersection.

During the minutes immediately following the accident, Hughes remained in the intersection outside of his vehicle.

Approximately ten minutes after the initial accident, Coker drove through the intersection, striking Hughes and his vehicle. Coker was intoxicated and driving a vehicle owned by his employer, Operator's Unlimited, Inc. As a result of this second collision, Hughes sustained extensive injuries to his leg. Coker later pled guilty to his second conviction for driving under the influence and admitted responsibility for the second collision.

Hughes brought suit against WCRSA and Coker.[1] During trial, Hughes entered a settlement agreement and covenant not to execute with Coker. WCRSA unsuccessfully moved the court for a directed verdict. Over WCRSA's objection, the trial court instructed the jury on various statutes dealing with WCRSA's alleged duty to carry emergency signaling devices. The jury returned a verdict of $225,000 for Hughes. The trial court denied WCRSA's motions for judgment notwithstanding the verdict (JNOV) and to have the verdict off-set or reduced by the $80,000 Hughes received from the settlement with Coker. This appeal followed.

ISSUES ON APPEAL

I. Did the trial court err in denying Hughes's motions for directed verdict and JNOV?

II. Did the trial court err by instructing the jury on sections 56-5-5060 to -5100 of the South Carolina Code (2006)?

III. Did the trial court err in failing to set-off or reduce the verdict entered against WCRSA by the amount Hughes received from Coker?

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[1] Hughes also brought suit against Moser individually and Coker's employer, Operator's Unlimited, Inc.; however, these parties were dismissed.

LAW/ANALYSIS

I. Directed Verdict & JNOV

WCRSA argues the trial court erred in failing to grant a directed verdict or a JNOV in its favor. We disagree.

WCRSA alleges that either a motion for a directed verdict or JNOV should have been granted in its favor for lack of proximate cause. Specifically, WCRSA alleges the ruling of the trial court was error because the second accident, which injured Hughes, was not foreseeable. Therefore, WCRSA contends the second collision was the result of an intervening cause and/or Coker's intervening criminal conduct, which supersedes its original negligence, breaking the chain of causation and relieving it from liability.

"In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or non-existence of evidence." Corbett v. Weaver, 380 S.C. 288, 292-93, 669 S.E.2d 615, 617 (Ct. App. 2008) (quoting Sims v. Giles, 343 S.C. 708, 714, 541 S.E.2d 857, 861 (Ct. App. 2001)). "When reviewing the denial of a motion for a directed verdict or JNOV, this [c]ourt applies the same standard as the trial court." Gibson v. Bank of Am., 383 S.C. 399, 405, 680 S.E.2d 778, 782 (quoting Gadson ex rel. Gadson v. ECO Servs. of S.C., 374 S.C. 171, 175, 648 S.E.2d 585, 588 (2007)). This court must review the evidence and any inferences in the light most favorable to the non-moving party and will only reverse the trial court's ruling "when there is no evidence to support the ruling or when the ruling is controlled by an error of law." Gadson, 374 S.C. at 175, 648 S.E.2d at 588.

In a tort action based on negligence, the plaintiff must establish the negligent act or omission proximately caused the injury. Singletary v. Atl. Coast Line R. Co., 217 S.C. 212, 218-19, 60 S.E.2d 305, 307-08 (1950); Hurd v. Willamsburg County, 353 S.C. 596, 611, 579 S.E.2d 136, 144 (Ct. App. 2003). "Proximate cause requires proof of both causation in fact and legal cause." Platt v. CSX Transp., Inc., 379 S.C. 249, 266, 665 S.E.2d 631, 640 (Ct. App. 2008). Cause in fact is established when "but for" the

defendant's negligence, the particular injury would not have occasioned the plaintiff, while legal cause is established when the plaintiff's injury was a foreseeable consequence of the wrongdoing. Oliver v. S.C. Dep't of Hwys. & Pub. Transp., 309 S.C. 313, 316, 422 S.E.2d 128, 130 (1992). "The touchstone of proximate cause in South Carolina is foreseeability," and a plaintiff must prove proximate cause by establishing the injury suffered occurred as a natural and probable consequence of the negligent act or omission. Hurd, 353 S.C. at 612, 579 S.E.2d at 144. The act or omission may be deemed the proximate cause of the injury if, "in the natural and continuous sequence of events, it produces injury, and without it, the injury would not have occurred." Id. Conversely, when the injury is not reasonably foreseeable or, "if the accident would have happened as a natural and probable consequence, even in the absence of the alleged breach, then the plaintiff has failed to demonstrate proximate cause." Id.

Foreseeability is determined from the defendant's perspective at the time of the negligent act or omission, not from hindsight. Id.; Parks v. Characters Night Club, 345 S.C. 484, 491, 548 S.E.2d 605, 609 (Ct. App. 2001). It is not necessary that defendant foresaw the particular event that occurred, but rather only that his negligent conduct would probably cause someone injury. Hurd, 353 S.C. at 613, 579 S.E.2d at 145. Thus, if a plaintiff demonstrates that a defendant, through foresight "or by the exercise of ordinary care should have foreseen[] the probability that his conduct would likely cause injury to another," he has established the requisite element of a negligence cause of action. Id. at 612, 579 S.E.2d at 144.

Proximate cause is the "efficient or direct cause of an injury," but does not mean the sole cause of the injury. Id. at 613, 579 S.E.2d at 145; Small v. Pioneer Mach., Inc., 329 S.C. 448, 464, 494 S.E.2d 835, 843 (Ct. App. 1997). A plaintiff can establish proximate cause by showing that the act or omission was "at least one of the direct, concurring causes of the injury." Hurd, 353 S.C. at 613, 579 S.E.2d at 145. When the negligence of two or more parties contributes to the injury suffered by the plaintiff, the negligence of the intervening party does not necessarily relieve the initial wrongdoer of liability. Shepard v. S.C. Dep't of Corr., 299 S.C. 370, 375, 385 S.E.2d 35,

37 (Ct. App. 1989); S.C. Ins. Co. v. James C. Greene & Co., 290 S.C. 171, 176, 348 S.E.2d 617, 620 (Ct. App. 1986). In order for the superseding or intervening act to break the causal chain, the inquiry is whether or not the initial actor should have reasonably anticipated injury in light of the circumstances. Shepard, 299 S.C. at 375, 385 S.E.2d at 38. Naturally, a defendant cannot be charged with foreseeing the unpredictable. Id. However, the wrongdoer need not have contemplated "the particular chain of events that occurred, but only that the injury at the hand of the intervening party was within the general range of consequences which any reasonable person might foresee as a natural and probable consequence of the negligent act." Id.; see also Pfaehler v. Ten Cent Taxi Co., 198 S.C. 476, 485-86, 18 S.E.2d 331, 335 (1942) (demonstrating that the focus remains on the anticipation or foreseeability of injury, not the number of subsequent acts that chance to intervene); Wallace v. Owens-Ill., Inc., 300 S.C. 518, 521, 389 S.E.2d 155, 157 (Ct. App. 1989) ("If the intervening acts are (1) set in motion by the original wrongful act and (2) are the normal and foreseeable result of the original act, the final result, as well as every intermediate cause, is considered in law to be the proximate result of the first wrongful cause.").

When considering proximate cause, this court is mindful that "[o]rdinarily the question of proximate cause is one of fact for the jury." Platt, 379 S.C. at 266, 665 S.E.2d at 640. "Only when the evidence is susceptible to only one inference does it become a matter of law for the court." Id. at 267, 655 S.E.2d at 640; see also Newton v. S.C. Pub. Rys. Comm'n, 312 S.C. 107, 439 S.E.2d 285 (Ct. App. 1993), rev'd on other grounds, 319 S.C. 430, 462 S.E.2d 266 (1995) (noting that the particular facts of each case determine whether the issue of proximate cause is one of fact or law).

WCRSA argues Gibson v. Gross, 280 S.C. 194, 311 S.E.2d 736 (Ct. App. 1983), applies here. In Gibson, the defendant, Gross, caused an accident when his vehicle hit a telephone pole and then collided with another car before finally coming to rest on the paved portion of the highway. Id. at 195, 311 S.E.2d at 737. Gross did not place any warning devices around his vehicle to warn oncoming drivers. Id. Shortly after the accident, an

altercation broke out between Gross and the other driver involved in the collision. Id. Noticing the altercation in progress, the plaintiff, Gibson, a passerby, pulled over to intervene. Id. at 195, 311 S.E.2d at 738. Moments later, an oncoming vehicle struck and injured Gibson as he stood next to Gross's car. Id. The trial court granted a directed verdict in favor of Gross, finding Gross did not proximately cause Gibson's injuries and "even if there was some negligence on the part of . . . Gross, such negligence was only an indirect or remote cause" of Gibson's injuries. Id.

To the extent the Gibson court addressed the foreseeability of the plaintiff's injury, the case is distinguishable. Initially, Gibson alleged Gross was negligent in failing to remove his car from the highway or in the alternative, in failing to warn oncoming drivers that his vehicle blocked the lane of travel. Significantly the record contained "no evidence . . . that [the other driver] struck Gibson because the highway was blocked, or because warning devices failed to warn him of the highway's condition." Id. at 198, 311 S.E.2d at 739 (emphasis added). Accordingly, with no evidence to support this position, the only issue was whether the evidence was sufficient to overcome the directed verdict motion based solely on Gross's negligent driving, which caused the initial accident. On this issue, because Gibson was not involved in the initial accident, the court held "[Gross] could not have been expected to foresee that he would have by his conduct caused injury to a person in [Gibson's] circumstances." Id. Thus, any negligence on the part of Gross was completely independent of that of the third-party driver, and the trial court's decision to direct a verdict in Gross's favor was affirmed.

In the case at hand, unlike Gross in Gibson, Hughes was involved in the collision and was not at the scene of his own accord. The jury was free to surmise it was reasonably foreseeable that a party involved in an accident at an intersection may fall victim to subsequent collisions or may even remain near the accident site for a period of time. Moreover, we find no legal authority that establishes a bright-line test regarding the amount of time necessary to break the chain of causation. To the contrary, our supreme court has acknowledged in a case in which a subsequent collision occurred some "fifteen to forty-five" minutes after an initial collision, "the mere lapse of

time would not necessarily break the chain of causation." Matthews v. Porter, 239 S.C. 620, 630, 124 S.E.2d 321, 326 (1962). Accordingly, the amount of time that must pass before the second occurrence is no longer foreseeable will vary from case to case. We therefore uphold the trial court's decision to allow the jury to make this determination.

WCRSA's argument that Coker's conduct was an intervening cause also fails. Generally, the intervening, criminal conduct of a third person will break the chain of causation when the act is neither intended by the initial actor nor foreseeable as the probable result of his conduct. Fortner v. Carnes, 258 S.C. 455, 462, 189 S.E.2d 24, 27 (1972); Mellen v. Lane, 377 S.C. 261, 285, 659 S.E.2d 236, 249 (Ct. App. 2008). Accordingly, the lynchpin of whether an intervening act, criminal or otherwise, breaks the causal chain is foreseeability. Thus, regardless of Coker's intoxication, the foreseeability that someone in Hughes's position would be injured as a natural consequence of WCRSA's negligence was a question for the jury.

In sum, because the record contains evidence to support that Hughes's injury was the reasonably foreseeable consequence of WCRSA's negligence, the trial court did not err in denying the directed verdict and JNOV motions. See Corbett, 380 S.C. at 292-93, 669 S.E.2d at 617 ("In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or non-existence of evidence."). As the evidence does not compel only a single inference that WCRSA was not the proximate cause of Hughes's injuries, the issue is one of fact, proper for the jury, and this court will not disturb it on appeal. See Platt, 379 S.C. at 267, 655 S.E.2d at 640 ("Only when the evidence is susceptible to only one inference does [proximate cause] become a matter of law.").

II. Jury Instruction

WCRSA next alleges that the trial court erred in instructing the jury on sections 56-5-5060 to -5100 of the South Carolina Code (2006).[2] We agree.

WCRSA's alleged error pertains primarily to instructing the jury on (1) section 56-5-5060, requiring, inter alia, "motor trucks" to carry flares or reflective devices and (2) section 56-5-5070 of the South Carolina Code (2006), which requires a vehicle transporting "inflammable liquids" to carry reflective devices.[3]

This court will not reverse the decision of the trial court as to particular jury instructions absent an abuse of discretion. Cole v. Raut, 378 S.C. 398, 405, 663 S.E.2d 30, 33 (2008); Clark v. Cantrell, 339 S.C. 369, 389, 529

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[2] These sections provide generally that certain vehicles are required to carry various warning, lighted, or reflective signals, to be employed in case the vehicle becomes disabled.

[3] The various other sections on which the trial court instructed the jury deal specifically with how and where to set the specified warning devices and provide in pertinent part:

> Whenever any motor truck, passenger bus, truck tractor, trailer, semitrailer or pole trailer is disabled upon the traveled portion of any highway or the shoulder thereof outside of any municipality at any time when lighted lamps are required on vehicles, the driver of such vehicle shall display the following warning devices upon the highway during the time the vehicle is so disabled on the highway, except as provided in § 56-5-5100.

S.C. Code Ann. § 56-5-5090 (2006).

S.E.2d 528, 539 (2000). A trial court abuses its discretion when the ruling is not supported by the evidence or is based on an error of law. Clark, 339 S.C. at 389, 529 S.E.2d at 539. However, an erroneous jury instruction is not reversible error unless it causes prejudice to the appealing party. Raut, 378 S.C. at 405, 663 S.E.2d at 33; Ellison v. Simmons, 238 S.C. 364, 372, 120 S.E.2d 209, 213 (1961).

When interpreting a statute, the "cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hardee v. McDowell, 381 S.C. 445, 453, 673 S.E.2d 813, 817 (2009); Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 122, 542 S.E.2d 736, 739 (Ct. App. 2001). "A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." Ga.-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct. App. 2003).

When confronted with an undefined term, the court must interpret it in accordance with its usual and customary meaning. Branch v. City of Myrtle Beach, 340 S.C. 405, 409-10, 532 S.E.2d 289, 292 (2000); State v. Hudson, 336 S.C. 237, 246, 519 S.E.2d 577, 581 (Ct. App. 1999). However, this court will consider the language of the particular clause in which the term appears and also its meaning in conjunction with the purpose of the whole statute. See Hinton v. S.C. Dep't of Prob. Parole & Pardon Servs., 357 S.C. 327, 332-33, 592 S.E.2d 335, 338 (Ct. App. 2004) ("Terms must be construed in context and their meaning determined by looking at the other terms used in the statute."). Statutes must be read as a whole and sections that are part of the same statutory scheme must be construed together. Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992); Hinton, 357 S.C. at 332-33, 592 S.E.2d at 338. Further, the maxim *expressio unius est exclusion alerius* provides that the expression of one thing implies the exclusion of another or its alternative. State v. Leopard, 349 S.C. 467, 473, 563 S.E.2d 342, 345 (Ct. App. 2002).

A. Section 56-5-5060

Section 56-5-5060 provides: "No person shall operate any motor truck, passenger bus or truck tractor upon any highway outside of the corporate limits of municipalities at any time from a half hour after sunset to half hour before sunrise unless there shall be carried in such vehicle" a specified quantity of signaling devices, flares, lanterns, or red-burning fuses.

The applicability of this statute hinges upon whether WCRSA's vehicle is a "motor truck." This chapter of the Code does not define the term "motor truck"; however, the term "truck" is defined as "[e]very motor vehicle designed, used or maintained primarily for the transportation of property." S.C. Code Ann. § 56-5-200 (2006). WCRSA argues the trial court erred in interpreting motor truck to be synonymous with the defined term truck. We agree.

In this case, when addressing whether truck and motor truck were synonymous, the trial court held because "there is no distinction between truck and motor truck in the definition section, I don't know how else to interpret it, except to think that they must be one in the same." However, a review of the statute as a whole, as well as reading the term motor truck in context with the remainder of the statute, does not support the trial court's interpretation.

In addition to the section in question, the term motor truck appears in section 56-5-4150 of the South Carolina Code (2006), providing in pertinent part:

> A private motor truck or truck tractor of more than twenty-six thousand pounds gross weight and a for-hire motor truck or truck tractor must have the name of the registered owner or lessor on the side clearly distinguishable at a distance of fifty feet. These

> provisions do not apply to two-axle straight trucks hauling raw farm and forestry products.

As the legislature specifically defines the term truck and clearly employs the term truck in other sections of the statute, the maxim *expressio unius est exclusion alerius* suggests motor truck and truck are not synonymous. See Leopard, 349 S.C. at 473, 563 S.E.2d at 345 (providing that the expression of one thing implies the exclusion of another). Had the legislature intended section 56-5-5060 to encompass trucks, we must surmise the drafters would not have elected to employ the term motor truck.[4] Moreover, considering the practices of statutory construction demonstrate the two terms are not to be construed as synonymous, motor truck must be given its plain and ordinary meaning. See Branch, 340 S.C. at 410, 532 S.E.2d at 292 (stating that terms must be given their natural and customary meanings). Naturally, the addition of the adjective motor qualifies the term to a narrower class of vehicles than merely a truck. The common meaning of motor truck is an automotive truck used especially for the transportation of goods. See Merriam-Webster English Dictionary 760, 466 (10th ed. 1993) (defining motor truck as a vehicle used for the transportation of freight, and defining freight as goods to be shipped). Further, the term motor truck appears in sections applicable to larger load-bearing and load-towing vehicles suggesting that a motor truck is a truck for the purposes of transporting freight being larger in size or weight than that of a common pickup truck, such as the WCRSA vehicle here. Accordingly, section 56-5-5060 does not require WCRSA to carry flares or reflective devices.

[4] The term motor truck is used only four times in the South Carolina Code. See S.C. Code Ann. §§ 12-36-2570, 56-5-4150, 56-5-5060, 56-5-5090 (2006).

B. Section 56-5-5070

Section 56-5-5070 provides:

> No person shall operate at the time and under the conditions stated in § 56-5-5060 any motor vehicle used in the transportation of inflammable liquids in bulk or transporting compressed inflammable gases unless there shall be carried in such vehicle three red electric lanterns meeting the requirements stated in § 56-5-5060, and there shall not be carried in any such vehicle any flare, fuses or signal produced by a flame.

Whether section 56-5-5070 imposes a duty on WCRSA to carry warning devices hinges upon the interpretation of the term "inflammable liquid." This chapter of the Code does not define the term inflammable liquid; however, it does define the term "flammable liquid" as "any liquid which has a flash point of 70° F., or less, as determined by a Tagliabue or equivalent closed-cup test device." S.C. Code Ann. § 56-5-350 (2006). The general provisions of statutory construction would mandate that when the legislature employs a term other than one specifically defined, the implicit intent is that the undefined term has a different meaning. Leopard, 349 S.C. at 473, 563 S.E.2d at 345 (providing that the expression of one thing implies the exclusion of another). However, of paramount significance in this situation is that the defined term – flammable liquid – is used nowhere in this chapter outside of the definition section. Rather, the only similar term employed is inflammable liquid. We remain acutely mindful that the legislature employed different terms; however, the common definition of inflammable is flammable. See Merriam-Webster English Dictionary 598 (10th ed. 1993) (defining inflammable as flammable); see also Branch, 340 S.C. at 409-10, 532 S.E.2d at 292 (stating that terms must be given their natural and customary meanings); Ga.-Carolina Bail Bonds, 354 S.C. at 22, 579 S.E.2d at 336 ("All rules of statutory construction are subservient to the

one that the legislative intent must prevail if it can be reasonably discovered from the language used . . . [and t]he legislature's intent should be ascertained primarily from the plain language of the statute."). Thus, in order to construe the statute to be consistent and give the terms their natural and common meanings, we look to the legislative definition of flammable.

Because we interpret inflammable and flammable to be synonymous, section 56-5-5070 applies only to vehicles that carry liquids with a flash point of seventy degrees Fahrenheit or lower, in bulk. At trial, WCRSA inquired as to the existence of evidence that the liquid at issue, diesel-fuel, fell within the ambit of the statute. To this, the trial court simply replied it was a "reasonable inference." However, upon review of the record, we find no evidence to indicate the diesel-fuel being transported by WCRSA was actually a flammable or inflammable liquid. Notwithstanding that the truck in this case is not one described by section 56-5-5060, the trial court's assumption that the carrying of diesel-fuel implicated section 56-5-5070 is unsupported by the evidence and was therefore error.

As the trial court's erroneous instructions could have led the jury to infer WCRSA had a duty to carry and use warning devices, the instructions had a reasonable chance of influencing the jury's verdict and prejudicing WCRSA. Therefore, the trial court's instructions amount to reversible error.[5] See Raut, 378 S.C. at 405, 663 S.E.2d at 33 (stating that improper jury instruction is not reversible error unless it causes prejudice to the appealing party).

[5] In light of this decision, we decline to address the remaining issue on appeal. Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when a decision on a prior issue is dispositive); Whiteside v. Cherokee County Sch. Dist. No. One, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993) (holding the appellate court need not address all issues when decision on a prior issue is dispositive).

CONCLUSION

Accordingly, the ruling of the trial court is

AFFIRMED IN PART, REVERSED IN PART, and REMANDED.

HEARN, C.J., and KONDUROS, J., concur.