

Rule 59(b) Interpretation: The S.C. Court of Appeals Looks Beyond the Literal Language to Effectuate the Purpose of the Rule

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“The motion for a new trial shall be made *promptly after the jury is discharged*, or in the discretion of the court not later than 10 days thereafter.” Rule 59(b), SCRCP (emphasis added). Knowing the stringency with which South Carolina’s courts follow the cardinal rule of interpretation, one would logically conclude that 59(b) means exactly what it says.^[1] Recently, however, the court of appeals undertook a somewhat more liberal approach to rule interpretation, and while acknowledging the specific language of the rule, it looked beyond a strict application of the language to reveal what it believes to be the purpose of the rule – to progress finality of judgments by requiring a party to move for a new trial promptly upon learning of an adverse verdict. *Ex parte: The Travelers Home and Marine Insurance Company, In re: William Gresham as Personal Representative of the Estate of John Corey Stringfellow*, 2019 WE 3210590 (July 17, 2019).

Gresham presents unquestionably tragic facts. Corey Stringfellow and his older brother, Cameron, were home alone while their parents were out of town. They left their home at approximately 1:00 a.m. to get marijuana from a friend’s house. On their way back home, Cameron, who was driving in excess of ninety miles an hour, struck a parked car, resulting in Corey’s death. Cameron was found to have an excessive blood alcohol level as well as a significant level of tetrahydrocannabinol (TCH) in his system. Corey likewise had a substantial level of TCH in his system, but no alcohol. Cameron pled guilty to manslaughter and driving under the influence.

Corey’s estate initiated an action against Cameron that was defended by Travelers, Stringfellow’s underinsurance carrier, who alleged Corey’s comparative negligence and joint enterprise. The court directed a verdict finding Cameron’s conduct was reckless and a proximate cause of Corey’s death. Consequently, the only liability issue for the jury was Corey’s alleged comparative negligence.

The jury determined Corey was 51% negligent, thereby barring any recovery by his estate. Immediately following publication of the verdict, but

while the jury was still seated, the trial court requested post-trial motions. The estate moved for a new trial under the thirteenth juror doctrine, among other relief. Following a hearing sometime later, the court invoked the thirteenth juror doctrine, granting a new trial as to the wrongful death portion of the claim. The matter came before the court on appeal by Travelers. In affirming the decision of the trial judge, the court undertook a two-step analysis; first, a determination of whether the estate's motion was improperly granted because it was made before the jury's discharge, and next, whether the trial judge erred in invoking the thirteenth juror doctrine.

While the necessity of applying the plain language of a statute or rule is oft repeated by our courts, the *Gresham* court emphasized the gravity of ascertaining the legislature's intent. Rejecting Travelers encouragement to apply a literal interpretation of the language of Rule 59(b), the court instead chose to underscore the practical application. In its evaluation, the court looked to the 1986 note to Rule 59(b), wherein the drafters articulated that post-trial motions in jury trials are to be made promptly *at the end of trial*, or within an additional ten days if allowed by the trial court. The court further noted the drafters chose not to address the nuances of jury discharge. The court found additional support for its position from other jurisdictions, including those in the federal system, and thus concluded acceptance of a party's new trial motion made in the brief time between the return of the verdict and discharge of the jury does not result in prejudice, but rather advances the purpose of Rule 59.

The court next turned to its analysis of the thirteenth juror doctrine that allows a trial court to "hang" the jury if it believes the verdict returned is contrary to the evidence presented. The application of this doctrine requires no statement of the trial court's reasoning therefor. Rather, because the trial court has the obligation to seek justice, it has the obligation to grant a new trial if the evidence does not support the verdict. So powerful is a trial court's decision to sit as the thirteenth juror that it has been described as "inviolable."^[2]

From a practitioner's standpoint, the opinion in *Gresham*, and the path the court followed in reaching that opinion, is apparent. As the court articulated, it went beyond a literal interpretation of Rule 59 in order to reach a common sense construction thereof, finding a motion for new trial made after the verdict but before discharge of the jury is timely. A more literal reading of the rule would obscure its true meaning. However, this opinion stands in contrast to that of the South Carolina Supreme Court in *Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC, et al.*, previously addressed here.^[3] There, the court followed a literal interpretation of Rule 203(b)(1), South Carolina Appellate Court Rules (SCACR), which requires notice of appeal be served within thirty days after receiving written notice of entry of an order or judgment. There, an assistant to the master-in-equity sent a copy of the signed order denying a motion by Fallon to the parties via email. Fallon, relying on previous authority, timed its filing of notice of appeal to fall within thirty days of its receipt of the subject order by mail, which was only three days later. The court rejected Fallon's notice of appeal as untimely, finding the applicable rule requires only *receipt of written notice of entry of an order of judgement*, and does not set forth a specific method by which delivery shall be made.

The recent and divergent approaches followed by our Supreme Court and our Court of Appeals leaves the practitioner somewhat uncertain as to whether a strict and literal interpretation of a rule will be implemented, or whether the court will extend reasoning beyond the exact language in order to reach what it deems a logical conclusion.

[1]"The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible." *Mitchell v. City of Greenville*. 411 S.C. 632, 634, 770 S.E.2d 391 (2015), citing *l'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). Where the statutes' language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." *Hodges v. Rainev*. 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

[2] See *Trivelas v. S.C. Dep't of Transp.*, 357 S.C. 545, 593 S.E. 2d 504.

[3] insights/when-does-the-time-to-appeal-begin

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