IN THE COURT OF APPEALS OF TENNESSEE

AT KNOXVILLE



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| MARGIE FRADY,<br>03A01-9803-CV-00097 | ) | C/A NO. |
| Plaintiff-Appellee, | ) | |
| and | ) | |
| ROBERT EUGENE FRADY, | ) | |
| Plaintiff, | ) | APPEAL AS OF RIGHT FROM THE BLEDSOE COUNTY CIRCUIT COURT |
| v. | ) | |
| JEFFREY C. LADD, | ) | |
| Defendant-Appellant. | ) | HONORABLE BUDDY PERRY, JUDGE |

For Appellant

REBECCA L. HICKS
McPheeters Law Offices
Dayton, Tennessee

For Appellee

HOWARD L. UPCHURCH
Pikeville, Tennessee

O P I N I O N

AFFIRMED AND REMANDED

Susano, J.

This is a negligence action arising out of a two-vehicle, head-on collision that occurred on a rural road in Bledsoe County on March 31, 1995. The jury found the defendant, Jeffrey C. Ladd, 100% at fault, and awarded the plaintiff,[1] Margie Frady, $52,078 in compensatory damages for her personal injuries.[2] The defendant appealed, presenting the following issues for our review:

> 1. Whether the trial court erred in failing to set aside the verdict as thirteenth juror in that the verdict was contrary to the weight of the evidence.
>
> 2. Whether the trial court erred in failing to grant a remittitur.
>
> 3. Whether the trial court erred in failing to give special instructions requested by the defendant.

We affirm.

I.

The defendant argues two concepts in his first issue. First, he contends that the trial court erred when it refused to set aside the jury's verdict because, so the argument goes, the evidence preponderates against the jury's determination that the defendant was 100% at fault. In addition, the defendant calls our attention to the fact that, in a simultaneously-tried

[1]There were actually two plaintiffs below, Margie Frady and her husband, Robert Eugene Frady. The jury declined to award Mr. Frady damages on his loss of consortium claim. The trial court's judgment approving the jury's verdict as to Mr. Frady is not before us on this appeal. As used in this opinion, the singular "plaintiff" refers to Margie Frady.

[2]The jury also awarded the plaintiff $8,100 as compensation for the damage to her 1989 Oldsmobile, which was a total loss. The appellant does not contest this part of the jury's verdict.

companion case, the trial court did set aside verdicts against the same defendant, and contends that it was inconsistent for the trial court to approve the verdict in the instant case while setting aside the verdicts in the other case.

A.

With respect to the defendant's first contention, he urges us to do something that is beyond our authority. In a jury case, we are not authorized to weigh the evidence and attempt to judge the credibility of the witnesses. ***Reynolds v. Ozark Motor Lines, Inc***., 887 S.W.2d 822, 823 (Tenn. 1994); ***Poole v. Kroger Co***., 604 S.W.2d 52, 54 (Tenn. 1980). This is the collective role of the 12 individuals who serve on a jury in any given case. Once the jury renders its verdict, and that verdict is approved by the trial court, our review is limited to determining whether there is material evidence in the record to support the verdict. Rule 13(d), T.R.A.P.; ***Reynolds***, 887 S.W.2d at 823. In the instant case, our review of the record persuades us that there is material evidence in the record which, if accredited, supports the conclusion that the sole cause of this accident was the defendant's negligence. Therefore, the jury's verdict as to liability cannot be successfully assailed on the facts.

B.

The plaintiff's suit in the instant case was consolidated for trial with a joint suit for damages arising out of the injuries sustained by two minors who were riding as guest

passengers in the defendant's vehicle. The latter suit was filed against Frady as well as Ladd. In both cases -- the instant case as well as the companion case -- the jury found the defendant Ladd 100% at fault. In the suit arising out of the guest passengers' injuries, the trial court granted those plaintiffs a new trial, *but on the issue of damages only*. In so doing, the trial court expressed its disapproval of the jury's decision that had awarded the parents of the passengers the full amount of the stipulated medical expenses, but had refused to award the minor passengers any recovery. The trial court apparently concluded that the verdicts in the companion case were inconsistent; hence the new trial on the issue of damages.

The defendant in the instant case argues that the trial court acted inconsistently when it approved the verdict in the instant case, but disapproved the verdicts in the companion case. The defendant relies upon the cases of ***Slaten v. Earl Campbell Clinic***, 565 S.W.2d 483 (Tenn. 1978), and ***Milliken v. Smith***, 405 S.W.2d 475 (Tenn. 1966). These cases stand for the proposition that "there must be consistency in verdicts in consolidated cases." ***Id***. at 477.

There is no inconsistency in the jury's determination, *in both of the cases*, that the defendant Ladd was 100% at fault. The trial court did not act in an inconsistent manner by approving the jury's liability and damages determination in one case while only approving its liability determination in the other case. The damages to which any one of the plaintiffs was entitled was based on evidence totally unrelated to the evidence

upon which the other plaintiffs' awards must be evaluated. The trial court obviously approved of the amount of damages awarded to the plaintiff Frady, but did not approve of the other awards of damages. This being the case, the trial court acted appropriately in approving one verdict while disapproving the other verdicts.

The defendant's first issue is found to be without merit.

II.

The plaintiff claims that the jury's verdict of $52,078 for the plaintiff's personal injuries is excessive. We disagree.

Our task with respect to this issue is clear. We "are required to take the strongest legitimate view of all the evidence, including all reasonable inferences therefrom, to sustain the verdict; to assume the truth of all the evidence that supports it; and to discard all evidence to the contrary." ***Miller v. Williams***, 970 S.W.2d 497, 498 (Tenn.App. 1998). *See also* ***Poole v. Kroger Co***., 604 S.W.2d at 54 (Tenn. 1980); ***City of Columbia v. Lentz***, 282 S.W.2d 787, 790 (Tenn.App. 1955).

At the time of the trial below, the plaintiff was 43 years old. She then had a life expectancy of 35.35 years. She testified that she had no recollection of the impact of the two vehicles. She stated that when she woke up at the emergency room of the local hospital, she was hurting in her back and felt

“achy” all over her body. When she opened her eyes, she saw two images of Dr. Charles Bownds, her family physician. Dr. Bownds ordered that she be transported by helicopter to Erlanger Medical Center in Chattanooga, where she was treated for a concussion.

The next day, the plaintiff continued to suffer from stiffness, soreness, and double vision. She began having intense headaches. She received several stitches in her forehead which ultimately left a scar. She testified that she continues to have sharp, stabbing pain in her head that bothers her two or three times a week. She had never experienced such pain prior to the accident.

From the moment she awoke following this accident, the plaintiff had double vision. She testified that upon release from the hospital, she continued to be disoriented from the double vision and walked by shuffling her feet and holding onto objects. Dr. Bownds referred her to Dr. Kenneth Wayne Nix, an optometrist, who attempted to correct the double vision with thick prism-lensed glasses. This treatment was unsuccessful, however, and the plaintiff subsequently underwent surgery by an opthalmologist on two occasions in an attempt to correct her double vision.

The plaintiff continues to have visual difficulties. When looking straight ahead, she must tilt her head to avoid seeing double. She also experiences problems when looking down. As a result, she no longer drives unless she absolutely has to, and she no longer reads as much as she did prior to this

accident. Although she returned to work within two weeks of the accident, she finally resigned her job because she was making errors due to her faulty eyesight.

In addition to these vision problems, the plaintiff testified that she suffers continuing pain in her low back. She testified that her low back was hurting in the emergency room immediately following the accident. She testified that she had not had low back problems before the accident. She now has back pain that begins in the middle of her back and radiates into her left hip and leg. She stated that it is rare for her to have a day without back pain.

The plaintiff testified that her injuries have impacted her daily life in many ways. She no longer does as much housework or yardwork as before the accident, and she no longer helps her husband in the dairy barn. She continues to seek emergency room treatment from time to time for the pain in her back. Her recreation and social life have been impacted as a result of this collision.

The plaintiff's husband testified that he witnessed the collision. He and his wife were heading home, in separate cars, from the dairy barn where he worked. He testified that the force of the head-on collision[3] spun his wife's car completely around and moved it some fifty feet from the point of impact. He testified that his wife was unconscious and had a gash on her

[3]Photographs of the two vehicles reflect substantial damage to the front of each of the vehicles. These photographs depict an impact of significant force.

head with blood gushing out. He called an ambulance to take her to the hospital.

Mr. Frady testified that since the accident, his wife is not able to do much of anything around the house and that their social life has totally changed. They no longer have friends over or entertain as much as they did before the accident. Mr. Frady now does most of the cooking and housework. He testified that a drastic change has occurred in their marital relations since the accident and that his wife did not enjoy a vacation that they had recently taken. He testified that everything they did around the house had changed since the accident.

The plaintiff's treating physician, Dr. Bownds, testified by deposition. He stated that the plaintiff had a low lumbar strain with a compressed disc and left lumbar pain. On cross-examination, he was asked if the plaintiff's low back condition was caused by the accident. He responded as follows:

> Q There was nothing -- there's nothing that would lead you to attribute this low-back pain to this accident; is there, Doctor?
>
> A Well, the fact that the accident was very traumatic could make you think that if she had any reasons to have a back problem, backing up to try to figure out what would have caused it, and this is the traumatic thing that happened in her life recently that could have caused some back pain.

In our judgment, this opinion, while somewhat inarticulately stated, expresses the doctor's opinion that the accident was the

cause of the plaintiff's back injury. *Cf.* ***Act-O-Lane Gas Service Co. v. Hall***, 248 S.W.2d 398, 404 (Tenn.App. 1951). Dr. Bownds testified that the plaintiff's back problems are permanent in nature.

The trial court also received the testimony of Dr. Nix, a board certified optometrist. Without objection, Dr. Nix testified as to the plaintiff's problems with double vision. He testified that the blow to the plaintiff's head had damaged a nerve on the left side, resulting in a muscle not functioning properly. He stated that the plaintiff had twice had surgery to correct her vision problems, and that while the double vision condition had been substantially corrected, her present condition requires that she make an adjustment when viewing things at close range:

> ... and she has mild limitation with the head tilt down, but that could be overcome with just mere practice in moving her head about.

Dr. Nix testified that her present eye problem is permanent in nature.

The plaintiff's medical expenses[4] were stipulated to be $1,790. This does not include the cost of the helicopter transportation to Erlanger Hospital in Chattanooga, which was estimated to be between $2,000 and $3,000. The plaintiff claimed $288 in lost wages.

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[4]For some unexplained reason, the stipulated expenses do not include the expense of the two eye surgeries.

In this case, we must decide if the record contains "material evidence to support the [jury's] verdict." Rule 13(d), T.R.A.P.; ***Coffey v. Fayette Tubular Products***, 929 S.W.2d 326, 331 n.2 (Tenn. 1996); ***Poole***, 604 S.W.2d at 54; ***Pettus v. Hurst***, 882 S.W.2d 783, 788 (Tenn.App. 1993); ***Benson v. Tennessee Valley Elec. Coop.***, 868 S.W.2d 630, 640 (Tenn.App. 1993).

In ***Foster v. Amcon Int'l, Inc***., 621 S.W.2d 142 (Tenn. 1981), the Supreme Court said that

> [a] reasoned examination of the credible proof of damages leads to a determination of the figure beyond which excessiveness or inadequacy lies and beyond which there is no evidence, upon any reasonable view of the case, to support the verdict.

***Id.*** at 146. In reviewing the adequacy of the jury's award, we note that

> [the determination of] the amount of compensation in a personal injury case is primarily for the jury, and that next to the jury, the most competent person to pass on the matter is the trial judge who presided at the trial and heard the evidence.

***Id.*** at 143-44; ***Coffey***, 929 S.W.2d at 331 n.2.

The effect of a trial court's approval of the amount of a jury award is clear:

> ... the trial judge's approval of the amount of the jury's verdict invokes the material evidence rule, just as it does with respect

> to all other factual issues upon which appellate review is sought....
>
> * * *
>
> "[a]ll of the evidence in the record that tends to support the amount of the verdict should be given full faith and credit upon appellate review."

***Poole***, 604 S.W.2d at 54 (citing ***Ellis v. White Freightliner Corp.***, 603 S.W.2d 125 (Tenn. 1980)).

We recognize that there is evidence in the record militating against the amount of the plaintiff's award; but since this evidence is "contrary" to the verdict, we are required to ignore it. *See* ***Miller***, 970 S.W.2d at 498.

When we ignore the "contrary" evidence, we cannot say that there is no material evidence to support the verdict of $52,078 in compensatory damages. While the plaintiff's medical specials and lost wages are low in relation to the jury's award, this is only one part of the damages equation. The jury was justified in finding that the plaintiff had suffered significant head and back injuries resulting in permanent impairment. There was evidence that these impairments substantially impact the quality of her life. When all of this is taken into consideration, we find material evidence to support the award.

III.

The defendant claims that the trial court erred when it refused certain special instructions submitted by him.

We review the jury charge in its entirety and as a whole to determine whether the trial judge committed reversible error. ***Otis v. Cambridge Mut. Fire Ins. Co***., 850 S.W.2d 439, 446 (Tenn. 1992); ***In re Estate of Elam***, 738 S.W.2d 169, 174 (Tenn. 1987); ***Grissom v. Metropolitan Gov't of Nashville***, 817 S.W.2d 679, 685 (Tenn.App. 1991). We will not invalidate a charge if it "fairly defines the legal issues involved in the case and does not mislead the jury." ***Otis***, 850 S.W.2d at 446; ***Grissom***, 817 S.W.2d at 685. Further, it is not error for a trial court to deny a requested instruction if its substance has already been included in other portions of the charge. ***Otis***, 850 S.W.2d at 445; ***Mitchell v. Smith***, 779 S.W.2d 384, 390 (Tenn.App. 1989). "Where the court correctly charges the law applicable to the case, it is not error to deny a special request that embodies a theory of a party if the court charges in general terms and with clearness sound propositions of law which would guide the jury in reaching a correct decision in the case." ***Otis***, 850 S.W.2d at 445. We will not reverse a trial court unless the failure to give a requested charge "more probably than not" affected the judgment. T.R.A.P. 36(b). *See* ***DeRossett v. Malone***, 239 S.W.2d 366, 378 (Tenn.App. 1950).

The defendant contends that the trial court committed reversible error when it failed to read his requested instructions to the jury. In particular, he cites three requested jury instructions as critical to the issue of liability: an instruction on sudden emergency; an instruction on skidding; and an instruction on the testimony of a witness who looks and does not see what was plainly visible.

In its charge to the jury, the trial court properly instructed the jury on the doctrine of comparative fault. The sudden emergency doctrine "no longer constitutes a defense as a matter of law but, if at issue, must be considered as a factor in the total comparative fault analysis." ***McCall v. Wilder***, 913 S.W.2d 150, 157 (Tenn. 1995). In addition, the trial court included a number of common law and statutory violations of the rules of the road in its charge to the jury, including keeping a proper lookout; keeping a vehicle under control; and yielding the right-of-way to approaching traffic. A careful analysis of the court's charge to the jury indicates that the requested special jury instructions relating to liability were included in other portions of the charge. As such, the trial court did not err in denying these instructions. ***Otis***, 850 S.W.2d at 445.

In addition, the trial court denied the defendant's request for instructions regarding expert testimony, medical expenses, and the course of travel of automobiles after a collision. Again, we find no error in the trial court's charge to the jury. The trial court's instructions were "in general terms and with clearness sound propositions of law which would guide the jury in reaching a correct decision in the case." ***Otis***, 850 S.W.2d at 445. The trial court did not err in denying these requested jury instructions.

IV.

The judgment of the trial court is affirmed. Costs on appeal are taxed against the appellant. This case is remanded to

the trial court for enforcement of the judgment and for collection of costs assessed below, all pursuant to applicable law.

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Charles D. Susano, Jr., J.

CONCUR:

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Herschel P. Franks, J.

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William H. Inman, Sr.J.