

RENDERED: August 7, 1998; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

No. 97-CA-000131-MR

SHERRY FRYAR, as Legal
Guardian, Parent, Next
of Kin and Friend of CRYSTAL
GAIL FRYAR, a Minor

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JOSEPH F. BAMBERGER, JUDGE
ACTION NO. 95-CI-446

SHERRI L. MURPHY

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: GUIDUGLI, JOHNSON and SCHRODER, Judges.

JOHNSON, JUDGE: Sherry Fryar (Fryar), on behalf of Crystal Gail Fryar (Crystal), a minor, appeals from the trial order and judgment of the Boone Circuit Court entered on November 15, 1996, that followed a jury verdict that found Sherri L. Murphy (Murphy) not liable for Crystal's personal injuries sustained in a motor vehicle accident. The accident occurred when Murphy's car was

rear-ended as Crystal was exiting Murphy's vehicle while it was stopped in the road in front of Crystal's house. Fryar alleges the following errors on appeal: (1) the trial court erred by not directing a verdict that Murphy was negligent as a matter of law; (2) it was reversible error for the trial court to prohibit cross-examination of Murphy's medical doctor as to prior medical reports; and (3) the jury verdict was not based on sufficient evidence, and the jury considered improper matters in reaching its decision. We affirm.

At the jury trial held November 6-8, 1996, the following evidence was presented. Crystal was a passenger in Murphy's vehicle on December 15, 1993, when they were involved in a two-car accident on Connor Road. Murphy was driving Crystal home from school, as she did on a regular basis, at approximately 3:00 p.m. Murphy planned to drop Crystal off in front of her house, rather than pull into the driveway, because shortly thereafter Murphy had to be at work. Fryar lives on Connor Road, a two-lane road which has no shoulder. A vehicle stopped along the edge of Connor Road will block the traffic lane. When Murphy stopped the vehicle in front of Fryar's house, and as Crystal was exiting the car, it was rear-ended by another vehicle driven by Ginger Garland (Garland).¹

¹ Garland was originally a defendant in this action, but she settled with Fryar before trial. The jury was instructed that Garland was negligent and such negligence was a substantial factor in causing the accident.

Crystal testified that because of a nearby four-way stop, the traffic was backed up to a point approximately "half a basketball court length" in front of where Murphy stopped to let her out of the car. Garland testified that she saw Murphy's car in plenty of time to stop, but that she did not see tail lights, brake lights, a blinker, or any signal that would indicate Murphy's vehicle was stopped or stopping. Garland also testified that she slowed her vehicle when she saw Murphy's vehicle, but, by the time she realized Murphy's vehicle was stopped, it was too late to avoid the accident. Murphy testified that she had her brake pedal depressed, and that, to the best of her knowledge, the brake lights were in working order.

The jury returned a 9-3 verdict finding that Murphy was not negligent and/or her actions were not a substantial factor in causing the accident. The trial court entered a judgment on November 15, 1996, that dismissed Fryar's complaint against Murphy. Fryar's motion for a new trial was denied on December 16, 1996. This appeal followed.

Fryar's first allegation of error is that the trial court should have entered a directed verdict that Murphy was negligent per se, whereby the jury should have deliberated on the issue of damages only. Fryar argues she was entitled to a directed verdict based on the language of Kentucky Revised Statutes (KRS) 189.450(1) and Woosley v. Smith, Ky., 471 S.W.2d 737 (1971).

KRS 189.450(1) states, in pertinent part, as follows:
"No person shall stop a vehicle, leave it standing or cause it to stop or to be left standing upon any portion of the roadway" It has long been held in this jurisdiction that the violation of a traffic statute is negligence per se, or as a matter of law. Woosley, supra, at 738; Ross v. Jones, Ky., 316 S.W.2d 845, 846 (1958). However, the violation of a traffic statute must have "some causal connection with a claimed injury" before it will "constitute negligence imposing liability." Ross, supra, at 846.

In the case sub judice, Fryar claims that Murphy violated the above statute when she stopped her vehicle in Connor Road to let Crystal depart, and that such violation was a direct and proximate cause of the ensuing injuries. Therefore, she asserts the trial court should have directed a verdict that Murphy was negligent as a matter of law. Murphy argues that because of Crystal's testimony about the vehicle being stopped in traffic when she was exiting the vehicle, a question was raised as to whether or not Murphy was in violation of KRS 189.450(1).

The evidence presented at trial appears sufficient to support Fryar's contention that Murphy was negligent per se for violating KRS 189.450(1). Murphy's contention that her actions were exempted from the statute falls short because of the considerable distance between where she stopped her vehicle and the line of traffic waiting at the intersection. However, the evidence was not sufficient to entitle Fryar to a directed

verdict since there remained a question for the jury to determine whether Murphy's negligence in stopping her vehicle in the road was a substantial factor in causing Murphy's injuries. Britton v. Wooten, Ky., 817 S.W.2d 443, 447 (1991); and Milliken v. Union Light, Heat & Power Co., Ky., 341 S.W.2d 261, 264 (1960).

In considering Fryar's motion for a directed verdict, the trial court had to draw all fair and reasonable inferences from the testimony in favor of Murphy, the non-moving party. After doing so, if "reasonable men . . . differ on the conclusion to be drawn, the question should be for the jury; otherwise, the clear conclusion is a matter of law, one way or the other." Lee v. Tucker, Ky., 365 S.W.2d 849, 851 (1963). The testimony in the trial was un rebutted that when Garland saw Murphy's vehicle, Garland had plenty of time to stop and avoid the collision. Further, Garland stated that she slowed her vehicle when she saw Murphy's vehicle, indicating that Garland realized Murphy's vehicle was traveling slower than Garland's vehicle. Further, there was the additional dispute in the testimony as to whether or not Murphy's brake lights were on when she stopped to let Crystal out of the car. This testimony created an instance where reasonable people could differ in their conclusion as to whether Murphy's negligence was a substantial factor in causing the accident. The trial court was correct in denying a directed

verdict as to Murphy's negligence and sending the question to the jury to decide.²

Fryar's second allegation of error is that the trial court committed reversible error by prohibiting cross-examination of Murphy's medical expert, Dr. Arthur Lee (Dr. Lee), about prior medical reports he wrote as an expert witness concerning plaintiffs in unrelated cases. The testimony was placed in the record by avowal. Fryar sought to cross-examine Dr. Lee about medical reports he prepared concerning persons Fryar's counsel had represented in previous, unrelated cases. Fryar claims that the usage of similar language and the similarities in Dr. Lee's opinions in four separate reports, including the one on Crystal, showed evidence of bias on the part of Dr. Lee. The trial court sustained Murphy's objection to this line of questioning, stating that it would make the trial unduly time-consuming and complex, and, in effect, would involve re-litigating prior cases. "There is no precise test of relevancy, but it is a determination which rests largely in the discretion of the trial court"

² Although not argued on appeal nor preserved as error during the trial, we find it necessary to comment on the jury instruction concerning Murphy's negligence. We believe the trial court should have instructed the jury that Murphy was negligent because of her violation of the statute, but submitted to the jury the question of whether Murphy's negligence was a substantial factor in causing the accident. We believe the evidence would support the jury's verdict that Murphy's negligence was not a substantial factor in causing this accident. However, from the wording of the jury instruction it is impossible to determine if the jury did not believe Murphy was negligent or did not believe Murphy's negligence was a substantial factor in causing the accident.

Glenn Falls Ins. Co. v. Ogden, Ky., 310 S.W.2d 547, 549 (1958) (citation omitted). Absent an abuse of discretion, determinations of the trial court as to relevancy will not be disturbed. Partin v. Commonwealth, Ky., 918 S.W.2d 219, 222 (1996).

Since the testimony of Dr. Lee, in the case sub judice, went solely to the issue of Crystal's damages, we find it unnecessary to consider this argument. Thus, if it were error on the part of the trial court to prohibit the desired cross-examination, the error was harmless in light of our holding that the trial court did not err in denying Fryar a directed verdict as to Murphy's liability. "[U]nless an error substantially affects the rights of the parties, then it is harmless." Hall v. Arnett, Ky. App., 709 S.W.2d 850, 852 (1986). Since the jury decided that Murphy was not negligent, naturally, it did not consider the issue of damages. Thus, Fryar's rights were not substantially affected by any possible error by the trial court in prohibiting the desired cross-examination.

Fryar's third allegation of error is that the jury verdict was not based on sufficient evidence. "[A]n appellate court must not substitute its findings of fact for those of the jury if there is evidence to support them." Horton v. Union Light, Heat & Power Co., Ky., 690 S.W.2d 382, 385 (1985). Further, the role of the appellate court is limited to viewing the evidence "from a standpoint most favorable to the prevailing party." Id. As discussed at length previously, the evidence

presented at trial, when viewed most favorably to Murphy, is sufficient to support the jury's verdict that Murphy was not negligent and/or that her negligence was not a substantial factor in causing the accident.

Finally, Fryar attaches the affidavit of Art Meisberger (Meisberger), a juror in the trial of this case, to suggest that the jury considered improper matters and ignored the evidence during deliberations and in reaching a verdict. "It is the ancient rule that a verdict cannot be impeached by the affidavit or testimony of a juror." Rietze v. Williams, Ky., 458 S.W.2d 613, 620 (1970) citing Rager v. Louisville & N. R. Co., 127 S.W. 155, 157 (1910) (footnote omitted).

If a juror sees or hears anything improper he should communicate it to the trial court as promptly as he can. To let him to [sic] do it after the verdict has been rendered, and especially after being interviewed by a disappointed party or lawyer, would invite the very kind of mischief the rule was designed to obviate.

Id. We are of the opinion that the post-trial affidavit of Meisberger is of no benefit to Fryar in gaining a new trial.

Having considered Fryar's arguments on appeal, the judgment of the Boone Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Hon. Eric C. Deters
Covington, KY

BRIEF FOR APPELLEE:

Hon. W. L. (Skip) Hammons, Jr.
Edgewood, KY