

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000521-MR (DIRECT APPEAL)
AND
NO. 2000-CA-000628-MR (CROSS APPEAL)

COURTNEY LANGLEY

APPELLANT/CROSS-APPELLEE

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JOHN R. ADAMS, JUDGE
ACTION NO. 97-CI-04261

ROBERT S. DAVIS, M.D.

APPELLEE/CROSS-APPELLANT

OPINION

AFFIRMING AS TO THE APPEAL AND CROSS-APPEAL

** ** * * * * *

BEFORE: COMBS and KNOFF, Judges; and MARY COREY, Special Judge.¹

COMBS, JUDGE: Courtney Langley appeals from the November 5, 1999, judgment of the Fayette Circuit Court following a jury verdict that awarded him no damages on his claim against Dr. Robert S. Davis for the alleged intentional infliction of emotional distress. He also appeals from the judgment entered on May 27, 1999, pursuant to a jury verdict, awarding him nothing on his claim against Dr. Davis for alleged medical negligence. We

¹Senior Status Judge Mary Corey sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

affirm. On cross-appeal, Dr. Davis challenges the trial court's denial of his motions for summary judgment as well as many of the rulings made during the two trials - including the failure to grant his motion for a directed verdict on the claim of intentional infliction of emotional distress. Because of our resolution of the issues raised in the direct appeal, these issues have been rendered moot.

On December 9, 1997, Langley filed a complaint in the Fayette Circuit Court alleging that while he was under the care of Dr. Davis from 1972 until 1995, the doctor was "grossly negligent" in his care and treatment of him by prescribing "excessive amounts" of Demerol, resulting in his drug addiction. He charged that due to the doctor's negligent and intentional acts, he "developed a mental illness resulting in severe and permanent injury," causing "great humiliation, extreme emotional distress, financial hardship, severe loss of reputation and respect." Additionally, Langley contended that Dr. Davis had breached his duty to treat him in accordance with reasonable medical standards and that in breaching that duty, he "exhibited an outrageous and reckless disregard" for Langley's physical and mental health.

A twenty-five-year relationship between Langley and Dr. Davis began in the early 1970's. Dr. Davis, a family practitioner in Harlan, Kentucky, and a good friend of Langley's father, began treating Langley professionally when he returned to Harlan after graduating from college. Langley appeared to have a promising future working in his father's coal mining business; he

eventually became vice-president of a construction company owned by his father. It is undisputed that Langley frequently presented himself to Dr. Davis with complaints of migraine headaches and back pain attributable to work-related injuries and scoliosis. From the mid-70's until 1983, Dr. Davis treated his pain with Demerol, a narcotic pain-killer in the form of pills and injections. Langley testified that Dr. Davis also gave him prescriptions for other drugs that he requested - including Vicodin and Percocet.

By 1983, Langley was addicted to Demerol. Because he could no longer tolerate taking Demerol by injections, Dr. Davis began administering the drug intravenously. Langley alleged that Dr. Davis also began demanding sexual favors in exchange for the drug. Dr. Davis admitted (and his records show) that he provided Langley with narcotic medications, including large doses of Demerol; however, the doctor insisted that he did so to keep Langley "off the streets" and out of trouble with the law. He denied having any sexual involvement with Langley. After the Board of Medical Licensure conducted an investigation of the records pertaining to his medical treatment of Langley, it permanently suspended Dr. Davis's license to practice medicine in 1996.

During the years at issue, Langley also had significant problems with alcohol addiction as evidenced by his six convictions for driving under the influence. Langley had other medical problems as well, including depression and panic disorder; he obtained prescriptions from other doctors for Prozac

and Xanax, another highly addictive drug similar to Valium. Langley entered a drug treatment program in 1986 and was clean and sober for a few months; but upon his return to Harlan, he again sought out Dr. Davis for drugs. Even after Langley moved to Lexington in the early 1990's, he continued to obtain prescriptions from Dr. Davis.

In 1992, Langley served time in prison after being convicted of his fourth DUI. In 1994, he was convicted of obtaining a controlled substance by fraud. In November 1996, he became depressed after attending a University of Kentucky football game with family members. Police officers responded to an anonymous telephone call reporting that Langley had a gun and was threatening to shoot himself. When an officer arrived at the scene, Langley brandished a handgun and waved it around while shouting that he wanted the officer to kill him. After being persuaded to put the gun down, Langley was taken into custody and was subsequently charged with the crimes of wanton endangerment and possession of a handgun by a felon. He entered an insanity plea.

At trial in October 1997, Dr. Davis testified about his treatment of Langley with various drugs – including Demerol. The jury was unable to reach a verdict, and Langley ultimately pled guilty. The five-year sentence imposed was probated; however, after yet another conviction for driving under the influence, Langley was sent to prison. He was still incarcerated at the time of the trial on his claims against Dr. Davis. At trial, Langley testified that the last twenty-five years of his life had

been a "waste." For all his numerous problems and failures -- his depressed state, run-ins with the law, an unsatisfactory social life, his inability to enjoy sexual relationships with either men or women, and numerous financial problems -- he placed the blame squarely and solely upon Dr. Davis.

One of several defenses asserted by Dr. Davis was that the complaint was barred by the one-year statute of limitations contained in Kentucky Revised Statutes (KRS) 413.140(e). Because the action was filed more than two years after Dr. Davis last provided Langley with any drugs, Dr. Davis moved the trial court to dismiss the medical negligence claim as time-barred. On June 19, 1998, the trial court granted the motion. In a motion to reconsider, Langley argued that it was not until his trial on the criminal charge of wanton endangerment conducted in October 1997 that he "discovered" Dr. Davis's negligence in treating him with Demerol to treat his back pain.

In response to the motion to reconsider, Dr. Davis pointed to Langley's contradictory deposition testimony in which Langley acknowledged that as early as 1975, he was aware that Dr. Davis was prescribing drugs for him for his recreational use only. Dr. Davis also argued that Langley, who was admitted to a drug treatment facility in 1987, and who remained drug-free while incarcerated for a DUI in 1992, had to have been aware of his Demerol addiction and the source of the drug sustaining that addiction long before the criminal trial in 1997. Nevertheless, the trial court agreed that there might be a genuine issue of material fact bearing upon when Langley became aware both of his

injury and of the fact that Dr. Davis was the cause of that injury. Thus, on February 8, 1999, the trial court reinstated the medical negligence claim.

Dr. Davis also moved for summary judgment on the outrage claim and argued that under the standards for that tort as discussed in Rigazio v. Archdiocese of Louisville, Ky.App., 853 S.W.2d 295 (1993), Langley was not permitted simultaneously to pursue a claim for medical negligence and for outrage. Langley responded that his claims did not overlap but that they were related to two discrete time periods -- the claim for medical negligence encompassing the years beginning in the early 1970's and ending in 1983 with the claim for outrage running from 1983 to 1995, a period during which even Dr. Davis acknowledged that there had been no medical justification for prescribing or administering the drugs. The trial court accepted Langley's argument that Dr. Davis's conduct comprised two successive torts rather than one, and both claims were tried in May 1999.

At the conclusion of the first trial, the jury received several instructions - which became confusingly commingled as portions seemed to overlap one another. The jury was first instructed on the medical negligence claim; it was told that Dr. Davis had a duty "to exercise the degree of care and skill expected of a reasonably competent family practitioner." Dr. Davis conceded to the jury that he had breached that duty in providing the considerable quantities of drugs to Langley. Without resolving attendant issues such as the degree of comparative negligence attributable to Langley, the jury

unanimously agreed that the medical negligence claim was indeed time-barred and that Langley should have realized Dr. Davis's breach of duty prior to October of 1997. Thus, it awarded no compensatory damages.

The jury was next instructed on the claim of intentional infliction of emotional distress (or the "outrage claim," covering the time period from 1983 to 1995). It awarded no damages.

Finally, the last set of instructions concerned the issue of punitive damages and whether the evidence had established that Dr. Davis "was grossly negligent in the medical treatment rendered to Courtney Langley...." Nine of the jurors voted to award punitive damages in the amount of \$1,000,000.

From the sequence in which the jurors had responded to the instructions, it became apparent to the trial judge that they had wanted to award "something" to Langley but that they had in effect awarded punitive damages on a claim that they themselves had found to be time-barred. After further discussion between the trial judge and the jurors, it seemed that the jurors wanted to deliberate a bit more on the outrage claim. This time, the jury returned a verdict for Langley on the issue of intentional infliction of emotional distress - but awarded \$0 in damages.

On May 27, 1999, judgment was entered dismissing the claim against Dr. Davis for negligence and awarding Langley "zero dollars" for his claim of intentional infliction of emotional distress. In dismissing the claim for punitive damages, the trial court reasoned that under Kentucky law:

compensatory damages must be awarded to support an award of punitive damages. Fowler v. Mantooth, Ky., 683 S.W.2d 250, 252-253 (1984); Lawrence v. Risen, Ky.App., 598 S.W.2d 474, 475-76 (1980). As a result, an award of punitive damages is not supported and judgment is entered on behalf of the Defendant, Robert S. Davis. . .

Following a series of post-trial motions by both sides, the trial court agreed that the jury may have been confused by its instructions on the issue of punitive damages. It set aside the judgment with respect to the award of zero dollars for the intentional infliction of emotional distress and ordered a new trial be conducted solely on the issue of damages.

The new trial was conducted in October 1999. The jury heard much of the same evidence presented at the first trial. The jury was instructed that it could award Langley compensatory damages not to exceed \$1,000,000 and punitive damages not to exceed \$5,000,000. The jury awarded \$0 under both the compensatory and punitive damages categories. A judgment was entered reflecting that verdict on November 5, 1999. Langley filed a motion for a new trial based on the insufficiency of the award, which was denied. This appeal and cross-appeal followed.

Langley does not allege any error with respect to the second trial. Instead, he first argues that he is entitled to a new trial on the issue of medical negligence due to an allegedly erroneous ruling during the first trial on his motion *in limine* to exclude the testimony of Nick Cole. Cole, a high school friend, testified in his deposition that he and Langley had smoked marijuana in school, that Langley sold drugs, and that he attempted to enlist Cole to sell drugs as well. Ruling that

there was no probative value in the evidence that Langley may have sold drugs, the trial court prohibited any reference to that activity at trial. However, it reasoned that Langley's prior use of illegal drugs was relevant to the issue of his possible proclivity to use drugs as well as to his claim that Dr. Davis was the cause of his long-standing depression and addiction to drugs.

Kentucky Rule of Evidence (KRE) 404(b) creates a general rule against the admission of evidence of other wrongs or acts "to prove the character of a person in order to show action in conformity therewith." Such evidence may, however, be admitted if offered "for some other purpose." KRE 404(b)(1). The proper application of this rule is entrusted to the sound discretion of the trial court. See Green River Electric Corporation v. Nantz, Ky.App., 894 S.W.2d 643 (1995). Absent an abuse of that discretion, a trial court's decision on admissibility of evidence will not be disturbed on appeal. Partin v. Commonwealth, Ky., 918 S.W.2d 219, 222 (1996). We agree that Langley's drug use prior to the doctor/patient relationship was directly relevant to several issues before the jury. Thus, we find no abuse of discretion in the trial court's ruling to allow Cole to testify about Langley's use of drugs in high school.

Langley next contends that the trial court erred in its judgment of May 27, 1999 (following the first trial), when it ruled that an award of punitive damages could not survive absent an award for compensatory damages. Langley is correct: an award

of punitive damages need not necessarily be accompanied by an award for compensatory damages as long as there has been an allegation of grounds justifying compensatory damages.

Without a factual allegation of actual compensatory damages, punitive recoveries cannot be sustained. [Emphasis added.] It has long been held that "[t]he correct rule . . . is that if a right of action exists--that is, if the plaintiff has suffered an injury for which compensatory damages might be awarded, although nominal in amount--he may in a proper case recover punitive damages. *Louisville & N.R. Co. v. Ritchel*, 148 Ky. 701, 147 S.W. 411, 414 (1912). Lawrence v. Risen, Ky.App., 598 S.W.2d 474, 476 (1980).

The Kentucky Supreme Court has most recently examined this issue in Commonwealth Department of Agriculture v. Vinson, Ky., 30S.W.3d 162, 166 (2000), in which it unequivocally announced that a punitive damages award may stand alone without a grant of any compensatory damages. Although Vinson involved a previous award of equitable relief, it relied upon Ritchel, supra, and Nappe v. Anschelewitz, 97 N.J. 37, 447 A.2d 1224 (1984), both cases in which the punitive damages award was not premised upon or preceded by equitable relief. We read Vinson as authorizing entry of a punitive damages award without the necessity of other relief having been granted:

Ritchel, *supra*, states in part that a verdict for punitive damages only will not be set aside because the jury failed to return a verdict for compensatory damages.

* * *

We are also persuaded by the reasoning of Nappe v. Anschelewitz, 97 N.J. 37, 477 A.2d 1224 (1984), that compensatory damages are not an essential element of an intentional tort committed willfully and

without justification. The mere fact that no compensatory damages were awarded to Vinson or Anderson does not mean that they did not have compensable injuries. The fact that there is not a quantifiable monetary damage awarded for lost pay does not mean that injury did not occur.

* * *

Here there is a factual basis for a possible award of actual compensatory damages although not given in this case. The common law of Kentucky does not provide a basis for defeating the judgment in question. The Whistleblower Statute is sufficiently explicit in regard to punitive damages.

Thus, although Langley is correct in arguing that a compensatory damages award need not be granted as a condition precedent for a punitive damages award, he forgets one critical point: that the court had also disallowed the punitive damages because they were tied to the medical negligence claim, which was legally unsustainable since it had been filed beyond the period of the statute of limitations. Langley essentially argues that although the trial court had failed to give a punitive damages instruction on the claim of intentional infliction of emotional distress, the \$1,000,000 awarded by the jury for medical negligence should now be revived or resurrected to compensate him for that claim.

It was precisely because of the confusion surrounding the instructions that the trial court granted Langley a new trial on the issue of damages with respect to his claim for the intentional infliction of emotional distress. Any error inherent in the first trial was cured when the instruction was given upon re-trial. There is no legal basis for reinstating from the first

trial the award of punitive damages for the time-barred negligence claim in order to compensate Langley for the separate and distinct claim for outrage in the second trial. Such a re-arrangement of awards from one claim to another and from one trial to another is not legally cognizable.

In his cross-appeal, Dr. Davis argues that the trial court rendered several erroneous rulings before and during the trial. Specifically, Dr. Davis argues that the negligence claim was barred by the statute of limitations as a matter of law and that the claim should have been summarily dismissed prior to trial. He contends that the tort of outrage is meant to be a "gap-filler" and should not allowed to co-exist or coincide with a claim asserting a more traditional tort. He also argues that he was entitled to a directed verdict on the outrage claim. We need not address the merits of these arguments since our decision in the direct appeal has rendered them moot.

The judgment of the Fayette Circuit Court is affirmed.

COREY, SPECIAL JUDGE, CONCURS.

KNOFF, JUDGE, CONCURS IN RESULT.

BRIEFS AND ORAL ARGUMENT FOR
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