

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001544-MR

STEVEN M. BLOOM, M.D.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE F. KENNETH CONLIFFE, JUDGE
ACTION NO. 94-CI-004659

CHARLES F. MAHL, M.D. and
RETINA ASSOCIATES, P.S.C.
d/b/a LOUISVILLE RETINA ASSOCIATES

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BUCKINGHAM, COMBS, AND SCHRODER, JUDGES.

BUCKINGHAM, JUDGE: Dr. Steven M. Bloom appeals from a judgment of the Jefferson Circuit Court arising out of an employment dispute between him and Dr. Charles F. Mahl and Retina Associates, P.S.C., d/b/a Louisville Retina Associates.¹ We affirm.

In 1989, Dr. Mahl recruited Dr. Bloom to practice with him in the Louisville area. The parties entered into an employment agreement on October 5, 1989. The medical practice in

¹ The appellees will hereinafter be referred to collectively as "Dr. Mahl."

which the parties were engaged was ophthalmology and vitreoretinal diseases and surgery.

On August 14, 1991, Dr. Bloom and Dr. Mahl entered into a second employment agreement, a stock purchase agreement, and a stock restriction agreement. Under the terms of the new employment agreement, Dr. Bloom became an equal shareholder with Dr. Mahl in Retina Associates. However, Dr. Mahl terminated Dr. Bloom from employment on July 29, 1994.

On September 7, 1994, Dr. Bloom filed a verified complaint against Dr. Mahl in the Jefferson Circuit Court. In January 1996, the case was tried by the court without a jury. Approximately one year later, the trial court entered Findings of Fact, Conclusions of Law and Judgment. Therein, the court awarded Dr. Bloom \$392,000 pursuant to the employment agreement's shareholder buyout provision. The court also awarded Dr. Bloom \$225,534 in lost salary for the year of 1994. However, the court did not award Dr. Bloom damages for future lost salary for 1995 "since he obtained employment with Eye Centers of Louisville in January 1995, a position comparable to his practice at Retina Associates." The court stated that "[c]omparing his future earnings at Eye Centers of Louisville with any calculation of future earnings at Retina Associates would be speculative and can not be established with reasonable certainty." The court also subtracted \$35,349.97 from Dr. Bloom's damage award for monies received by him at Eye Centers of Louisville for patients that came from Retina Associates. The total judgment in favor of Dr. Bloom was \$582,184.03.

Both parties appealed from the trial court's judgment, and, on February 19, 1999, this court rendered an opinion affirming the trial court in part but reversing and remanding in part. This court reversed the trial court's finding that Dr. Bloom was not entitled to recover the lost 1995 salary.² The panel of the court that rendered the opinion held that:

We are of the opinion that Trial Exhibits 39 and 41, plus the testimony of Bloom's expert witness and other evidence adduced in this vein, were sufficient to establish with reasonable certainty Bloom's lost 1995 income or salary claim, thereby overcoming appellees' argument that the claim was too speculative.

Thus, the issue of Dr. Bloom's lost income for 1995 was remanded to the trial court "for further proceedings consistent with the views expressed in this opinion." The Kentucky Supreme Court denied discretionary review of the case by an order entered on August 18, 1999, and this court's opinion became final on August 27, 1999.

Dr. Bloom moved the trial court to enter a judgment on his 1995 lost salary claim on August 26, 1999. A hearing on the motion was held on October 19, 1999, and the trial court entered a Memorandum and Judgment on May 26, 2000. Dr. Bloom initially claimed \$338,491 as lost income for 1995. However, during the hearing he conceded that the amount should be reduced by \$111,600. He thus claimed that his lost income for 1995 was \$226,891.

² This court also partially reversed the trial court on other issues, but those issues are not pertinent to this appeal.

In its judgment, the trial court awarded him only \$134,833.77 for lost income for 1995. In addition, the court awarded prejudgment interest at eight percent per annum from August 27, 1999, the date the opinion of this court became final. Finally, the court also awarded postjudgment interest at twelve percent per annum³ from May 26, 2000, the date the judgment setting forth the amount owed was entered. The court denied Dr. Bloom's claim for an earlier postjudgment interest award because there had not been a judgment setting forth the amount owed. This appeal by Dr. Bloom followed.

Dr. Bloom argues in his second appeal to this court that the trial court ignored this court's "unambiguous directive" in determining his damages for lost income for 1995. He points to the language in this court's first opinion which held that Trial Exhibits 39 and 41 as well as the testimony of his expert witness (Frank Strickland) and other evidence introduced at trial were sufficient to establish the claim with reasonable certainty.

Dr. Mahl responds to this argument by noting that this court did not direct the trial court to award a specific amount of damages for lost income for 1995. He also points out that Dr. Bloom's Trial Exhibits 39 and 41 did not set forth figures indicating lost income for 1995 at \$226,891 but rather at \$407,540. Dr. Mahl also asserts that the trial court was allowed to consider, and did consider, all relevant evidence introduced at trial concerning lost income for 1995 and was not limited to just the two exhibits and Strickland's testimony.

³ See Kentucky Revised Statutes (KRS) 360.040.

We have reviewed the record and determined that the trial court did not err or abuse its discretion in awarding Dr. Bloom \$134,833.77 for lost income for 1995. In its judgment, the trial court noted a downturn in gross income for Retina Associates in 1995 because of a change in the Medicare formula that required additional expenses. The court also stated it was not satisfied that Strickland's testimony gave sufficient consideration to several variables in the 1995 financial status of Retina Associates "that could have and did reflect at least a temporary downturn." The court also found that the doctors in Retina Associates made \$1.65 million in 1995, up from \$1.4 million in 1994. However, as the court noted, the 1995 income was distributed to thirteen doctors while the 1994 income was distributed to only eight doctors. The court stated that it was "left, therefore, to hypothesize where Dr. Bloom would have fit in the 1995 picture at Retina Associates."

The trial court determined that Dr. Bloom "would have been in the spot occupied by Dr. [Sean] Murphy." Thus, the trial court assumed that Dr. Bloom would have made an income equal to that of Dr. Murphy in 1995 and, after considering Dr. Bloom's income at Eye Center of Louisville for 1995, arrived at \$134,833.77 as the lost income figure.

We disagree with Dr. Bloom's argument that this court gave the trial court an "unambiguous directive" and that the trial court was bound to consider only the evidence in the two trial exhibits as well as the testimony of Strickland. This court's first opinion held that the two trial exhibits as well as

Strickland's testimony "and other evidence adduced in this vein, were sufficient to establish with reasonable certainty Bloom's lost 1995 income or salary claim[.]" (Emphasis added.) As the fact finder in this case, the trial court was entitled to consider all the evidence presented and determine the weight to be given to the evidence and the credibility to be given to witnesses. "Findings of Fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." CR⁴ 52.01. Under these principles, it was not error for the trial court to refuse to fully accept the testimony of Dr. Bloom's expert witness concerning the amount of lost income for 1995.

Dr. Bloom's second argument is that the trial court erred in granting prejudgment interest from August 27, 1999, the date this court's first opinion became final. He contends he should have been awarded prejudgment interest from the end of 1995. The court correctly determined that Dr. Bloom's damages for lost income for 1995 was an unliquidated claim and that he was not entitled to prejudgment interest. See Atlantic Painting & Contracting, Inc. v. Nashville Bridge Co., Ky., 670 S.W.2d 841, 847 (1984). However, based on the principles of equity referred to in Nucor Corp. v. General Elec. Co., Ky., 812 S.W.2d 136, 143 (1991), the court awarded prejudgment interest as of the date our first opinion became final. The court's rationale was that it became certain at that time that Dr. Bloom would have a recovery

⁴ Kentucky Rules of Civil Procedure.

on his claim. We hold that the trial court did not abuse its discretion in refusing to award prejudgment interest from January 1, 1996, rather than from August 27, 1999.

Finally, Dr. Bloom argues that the trial court erred by failing to award him postjudgment interest from August 18, 1999, the date the Kentucky Supreme Court denied discretionary review in this case. He asserts it was on that date that Dr. Mahl knew or should have known that he was responsible to Dr. Bloom for the lost income of 1995. He asserts that the only issue remaining was the trial court's "ministerial act" of entering the judgment as directed in this court's first opinion. Dr. Bloom also complains that the trial court unjustifiably delayed entering the judgment for nine months after the motion was made and seven months after the hearing was held and that such delay penalizes him and unjustly enriches Dr. Mahl. The trial court rejected Dr. Bloom's postjudgment interest claim on the ground that "there was not a judgment setting forth an amount."

KRS 360.040 allows postjudgment interest. However, as the trial court notes, no judgment was entered until the final judgment of May 26, 2000. Thus, we conclude the trial court correctly rejected Dr. Bloom's claim for any postjudgment interest before that date.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Michael W. Oyler
Louisville, Kentucky

BRIEF FOR APPELLEES:

Jonathan D. Goldberg
Louisville, Kentucky

