

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Hunter M. Sully,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-1148 (C.P.C. No. 09CV-08-12902)
Jazmine E. Joyce et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees,	:	
Abdirashid H. Hagi,	:	
Defendant-Appellant.	:	
Hunter M. Sully,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-1151 (C.P.C. No. 09CVC-08-12902)
Jazmine E. Joyce,	:	(REGULAR CALENDAR)
Defendant-Appellant,	:	
Abdirashid H. Hagi et al.,	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on August 4, 2011

Law Office of Brett Jaffe and Brett Jaffe, for plaintiff-appellee.

Gallagher, Gams, Pryor, Tallan & Littrell, LLP, and *Barry W. Littrell*, for defendant-appellant Abdirashid H. Hagi.

Law Offices of Craig S. Cobb, and *Joseph V. Erwin*, for

defendant-appellant Jazmine E. Joyce.

APPEALS from the Franklin County Court of Common Pleas.
DORRIAN, J.

{¶1} Defendants-appellants, Abdirashid H. Hagi ("Hagi") and Jazmine E. Joyce ("Joyce"), appeal from a judgment of the Franklin County Court of Common Pleas granting plaintiff-appellee, Hunter M. Sully's ("Sully"), motion for a new trial. For the reasons that follow, we affirm.

{¶2} On the evening of September 1, 2007, Joyce was driving Sully, Delray Williams ("Williams"), and Britani Burruss ("Burruss") from the campus of Capital University to a club in downtown Columbus. Sully was seated in the front passenger seat, while Burruss and Williams rode in the backseat. After leaving the Capital University campus, Joyce drove west on Interstate 70 to reach downtown Columbus. She took the Fourth Street exit off the highway, traveling west on Fulton Street. At the first intersection after leaving the highway, Joyce's car collided with a taxicab traveling north on Fourth Street driven by Hagi. There was a traffic light at the intersection where the collision occurred. Sully suffered injuries to his head, chest, and leg as a result of the collision.

{¶3} Sully filed a lawsuit against Joyce and Hagi, asserting that one of the two, or both, drove negligently and caused Sully's injuries. Prior to trial, the parties stipulated that Sully suffered recoverable damages of \$35,000 and that trial would proceed on the sole issue of liability. At trial, Sully, Joyce, and Williams all testified that Joyce had a green light at the intersection of Fourth Street and Fulton Street. Sully and Joyce testified that Joyce was decelerating from highway speed as she drove up the exit ramp and

through the intersection. Sully further testified that Hagi's vehicle accelerated into the intersection immediately prior to the impact. Joyce testified that she did not see Hagi's vehicle prior to the collision. Hagi testified that he had a green light at the intersection of Fourth and Fulton. Hagi testified that he did not accelerate into the intersection but was traveling at a constant speed of 25-to-30 miles per hour. Hagi stated that he did not see Joyce's vehicle prior to the collision. Burruss was not called to testify at the trial.

{¶4} During jury deliberations, the jury sent the court a question inquiring as to what would happen if they found for the defendants and against the plaintiff. After a discussion with counsel, the trial judge responded with a statement that, if the jury found for the defendants, the plaintiff would not recover. Shortly thereafter, the jury returned a verdict in favor of Joyce and Hagi. Sully moved for a new trial on the grounds that the jury verdict was against the manifest weight of the evidence. The trial court granted Sully's motion, concluding that the jury verdict was a manifest injustice and against the manifest weight of the evidence.

{¶5} Hagi and Joyce filed separate notices of appeal from the trial court's order granting the motion for new trial. The cases were then consolidated for briefing and oral argument. In case No. 10AP-1148, Hagi assigns the following errors for this court's review:

Assignment of Error I: The trial court erred as a matter of law in granting Plaintiff's Motion for a New Trial by ignoring Plaintiff's burden of proof and by defacto [sic] instituting a new legal standard by which red light/green light negligence cases will be decided.

Assignment of Error II: The trial court erred by abusing its discretion in granting Plaintiff's Motion for a New Trial because it failed to provide sufficient reasons and it relied on

its own view of the evidence and thereby encroached on the jury's factfinding function.

{¶6} In case No. 10AP-1151, Joyce sets forth one assignment of error:

THE TRIAL COURT ERRED IN GRANTING PLAINTIFF HUNTER M. SULLY'S MOTION FOR A NEW TRIAL BECAUSE IT WAS WITHIN THE PROVINCE OF THE JURY TO DETERMINE WHETHER PLAINTIFF SUSTAINED HIS BURDEN OF PROOF AGAINST EITHER OF THE DEFENDANTS.

{¶7} Civ.R. 59(A) provides multiple grounds on which a trial court may grant a new trial. We begin by considering the proper standard of review for a ruling on a motion for a new trial. In *Rohde v. Farmer* (1970), 23 Ohio St.2d 82, the Supreme Court of Ohio held that "[w]here a trial court is authorized to grant a new trial for a reason which requires the exercise of a sound discretion, the order granting a new trial may be reversed only upon a showing of abuse of discretion by the trial court." *Id.* at paragraph one of syllabus. In ruling on a motion for new trial on the grounds that the judgment is not sustained by the weight of the evidence, the trial court must engage in a limited weighing of the evidence and must consider the credibility of the witnesses. *Id.* at paragraph three of syllabus. This requires the trial court to exercise its discretion, and an order granting or denying a new trial on this basis will not be reversed absent an abuse of discretion. *Antal v. Olde Worlde Prods., Inc.* (1984), 9 Ohio St.3d 144, 145; *Harper v. Lefkowitz*, 10th Dist. No. 09AP-1090, 2010-Ohio-6527, ¶6. An abuse of discretion occurs where a court's attitude is "unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶8} The Supreme Court in *Rohde* further stated that "[w]here a new trial is granted by a trial court, for reasons which involve no exercise of discretion but only a

decision on a question of law, the order granting a new trial may be reversed upon the basis of a showing that the decision was erroneous as a matter of law." *Id.* at paragraph two of syllabus. Accordingly, an order granting a new trial on the grounds that the judgment was contrary to law is subject to de novo review. *Harper* at ¶6. Similarly, an order granting a new trial on the basis that there was an error of law at trial is subject to de novo review. *Ferguson v. Dyer*, 149 Ohio App.3d 380, 2002-Ohio-1442, ¶10 ("[O]ur review of a motion pursuant to Civ.R. 59(A)(9) is de novo.").

{¶9} Sully sought a new trial pursuant to Civ.R. 59(A)(6), asserting that the judgment was not sustained by the weight of the evidence. Therefore, we would normally apply the abuse-of-discretion standard. However, in his first assignment of error, Hagi asserts that we should undertake a de novo review because the trial court erred as a matter of law in granting the motion for new trial. Hagi argues that the trial court committed an error of law by failing to properly apply the law as set forth in this court's decisions in *Peck v. Serio*, 155 Ohio App.3d 471, 2003-Ohio-6561, and *Plank v. McKeever*, 10th Dist. No. 04AP-1273, 2005-Ohio-5645.

{¶10} Hagi argues that this court's decision in *Peck* required the trial court to deny Sully's motion for new trial. The facts in *Peck* were similar to the scenario in the present appeal. The plaintiff, Christina Peck ("Peck"), was a passenger in a car driven by her mother, Betty Serio ("Serio"). As Serio attempted to make a left turn, she collided with another vehicle that was traveling straight through the intersection, driven by Willetha Carmichael ("Carmichael"). *Id.* at ¶2. Each driver claimed that she had the right of way, with Serio asserting that she had a green turn arrow and Carmichael asserting she had a solid green light. *Id.* Peck filed a lawsuit against both drivers. At trial, only Peck, Serio,

and Carmichael testified. Peck moved for a directed verdict based on alternative liability, and the magistrate presiding over the trial denied that motion. *Id.* at ¶3. Peck also sought a jury instruction on alternative liability, which was denied. *Id.* The jury found for both defendants, and Peck moved for judgment notwithstanding the verdict or for a new trial, which was denied. *Id.* at ¶4.

{¶11} Although the facts in *Peck* were similar to the case before the court, that decision does not dictate the outcome here. The appeal in *Peck* turned on the application of the theory of alternative liability within the context of a motion for directed verdict made pursuant to Civ.R. 50. *Id.* at ¶5-17. This court found that Peck failed to prove that both defendants were negligent; therefore, the doctrine of alternative liability did not apply. *Id.* at ¶17. In the present case, Sully did not argue that the theory of alternative liability applied. The trial court expressly stated that alternative liability did not apply, and, contrary to Hagi's contention, the trial court did not apply alternative liability in its decision. Moreover, in *Peck* we found that, because she did not file objections to the magistrate's decision denying her motion for judgment notwithstanding the verdict or for a new trial, Peck effectively waived that issue on appeal. *Id.* at ¶22. Thus, the *Peck* precedent does not control our decision here because that case turned on a different issue.

{¶12} Hagi also asserts that the trial court erred as a matter of law in failing to apply the precedent from this court's decision in *Plank*. However, as the trial court noted, *Plank* is distinguishable from the present case. *Plank* involved a two-car automobile accident that occurred as one car sought to change lanes on an interstate highway. *Id.* at ¶3. The driver of the car that was struck testified that she pulled up behind stopped traffic on the highway and began to move into the lane to her left in order to pass the stopped

traffic. Id. She stated that, as she turned her wheels to the left to move into that lane, her car was struck from behind. Id. The driver and passenger in the other car testified that the car that they struck moved from left to right in front of them, cutting them off and making a collision unavoidable. Id. at ¶¶6-7. The jury returned a verdict in favor of both defendants, and the trial court denied motions for new trial. Id. at ¶¶10-11. On appeal, this court affirmed the denial of a new trial. Id. at ¶¶29. Due to "numerous inconsistencies and a lack of agreement about which car was in what lane and at what point in the progression of events leading up to and including impact," the court could not find that a manifest injustice had been done or that the jury's verdict was against the manifest weight of the evidence. Id. at ¶¶24. These "differing accounts likely confused the jury." Id. at ¶¶27. By contrast, in the present case, the only point of disagreement was which car proceeded through the intersection without a green light. The jury was not faced with sorting out conflicting, inconsistent testimony about the relative position of the vehicles involved in the collision. Further, the decision in *Plank* demonstrates that an order granting or denying a motion for new trial asserting that the verdict was not sustained by the weight of the evidence should be reviewed for abuse of discretion. In affirming the trial court's denial of the motions for new trial, this court noted that the trial court was within its discretion to deny the motions. Id. at ¶¶28.

{¶13} The trial court did not err as a matter of law by failing to apply governing precedent in granting the motion for new trial. Accordingly, we review the trial court's judgment that the verdict was not sustained by the weight of the evidence for abuse of discretion. Hagi's first assignment of error is without merit and is overruled.

{¶14} Hagi's second assignment of error and Joyce's sole assignment of error both assert that the trial court abused its discretion in granting the motion for new trial. We will address these assignments of error together.

{¶15} Civ.R. 59(A) provides that, when a new trial is granted, the court must specify in writing the grounds for the new trial. Hagi asserts that the trial court abused its discretion by failing to provide sufficient factual reasons for granting a new trial. A trial court is required to articulate its reasons for granting a new trial so that a reviewing court may determine whether the trial court abused its discretion in granting the new trial. *Antal* at 147. The determination of whether a trial court's statement of reasons is sufficient is made on a case-by-case basis, but "such reasons will be deemed insufficient if simply couched in the form of conclusions or statements of ultimate fact." *Id.* In this case, the court noted that three witnesses testified that Joyce had a green light, while Hagi testified that he had a green light. The court found that there was testimony from which the jury could determine that either Joyce or Hagi was negligent. This is more than a mere conclusion that the verdict was not sustained by the weight of the evidence. The trial court did not fail to provide sufficient factual reasons to support its decision.

{¶16} Hagi and Joyce also claim that the trial court abused its discretion by encroaching on the jury's fact-finding function in granting the motion for new trial. They assert that the trial court improperly relied on its own view of the evidence, rather than accepting the jury's verdict.

{¶17} "[I]n ruling on a motion for new trial upon the basis of a claim that the judgment 'is not sustained by sufficient evidence,' the [trial] court must weigh the evidence and pass upon the credibility of the witnesses, not in the substantially unlimited sense that

such weight and credibility are passed on originally by the jury but in the more restricted sense of whether it appears to the trial court that manifest injustice has been done and that the verdict is against the manifest weight of the evidence." *Rohde* at paragraph three of syllabus. As explained above, we review the trial court's order granting a new trial under the abuse-of-discretion standard. This standard "recognizes that the trial court is in a better position to determine credibility issues." *Duffer v. Powell*, 10th Dist. No. 05AP-859, 2006-Ohio-2613, ¶33. "[W]here [an] appeal is from the granting of a motion for new trial, and the trial court's decision on the motion for new trial involves questions of fact, * * * the appellate court should view the evidence favorably to the trial court's action rather than to the original jury verdict." *Rohde* at 94. In its decision, the trial court reviewed the evidence and concluded that a manifest injustice occurred because there was sufficient evidence to permit the jury to determine that one of the two drivers was negligent. After reviewing the testimony presented at trial and the trial court's decision, we cannot conclude that the trial court was unreasonable, arbitrary, or unconscionable in determining that a new trial was necessary to avoid a manifest injustice.

{¶18} Finally, in both his first and second assignments of error, Hagi argues that the trial court erred because its decision granting the motion for new trial did not include a ruling that Sully met his burden of proof against Hagi or Joyce. (Appellant Hagi's brief at 13.) However, in granting the motion for new trial, the trial court need only "specify in writing the grounds upon which [the] new trial is granted." Civ.R. 59(A). Had the trial court included a statement that Sully met his burden of proof against Hagi or Joyce, the ruling would have effectively functioned as a judgment notwithstanding the verdict. Under Civ.R. 50(B), "no judgment shall be rendered by the court on the ground that the verdict is

against the weight of the evidence." Therefore, the trial court did not err by not ruling that Sully met his burden of proof against Hagi or Joyce. Moreover, contrary to Hagi's assertion, the trial court did not shift the burden of proof to the defendants in this case. At the new trial, Sully will still be required to prove negligence on the part of Hagi or Joyce, or both, in order to win a judgment.

{¶19} Accordingly, Hagi's second assignment of error and Joyce's assignment of error are without merit and are overruled.

{¶20} For the foregoing reasons, we overrule Hagi's two assignments of error and Joyce's sole assignment of error. The judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BRYANT, P.J., and BROWN, J., concur.
