NO. 12-14-00156-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

INEZ MANIGAULT, APPELLANT	***§***	***APPEAL FROM THE 145TH***
V.	***§***	***JUDICIAL DISTRICT COURT***
JANE THORN-HENDERSON, APPELLEE	***§***	***NACOGDOCHES COUNTY, TEXAS***

MEMORANDUM OPINION

Inez Manigault, proceeding pro se, appeals the trial court's judgment in her favor and against Jane Thorn-Henderson. Manigault raises eleven issues on appeal. We affirm.

BACKGROUND

Thorn-Henderson drove her vehicle into Manigault's vehicle, while Manigault was stopped at a red light. Manigault was injured in the collision and required medical attention. Her doctor prescribed physical therapy. After several weeks, Manigault was able to cope with her pain and stopped attending physical therapy.

Manigault continued to work for several weeks after the accident. However, she believed that her injuries impeded her ability to do her job, and she eventually quit. Manigault was out of work for a lengthy period of time before she found a new job.

Manigault sued Thorn-Henderson on negligence grounds. The matter proceeded to a jury trial. At trial, Manigault sought damages for past and future physical pain and mental anguish, past and future physical impairment, past medical expenses, and past loss of earning capacity. The jury awarded her damages for her past physical pain and mental anguish, past physical impairment, and past medical expenses. The jury declined to award her damages for future physical pain and mental anguish, future physical impairment, or past loss of earning capacity.

The trial court signed a judgment in accordance with the jury's verdict, and this appeal followed.[1]

LEGAL AND FACTUAL SUFFICIENCY

In her second issue, Manigault argues that the trial court erred in rendering judgment because there is legally sufficient evidence to support her damage claims. In her third issue, she contends that the evidence is factually insufficient to support some of the jury's findings and the trial court's judgment based on those findings. As part of her fourth issue, she contends that the evidence is legally and factually sufficient to support her damage claims.

Preservation of Error

A legal sufficiency challenge may be preserved by (1) a motion for directed verdict, (2) a motion for judgment notwithstanding the verdict, (3) an objection to submitting an issue to the jury, (4) a motion to disregard a jury finding on an issue, or (5) a motion for new trial. *See* ***Cecil v. Smith***, 804 S.W.2d 509, 511 (Tex. 1991); ***C.M. Asfahl Agency v. Tensor, Inc.***, 135 S.W.3d 768, 786 (Tex. App.–Houston [1st Dist.] 2004, no pet.). But there is only one way a party can preserve a factual sufficiency challenge; she must raise the matter in a motion for new trial. *See* ***In re C.E.M.***, 64 S.W.3d 425, 428 (Tex. App.–Houston [1st Dist.] 2000, no pet.).

Application

In the instant case, Manigault failed to preserve her legal and factual sufficiency challenges. She did not move for directed verdict on any element of damages. She did not object to any aspect of the charge. And she did not file any postverdict motions. Thus, we do not reach the merits of Manigault's legal and factual sufficiency challenges. Manigault's second and third issues are overruled. Furthermore her fourth issue is overruled to the extent it relates to her argument that the evidence is legally and factually sufficient to support her damage claims.

[1] Manigault attached documents to her appellate brief. We cannot consider documents attached to an appellate brief that do not appear in the record. ***Till v. Thomas***, 10 S.W.3d 730, 733 (Tex. App.–Houston [1st Dist.] 1999, no pet.). Instead, we determine a case on the record as filed. ***Id.***

HEARSAY

In her fifth issue, Manigault argues that the trial court improperly excluded critical evidence at trial on hearsay grounds. Specifically, she contends the trial court erred in excluding evidence that a steel rod in the rear of her vehicle reduced the visible damage from the impact.

Standard of Review and Applicable Law

We review a trial court's evidentiary rulings for an abuse of discretion. *See* ***Owens–Corning Fiberglas Corp. v. Malone***, 972 S.W.2d 35, 43 (Tex.1998). A trial court abuses its discretion when it rules without regard to any guiding rules or principles. *See* ***id.*** A trial court does not abuse its discretion as long as its decision is within the zone of reasonable disagreement. ***Natural Gas Pipeline Co. of Am. v. Pool***, 30 S.W.3d 618, 632 (Tex. App.–Amarillo 2000), *rev'd on other grounds*, 124 S.W.3d 188 (Tex. 2003). The burden is on the complaining party to present a sufficient record to the appellate court to show error requiring reversal. ***Estate of Veale v. Teledyne Indus., Inc.***, 899 S.W.2d 239, 242 (Tex. App.–Houston [1st Dist.] 1995, writ denied).

Hearsay "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." TEX. R. EVID. 801(d). Hearsay is not admissible except as provided by statute or the rules of evidence or other rules prescribed pursuant to statutory authority. TEX. R. EVID. 802. The proponent of hearsay has the burden of showing that the testimony fits within an exception to the general rule prohibiting the admission of hearsay evidence. ***Volkswagen of Am., Inc. v. Ramirez***, 159 S.W.3d 897, 908 n.5 (Tex. 2004).

Application

In the case at hand, Manigault sought to introduce evidence that a steel rod in the rear portion of her car protected her bumper from being visibly damaged. However, she did not offer any specific information concerning how this steel rod counteracted the impact from Thorn-Henderson's vehicle. Instead, she claimed that the rod caused "the vehicle to bounce back so you don't see the damages that was done to the vehicle from the outside." She conceded that a representative of the Dodge dealership, who was preparing a damage estimate for her vehicle, told her this fact about the steel rod.

Thorn-Henderson lodged a hearsay objection to Manigault's proffered evidence. At trial, Manigault did not argue that the evidence was not hearsay or that it fit within an exception to the

hearsay rule. Instead, she contended that she could offer the testimony because she "can testify about what she knows about her car." Likewise, on appeal, Manigault fails to raise arguments concerning why the proffered testimony was not inadmissible hearsay.

Here, Manigault offered the testimony in question to prove the truth of the matter asserted by the representative of the Dodge dealership—that her vehicle had a steel rod in the back that reduced visible damage from rear end impacts. Thus, we hold that the proffered testimony is inadmissible hearsay and the trial court properly sustained Thorn-Henderson's objection. Manigault's fifth issue is overruled.

DUE PROCESS

In her sixth issue, Manigault contends that the trial court abused its discretion and exceeded its power in violation of her right to due process.

Applicable Law

Due process requires a neutral and detached hearing body or officer. ***Earley v. State***, 855 S.W.2d 260, 262 (Tex. App.–Corpus Christi 1993), *writ dism'd, improvidently granted*, 872 S.W.2d 758 (Tex. Crim. App. 1994) (citing ***Gagnon v. Scarpelli***, 411 U.S. 778, 786, 93 S. Ct. 1756, 1761, 36 L. Ed. 2d 656 (1973)). In the absence of a clear showing to the contrary, we will presume the trial court was a neutral and detached officer. ***Earley***, 855 S.W.2d at 262 (citing ***Fielding v. State***, 719 S.W.2d 361, 366 (Tex. App.–Dallas 1986, pet. ref'd)). The complaining party must show the judge acted improperly and that she suffered probable prejudice as a result. ***Rymer v. Lewis***, 206 S.W.3d 732, 735–36 (Tex. App.–Dallas 2006, no pet.). In analyzing this issue, we examine the entire record. *See* ***id.*** at 736.

A trial court has the inherent power to control the disposition of cases. ***Dow Chem. Co. v. Francis***, 46 S.W.3d 237, 240 (Tex. 2001). Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. ***Liteky v. United States***, 510 U.S. 540, 555, 114 S. Ct. 1147, 1157, 127 L. Ed. 2d 474 (1994). Bias must come from an extrajudicial source and result in an opinion on the merits of the case other than what the trial court learned from participation in the case. *See* ***In re K.L.R.***, 162 S.W.3d 291, 312 (Tex. App.–Tyler 2005, no pet.).

Application

In the instant case, Manigault contends that the trial court displayed a lack of impartiality by engaging in favorable exchanges with Thorn-Henderson and her attorney. Yet, there is no

evidence in the record to support Manigault's contention that the trial court favored Thorn-Henderson. In fact, the record contains no evidence indicating improper exchanges between the trial court and Thorn-Henderson or her attorney or any exhibition of bias against Manigault and her claims.

Manigault further contends that the trial court demonstrated a lack of impartiality by ruling against her and allowing her former attorney to prepare the proposed judgment after she terminated him. We have examined the trial court's rulings and conclude that the trial court ruled correctly. Manigault's contentions fail to rebut the presumption that the trial court was a neutral and detached officer. *See* ***Earley***, 855 S.W.2d at 262. Manigault's sixth issue is overruled.

INEFFECTIVE ASSISTANCE OF COUNSEL

In her eighth issue, Manigault complains that her trial attorney failed to adequately represent her.

In the criminal context, claims of ineffective assistance of counsel are evaluated under the two step analysis articulated in ***Strickland v. Washington***, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 674 (1984). However, the doctrine of ineffective assistance of counsel does not apply to civil cases. *See* ***Cherqui v. Westheimer St. Festival Corp.***, 116 S.W.3d 337, 343 (Tex. App.–Houston [14th Dist.] 2003, no pet.); ***McCoy v. Tex. Instruments, Inc.***, 183 S.W.3d 548, 553 (Tex. App.–Dallas 2006, no pet.). Thus, we hold that Manigault may not raise the issue of ineffective assistance of counsel in this civil proceeding. Manigault's eighth issue is overruled.

PRESERVATION OF ERROR

In several of Manigault's issues, she failed to preserve error at the trial court level. We address each of these issues below.

Applicable Law

To preserve a complaint for appellate review, a party must present the complaint to the trial court by a timely request, objection, or motion that states the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint. TEX. R. APP. P. 33.1. This rule ensures that the trial court has had the opportunity to rule on matters for which parties later seek appellate review. ***In re E. Tex. Med.***

Ctr. Athens, 154 S.W.3d 933, 936 (Tex. App.–Tyler 2005, orig. proceeding). Further, the trial court must have ruled on the request, objection, or motion, either expressly or implicitly, or refused to rule on the request, objection, or motion, and the complaining party objected to the refusal. TEX. R. APP. P. 33.1(a)(2).

Application

In her first issue, Manigault contends that the trial court erred in the method it employed to obtain potential jurors for the jury selection. Specifically, she claims that the potential jurors were not a fair cross section of the community as required by the Jury Selection and Service Act of 1968. *See* 28 U.S.C.A. §§ 1861–78 (West, WESTLAW current through Dec. 28, 2015). We have reviewed the entirety of the record in this case, and there is no instance in which Manigault timely raised an objection to the jury panel. Thus, Manigault failed to preserve any error. *See* TEX. R. APP. P. 33.1. But even had she preserved error, there is no evidence in the record indicating that the jury panel was improperly assembled. Manigault's first issue is overruled.

As part of her fourth issue, Manigault argues that mental anguish and physical pain should not have been presented to the jury as a single submission in the court's charge. In her tenth issue, Manigault contends that the trial court committed error in its charge to the jury. However, at trial, when Manigault was presented with the court's proposed charge, she, through her attorney, stated that she had no objections to it. We hold that Manigault failed to preserve error, if any, on these issues. ***Id.*** Manigault's tenth issue is overruled. Her fourth issue is overruled to the extent it relates to her argument that there was error in the court's charge.

In her seventh issue, Manigault argues that the trial court engaged in improper ex parte communications with Thorn-Henderson and her attorney. We have reviewed the entire record. Having done so, we conclude that (1) there is no evidence of ex parte communications between the trial court and Thorn-Henderson and her attorney, and (2) Manigault did not raise any objections concerning any supposed ex parte communications between the trial court and Thorn-Henderson and her attorney. ***Id.*** Manigault's seventh issue is overruled.

In her ninth issue, Manigault contends that Thorn-Henderson presented false evidence at trial and her attorney acted improperly. Because the record reflects that Manigault failed to object to any of Thorn-Henderson's evidence as being false or to any actions of Thorn-Henderson's attorney as being improper, she has failed to preserve error, if any. ***Id.*** Manigault's ninth issue is overruled.

In her eleventh issue,[2] Manigault argues that the trial court's judgment conflicts with the precedent of the Supreme Court. Once again, the record reflects that she failed to make any such objection at any point during the trial and, thus, has failed to preserve any error. ***Id.*** Manigault's eleventh issue is overruled.

DISPOSITION

Having overruled Manigault's eleven issues, we ***affirm*** the trial court's judgment.

BRIAN HOYLE
Justice

Opinion delivered February 29, 2016.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)

[2] In Manigault's brief, she identified her contention that the trial court's judgment conflicts with Supreme Court precedent as her twelfth issue. However, her tenth and eleventh issues were identical. Accordingly, we refer to this issue as Manigault's eleventh issue.

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

FEBRUARY 29, 2016

NO. 12-14-00156-CV

INEZ MANIGAULT,
Appellant
V.
JANE THORN-HENDERSON,
Appellee

Appeal from the 145th District Court
of Nacogdoches County, Texas (Tr.Ct.No. C1228525)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that all costs of this appeal are hereby adjudged against the Appellant, **INEZ MANIGAULT,** for which execution may issue, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.