Cite as 2015 Ark. App. 264

ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-14-674

Opinion Delivered April 22, 2015

TRICIA DUNDEE
APPELLANT

V.

BRENDA HORTON and GEICO GENERAL INSURANCE COMPANY
APPELLEES

APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, GREENWOOD DISTRICT
[Nos. CV-11-1654, CV-13-147G]

HONORABLE JAMES O. COX, JUDGE

REBRIEFING ORDERED

LARRY D. VAUGHT, Judge

Appellee Brenda Horton rear-ended appellant Tricia Dundee in a motor-vehicle accident. Horton admitted liability at trial, and the jury awarded Dundee damages in the amount of $14,100. After the Sebastian County Circuit Court entered a judgment on the jury verdict, Dundee appealed, arguing that the trial court abused its discretion in granting Horton's motions in limine excluding the causation testimony from two of Dundee's medical providers and in refusing her request to introduce a demonstrative-aid video into evidence. Due to deficiencies in Dundee's abstract and addendum, we order rebriefing.

The only issue at trial was damages. Dundee claimed that she suffered various orthopedic injuries as a result of the accident. She was initially treated by physician's assistant Patrick Walton, and she was later referred to pain-management physician, Dr. Cathy Luo.

Horton filed separate motions in limine to exclude causation testimony from Walton and Dr. Luo, which the trial court granted. At trial, Walton and Dr. Luo were allowed to testify that

Dundee's injuries were consistent with being in an automobile accident, but they were not permitted to testify that the accident caused Dundee's injuries. At the conclusion of trial, the jury awarded Dundee damages in the amount of $14,100.

After the trial court entered the judgment on the jury verdict, Dundee moved for a new trial, arguing that the jury's $14,100 verdict was inadequate as a matter of law because liability was admitted; it was undisputed that Dundee was injured in the accident; she suffered $14,100 in medical bills; and the jury failed to award damages for pain and suffering. The trial court denied the motion for new trial, finding that the $14,100 award was not nominal or based on speculation or conjecture, and the jury was entitled to weigh the credibility of the witnesses and make its own determination of whether Dundee suffered pain and suffering. This appeal followed.

However, we are not able to address the merits of Dundee's appeal because she has submitted a brief with a deficient abstract and addendum. Arkansas Supreme Court Rule 4-2(a)(5) provides:

> (5) Abstract. The appellant shall create an abstract of the material parts of all the transcripts (stenographically reported material) in the record. Information in a transcript is material if the information is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal.
>
> (A) Contents. All material information recorded in a transcript (stenographically reported material) must be abstracted. Depending on the issues on appeal, material information may be found in, for example, counsel's statements and arguments, voir dire, testimony, objections, admissions of evidence, proffers, colloquies between the court and counsel, jury instructions (if transcribed), and rulings. All material parts of all hearing transcripts, trial transcripts, and deposition transcripts must be abstracted, even if they are an exhibit to a motion or other paper. . . .

Ark. Sup. Ct. R. 4-2(a)(5)(A) (2014).

While Dundee does not challenge the sufficiency of the evidence on appeal, she does challenge two evidentiary rulings, which she claims resulted in prejudice in the form of a low damages award. However, we cannot assess her claim of prejudice because her abstract is deficient. For example, the hearing and trial transcripts in this case are 493 pages. Dundee's abstract is sixteen pages. The abstract does not include the testimony concerning the accident itself, it entirely excludes the testimony of ten witnesses (many of whom offered testimony in support of Dundee's claim for damages sought at trial), and it omits much of the testimony of Dundee, Walton, and Dr. Luo. Additionally, the abstract does not include the closing arguments of counsel, which would include the total amount of damages Dundee sought and Horton's arguments on why Dundee was not entitled to those damages. Because Dundee's abstract omits information regarding the nature and extent of the collision, her prior medical condition, and the elements and amounts of damages she sought, she has failed to provide the information essential for us to understand the case and to decide the issues on appeal. Ark. Sup. Ct. R. 4-2(a)(5)(A).

Furthermore, Rule 4-2(a)(8) of the Arkansas Supreme Court Rules provides that the addendum contained in the filed brief shall contain all documents in the record that are essential to an understanding of the case and to decide the issues on appeal. Dundee's addendum violates Rule 4-2(a)(8) in that it does not include photographs taken at the accident scene that were shown to Walton and Dr. Luo during their testimony, evidence of past and future medical expenses, or prior medical records.

Due to Dundee's failure to comply with our abstracting and addendum rules, we order her to file a substituted brief, curing the deficiencies in the abstract and addendum within fifteen days from the date of entry of this order pursuant to Rule 4-2(b)(3). After service of the substituted brief, Horton shall have the opportunity to file a responsive brief in the time prescribed by the supreme court clerk, or she may choose to rely on the brief previously filed in this appeal.

While we have noted the above-mentioned deficiencies, the materials listed herein are not intended as an exhaustive list of deficiencies. We encourage Dundee's counsel, before filing her substituted addendum and brief, to review Rule 4-2 in its entirety as it relates to the abstract and addendum to ensure that no other deficiencies exist. If Dundee fails to cure the deficiencies within the prescribed time, the order appealed from may be affirmed for noncompliance with the rule. Ark. Sup. Ct. R. 4-2(b)(3).

Rebriefing ordered.

HOOFMAN and BROWN, JJ., agree.

Chaney Law Firm, P.A., by: *Don P. Chaney*, *Nathan Price Chaney*, *S. Taylor Chaney*, and *Hilary M. Chaney*, for appellant.

Robinson Law Firm, by: *Jon P. Robinson*, for appellee.