

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

CANDICE R. MUMFORD,)	C.A. NO. 00C-05-022 WLW
)	
Plaintiff,)	
)	NON-ARBITRATION CASE
v.)	
)	
SAMUEL RIFFE PARIS,)	TRIAL BY JURY OF TWELVE
)	DEMANDED
Defendant,)	

Submitted: November 19, 2002
Decided: January 31, 2003

On Defendant's Motion for Directed Verdict or Judgment Per Rule 50 Not
Withstanding the Verdict or Motion for New Trial Per Rule 59. Denied.

MEMORANDUM OPINION

Nicholas H. Rodriguez, Esq., Schmittinger & Rodriguez, P.A., 414 South State Street, P.O. Box 497, Dover, DE 19903. Attorney for Plaintiff.

Douglass Lee Mowrey, Esq., Bouchelle & Palmer, 131 Continental Drive, Suite 407, Newark, DE 19713. Attorney for Defendant.

CARPENTER, J.

I. Introduction

The Defendant has filed a Motion for Directed Verdict or Judgment Not Withstanding the Verdict and a Motion for New Trial pursuant to Rule 59. Upon consideration of the evidence presented at trial and a review of the Defendant's motion and Plaintiff's response, it appears to this Court that Defendant's motion should be **DENIED**.

II. Background

This trial was based on an accident that occurred on June 28, 1998, when the vehicle driven by the Defendant, Samuel Paris ("Defendant"), struck the vehicle driven by the Plaintiff, Candice Mumford ("Plaintiff"). As the trial progressed, Defendant admitted negligence and proximate cause and the sole issue before the jury was the affirmative defense that the accident was unavoidable because of the Defendant's medical emergency. In order to prevail on the affirmative defense the Defendant must prove by a preponderance of the evidence that: (1) Mr. Paris suddenly became physically or mentally incapacitated without warning; (2) this physical or mental incapacity caused him to be unable to control his motor vehicle; and (3) such incapacity was unanticipated and unforeseen.

Factually there was very little dispute as to the events leading up to the accident. Richard Thomas was the only eyewitness to Defendant's driving prior to the accident. He testified that he observed the Defendant driving for three to four

minutes prior to the accident during which the Defendant was swerving and appeared to be trying to pass his vehicle. At some point during the drive, Mr. Thomas observed the Defendant through his rearview mirror make a left hand turn as well as stop at a red light and subsequently accelerate when the light turned green. Mr. Thomas also observed the Defendant enter a parking lot of a business along the highway, come to a stop and then abruptly reenter the roadway. He testified that the accident occurred when the Defendant seemed to be trying to pass on the left, and struck the victim's car on the drivers side of the vehicle.

The officer who responded to the accident testified that his investigation revealed that after striking the Plaintiff's vehicle the Defendant struck a gas pump at the Uncle Willy's convenience store and then crossed over to the other side of the road, ultimately weaving in and out of a ditch. The officer testified that in order for this driving pattern to have occurred there must have been some steering after the impact because the vehicle did not travel in a straight line.

With negligence and proximate cause admitted, the case became a battle of the experts regarding the Defendant's medical condition at the time of the accident. Defendant's expert, Dr. Gold, testified that the Defendant suffered from medication induced ventricular tachycardia. Dr. Gold stated that the ventricular tachycardia caused the Defendant to sustain a syncopal event; thus, Defendant could not control

his action when the accident occurred. Dr. Gold explained how in a clinical setting he was able to recreate the Defendant's syncopal event. Plaintiff's experts, Dr. Feirstein and Dr. Callery, testified that according to the facts presented by the only eyewitness and the physical facts of the accident, that Defendant did not sustain a syncopal event.

At the close of the case, pursuant to Superior Court Civil Rule 50(a),¹ Defendant moved for a directed verdict in his favor. The Court denied the motion allowing the case to proceed to the jury. During the jury's deliberations, they requested clarification of the verdict form that had been provided with the jury instructions. The Court proposed amending the verdict form to simply reflect that a "yes" response reflected a verdict for the Defendant and a "no" response reflected a verdict for the Plaintiff. Neither party objected to the proposed change. After further deliberations, the jury determined that the Defendant failed to meet his burden with respect to the affirmative defense and returned a verdict in favor of the

¹ Rule 50(a)(1) states in pertinent part:

If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the Court may determine the issue against the party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

See SUPER. CT. CIV. R. 50(a)(1).

Plaintiff. It is this verdict which the Defendant is now challenging.

III. Discussion

The Defendant has utilized both avenues of potential relief following an adverse verdict from a civil jury trial. Defendant has filed a motion for judgment as a matter of law pursuant to Superior Court Civil Rule 50(b), and in the alternative, Defendant requests a new trial.² As the Delaware Supreme Court articulated:

A motion for judgment notwithstanding the verdict and a motion for a new trial are not interchangeable since they serve entirely different purposes. When passing on a motion for judgment as a matter of law, the court does not weigh the evidence but rather, views the evidence in a light most favorable to the non-moving party and, drawing all reasonable inferences therefrom, determines if a verdict may be found for the party having the burden. In contrast, when considering a motion for a new trial, the court weighs the evidence in order to determine if the verdict is one which a reasonably prudent jury would have reached.³

Applying these standards, the Court will now address each argument in turn.

² The Defendant did not specify the authority for which a new trial was requested; however, this Court is treating it as a Motion under Superior Court Civil Rule 59.

³ *Burgos v. Hickok*, 695 A.2d 1141, 1144-45 (Del. 1997) (internal citations omitted).

A. Motion for Judgment as a Matter of Law

Pursuant to Superior Court Civil Rule 50 (b):

Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. . . . If a verdict was returned, the Court may . . . allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law.⁴

Under Rule 50 this Court is required to view the evidence in the light most favorable to the nonmoving party.⁵ Utilizing that standard this Court ““must determine “whether the evidence and all reasonable inferences that can be drawn therefrom”” could justify a jury verdict in favor of the Plaintiff.⁶ In order to find for the moving party this Court must find that ““there is no legally sufficient evidentiary basis for a reasonable jury to find for [the non-movant].””⁷ Thus, “the

⁴SUPER. CT. CIV. R. 50(b).

⁵ *Blue Hen Lines, Inc. v. Turbitt*, 787 A.2d 74, 77 (Del. 2001).

⁶ *Id.* (quoting *Trievel v. Sabo*, 714 A.2d 742, 744 (Del. 1998) (quoting *Mazda Motor Corp. v. Lindahl*, 706 A.2d 526, 530 (Del. 1998))).

⁷ *Brown v. Liberty Mutual Ins. Co.*, 774 A.2d 232, 245 (Del. 2001) (quoting SUPER. CT. CIV. R. 50(a)).

factual findings of a jury will not be disturbed if there is *any* competent evidence upon which the verdict could reasonably be based.”⁸

Defendant proffers three arguments in support of his Motion. First, Defendant claims that the amended jury form allowed the jury to sympathetically “vote” for the Plaintiff instead of considering whether the requirements of its affirmative defense had been established. This argument is totally without merit. The verdict sheet originally provided to the jury was unique in that the only issue remaining for decision was whether the Defendant had established the defense of unavoidable accident. The question posed to the jury was:

Do you find that the accident was unavoidable because the defendant, Samuel Paris, suffered from a sudden, unforeseen and unanticipated physical or medical condition that caused him to be unable to control his motor vehicle?

_____ Yes
_____ No

After some deliberation the jury sent a note requesting clarification of the form. There was general agreement by counsel that the question posed in the original verdict sheet was potentially confusing and the following modification was agreed to by counsel:

⁸ *Delaware Elec. Coop. Inc. v. Pitts*, 1993 WL 445474 at *1 (Del. Supr.) (quoting *Mercedes-Benz v. Norman Gershman’s*, 596 A.2d 1358 (Del. 1991)) (emphasis added).

Do you find that the accident was unavoidable because the defendant, Samuel Paris, suffered from a sudden, unforeseen and unanticipated physical or medical condition that caused him to be unable to control his motor vehicle?

_____ Yes (Your verdict would be for the defendant.)

_____ No (Your verdict would be for the plaintiff.)

This minor change appeared to resolve any confusion that might have existed, and a subsequent verdict was returned without additional communication from the jury. There was no suggestion or implication that the jury was confused by the instructions provided regarding unavoidable accident, nor that they failed to fully consider the evidence in light of the instructions.

Defendant's second argument for setting aside the verdict is that the jury may have sympathetically voted for the Plaintiff because the jury did not have to face the Defendant because he was deceased, and the fact that the insurance company's involvement was entered into testimony during the playing of an expert's videotape. The insurance issue was addressed by this Court prior to trial, and an agreement was made that the defense counsel would operate the VCR and edit out the insurance references. Unfortunately counsel failed to stop the VCR before the insurance references were discussed. However at side bar, defense counsel agreed that no curative instruction should be given to the jury as that would draw more attention

to the matter than the brief reference to the insurance company. This Court attempted to accommodate the defense by allowing defense counsel to operate the VCR and edit the appropriate areas and provide counsel the opportunity to request a curative instruction when her mistake occurred. The fact that counsel's own error allowed a brief reference to insurance to enter into evidence provides no basis for setting aside the jury's verdict. It is also the Court's recollection that the issue of the Defendant's death unrelated to the accident was disclosed to the jury. If any sympathy existed, it flowed to the Defendant, not the Plaintiff, and this argument is also without merit.

Finally, Defendant argues that a review of the evidence shows no legal basis upon which the jury could have returned a verdict for the Plaintiff. As previously noted, this was a battle of the experts. The Court is satisfied that the jury could reasonably believe Plaintiff's experts, which testified that based on the controlled driving demonstrated on the part of the Defendant evidenced by the eyewitness and police officer's reconstruction of the accident, that Defendant did not suffer from a syncopal event. The determination of the credibility and reliability of different experts is an area uniquely left to the jury to decide and may not be overturned unless there is no reasonable basis to support that decision. That simply is not the

case here.

B. Motion for a New Trial

Under Superior Court Civil Rule 50(b) a motion for a new trial may be joined with the renewal motion for a judgment as a matter of law.⁹ However, after a jury has returned a verdict that verdict should only be set aside for exceptional circumstances. In *Burgos* the Supreme Court explained:

Barring exceptional circumstances, the trial judge should set aside the jury verdict pursuant to a Rule 59 motion only when the verdict is manifestly and palpably against the weight of the evidence, or for some reason, justice would miscarry if the verdict were allowed to stand. This standard gives recognition to the exclusive province of the jury as established by the Delaware Constitution, while preserving the separate common law function of the motion for a new trial where all of the evidence can be reviewed from the unique viewpoint of the trial judge.¹⁰

As explained above, this case came down to a battle of the experts. It is obvious the jury agreed with the Plaintiff's experts and there was evidence that would clearly support their conclusion. There is simply no basis to overturn the jury's considered judgment and verdict and no miscarriage of justice has occurred.

IV. Conclusion

⁹ SUPER. CT. CIV. R.50(b) (stating "A motion for a new trial under Rule 59 may be joined with a renewal of the motion for a judgment as a matter of law").

¹⁰ *Burgos*, 695 A.2d at 1145 (internal citations omitted).

In conclusion, this Court has determined that there was sufficient evidence presented at trial to justify the jury verdict for the Plaintiff. Therefore, Defendant's motion for a judgment as a matter of law and motion for a new trial are both **DENIED.**

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.