Third District Court of Appeal

State of Florida

Opinion filed September 11, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-163
Lower Tribunal No. 15-9471

Castle Builders of Miami, Inc., et al.,
Appellants,

vs.

Stephanie Rohm Quirantes, etc.,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Antonio Arzola, Judge.

Cooney Trybus Kwavnick Peets, and Warren B. Kwavnick and Kelly Lenahan (Fort Lauderdale), for appellants.

Eaton & Wolk, P.L., and Douglas F. Eaton, for appellee.

Before SALTER, MILLER and GORDO, JJ.

PER CURIAM.

Castle Builders of Miami, Inc. ("Castle Builders") and Harry Housen appeal a final judgment against them for $4,376,646.60 and an order denying their motion

for new trial (or, in the alternative, remittitur) following a jury trial and adverse verdict. The circuit court case was a personal injury lawsuit in which Stephanie Rohm Quirantes, as plenary guardian for her mother, Terry Rohm, sought damages from Castle Builders and Mr. Housen following an automobile collision in Miami-Dade County.

The evidence at trial established that Mr. Housen was driving his Castle Builders pickup truck at about 50 miles per hour in an area with a posted speed limit of 30 miles per hour, and that he failed to stop at a posted stop sign. Ms. Rohm, age 73 at the time of the accident, was a front-seat passenger in the sedan struck by the truck. She sustained serious and permanent injuries in the resultant crash, including brain injuries (a subdural hematoma, among other injuries). Mr. Housen and Castle Builders stipulated before trial that: Ms. Rohm was permanently injured in the accident; she incurred $947,259.80 in past medical bills; and she had a current life expectancy of 12.94 years.

After the adverse jury verdict, the defense moved for a new trial or remittitur. The grounds raised in the motion and in this appeal are (1) allegedly-improper comments during closing argument by Ms. Rohm's counsel, and (2) the alleged excessiveness of the verdict, as contrary to the manifest weight of the evidence.

We find neither argument persuasive, following our thorough review of the record. We review the allegedly improper closing argument and denial of the motion

for an abuse of discretion. See Engle v. Liggett Grp., Inc., 945 So. 2d 1246, 1271 (Fla. 2006). Ms. Rohm's counsel's statements that Mr. Housen had not admitted running the stop sign until mid-trial, that his prior testimony "was not the truth" and that he had not previously apologized to Ms. Rohm, were objected to and the objections were sustained. Counsel's statement that Mr. Housen's conduct "is not just negligence; it's horrible" was also the subject of an objection that was sustained, and the trial court provided a curative instruction.[1]

Additionally, defense counsel reminded the jury of the improper comment during his own closing argument.[2] We find no abuse of discretion regarding the trial court's rulings on these statements or in the denial of the motion for a new trial on these grounds.

The defendants' post-trial argument regarding the jury's allegedly excessive damages award also falls short. Section 768.74(5), Florida Statutes (2018), specifies

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[1] "Ladies and gentlemen, before counsel continues, I need to explain to you that there was an objection by defense counsel as to the plaintiff's characterization of the defendants' action as horrible. That phrase is hereby stricken from the record. It is not for our consideration. Your determination will be whether [Mr. Housen's] actions, the defendants' actions were negligent."

[2] "And the one thing, folks, that you cannot do – you can be upset about the speed. It was described by plaintiff's counsel as horrible, but you cannot excuse the actions of [the driver of the vehicle in which Ms. Rohm was a passenger]." See Kines v. State, 239 So. 3d 208, 210 (Fla. 1st DCA 2018) (finding "defense counsel invited error when he announced that he had no objection to the admission of the redacted interview and when he referred to the interview during his closing argument").

that the trial court "shall consider the following criteria" in addressing a motion for remittitur:

> (a) Whether the amount awarded is indicative of prejudice, passion, or corruption on the part of the trier of fact;
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> (b) Whether it appears that the trier of fact ignored the evidence in reaching a verdict or misconceived the merits of the case relating to the amounts of damages recoverable;
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> (c) Whether the trier of fact took improper elements of damages into account or arrived at the amount of damages by speculation and conjecture;
>
> (d) Whether the amount awarded bears a reasonable relation to the amount of damages proved and the injury suffered; and
>
> (e) Whether the amount awarded is supported by the evidence and is such that it could be adduced in a logical manner by reasonable persons.

The absence of "prejudice, passion, or corruption" on the part of the jury is evident in the jury's special interrogatory verdict finding five percent comparative fault on the part of the driver of the vehicle in which Ms. Rohm was a passenger. The record contains competent, substantial evidence to support each of the four special interrogatory damages figures returned in the jury's written verdict (one of which, as already noted, was the stipulated past medical expense figure of $947,259.80).

The gist of the appellants' primary complaint regarding damages is that the jury awarded future damages based on an anticipated life expectancy of 15 years

rather than 12.94 years as stipulated pretrial. The stipulation came from published mortality tables, but the jury was not bound by those tables. Without objection, the jury was given standard jury instruction 501.6:

> Terry Rohm has been permanently injured. As a result, you may consider her life expectancy. Her life expectancy is 12.94 years according to Mortality Tables. Mortality Tables are not binding on you but may be considered together with other evidence in the case bearing on Terry Rohm's health, age and physical condition, before and after the injury, in determining the probable length of her life.

A defense medical expert testified that Ms. Rohm has done "extremely well" in her recovery from the accident, and that "it would be highly unlikely for her to lose ground from this point." During closing argument, defense counsel told the jury that Ms. Rohm "has, in fact, made a miraculous recovery." The jury cannot be faulted for concluding that Ms. Rohm may live just over two years longer than the mortality tables predict, and in doing so the jury simply followed the applicable jury instruction.

"Because damages are inherently difficult to measure, such a decision is generally one to be made by the jury, not by an appellate court." Philip Morris USA, Inc. v. Ledoux, 230 So. 3d 530, 538 (Fla. 3d DCA 2017). The trial court committed no error in its review of the appellants' post-judgment motion.

For these reasons, the verdict, final judgment, and order denying a new trial or remittitur, are affirmed in all respects.