

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-000830-MR

SHONEY'S, INC. D/B/A  
FIFTH QUARTER

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE STEPHEN P. RYAN, JUDGE  
ACTION NO. 96-CI-002802

GLORIA J. LAFLEUR

APPELLEE

OPINION  
REVERSING AND REMANDING  
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BEFORE: DYCHE, EMBERTON, AND HUDDLESTON, JUDGES.

DYCHE, JUDGE: Shoney's, Inc., d/b/a Fifth Quarter, appeals from a judgment of the Jefferson Circuit Court awarding damages to Gloria LaFleur consistent with a jury verdict in her favor. Fifth Quarter claims that LaFleur failed to properly supplement her answers to interrogatories prior to trial and should have been precluded from seeking damages in an amount more than the last amount stated in the answers. We reverse.

LaFleur fell stepping off the sidewalk onto the parking lot at Fifth Quarter. She filed her complaint against Fifth Quarter seeking compensation for lost wages, past and future pain and

suffering, and past and future medical bills. Fifth Quarter propounded interrogatories on LaFleur; after thirty days passed without a response, Fifth Quarter filed a motion to compel answers pursuant to Kentucky Rules of Civil Procedure (CR) 37.01(b)(i), and LaFleur complied. In her answers, LaFleur claimed \$5,563.72 in medical expenses and \$1,122.10 in wages lost prior to trial. She also stated that she would supplement her answers to amounts of special damages and unliquidated damages prior to trial, and that her amount of future wage loss remained undetermined.

The trial court ordered that all claims for damages be exchanged with opposing counsel and filed in the record at least ten days prior to trial, which was set for February 16, 1999. On February 11, 1999, counsel for LaFleur filed a compliance with the trial court's order listing medical expenses at \$27,604.12, and lost wages and ability to earn money at \$663,440.00. Unlike the answers to interrogatories, however, this compliance was not signed by LaFleur. See CR 33.01(2). Fifth Quarter's motion *in limine* seeking to prevent LaFleur from introducing any amounts of damages not stated in the answers to interrogatories was denied. At the close of LaFleur's case, Fifth Quarter's motions for directed verdict regarding future wages, future economic loss, and future medical expenses were granted.

The jury returned a verdict finding Fifth Quarter eighty percent liable for LaFleur's injuries and awarded \$75,000.00 for past and future pain and suffering, and \$14,823.00 for medical expenses. After apportioning these amounts for fault, the trial

court granted LaFleur judgment in the amount of \$71,848.40.

Fifth Quarter's motion for judgment notwithstanding the verdict was denied and this appeal ensued.

Fifth Quarter argues that the trial court erred by allowing LaFleur to proceed to trial claiming any amount of damages not included in the answers to interrogatories. CR 8.01(2) states that

In any action for unliquidated damages the prayer for damages in any pleading shall not recite any sum as alleged damages other than an allegation that damages are in excess of any minimum dollar amount necessary to establish the jurisdiction of the court; provided, however, that all parties shall have the right to advise the trier of fact as to what amounts are fair and reasonable as shown by the evidence. When a claim is made against a party for unliquidated damages, that party may obtain information as to the amount claimed by interrogatories; if this is done, the amount claimed shall not exceed the last amount stated in answer to interrogatories.

(Emphasis added).

Our Supreme Court has most recently addressed this issue in Fratzke v. Murphy, Ky., 12 S.W.3d 269 (1999). There, similar to the instant case, the trial court ordered the parties to submit an itemized list of damages at least twenty days prior to trial. In her answers to interrogatories, the plaintiff had listed only certain medical expenses, and on the last day of trial attempted to supplement her answers to interrogatories to include amounts for unliquidated damages claims. Citing National Fire Insurance Company v. Spain, Ky. App., 774 S.W.2d 449 (1989), the Supreme Court concluded that the trial court lacked discretion to award damages in an amount that exceeded that last

amount stated in answers to interrogatories. Fratzke, 12 S.W.3d at 273.

The Court noted an apparent conflict with Burns v. Level, Ky., 957 S.W.2d 218 (1997), which had suggested that the trial court had discretion in whether to allow a party to ask at trial for damages not stated in interrogatories. Fratzke called the Burns reference to discretion "unfortunate," and held that CR 8.01(2) provides its own mandatory remedy – the prohibition against seeking damages not listed in interrogatory answers. 12 S.W.3d at 273.

We believe that Fratzke controls the outcome in this case. The last amounts stated in LaFleur's answers were \$5,563.72 and \$1,122.10. Her attempt to supplement her answers to interrogatories by means of the compliance letter was insufficient. A supplement to an interrogatory answer should comply with the requirements of CR 33.01(2) and be signed by the party giving the answer. Anything less would enable a party to initially submit signed, incomplete answers, and later follow up with "answers" that are not attested to by the party making the claim. This result defeats the policy behind the rule of having the party respond to interrogatories during the discovery process. Because LaFleur did not properly supplement her answers prior to trial, the trial court erred in allowing her to proceed seeking additional damages at trial.

The judgment of the Jefferson Circuit Court is reversed, and this case is remanded for entry of judgment consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Matthew J. Baker  
Matthew P. Cook  
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BRIEF FOR APPELLEE:

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