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Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000861-MR

BRUCE CASSIDY — APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 96-CI-01221

JEFF EDMONDSON — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: BARBER, JOHNSON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from a judgment entered pursuant to a jury verdict awarding compensatory and punitive damages to the plaintiff in a battery action stemming from a fight over a basketball bet. We reject appellant's arguments that the judgment was in error because appellee was required to present expert witness testimony regarding his injuries and one of the jurors signed inconsistent verdicts. Thus, we affirm.

On March 22, 1996, appellee, Jeff Edmondson, and appellant, Bruce Cassidy, who were friends at the time, were at Edmondson's home watching the 1996 NCAA basketball tournament. During the evening, Edmondson and Cassidy were drinking heavily

and betting on the games. At some point, Edmondson and Cassidy got into an argument over one of the bets and Cassidy snapped. It is undisputed that Cassidy severely beat Edmondson about the face, striking him numerous times. Edmondson thereafter sought medical treatment for his injuries. On August 16, 1996, Edmondson filed a battery action against Cassidy seeking payment of his medical bills, lost wages, pain and suffering, and punitive damages.

Prior to trial, Cassidy filed a motion in limine to prevent Edmondson from offering any medical records into evidence without supporting expert medical testimony to lay a foundation and explain said records to the jury. Edmondson argued that he was not required to present expert medical witness testimony in order for his medical records to be admitted into evidence. Edmondson maintained that the medical records could be admitted through Edmondson's testimony.

The trial commenced on February 17, 1999. At trial, the court overruled Cassidy's objections as to the medical records and allowed them to be admitted without expert medical testimony. The parties did stipulate that the medical records which were admitted were authentic and were for treatment for the injuries Edmondson sustained on March 22, 1996, but Cassidy did not stipulate that all treatment was medically necessary. In addition, the court allowed Edmondson to read from portions of those medical records.

The records were from: Bluegrass Regional Medical Center emergency room where Edmondson went immediately after the

incident; Good Samaritan Hospital where Edmondson went the next day for tests; Central Baptist Hospital where Edmondson had surgery on his face on April 8, 1996; and the offices of his family doctor and other specialists. In addition, Edmondson introduced into evidence photographs of himself on the evening of the beating and the day after. These photographs graphically show both of Edmondson's eyes blackened and swollen almost shut. Also, massive bruising and swelling is evident throughout the cheek, forehead, and nasal area.

At one point, Edmondson's counsel asked if all the medical expenses incurred were reasonable and necessary, and Edmondson responded in the affirmative. Cassidy objected and the court sustained the objection and admonished the jury to disregard that evidence.

The jury rendered a verdict in favor of Edmondson and awarded damages in the total amount of $43,169.30: $8,547.30 for medical expenses, $4,622 for lost wages, $5,000 for pain and suffering, and $25,000 in punitive damages. From the judgment against Cassidy entered pursuant to this verdict, Cassidy now appeals.

Cassidy first argues that the court should not have allowed the medical records to be admitted without expert medical testimony to lay a foundation therefor. From the outset, we note that this is not a medical malpractice action in which expert medical testimony is required to prove liability. Baylis v. Lourdes Hospital, Inc., Ky., 805 S.W.2d 122 (1991). Edmondson contends that medical records are allowed to be admitted without

expert medical testimony under KRS 422.300 which provides as follows:

> Medical charts or records of any hospital licensed under KRS 216B.105 that are susceptible to photostatic reproduction may be proved as to foundation, identity and authenticity without any preliminary testimony, by use of legible and durable copies, certified in the manner provided herein by the employee of the hospital charged with the responsibility of being custodian of the originals thereof. Said copies may be used in any trial, hearing, deposition or any other judicial or administrative action or proceeding, whether civil or criminal, in lieu of the original charts or records which, however, the hospital shall hold available during the pendency of the action or proceeding for inspection and comparison by the court, tribunal or hearing officer and by the parties and their attorneys of record.

From our reading of KRS 422.300, we believe it explicitly allows medical records to be admitted without requiring a medical expert to lay a foundation therefor. Cassidy maintains, however, that under Young v. J.B. Hunt Transportation, Inc., Ky., 781 S.W.2d 503 (1989), compliance with KRS 422.300 does not assure admission of medical records in all cases. In Young, a personal injury case, the defendant cited KRS 422.300 in attempting to introduce voluminous hospital records with regard to the plaintiff's injury from a prior accident. However, the defendant waited until the conclusion of both parties' evidence before introducing this evidence. In upholding the trial court's refusal to admit the evidence, the Court did state:

> [KRS 422.300] is merely a convenient device for authenticating medical records. It does not assure their admissibility or abrogate other rules of evidence relating to the admission of documentary evidence.

Young, 781 S.W.2d at 508. In our view, however, the Court's decision in Young turned on the fact that the records were introduced at the end of the parties' evidence and the evidence in those records was cumulative:

> In the case at bar, if appellant's voluminous prior hospital records had been admitted in mass without the prior treating physician or any physician available to explain the records, counsel would have been free to draw whatever conclusions they wished without fear of evidentiary contradiction. In the heat of trial, there is probability that distortion, confusion, or misunderstanding would have resulted.
> . . .
> In addition, as the evidence in chief for both parties was concluded at the time the prior hospital records were offered, the trial court was in a position to know whether additional evidence concerning appellant's prior injuries would be cumulative. Our examination of the record reveals extensive testimony as to appellant's prior injuries and presumably, the trial court was well aware of this.

Young, 781 S.W.2d at 508-509. In the instant case, the hospital records were offered early on in Edmondson's case and Cassidy had every opportunity to present testimony to rebut information in the records and to cross-examine Edmondson as to the records. In fact, Cassidy did cross-examine Edmondson as to the records by having Edmondson read certain contradictory information contained in the records. Further, the records were not cumulative of any evidence admitted.

Cassidy also argues that allowing Edmondson to read from the hospital records essentially allowed Edmondson to testify as an expert, which violates KRE 601, KRE 701, and KRE 703. At trial, Edmondson specifically testified that he was not

a medical expert. He did not attempt to interpret the medical records; he merely read from them. Only at one point he did state that he sustained "broken cheeks, a broken jaw, concussions, nerve damage, and just crushed sinuses" when asked by his counsel on direct what his injuries were. Cassidy cites to North American Acc. Insurance Co. v. Caskey's Administrator, 218 Ky. 750, 292 S.W. 297 (1927) and Sovereign Camp, W.O.W. v. Morris, 212 Ky. 201, 278 S.W. 554 (1925), wherein it was held that lay opinion testimony regarding diagnosis of internal disease conditions not subject to observation must be excluded. From our review of the photos in the record, the broken cheeks and crushed sinuses were observable. As to the concussions, broken jaw and nerve damage, we cannot say it was reversible error to allow this testimony. Although a lay person could not conclusively determine that Edmondson suffered concussions, a broken jaw and nerve damage from viewing the photos, one could certainly see that such injuries were possible. Also, there was evidence, albeit conflicting evidence, in the medical records that he sustained these injuries. Further, Cassidy did not object when Edmondson was asked on direct what his injuries were. See CR 46; Division of Parks, Dept. of Conservation v. Hines, Ky., 316 S.W.2d 60 (1958).

Cassidy also argues that there were contradictions, much technical medical language, and evidence regarding pre-existing conditions in the medical records that a lay person could not understand, which necessitated expert medical testimony. From our review of the records, while there was some

technical medical language, much of the information could be understood by a lay person. The x-ray records from the emergency room at Bluegrass Regional Medical Center stated:

> There is no obvious fracture of the face but there is a considerable amount of fluid in the ethmoid air cells and both maxillary antra. The fluid could be present from pre-existing sinusitis but occult or hidden fractures of the face could be present. . . IMPRESSION: Ethmoid and bilateral sinusitis versus occult fractures of the face with bleeding.

The radiology report from Good Samaritan Medical Center stated:

> The mandible appears to be intact. However, there are identified fractures through the maxillary sinuses. . . IMPRESSION: Multiple fractures of the walls of the maxillary sinuses bilaterally with compression of a fracture fragment at the anterior aspect of the right maxillary sinus.

The x-ray report from Central Baptist Hospital where Edmondson had surgery stated, "HISTORY: Le Forte-I fracture of left facial bones. . ." The operating room record from Central Baptist Hospital stated, "PRE-OPERATIVE DIAGNOSIS: jaw fracture. . . OPERATIVE PROCEDURE: closed reduction of Le Forte I Fracture; Placement of Arch Bars." The consent form from Central Baptist Hospital referred to Edmondson's operation as "Reduction of upper jaw fracture." Finally, the surgeon's report from Central Baptist Hospital states, "PREOPERATIVE DIAGNOSIS: Le Forte I fracture of the maxilla. POSTOPERATIVE DIAGNOSIS: Le Forte I fracture of the maxilla."

We believe that a jury could glean from the above information that Edmondson suffered at least one facial fracture. We also believe that a jury could see that there was disputed

evidence as to whether Edmondson's jaw was broken and that Edmondson's sinusitis (a medical condition known to most lay persons) was a possible pre-existing condition. It should also be noted that, while Edmondson chose not to present expert medical testimony to prove his case, Cassidy was free to call such an expert to rebut Edmondson's medical evidence, but simply chose not to do so. Thus, we do not believe that Cassidy was prejudiced by the admission of the records without expert medical testimony.

Cassidy further maintains that the admission of the medical records without expert medical testimony denied the jury the opportunity to determine the extent of the injuries and the reasonableness of the treatment and medical expenses. We disagree. As stated earlier, the court sustained Cassidy's objection to Edmondson's testimony regarding the reasonableness of his treatment and expenses, and admonished the jury accordingly. In Townsend v. Stamper, Ky., 398 S.W.2d 45 (1965), the Court held that an itemized list of medical expenses was a prima facie showing of the reasonableness of the medical bills. Hence, the burden then shifted to Cassidy to prove that the treatment and expenses were not reasonable. Again, Cassidy failed to present expert testimony that said treatment and expenses were unreasonable, although he did cross-examine Edmondson as to the reasonableness of the treatment and whether some of the treatment was for pre-existing conditions. The jury was free to find that not all of the claimed expenses were reasonable, but chose to find otherwise.

In sum, the trial court did not abuse its discretion in allowing the medical records to be admitted without expert medical testimony. There was sufficient evidence of Edmondson's injuries within the comprehension of the jury to support its award of damages for medical expenses, pain and suffering, and punitive damages.

Cassidy's next argument is that the trial court committed reversible error in accepting an inconsistent jury verdict. It is undisputed that one of the jurors who voted in favor of Cassidy with regard to liability, was one of the nine jurors who voted to award punitive damages to Edmondson. In support of his position, Cassidy cites Baxter v. Tankersley, Ky. 416 S.W.2d 737 (1967), in which the Court overturned a verdict where certain jurors who voted to award damages had voted for the defendant as to liability. However, Baxter was explicitly overruled in Young v. J.B. Hunt Transportation, Inc., Ky., 781 S.W.2d 503 (1989). In Young, the Court held that the statutory requirement of agreement by at least three-fourths of the jurors could be satisfied by any of the nine jurors agreeing on any issue separately submitted even if the vote on an issue was inconsistent with a vote on another issue. We further reject Cassidy's argument that Young can be distinguished from the case at hand. Accordingly, the verdict was not accepted in error.

For the reasons stated above, the judgment of the Franklin Circuit Court is affirmed.

BARBER, JUDGE, CONCURS.

JOHNSON, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

JOHNSON, JUDGE, DISSENTING: I respectfully dissent. I believe the medical records were improperly admitted into evidence and that Edmondson failed to meet his burden of proof as to damages. I would reverse the judgment and remand for the trial court to enter a directed verdict in favor of Cassidy.

The trial court and the Majority Opinion have misapplied KRS 422.300. This statute "is merely a convenient device for authenticating medical records [of a hospital]. It does not assure their admissibility or abrogate other rules of evidence relating to admission of documentary evidence." Bell v. Commonwealth, Ky., 875 S.W.2d 882, 887 (1994) (quoting Young v. J.B. Hunt Transportation, Inc., Ky., 781 S.W.2d 503, 508 (1989)). Clearly, this statutory convenience is limited to eliminating the need to call the hospital's records custodian as a witness to provide a foundation as to the photocopies of the records or to identify or authenticate the copies. It does not eliminate the need for other qualified testimony concerning the records.

While the statute clearly states that "[s]aid copies may be used in any trial. . ." [emphasis added], the question is in what manner may the copies be used. Our Supreme Court has stated the obvious in Young and Bell: The statute does not assure the admissibility of the records or abrogate other rules of evidence relating to admission of documentary evidence. Thus, Edmondson was entitled to avoid the inconvenience of calling the hospital's records custodian as a witness to get the hospital records before the court. However, in order for these hospital records to be properly admitted into evidence for the jury's

consideration, the rules of evidence had to be met. Under KRE 702 Edmondson did not qualify as an expert witness; and Edmondson's testimony as a lay witness went well beyond the scope of KRE 701. I cannot accept the Majority's statement that "much of the information could be understood by a lay person." Rather, I believe the text of the records quoted by the Majority clearly supports the opposite conclusion. Slip Op. at 8.

BRIEF FOR APPELLANT:

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