RENDERED: JUNE 15, 2001; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001801-MR

DAVID WHEAT — APPELLANT

v.

APPEAL FROM BARREN CIRCUIT COURT
HONORABLE BENJAMIN L. DICKINSON, JUDGE
ACTION NO. 95-CI-00312

DANNY G. MARTIN — APPELLEE

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

BEFORE: BARBER, BUCKINGHAM, AND MILLER, JUDGES.

MILLER, JUDGE: David Wheat brings this *pro se* appeal from a July 6, 2000, judgment of the Barren Circuit Court entered upon a jury verdict. We affirm.

On April 15, 1993, appellant, David Wheat (Wheat), and appellee, Danny G. Martin (Martin), were involved in a car accident at the intersection of Kentucky Highway 90 and Flint Knob Road in Barren County, Kentucky. Martin was westbound on Highway 90, the superior highway at this intersection. Wheat was southbound on Flint Knob Road. Flint Knob Road has a stop sign at this intersection. After letting his wife out of the van so

she could get into another vehicle, Wheat attempted to pull out across Highway 90 from Flint Knob Road into a gravel parking area. As Wheat attempted to cross the road, he pulled in front of Martin and was struck by the front of Martin's vehicle on the left side of his van near the rear of his vehicle. It is undisputed that Martin was entirely in his lane at the point of impact. Other than the two parties involved, there were no eye-witnesses to the accident. The original complaint was filed on June 23, 1995. At this time, Wheat was represented by counsel. The case came on for trial by jury on July 5 and 6, 2000. The jury found unanimously in favor of Martin and the court therefore dismissed the case by judgment entered July 6, 2000. This appeal follows.

Drafted as a single issue, it appears Wheat has made four assignments of error. We will deal with each in turn.

Wheat's first assignment of error is that he was prejudiced by failure of his trial attorney to introduce certain evidence. Specifically, he contends his attorney failed to introduce certain photographs and failed to call a certain witness. Negligence of an attorney is imputable to the client and is not grounds for a new trial. See Vanhook v. Stanford-Lincoln County Rescue Squad, Inc., Ky. App., 678 S.W.2d 797 (1984). As such, we deem this assignment of error without merit.

Wheat's next assignment of error is that the trial judge acted improperly showing "favoritism" to Martin and also communicating "an inference of causation" to the jury. We disagree. After the close of Wheat's case, Martin made a motion

for a partial directed verdict. The motion was made out of the hearing of the jury. In the discussion of this motion, the trial judge commented that Wheat had pulled out in front of Martin and indicated he did not see how Wheat could not be at least partially at fault. As this comment was made out of the hearing of the jury and on consideration of a motion for a partial directed verdict, we perceive no favoritism or inference of causation was ever communicated to the jury.

The second statement complained of by Wheat amounts to the circuit court's reading of its instructions, including a partial directed verdict. In the partial directed verdict, the court ruled that Wheat was at fault, and that the jury would have to determine whether Martin shared in the fault, and if so, apportion fault between the two parties. We are of the opinion that there is no error in the manner in which the partial directed verdict was communicated or read to the jury.

Wheat's third assignment of error is that counsel for Martin made improper comments during closing arguments. Specifically, Wheat complains of two statements. He first takes issue with the statement that Wheat produced no witnesses to corroborate his claim that Martin admitted to speeding. The second was a statement pointing out to the jury that the judge had, in fact, directed a verdict finding Wheat at least in part at fault. There were no objections made to the statements at trial. As such, our review is under substantial error. Ky. R. Civ. P. (CR) 61.02. Opposing counsel merely set out two facts. Even if doing so was improper, it does not rise to the level of

manifest injustice. Cf. Anderson v. Calm, Ky. App., 554 S.W.2d 882 (1977). As such, we do not believe the comments constitute substantial error.

Wheat's final assignment of error is that the partial directed verdict entered by the trial court was improper. Upon motion by Martin, the trial court granted a partial directed verdict that Wheat was at least partly at fault. In appellate review of ruling on motion for directed verdict, we must ascribe to evidence of all reasonable inferences which support the claim of the prevailing party. See Bierman v. Klapheke, Ky., 967 S.W.2d 16 (1998). In this case, there was evidence Martin had the right of way and was not traveling at excessive speed. Further evidence indicated Wheat pulled into Martin's path. Given the above, we cannot say the trial judge was clearly erroneous in granting the partial directed verdict.

For the foregoing reasons, the judgment of the Barren Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

David Wheat, Pro Se
Glasgow, Kentucky

BRIEF FOR APPELLEE:

James I. Howard
Horse Cave, Kentucky