RENDERED: JULY 27, 2001; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000420-MR

CARDONNA CULLER — APPELLANT

v.

APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JOHN L. ATKINS, JUDGE
ACTION NO. 97-CI-01056

JARED D. DESPAIN — APPELLEE

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

BEFORE: BARBER, DYCHE, AND JOHNSON, JUDGES.

BARBER, JUDGE: Appellant, Cardonna Culler ("Culler"), appeals from an order of the Christian Circuit Court denying her motion for a new trial. The sole issue on appeal is whether Culler was entitled to a new trial on damages where the jury awarded her medical expenses, but nothing for pain and suffering. We affirm.

Culler was involved in a motor vehicle accident with Appellee, Jared Despain ("Despain"), on December 16, 1996. The case was tried in Christian Circuit Court on January 6 and 7, 2000. At the conclusion of the testimony, the trial court granted a directed verdict on liability in Culler's favor. The

jury returned a verdict on damages, awarding the requested medicals of $4,338.16, but nothing for pain and suffering.

On January 14, 2000, Culler filed a motion for a new trial on the ground that the damages were inadequate, stating:

> Attached hereto . . . is Miller v. Swift, 46 K.L.S. 14[1] which outlines the duties of a trial court to determine whether an award is inadequate depends upon the underlying evidence [sic]. The evidence in the present case was overwhelming that plaintiff suffered some amount of pain and suffering and as such the jury's verdict clearly disregarded the evidence and it should be set aside granting plaintiff a new trial in this action.

By order entered February 9, 2000, the trial court denied the motion for a new trial. On appeal, Culler relies upon Prater v. Coleman, Ky. App., 955 S.W.2d 193 (1997) for the proposition that an award of zero damages for mental and physical pain and suffering is inadequate "as a matter of law" where the jury has made an award for medical expenses. Culler contends that we have "almost an identical situation here."

In response, Despain contends that the trial judge's action, in denying the motion for a new trial, is not "clearly erroneous." Despain argues that the trial judge, in the case *sub judice*, was in a better position to review the jury's action. Despain points out that his medical treatment consisted solely of conservative chiropractic care, and there was "no significant evidence" of pain and suffering. Culler did not file a reply.

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[1]Miller v. Swift, Ky., S.W.3d 599 (2001), released for publication April 26, 2001.

Prater involved a similar factual situation. The court held that the jury's failure to award damages for past pain and suffering was improper, where the jury had awarded medical expenses; however, our Supreme Court, in Swift, supra determined that Prater was based upon a misinterpretation of the law. In Swift, the plaintiff sought damages for pain and suffering, claiming that the accident had resulted in enhanced pain, in addition to that she had suffered prior to the accident due to a variety of maladies. The Supreme Court explained:

> [The plaintiff] . . . argues that the trial court abused its discretion and erred as a matter of law when it denied her motion for a new trial because the jury's failure to award her any amount of money for pain and suffering was contrary to the evidence and inconsistent with its award of more than $5000 for medical expenses and lost wages
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> . . . .
>
> [The plaintiff's]. . . argument presupposes legal inconsistency when a jury awards damages for medical expenses and lost wages, but awards no damages to compensate the plaintiff for pain and suffering. **The law in Kentucky, however, does not require a jury to award damages for pain and suffering in every case in which it awards medical expenses.** In Cooper v. Fultz,[Ky.], 812, S.W.2d 497 [1991] this Court, faced with a jury verdict similar to the one now before us, remanded the case for the trial court to determine the adequacy of a jury's award, and plainly avoided holding such a verdict inconsistent or inadequate as a matter of law:
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> . . . .
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> In Cooper, this Court rejected the contention that a jury's pain and suffering award was automatically inadequate as a matter of law when a jury intentionally indicated no pain and suffering award but awarded damages for medical expenses or lost wages. Instead, the Cooper Court remanded the matter for the

> trial court to determine whether, based upon the evidence submitted at trial, the jury's pain and suffering award was adequate.
>
> **It appears that some confusion has resulted from Prater v. Coleman, . . . where a three-judge panel of the Court of Appeals misconstrued the Cooper holding** and remanded a similar case for a new trial. In the case now before us, however, we believe the majority of the en banc panel correctly interpreted Cooper. **We now overrule Prater v. Coleman to the extent it holds that a "0" award of pain and suffering damages, regardless of the evidence, is inadequate as a matter of law when accompanied by awards for medical expenses and lost wages.**
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> Swift, Id. 2001 Ky. Lexis, at 7-10, (Emphasis added.)

Here, the proper standard of review is whether the trial court's action was "clearly erroneous." Accordingly, if the jury's verdict of zero damages for pain and suffering is supported by the evidence, the trial court was not clearly erroneous in denying Culler's motion for a new trial. Id. 2001 Ky. Lexis, at 6. Culler has not shown that the jury's verdict of "Zero" damages for pain and suffering lacks a substantial evidentiary foundation. In fact, Culler has not provided any reference whatsoever to the record regarding evidence of pain and suffering. We decline to search for it. Robbins v. Robbins, Ky. App., 849 S.W.2d 571 (1993). The trial court's order denying the motion for new trial is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Robert L. Fears
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