

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-001137-MR

TERESA K. ISON

APPELLANT

v. APPEAL FROM LETCHER CIRCUIT COURT
HONORABLE SAMUEL T. WRIGHT, III, JUDGE
ACTION NO. 08-CI-00412

MCDONALD'S #12237

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: NICKELL AND THOMPSON, JUDGES; ISAAC, SENIOR JUDGE.¹

THOMPSON, JUDGE: Teresa K. Ison appeals from the Letcher Circuit Court's judgment awarding her \$5,500 in monetary damages. She contends that the trial court's judgment failed to adequately compensate her for her injuries resulting from McDonald's #12237's (McDonald's) negligence. For the reasons stated, we affirm.

¹ Senior Judge Sheila R. Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On October 14, 2007, Ison, an employee of the Letcher Manor Nursing Home in Whitesburg, Kentucky, had a co-worker travel to McDonald's and purchase her lunch. During Ison's lunch break, she began consuming her lunch and experienced a "strange taste" coming from her drink. She then removed the lid of her drink and discovered an unidentified insect at the bottom of her cup. Ison then became pale, anxious, dizzy, and came to a rest on the breakroom floor.

On October 14, 2009, Ison filed an action for negligence against the local McDonald's restaurant in the Letcher Circuit Court. She alleged that she suffered adverse health effects after drinking the tainted drink, including anxiety and depression. Eventually, a bench trial was conducted regarding Ison's action, which resulted in a judgment and an award of damages in her favor for \$5,500.

Ison contends that the trial court failed to consider the impairment that she sustained due to McDonald's negligence in awarding her monetary damages. She also argues that the trial court erred by not awarding her damages for mental problems despite finding that the drinking incident caused her mental distress.

"On appeal of a verdict from a bench trial, we review the lower court's findings of fact for clear error and its legal determinations *de novo*." *Arnold v. Patterson*, 229 S.W.3d 923, 924 (Ky.App. 2007). A trial court's findings of fact are not clearly erroneous if they are supported by substantial evidence. *Clark v. Bd. of Regents of Western Kentucky University*, 311 S.W.3d 726, 729 (Ky.App.

2010). Substantial evidence constitutes proof of facts which have sufficient probative value to permit a reasonable person to reach a factual determination. *Id.*

After hearing testimony from Dr. Eric Johnson that Ison sustained a seven percent impairment as a result of the incident along with other evidence, the trial court found that the alleged impairment rating was inconsistent with Ison's successful post-incident adjustments in her life. The trial court further found that the impact of Ison's consumption of the tainted drink was not severe enough to reduce her functionality. Despite not accepting the seven percent impairment rating opined by Dr. Johnson, the trial court awarded Ison damages totaling \$5,500 as a result of the adverse effects she sustained from consuming the tainted drink.

While Ison contends that Dr. Johnson's testimony should have been accepted as absolute fact, "[w]e cannot judge the credibility and strength of witnesses because trial courts have this responsibility." *Jenkins v. Jenkins*, 325 S.W.3d 924, 928 (Ky.App. 2010). The trial court heard Dr. Johnson's testimony, Ison's testimony regarding her mental health status, and testimony regarding the event giving rise to Ison's negligence claim. Based on this evidence, the trial court found that Ison's damages were not as severe as Dr. Johnson indicated. Although another court might have reached a different determination, we conclude that the trial court's decision regarding damages was supported by substantial evidence. *Moore v. Asente*, 110 S.W.3d 336, 353-54 (Ky. 2003).

Having addressed Ison's claim, we turn to McDonald's argument that sanctions should be imposed against Ison pursuant to Kentucky Rules of Civil

Procedure (CR) 11. It argues that Ison's argument is not well-grounded in fact or warranted by existing law and is only meant to harass McDonald's. Under our sanctioning authority, we can only issue sanctions when an appeal is so lacking of merit that it appears to have been pursued in bad faith. *Kenton County Fiscal Court v. Elfers*, 981 S.W.2d 553, 559 (Ky.App. 1998). However, we conclude that the record does not support a finding that Ison's appeal was prosecuted in bad faith. The record is more suggestive of the two parties having a mere disagreement over the nature and quality of the evidence. While McDonald's did not desire to litigate this matter in this Court, we cannot declare that Ison's appeal was egregious, frivolous, and warranting of sanctions. *Id.* Accordingly, we reject McDonald's request to impose sanctions against Ison.

For the foregoing reasons, the Letcher Circuit Court's judgment and award of damages following a bench trial is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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