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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001355-MR

SHELTER MUTUAL INSURANCE COMPANY APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 13-CI-00155

LOREN SHEFFIELD APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, MAZE, AND STUMBO, JUDGES.

CLAYTON, JUDGE: Shelter Mutual Insurance Company (hereinafter, "Shelter") appeals several decisions of the Franklin Circuit Court in an underinsured motorist claim involving two separate trials. The action commenced when Loren Sheffield filed a complaint against the insurance company seeking underinsured motorist benefits following a car accident.

The primary issues on appeal is Shelter's contention that the trial court should not have granted Loren's motion for a new trial following the first trial, but if this Court agrees with the order for a new trial, it maintains, among other things, that its motion for a new trial following the second trial, should have been granted. After careful consideration of the record and the arguments, we affirm the trial court.

BACKGROUND

On December 31, 2006, Loren Sheffield, then age 13, was riding in the passenger seat of her mother's car when the car was struck from behind on Interstate 64 in Franklin County. The driver of the car that struck Loren's vehicle admitted liability. As a result of the accident, Loren has continuously complained about pain in her neck and back. She has sought treatment from numerous physicians, physical therapists, and a chiropractor. In fact, Loren has been treated in some manner by a chiropractor and/or physical therapist since the accident occurred.

Loren settled the underlying bodily injury claim with the tortfeasor's carrier, Safe Auto, for the policy limits of $25,000. Loren's mother, Marsha Becknell, maintained two automobile insurance policies with Shelter. These policies provided underinsured motorists coverage ("UIM") and were available to Loren. Shelter, after being advised that Safe Auto had tendered the limits of its liability coverage, waived its subrogation rights and consented to Loren's acceptance of Safe Auto's payment of benefits.

On February 11, 2013, Loren filed suit against Shelter for the UIM benefits in her mother's policies claiming that her injuries and damages exceeded the limits of Safe Auto's liability coverage. She argued that Shelter was obligated to pay, to the extent of its UIM benefits, for her damages and injuries, which exceeded the amount received from Safe Auto's liability coverage.

The first trial occurred on August 6-7, 2014. The issue at the trial was the nature and extent of Loren's injuries and the amount of damages. During the trial, Loren testified that she experienced daily neck and back pain as a result of the car accident. Loren's expert physician testified at the trial that Loren sustained an instability in her atlantoaxial joint as a result of the car accident. Further, the expert opined that the injury would require additional diagnostic testing and possible surgery.

Shelter countered by claiming that Loren merely suffered a strain or sprain to her neck, which should have resolved within weeks of the car accident. They supported the argument with medical expert testimony, testimony of Loren's treatment providers, and photos of Loren playing volleyball.

At the conclusion of the first trial, the jury awarded Loren $15,000 in medical expenses; $0 for future medical expenses; and, $0 for past and future pain and suffering. With set-offs, a judgment of $0 was entered on August 25, 2014, in favor of Shelter.

However, on November 21, 2014, the trial court granted Loren's motion for a new trial. Loren claimed that the jury award of past medical expenses

and $0 for pain and suffering was improper as a matter of law. The trial court, after considering the parties' arguments, held that the jury's verdict of $0 for pain and suffering was not consistent with the evidence provided at trial regarding Loren's pain and suffering. Another trial was scheduled for May 11-12, 2015.

Before the second trial commenced, Loren made a motion for the trial court to reconsider its ruling in the first trial prohibiting her from introducing into evidence the portion of her mother's insurance policy discussing the UIM coverage. The trial court granted this motion and allowed the introduction of this portion of the policy at the second trial.

Additionally, the trial court, over Shelter's objection, permitted Loren to introduce the October 16, 2008 letter from Shelter to Bauman Physical Therapy ("Bauman"), a treatment provider for Loren. In the letter, Shelter asked Bauman the amount of Loren's injury that was a result of the car accident and the amount of the injury that was based on a pre-existing condition. According to Shelter, the letter pertained to Loren's basic reparations benefit and not to her UIM benefits. But during closing arguments, Loren's counsel argued that the letter was proof that Shelter attempted to deny Loren's UIM benefits and continued to deny them based on a pre-existing condition. Nonetheless, the trial court denied Shelter's motion for a mistrial because of these statements.

On May 12, 2015, the jury returned a verdict awarding Loren, $19,037.05 for past medical expenses; $3,600 for future medical expenses; $33,450 for past pain and suffering; and, $0 for future pain and suffering. The

total of the jury's award was $56,087.05. After the appropriate set-offs, a judgment of $21,087.05 was entered on July 10, 2015. The trial court, thereafter, denied Shelter's motion for a new trial.

Shelter now appeals from numerous decisions of the trial court including the order granting Loren's November 21, 2014 motion for new trial; the order granting Loren's motion to amend the ruling from the first trial, which permitted the introduction of a portion of the Shelter's automobile insurance policy concerning UIM benefits; the July 10, 2015 jury verdict; the trial court's decision in the second trial allowing introduction of letter from Bauman Physical Therapy; the trial court's decision during the second trial denying Shelter's motion for a mistrial based on the closing argument of opposing counsel; the trial court's jury instructions in the second trial, which according to Shelter, were inconsistent with the jury instructions in the first trial; and, the trial court's denial of Shelter's August 5, 2015 motion for new trial.

ANALYSIS

The grant of the motion for a new trial after the first trial

It is well-established that appellate courts review a trial court's decision on a motion for a new trial based on the grounds of inadequate damages under a "clearly erroneous" standard of review, since it is based on the nature of the evidence. *Cooper v. Fultz*, 812 S.W.2d 497 (Ky. 1991) (overruled on other grounds). Therefore, appellate courts must give "a great deal of deference" to a trial court's decision to grant a new trial under Kentucky Rules of Civil Procedure

(CR) 59.01. *Bayless v. Boyer*, 180 S.W.3d 439, 444 (Ky. 2005). Indeed, a trial court's decision whether to grant a new trial "is presumptively correct." *City of Louisville v. Allen*, 385 S.W.2d 179, 184 (Ky.1964) (overruled on other grounds by *Nolan v. Spears*, 432 S.W.2d 425, 428 (Ky. 1968)). Accordingly, we treat the decision of the trial court with a great deal of deference.

Shelter contends that the trial court erred in granting Loren's motion for a new trial after the first trial. It argues that the trial court's decision to grant Loren's motion for a new trial was clearly erroneous because the trial court substituted its own opinion concerning Loren's credibility instead of relying on the jury's opinion. Yet, Shelter cites to *Dennis v. Fulkerson*, 343 S.W.3d 633 (Ky. 2011), for the proposition that when damages are not awarded for pain and suffering, despite an award of medical expenses, it is the nature of the underlying evidence that is illuminating. *Id*. at 635. Thus, it appears that if the jury's verdict of zero damages for pain and suffering was not supported by evidence, the trial court should grant a motion for a new trial.

Shelter also proffers that Loren's subjective complaints did not match the objective medical evidence, and thus, the jury found correctly that she did not suffer a compensable injury. Shelter supported its argument with the Kentucky Supreme Court case of *Miller v. Swift*, 42 S.W.3d 599 (Ky. 2001). Similar to *Fulkerson*, *Miller* stands for the proposition that the trial court, to determine whether to grant a new trial under CR 59.01(d), must evaluate the evidence to ascertain if the jury's verdict comports with the evidence.

Loren argued under CR 59.01(d) that she was entitled to a new trial. CR 59.01(d) permits the grant of a new trial if excessive or inadequate damages appear to have been awarded by a jury under the influence of passion or prejudice or in disregard of the evidence or the instructions of the trial court. In the case at hand, the jury awarded her $15,000 in medical expenses but $0 for pain and suffering. Hence, the question is whether the award of $0 damages for pain and suffering was inadequate as a matter of law.

Citing numerous cases, Loren argues that under Kentucky jurisprudence, when there is an award for medical expenses, a complimentary award of $0 for pain and suffering is improper and grounds for a new trial. *See Wall v. Van Meter,* 311 Ky. 198, 223 S.W.2d 734 (Ky. 1949)(overruled on other grounds by *Cooper v. Fultz*, 812 S.W.2d 497 (Ky. 1991)); *Vittitow v. Carpenter*, 291 S.W.2d 34, 35 (Ky. 1956); *Sandy Hill Energy, Inc., v. Ford Motor Co.,* 83 S.W.3d 483, 493 (Ky. 2002)(vacated by *Ford Motor Co. v. Smith*, 538 U.S. 1028, 123 S. Ct. 2072, 155 L. Ed. 2d 1056 (2003)).

We concur with Shelter that *Miller v. Swift, supra,* is persuasive here. Yet, we disagree as to its impact. In *Miller*, the Kentucky Supreme Court explained:

> Whether the award represents "excessive or inadequate damages appearing to have been given under the influence of passion or prejudice or in disregard of the evidence or the instructions of the court," CR 59.01(d), is a question dependent on the nature of the underlying evidence.

Id. at 602 (emphasis omitted). Thus, there is no bright line rule when a jury awards medical expenses but fails to provide damages for pain and suffering. Instead a trial court must consider the underlying evidence to ascertain whether the damages are inadequate as a matter of law. We also observe that the facts in *Miller* are distinguishable from these facts because Miller did not receive damages for pain and suffering because the jury believed that the accident therein aggravated a pre-existing condition of Miller. That is not the case here.

In its order granting the new trial, the trial court discussed the line of cases about whether a $0 award for pain and suffering is inadequate as a matter of law. Although the trial court noted that Kentucky law does not require a jury to award damages for pain and suffering in every case in which it awards medical expenses, if a trial court is required to make such a determination, it must consider whether the evidence presented supports the jury's findings. Ultimately, in the case at bar, it found that the jury's verdict was inconsistent with the evidence presented and granted the motion for a new trial.

The trial court, after an extensive review of both parties' medical evidence presented at the trial, concluded that a $0 award for pain and suffering was inconsistent with the medical evidence. The trial court noted that the evidence, which showed Loren experienced at least some pain and suffering after the injury, was uncontradicted. In coming to this conclusion, the trial court observed that although the parties' testimony was contradictory, Loren provided

medical testimony that was compelling, and accordingly, established her pain and suffering by a preponderance of the evidence.

Here, the trial court provided both a thorough review of the evidence and also a well-structured analysis that a new trial was necessary. Moreover, we disagree with Shelter's assertion that the trial court substituted its opinion for that of the jury regarding Loren's credibility. A perusal of the trial court's decision shows that it did not focus on Loren or her testimony. Rather, the trial court evaluated the testimony of a variety of medical experts and other witnesses. After scrutinizing the evidence, the trial court determined that a new trial was warranted. We concur and hold that its decision to grant a new trial, based on CR 59.01(d), was not clearly erroneous.

Additionally, Shelter argues that the trial court committed a series of errors during the second trial that created an unduly prejudicial environment for the insurance company. In particular, these errors permitted Loren to introduce evidence and make arguments related to Shelter's handling of Loren's insurance claim. Shelter maintains that the only issues that should have been presented to the jury were ones related to the injuries and damages resulting from the car accident that occurred in December 2006. Each argument is addressed individually below.

The introduction of UIM contract

During the first trial, Loren attempted to introduce into evidence the UIM endorsement, which was the subject of the litigation. Shelter objected, and the trial court sustained the objection. During the second trial, Loren made a

motion to amend this ruling. Observing that in Kentucky a UIM case is a contract case, she argued that she should be able to introduce into evidence the contract since it was the subject of the dispute. *See Earle v. Cobb*, 156 S.W.3d 257 (Ky. 2004).

Shelter argues that the interpretation of a UIM contract is strictly a matter of law for the court to decide and the introduction of the contract creates a risk of confusing the jury. Furthermore, Shelter contended the only issue for the jury to decide is the amount of the damages, and thus, the contract language is irrelevant. Furthermore, Shelter maintains that, even if it is relevant, its probative value is outweighed by the danger of undue prejudice.

Loren counters that she is not requesting the jury to interpret the contract but only to be permitted to view the contract that engendered this litigation. Further, she notes that Shelter's labeling the contract as irrelevant is meritless since the contract is the basis of the litigation.

The trial court granted the motion to alter the ruling from the first trial on May 8, 2015. It reasoned that because the UIM case is a contract case, the UIM policy is relevant under Kentucky Rules of Evidence (KRE) 402. The contract is the basis of Loren's claim against Shelter. Further, the trial court held that the probative value of the evidence outweighed the risk of undue prejudice and confusion for the jury under KRE 403. The trial court also explained that it would use the jury instruction to inform the jury that they are not to interpret or make conclusions of law about the contract. Additionally, the trial court clarified that the

purpose of introducing this evidence was to assist the jury in understanding the reason for the case and to help the members of the jury understand the factual context of the claim.

"The trial judge has wide discretion to admit or exclude evidence...." *Baptist Healthcare Sys., Inc. v. Miller*, 177 S.W.3d 676, 680 (Ky. 2005). The appellate standard of review for a trial court's evidentiary rulings is whether the trial court abused its discretion. *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 577 (Ky. 2000). A trial court abuses its discretion if its decision is "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

We are not persuaded by Shelter's argument that since interpretation of a UIM contract is strictly a matter of law for the court to decide, the introduction of the contract creates a risk of confusing the jury. First, the jury was aware that it was a contract case. Furthermore, it was not required to interpret the contract but rather to ascertain Loren's damages. Finally, the trial court appropriately instructed the jury on its duties in the jury instructions.

In *State Farm Mut. Auto. Ins. Co.v. Riggs*, 484 S.W.3d 724 (Ky. 2016), the Kentucky Supreme Court discussed principles related to UIM coverage. Therein, the Court, citing *Coots v. Allstate Ins. Co.*, 853 S.W.2d 895, 898 (Ky. 1985), recognized that from its inception that UIM coverage is first-party coverage, which means that the insurer has a "contractual obligation directly to the insured which must be honored even if the tortfeasor cannot be identified." *Id* at 898. And

it concluded that "[a]s a result of this contractual obligation, an insured's action against the UIM carrier is appropriately labeled a breach-of-contract action." *Riggs*, 484 S.W.3d at 727. It is indisputable that Loren's UIM benefits with Shelter are contractual, and therefore, this matter is a contract case. Consequently, the trial court reasoned that because all relevant evidence is admissible, the trial court did not abuse its discretion in permitting the introduction of the contract. Moreover, Shelter cites no authority for the proposition that a contract in a contract lawsuit is inadmissible.

Also, Shelter does not demonstrate that any language in the UIM contract was confusing. While it makes the conclusory statement that the introduction of the contract was prejudicial, confusing, and irrelevant, it provides no specific examples in which the language confused the jury.

In discussing its belief that the introduction of the contract misled the jury, Shelter acknowledges that the case arose out of contract and observed that the only issue before the jury was the nature and extent of Loren's personal injuries. But Shelter next asserts that by introducing the contract, the issue became whether Shelter had an obligation to pay and is refusing to do so. This argument is logically incongruent since Shelter had already admitted it has an obligation to pay based on the contract. Hence, the only issue remaining for the jury is to determine the extent of Loren's injuries. Given that the there is no dispute that UIM benefits are contractual, the introduction of the contract does not shift in the jury's

understanding of its responsibility – to ascertain the extent of Loren's injuries and determine appropriate damages.

Finally, Shelter's argument that because the second jury came to a different verdict than the first jury is specious. The first and second trials were different, and obviously, two different juries can validly arrive at different conclusions. They did not establish that the contract confounded the second jury.

We believe that the introduction of the contract permitted the jury to understand the reason for the case and their purpose in hearing the matter. Shelter's claim of prejudice is unfounded. Consequently, the trial court did not abuse its discretion in admitting the contract into evidence. The document was relevant to the proceedings since a UIM claim is a contract claim.

The introduction of the letter from Shelter to the physical therapist

Again, the trial court is vested with wide discretion in its determination of whether to admit or exclude evidence, and our review is for an abuse of discretion on the part of the trial court. Shelter argues that the letter from Bauman to Shelter should not have been submitted into evidence because it concerned Loren's basic reparation benefits ("PIP") and was not relevant to the UIM. Moreover, even if it was relevant, it was unduly prejudicial and confused the jury because PIP benefits were not before the jury.

Loren points out that she never referred to the letter as a UIM or PIP letter; the letter does not reference either PIP or UIM; and, the Shelter employee who authored the letter was a "medical payments adjuster" rather than a PIP or

UIM adjuster on the claim. Instead, the letter supports the proposition that Shelter is suggesting that Loren's injury was based on a pre-existing condition.

The letter was about the car accident, which was the subject of the lawsuit. The letter states:

> We have had the opportunity to review the medical records regarding the treatment of the above claimant relating to the motor vehicle accident (MVA). It has been noted there was treatment for a pre-existing condition. We are requesting that you apportion the degree to which this treatment is related to the MVA versus the pre-existing condition.

Apparently, Shelter was referring to volleyball since one of Loren's medical records stated that volleyball was putting strain on her neck and shoulders. Nonetheless, the physical therapist replied to Shelter's medical payments adjuster that 100% of the treatment was for the injury from the car accident.

At the trial, the trial court permitted the introduction of the letter because it believed that the introduction of the letter provided context to Shelter's decision-making. Based on the trial court's reasoning, we believe that it did not abuse its discretion in admitting the letter. Nothing in the record, other than Shelter's claims, indicates that the letter had anything to do with PIP benefits. Further, the letter does not reference nor does the physical therapist discuss any pre-existing condition. Shelter itself introduced the concept of a pre-existing condition, which the physical therapist disavowed. That is all the letter shows. Furthermore, Shelter itself brought up the idea of a pre-existing condition in its closing argument when it observed that one of the hospitals had observed a pre-

existing condition. Therefore, the trial court did not abuse its discretion in permitting the introduction of the letter.

Denial of the motion for new trial and mistrial following second trial

Besides arguing that the trial court abused its discretion in admitting the letter from Shelter to Bauman, Shelter also maintained that the trial court should have granted a new trial because the trial court permitted Loren to introduce contract language about the UIM benefits, provide an alleged misleading letter from Shelter to Bauman, and finally, its denial of a mistrial based on the supposed improper comments by Loren's counsel. The contract language has already been extensively discussed, and we reiterate that no error was committed by the admission of the contract endorsement, and therefore, the trial court did not abuse its discretion in denying a new trial based on this issue.

Regarding the letter, Shelter maintains that Loren was implying that Shelter was attempting to deny Loren's claim because of a pre-existing condition. As previously noted, the trial court permitted the introduction of the letter for the jury to have an understanding of the context of Shelter's decision-making process regarding Loren's claim. Instead, Shelter suggests that it never planned to deny her claim but was merely trying to clarify a medical record, which stated that volleyball was causing her pain. If that is the case, the letter should not be problematic. Lastly, Shelter posits that the remarks of Loren's counsel about the letter during closing arguments necessitate a new trial.

Shelter relies heavily on *Risen v. Pierce*, 807 S.W.2d 945, 949 (Ky. 1991) for the proposition that an improper argument requires reversal if it is so prejudicial, under the circumstances of the case, an admonition would not cure it. Nonetheless, the improper argument in *Risen* is readily distinguishable from the circumstances here. In *Risen*, counsel made numerous references to evidence not in the record and blatantly disregarded the admonitions of the court. In our matter, a letter, which, in contrast, had been entered into evidence, was referenced during closing arguments, but stopped by Shelter's objection immediately.

The *Risen* Court, *citing Mason v. Stengell*, 441 S.W.2d 412, 416 (Ky. 1969), noted that reversal is proper if the argument is so prejudicial that an admonishment would not cure it. *Risen*, 807 S.W.2d at 949. However, Shelter has not established that the comments in Loren's closing arguments were egregious, and thus, prejudicial.

Shelter maintains that because of the differences between the two verdicts in the trials, obviously it was prejudiced by Loren's closing argument. No support is provided by Shelter to show a nexus between the closing comments and the ultimate verdict. Additionally, a close examination of the jury verdict at the second trial, while larger than the verdict at the first trial, does not establish that it was excessive.

The damages requested by Loren were different at both trials. At the first trial, her damage award was $15,000 for medical expenses, nothing for her $42,552 claim for future medical expenses, and nothing for her $257,081.67

request for future pain and suffering. At the second trial, Loren requested $19,037.05 in medical expenses; $68,400 in future medical expenses; $33,450 in past pain and suffering; and, $104,025 in future pain and suffering. The jury awarded $19,037.05 in medical expenses; $3,600 in future medical expenses; $33,450 in past medical pain and suffering; and, $0 in future pain and suffering. After statutory adjustments, Loren's total award was $21,087.05. Our review of the record, arguments of counsel, and perusal of the verdict does not indicate that the jury acted unreasonably or that it was swayed by a prejudicial argument.

Additionally, a second trial was held because the trial court determined that another trial was necessary since the evidence of pain and suffering at the first trial did not support the jury's award of $0 for pain and suffering. Rather than indicating a problem at the second trial, it vindicates the rationale for a second trial.

Finally, we have already highlighted that it is not necessarily an indication of error that after a second trial, a jury awarded more damages. In any repeat trial, there are going to be differences, both in the evidence, witnesses, and the arguments. These factors alone may account for a different verdict. Nothing changes the legal mandate that the amount of damages in a dispute is left to the sound discretion of the jury. *Asbury Univ.v. Powell*, 486 S.W.3d 246, 264 (Ky. 2016) (Citations omitted).

While the comments of Loren's counsel in closing argument may have been ill-advised, the trial court, upon Shelter's objection, immediately

stopped Loren's counsel from continuing this line of argument. Furthermore, even if an argument is improper, the question remains whether the argument was egregious enough to warrant a reversal. In making this determination, each case must be judged on its unique facts. *Rockwell Int'l Corp. v. Wilhite*, 143 S.W.3d 604, 631 (Ky. App. 2003). And an isolated instance of improper argument, for example, is seldom deemed prejudicial. *Id.* Furthermore, at the second trial, there was no continual and colorful reiteration of an improper argument. Therefore, we believe that the statements by Loren's counsel during closing argument were not grievous enough to result in prejudice to Shelter.

To conclude, the granting of a motion for a new trial is within the discretion of the trial court. *Kaminski v. Bremner*, Inc., 281 S.W.3d 298, 304 (Ky. App. 2009). The standard of review is whether there has been an abuse of that discretion. *Id*. "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000).

It is universally agreed that a mistrial is an extreme remedy and should be resorted to only when there is a fundamental defect in the proceedings which will result in a manifest injustice. The occurrence complained of must be of such character and magnitude that a litigant will be denied a fair and impartial trial and the prejudicial effect can be removed in no other way. *Gould v. Charlton Co*., Inc., 929 S.W.2d 734, 738 (Ky. 1996) (Citations omitted).

We concur with the trial court's reasoned decision that another trial was not necessary after the first two trials. Such a decision is a matter for the sound discretion of a trial judge. Moreover, reversal of such a decision by a reviewing court must be undertaken only with great restraint and only in exceptional cases. *Aker v. Smith*, 290 S.W.2d 496 (Ky. 1956). That is not the case here. In the case at bar, the trial court did not abuse its discretion in denying a motion for a new trial.

Jury Instructions

Shelter maintains that the jury instructions were in error, and thus, presumed to be prejudicial, which necessitates that the second verdict should be reversed. It bases its argument on the fact that the instructions at the second trial were different than the instructions at the first trial. The jury instruction in the first trial was as follows:

> You will determine from the evidence the sum or sums of money that will fairly and reasonably compensate Loren Sheffield for the element of damages listed below as you believe from the evidence she has sustained as a direct result of this motor vehicle accident. *You must determine whether the injuries alleged by the Plaintiff were caused by the accident or whether they are attributable wholly, or in part, to other conditions or diseases not caused by the accident.*[1]

At the second trial, the jury instructions were modified when Loren's counsel observed that the second sentence in Shelter's proposed jury instructions, which had been used at the first trial, were not based on Palmore's Jury

[1] Hereinafter, this sentence will be referenced as the "italicized sentence."

Instructions[2] and asked for it to be deleted. The second trial's jury instructions stated:

> You will determine from the evidence the sum or sums of money that will fairly and reasonably compensate Loren Sheffield for the element of damages listed below as you believe from the evidence she has sustained. Your verdict, if any, should be only for the injuries that you believe from the evidence directly and proximately resulted from the accident.

The record shows that Loren's counsel questioned the use of the "italicized sentence" during the discussion of the jury instructions before the trial judge. In response, Shelter stated that the instructions were from Palmore. After a review of Palmore, it was determined that the "italicized sentence" was not in Palmore. The judge then queried Shelter as to their legal authority for the second sentence. They were not able to provide any authority. Thereupon, the trial court judge granted the request to eliminate the above "italicized sentence" stating that it appeared duplicative. At this time, Shelter registered an objection but provided no explanation or specificity to its objection.

According to Shelter, the change in the language of the jury instructions prejudiced it because the jury was not instructed to differentiate between the complaints related to the car accident and other injuries and causes of pain, which it claims it put into evidence. Shelter reasons that the difference in the damage award between the two trials proves that the jury instructions were

[2] At the trial, the attorney only stated "Palmore's." He was referencing John S. Palmore, *Kentucky Instructions to Juries.*

prejudicial. We are not persuaded that the difference in the jury instructions is the cause of the difference in the damages.

Appellate review of jury instructions is a matter of law and reviewed *de novo*. *Reece v. Dixie Warehouse and Cartage Co.*, 188 S.W.3d 440, 449 (Ky. App. 2006). Again, we note that the two trials are not one and the same, and therefore, a change in jury instructions on its face is not error. "The purpose of jury instructions is to define the law on issues that are raised." *Keller v. Eldridge*, 471 S.W.2d 308, 310 (Ky. 1971). Furthermore, Kentucky law requires the use of "bare bones" jury instructions, leaving it to counsel to flesh out the case. *Olfice, Inc. v. Wilkey*, 173 S.W.3d 226, 229 (Ky. 2005).

The jury instructions in the second trial did establish the law on the issues raised. They were based on jury instructions in Palmore, an established treatise on Kentucky jury instructions. Plus, the instructions used said "[y]our verdict, if any, should be only for the injuries that you believe from the evidence directly and proximately resulted from the accident." This language informs the jury that they are to only award damages for injuries that proximately resulted from the accident. We agree with the trial judge that the second sentence was duplicative, and hence, not necessary since it merely restated the first sentence. There was no error in the jury instructions.

CONCLUSION

For the aforementioned reasons, we affirm the decision of the Franklin Circuit Court.

ALL CONCUR.

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