

RENDERED: AUGUST 10, 2018; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2017-CA-000862-MR  
AND  
NO. 2017-CA-000863-MR

ALICIA CONRAD

APPELLANT/CROSS-APPELLEE

APPEAL AND CROSS-APPEAL FROM BOONE CIRCUIT COURT  
v. HONORABLE JAMES R. SCHRAND II, JUDGE  
ACTION NO. 16-CI-00158

RYAN SHROUT

APPELLEE/CROSS-APPELLANT

OPINION  
REVERSING AND REMANDING

\*\* \*\* \* \* \* \* \*

BEFORE: COMBS, DIXON AND TAYLOR, JUDGES.

COMBS, JUDGE: This case involved an action for damages resulting from a motor vehicle collision. Alicia M. Conrad appeals and Ryan Shroust cross-appeals from the judgment of the Boone Circuit Court entered after a bench trial to recover damages for the residual diminution in value of Shroust's vehicle. After our review, we reverse and remand for entry of judgment consistent with this opinion.

On June 7, 2015, Conrad and Shroul were involved in a motor vehicle accident. Conrad stipulated to fault and liability. The costs to repair Shroul's 2013 Chevrolet Volt totalled more than \$12,000. The necessary repairs were made to the car, and Shroul was satisfied with them. However, he received no offers when he attempted to sell the Volt for \$16,000 and then later for \$14,000.

On January 28, 2016, Shroul filed an action against Conrad to recover the residual diminution in value of the Volt following the collision and the necessary repairs. Shroul contended that the Kelley Blue Book value of the vehicle before the accident was \$17,272 but that the car had a value of only \$7,500 after it had been repaired. Shroul contended that the residual diminution in value to his car totalled \$9,772. He also sought to recover \$4,704, the amount that he had paid toward the purchase of a vehicle during the pendency of the action.<sup>1</sup>

The circuit court conducted a bench trial on March 9, 2017. The parties agreed that there was a residual diminution in value of the Volt as a result of the collision and necessary repairs and that Shroul was entitled to recover those damages.<sup>2</sup> The primary issue at trial was the correct measure of damages.

---

<sup>1</sup> Shroul has abandoned his claim for this amount. It is not an issue on appeal.

<sup>2</sup> The Supreme Court of Kentucky recently addressed the real property counterpart of the damages claimed here. In *Muncie v. Wiesemann*, 548 S.W.3d 877, 880 (Ky. 2018), the court noted that “[s]tigma damages measure the amount by which a real property’s value is diminished in excess of repair costs.”

Conrad's expert, Alvin Ray, a principal in Metro Appraisal and Adjustment Company, had been appraising vehicles since 1983. Ray testified that the value of the Volt was \$16,825 before the collision. Using a methodology that took into account the extent of damage and the nature of the structural repairs, Ray testified that he would expect the residual diminution in value to the Volt to be eleven percent (11%) of its pre-collision value -- or \$1,850. He estimated that the retail value of the vehicle (following repairs) was between \$9,600 and \$11,200. Based upon these figures, Ray computed the residual diminution in value of the vehicle to be between \$5,625 and \$7,225.

Shrout testified that the value of the Volt before the collision was \$17,272. He explained that he now had a private offer to purchase the vehicle for \$8,000. Based upon these figures, Shrout contended that there was a residual diminution in value to the vehicle of more than \$9,000.

The circuit court rejected the testimony of Conrad's expert indicating that the Volt had suffered a residual diminution in value of only eleven percent (11%) following the repairs. However, the court was persuaded that the value of the Volt at the time of the accident was \$16,825 and found that the fair market value of the Volt -- after it had been repaired -- was only \$11,200. In a judgment entered on March 24, 2017, the court awarded damages in the amount of the

difference between these figures for a total of \$5,625. The court denied the separate post-trial motions of both parties. This appeal and cross-appeal followed.

On appeal, both parties accept the trial court's finding that the pre-collision value of the Volt was \$16,825. However, Conrad argues that the trial court erred in its damage award since the total damages recovered (cost of repair -- \$12,256.48, plus the residual diminution in value -- \$5,625) exceed the pre-collision value of the vehicle by more than \$1,000. Conrad also contends that the provisions of KRS<sup>3</sup> 186A.530 prohibit her insurer from paying damages in excess of seventy-five percent (75%) of the value of the vehicle unless Shroul obtains a salvage title.

Shroul argues that the trial court erred by permitting Conrad's expert to testify and by accepting the testimony that indicated that the Volt had a fair market value of \$11,200 after the repairs were completed. Shroul contends that \$8,825 represents the real residual diminution in value and the correct measure of damage. Finally, Shroul argues that interest upon the entire award should accrue at twelve percent (12%). We address the contentions in an order that will comport with our analysis of the issues.

Shroul contends that the trial court abused its discretion by permitting Conrad's expert to testify for two reasons. First, Shroul argues that Conrad failed

---

<sup>3</sup> Kentucky Revised Statutes (KRS).

to produce -- in a timely manner -- an explanation for the methodology underlying her expert's opinion. Second, Shroul argues that the expert's testimony could not constitute substantial evidence because the basis of his opinion regarding the vehicle's value following the repairs was not adequately linked to his expertise. Issues related to the admission of expert witness testimony fall within the wide discretion of the trial court. *Farmland Mut. Ins. Co. v. Johnson*, 36 S.W.3d 368 (Ky. 2000). We are not persuaded by either of his arguments. Even if we were persuaded by either contention, we would nevertheless reject the argument that the judgment should be reversed on this basis for the following reason.

On appeal, both parties accept the trial court's finding that the pre-collision value of the Volt was \$16,825. However, neither party offered evidence of the value of the Volt **immediately after** it was damaged. The difference in the value of the vehicle immediately before and immediately after the physical damage is sustained is critically important. That difference is designated as the gross diminution in value, and it caps the damages awarded. *See Braum v. Kinderdine*, 27 N.E.3d 602 (Ohio App. 2015). The costs of repair, plus an award for the residual diminution in value to the vehicle, cannot exceed the gross diminution in value. *Id.*

In this case, it is undisputed that the cost of repairs made to the Volt to Shroul's satisfaction totaled \$12,256.48. On appeal, Conrad observes that the

gross diminution in value cannot exceed the full value of the property before it sustained the physical damage. Her reasoning is correct and indeed axiomatic. In her primary brief, Conrad accepted the gross diminution in value of the Volt as equal to its fair market value before the collision. Consequently, she accepts this figure as a cap on damages attributable to a combination of the cost of repairs and the residual diminution in value to the Volt. The stipulated gross diminution in value, minus the cost of repairs to the Volt, equals \$4,568.52. As a matter of law, regardless of the fair market value of the of the vehicle following the repairs, the damage award in this case cannot exceed \$4,568.52.

The trial court rejected the opinion of Conrad's expert that the residual diminution in value to the Volt was 11% of its pre-collision value. The remaining evidence submitted by both Conrad and Shroust indicated that the residual diminution in value to the Volt exceeded \$4,568.52. If the trial court had accepted Shroust's opinion regarding the value of the Volt following the repairs, that of \$8,000, and if it had disregarded entirely the expert opinion of Alvin Ray, the court still could not have awarded more than \$4,568.52 representing the residual diminution in value to the vehicle. Conrad argued in her primary brief that substantial evidence supports a judgment in the amount of \$4,568.52 and no more. We agree. Consequently, the judgment must be reduced accordingly.

Next, Conrad contends that the provisions of KRS 186A.530(7)(b) prohibit the payment of damages to Shroud that exceed 75% of the value of the vehicle unless he first obtains a salvage title for the Volt. We do not agree that the provisions of the statute prevent Conrad's insurer from paying the full amount of the damage award.

KRS 186A.530(7)(b) provides, in part, as follows:

In claim settlements that do not involve transfer of the vehicle to the insurance company, an insurer shall not render payment on a damage claim for a vehicle whose damage meets or exceeds seventy-five percent (75%) of the value of the vehicle, until the insurer has received proof that the owner has surrendered the title or has applied for a salvage certificate of title as set forth in KRS 186A.520.

A salvage vehicle is defined as a vehicle which has been wrecked, destroyed, or damaged to the extent that the total cost of parts and labor to rebuild it to its pre-collision condition (not including the cost or parts and labor to reinstall a deployed airbag system) exceeds seventy-five percent (75%) of the retail value of the vehicle. KRS 186A.520. Damages for the residual diminution in value to the car are meant to reflect the loss in market value attributable to the long lasting negative perception associated with a wrecked vehicle. Since damages representing the residual diminution in value to the car are meant to compensate the owner for a loss associated with the vehicle that is not susceptible to physical repair, the statute is plainly inapplicable.

Finally, Shroul contends that post-judgment interest should be calculated at twelve percent (12%) rather than six percent (6%). He acknowledges the amendment to KRS 360.040, which became effective on June 29, 2017, reducing the post-judgment rate of interest from twelve percent (12%) to six percent (6%). However, he argues that the statutory amendment should not apply to the judgment entered in this case.

The trial court has not ruled on the rate of interest accruing on the judgment in this case. Upon remand, the trial court will enter a new judgment, and interest will begin to accrue at the correct statutory rate to be determined by the trial court under the timelines of this case.

The judgment of the Boone Circuit Court is reversed, and the case is remanded for further proceedings consistent with this opinion.

DIXON, JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

Robert B. Cetrulo  
Edgewood, Kentucky

BRIEF FOR APPELLEE:

Justin L. Lawrence  
Ft. Mitchell, Kentucky