IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-CA-00752-SCT

JOSEPH S. RICHARDS AND BRANDY REED

v.

LARRY G. WILSON, EDDIE WILSON AND WILSON BROTHERS FARMS

DATE OF JUDGMENT:	09/28/2018
TRIAL JUDGE:	HON. JOSEPH H. LOPER, JR.
TRIAL COURT ATTORNEYS:	MARK KEVIN HORAN JAMES H. POWELL, III BRADLEY DAVID DAIGNEAULT J. NILES McNEEL WILLIAM THOMAS COOPER
COURT FROM WHICH APPEALED:	CHOCTAW COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANTS:	JAMES H. POWELL, III BRADLEY DAVID DAIGNEAULT
ATTORNEYS FOR APPELLEES:	J. NILES McNEEL JACOB ARTHUR BRADLEY
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY
DISPOSITION:	AFFIRMED - 12/03/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE RANDOLPH, C.J., MAXWELL AND BEAM, JJ.

MAXWELL, JUSTICE, FOR THE COURT:

¶1. In this tractor-motorcycle collision case, the jury was presented with only two options—find the tractor driver 100 percent liable for the motorcycle riders' injuries or not liable at all. Neither party requested a comparative-negligence instruction. And none was

given. The jury found the tractor driver liable but only awarded the motorcycle riders a fraction of their uncontested damages.

¶2. Both parties filed posttrial motions. The motorcycle riders sought more damages, and the tractor driver requested a new trial. The trial court granted a new trial, agreeing with the tractor driver that the jury had rendered a "compromise verdict." At the second trial, the jury found in favor of the tractor driver. The motorcycle riders appeal. They assert the trial court erred by granting a new trial following the first verdict.

¶3. But the trial judge did not abuse his discretion. "A compromise verdict occurs when the jury cannot agree on a verdict and, consequently, awards a lower amount of damages to get the agreement of the number required to reach a verdict—"in other words, the jury compromises on damages to get an agreement on liability."[1] Here, the record supports the trial judge's finding the jury had reached a compromise verdict in the first trial. The jury appeared confused by the instructions. At one point the jury asked the judge what to do if they answered no to a jury-instruction question on the tractor driver's liability. Later, they indicated they could not reach a decision. And then, following a ***Sharplin*** instruction,[2] they found the tractor driver was liable but only awarded a portion of the actual uncontested damages.

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[1] ***DC Gen. Contractors, Inc. v. Slay Steel, Inc.***, 109 So. 3d 577, 586 (Miss. Ct. App. 2013).

[2] *See* ***Sharplin v. State***, 330 So. 2d 591, 596 (Miss. 1976) (approving an instruction to "be given in either criminal or civil [trials] when the trial judge is confronted by a hung jury").

¶4. Even the motorcycle riders—when arguing after the second verdict that the first verdict should be reinstated—asserted that the jury's verdict in the first trial appeared to "apportion[] fault" by reducing the plaintiffs' actual medical expenses and lost wages "by half without such an instruction." In other words, the motorcycle riders themselves point out the jury compromised on liability by lowering damages.

¶5. Thus, the trial judge did not abuse his discretion by granting a new trial based on finding the first verdict was a compromise verdict. We affirm.

Background Facts & Procedural History

I. Collision

¶6. The tractor and motorcycle collided on Highway 9 in Choctaw County, Mississippi. Larry Wilson was driving the tractor. He was delivering hay to his brother at their farm on Maddox Road. Joseph Richards was driving the motorcycle with Brandy Reed as his passenger. Richards and Reed were taking part in a charity motorcycle ride, along with fifty to seventy-five others.

¶7. The motorcycle convoy was traveling south on Highway 9 when it came upon Wilson's tractor, also traveling south. According to witnesses, about ten motorcycles passed the tractor using the northbound lane of the two-lane highway. Passing then stopped due to oncoming northbound traffic. When that traffic cleared, passing resumed. Richards lagged behind two other motorcycles in the northbound lane. As Richards tried to pass Wilson, Wilson started to make a left turn onto Maddox road. The bucket on the front of Wilson's

tractor struck Richards's motorcycle. This caused the bike to crash, and Richards and Reed were seriously injured.

II. Lawsuit

¶8. Richards and Reed sued Wilson, Wilson's brother, and their farm (collectively, "Wilson").

¶9. At trial, Wilson did not dispute Richards's and Reed's damages. But Wilson argued he was not liable for those damages. According to Wilson, the two's injuries were due to Richards's carelessness. Richards had not only tried to pass *two* vehicles at once—Wilson's tractor and a truck traveling immediately behind it—but he also did so at an intersection with another public road. Richards says there was no truck. He was just passing the tractor. And according to Richards, it was Wilson who negligently failed to signal his tractor's turn and failed to stay in his lane until Richards had passed.

¶10. At the end of the two-day trial in August 2017, the parties presented the jury an all-or-nothing choice. They were to find Wilson 100 percent liable for Richards's and Reed's injuries or not liable at all. Neither party requested nor did the trial court give a comparative-negligence instruction. Instead, the jury was given, among other instructions, Instruction 7. This lengthy instruction posed a series of propositions followed by questions. If the jury answered yes to all the questions, it was to find Wilson liable and determine Richards's and Reed's damages. But if the jury answered no to any one question, it was to find in Wilson's favor.

III. Jury Deliberations and Verdict

¶11. Forty-five minutes into their deliberations, the jury sent the trial judge a note about Instruction 7. "We have reached a no on question four," the note said. "Would like more clarification on the question." The judge told the jury to refer to Instruction 20, the form-verdict instruction. An hour later, the jury said they had another question about Instruction 7. And the judge once again told them, if they answered no to question 1, 2, 3, or 4, they should follow Instruction 20.

¶12. Twenty-five minutes later, the jury sent a third note saying they could not reach a verdict. So the judge called the jury back into court and gave them a ***Sharplin*** instruction. After another hour of deliberations, the jury asked another question about Instruction 7. Specifically, the jury inquired whether "his failure" in question four referred to the tractor or the motorcycle. After conferring with counsel for both parties, the judge informed the jury that "his" referred to Wilson.

¶13. Twenty-five minutes later, after three-and-a-half hours of deliberation, the jury informed the judge they had reached a verdict. The jury found in favor of Richards and Reed. They awarded Richards $125,763. Though damages were not contested, the jury awarded Richards the full amount of his past lost earnings. But the jury only awarded him half the amount of his past medical expenses, and zero damages for his other past damages, past pain and suffering, and future pain and suffering. The jury awarded Reed $56,111.86. Again, though damages were not contested, the jury awarded Reed the full amount of her past lost earnings, half the amount of her past medical expenses, and nothing for her other past damages, past pain and suffering, and future pain and suffering.

IV. Motion for New Trial and Motion for Additur

¶14. Both Wilson and Richards and Reed filed timely posttrial motions. Wilson filed a motion for a new trial. He argued confusion over the jury instructions or disagreement about liability led the jury to reach a compromise verdict. Richards and Reed filed a motion to amend the judgment as it related to medical damages and for an additur for damages for pain and suffering. Because no comparative-negligence instruction was given, they argued, the jury's finding in their favor meant the jury found Wilson 100 percent at fault. And because Wilson offered no evidence to rebut Richards's and Reed's damages, Richards and Reeds contended that the award of only half their medical damages and zero pain-and-suffering damages was against the overwhelming weight of the evidence.

¶15. The trial judge granted Wilson's motion for a new trial, making Richards and Reed's motion moot. First, the judge agreed that Instruction 7 had been confusing and peremptory. The jury could have answered yes to all the instruction's questions without finding Wilson negligently entered the northbound lane. And the judge found "[t]he fact the jury grappled so much with undisputed factual issues [wa]s evidence of their confusion." Second, the judge found the verdict was a compromise verdict. The judge reasoned,

> [t]his is a case where liability was closely contested, yet damages were not. No comparative negligence instruction was given—thus the jury was required to find 100% liability for one of the parties. Nonetheless, the jury returned a verdict for exactly half of the medical damages. Had the jury returned some other amount of damages, there would be more doubt as to why they returned such a verdict. But this verdict on its face supports the conclusion that the jury reached its verdict by agreeing to split the damages by half.

V. Second Verdict

¶16. The case was retried in September 2018. This time, the jury found for Wilson. Richards and Reed filed a motion for judgment notwithstanding the verdict or, alternatively, a new trial.

¶17. Richards and Reed argued the trial judge should—notwithstanding the second verdict—enter a judgment in his favor and reinstate the jury's verdict from the first trial. Alternatively, they requested a new trial on damages only. They based their motion on the assertion that the trial judge, following the first trial, "*sua sponte*[] entered an Order granting a new trial based on the [trial] Court's failure to instruct jury on comparative negligence . . . ." But that is not what the trial judge did. Rather, the judge had granted Wilson a new trial based on his conclusion Instruction 7 was faulty and that the jury had reached a compromise verdict.[3]

¶18. Indeed, when arguing that the first jury's verdict should be reinstated, Richards and Reed essentially pointed out why the first jury verdict *was* a compromise verdict. According to Richards and Reed,

> it appears from the verdict returned by the jury in [the first] trial [the jury] apportioned fault by the verdict they returned since they reduced actual medical expenses and lost wages suffered by the plaintiffs by half without such

[3] At the end of his opinion granting a new trial, the trial court in dicta "recognized that it should have given a contributory negligence instruction, even though neither party asked for it." *See* ***Tan Minh Pham v. Welter***, 542 So. 2d 884, 890 (Miss. 1989) ("[W]e have held in motor vehicle accident cases where each side claimed the other's negligence solely caused the accident, that the circuit judge committed no error in granting a comparative negligence instruction."). In other words, the trial court did not grant a new trial sua sponte based on the failure to give a comparative-negligence instruction. Rather, having granted Wilson's motion for a new trial for reasons Wilson asserted in his motion, the trial court merely acknowledged it could have—and probably should have based on the evidence—instructed the jury on comparative negligence.

> an instruction. The jury by their verdict in the first trial had already done what the Court via the Order for new trial sought to do. They had determined the fault of each of the parties in reaching their decision.

¶19. The trial judge denied Richards and Reed's motion. In his order, the judge pointed out that he granted a new trial because the evidence supported his finding that Instruction 7 was faulty and that the jury had reached a compromise verdict. And in revisiting this decision after the second trial, the judge found the decision to set aside the first verdict was correct.

Issues on Appeal & Standard of Review

¶20. Richards and Reed have appealed. They argue the trial court erred (1) by granting Wilson's motion for new trial after the first jury verdict and (2) by denying his motion for a judgment notwithstanding the verdict following the second verdict. Richards suggests the second alleged error sprung from the first alleged error. So in short, this appeal actually raises one issue: Did the trial court err by granting Wilson's motion for a new trial based on a bad jury instruction and a compromise verdict?

¶21. Rule 59(a) of the Mississippi Rules of Civil Procedure gives trial courts discretionary authority to grant a new trial following a jury trial. A new trial may be granted "for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of Mississippi[.]" M.R.C.P. 59(a)(1). This includes "an error in jury instructions." M.R.C.P. 59(a) advisory committee note. The grant of a motion for a new trial is reviewed for abuse of discretion. *Id.*; ***White v. Yellow Freight Sys., Inc.***, 905 So. 2d 506, 510 (Miss.

2004) ("The grant or denial of a motion for a new trial is a matter within the trial court's sound discretion.").

Discussion

I. Jury Instruction 7

¶22. The trial judge granted a new trial based on a faulty jury instruction that led to a compromise verdict. "That a jury may have become confused during the course of its deliberations has been found to be adequate grounds for granting of a new trial." ***Clark v. Viniard ex rel. Viniard***, 548 So. 2d 987, 991 (Miss. 1989) (citing ***Griffin v. Fletcher***, 362 So. 2d 594, 596 (Miss. 1978)). And, here, the trial judge found and the record supports that the jury was confused.

¶23. The source of the jury's confusion appears to have stemmed from Instruction 7. In granting a new trial, the judge identified two problems with this instruction. First, the instruction confusingly asked the jury to assess liability based on whether Wilson turned into Richards's lane while Richards was passing. It posed this query even though it was never disputed that Wilson had turned into the northbound lane while Richards was passing. Second, the instruction was peremptory. It instructed the jury to assess damages to Richards and Reed without finding Wilson negligent.

¶24. On appeal, Richards and Reed suggest Instruction 7 should not have been read in isolation. They point to other instructions directing the jury must find Wilson negligent to award damages. *See* ***Vaughn v. Ambrosino***, 883 So. 2d 1167, 1171-72 (Miss. 2004) (holding that, while an improper instruction was given, no reversible error occurred based

on the jury instructions as a whole). It is true "defects in specific instructions do not require reversal where all instructions taken as a whole fairly—although not perfectly—announce the applicable primary rules of law." ***Shields v. Easterling***, 676 So. 2d 293, 295 (Miss. 1996). But the question posed by Wilson's motion for a new trial is different. It was not whether Instruction 7, read in isolation, was erroneous. The question was whether Instruction 7's essentially peremptory language confused the jury, particularly when read in connection with other instructions about having to find Wilson negligent. And here, as the trial judge put it, "[t]he fact that the jury grappled so much with undisputed factual issues is evidence of their confusion." *See* ***Griffin***, 362 So. 2d at 596 (holding that a new trial should have been granted because the jury was obviously confused by receiving a peremptory instruction and having the issue of liability submitted to them).

¶25. So the trial judge did not abuse his discretion by granting a new trial based on jury confusion created by Instruction 7. This becomes even more clear when the issue of a compromise verdict is factored in.

II. Compromise Verdict

¶26. This Court has rarely addressed the question of a compromise verdict, except to emphatically state that "our law condemns compromise verdicts." ***Dunn v. Jack Walker's Audio Visual Ctr.***, 544 So. 2d 829, 832 (Miss. 1989).

¶27. "A compromise judgment is one reached when the jury, unable to agree on liability, compromises that disagreement and enters a low award of damages." ***Nat'l R.R. Passenger Corp. v. Koch Indus., Inc.***, 701 F.2d 108, 110 (10th Cir. 1983) (citing ***Lucas v. Am. Mfg.***

Co., 630 F.2d 291, 294 (5th Cir. 1980); ***Young v. Int'l Paper Co.***, 322 F.2d 820, 823 (4th Cir. 1963)); *see* ***Dunn***, 544 So. 2d at 831 n.5 (pointing to ***Nat'l R.R. Passenger Corp.***, 701 F.2d at 110, for its "useful discussion of the phenomenon of the compromise verdict"). "[I]n other words, the jury compromises on damages to get to an agreement on liability." ***DC Gen. Contractors, Inc.***, 109 So. 3d at 586. When "the issues of liability and damages were tried together and there are indications that the jury may have rendered a compromise verdict, the court should grant a new trial on all of the issues rather than one limited solely to the issue of damages." ***Lucas***, 630 F.2d at 294 (citing ***Hatfield v. Seaboard Air Line R.R.***, 396 F.2d 721, 724 (5th Cir. 1968); 11 Charles Alan Wright & Arthur R. Miller et al., *Federal Practice and Procedure* § 2814 (1973); 6A James W. Moore et al., *Moore's Federal Practice* ¶ 59.06 (2d ed. 1979)).

¶28. We have held that a modest damages award standing alone is not evidence the jury was confused or compromised on liability. ***Dunn***, 544 So. 2d at 831; *see also* ***Pagan v. Shoney's, Inc.***, 931 F.2d 334, 339 (5th Cir. 1991) (holding that "a nominal or inadequate finding of damages alone does not automatically mandate the conclusion that a compromise verdict produced the award"). That said, the Tenth Circuit has recognized "[a] refusal to allow for undisputed special damages is usually convincing evidence that a jury failed to make a decision of the liability issue." ***Nat'l R.R. Passenger Corp.***, 701 F.2d at 110 (quoting ***Toshio Hamasaki v. Flotho***, 248 P.2d 910, 912 (Cal. 1952)). *But see* ***Thompson v. Dung Thi Hoang Nguyen***, 86 So. 3d 232, 238 (Miss. 2012) (holding that, "because the verdict was a general verdict," the Court could not "say for sure" why the jury selected the exact amount

of the award). "To determine whether a verdict is a compromise verdict, a court looks for a close question of liability, a damages award that is grossly inadequate, and other circumstances such as length of jury deliberation." ***Nat'l R.R. Passenger Corp.***, 701 F.2d at 110 (citing ***Vizzini v. Ford Motor Co.***, 569 F.2d 754, 761 (3d Cir.1977); ***Hatfield***, 396 F.2d at 723; ***Toshio Hamasaki***, 248 P.2d at 911). The Fifth Circuit has referred to these and other considerations—such as the jury's confusion concerning contributory negligence and request for additional instructions—as "indicia of compromise." ***Pagan***, 931 F.2d at 339. Another indicium is when "neither party urged acceptance in the trial court of the verdict finally rendered." ***Hatfield***, 396 F.2d at 723.

¶29. Here, several indicia of compromise are present. First, the question of liability was close. Second, while the jury awarded Richards's and Reed's undisputed lost wages, the jury awarded exactly half their undisputed medical damages. And the jury awarded no damages for pain and suffering—"convincing evidence that a jury failed to make a decision of the liability issue." ***Nat'l R.R. Passenger Corp.***, 701 F.2d at 110. Third, the jury clearly was confused by Instruction 7. The jury sought multiple clarifications through several notes. At one point, they told the judge they had answered no to Instruction 7's fourth question. This would have meant they had found Wilson not liable. But they later asked to whom "his failure" in question four referred. Only after informing the judge they were deadlocked and after receiving a ***Sharplin*** instruction did they render their verdict against Wilson. Fourth, neither side urged acceptance of the verdict. Richards and Reed sought an amended judgment and additur, and Wilson requested a new trial. Finally, in their motion after the

second trial, Richards and Reed asserted the first jury appeared to apportion fault by reducing the amount of damages to reach agreement that Wilson was 100 percent liable—the only liability option they were given.

Conclusion

¶30. This Court is not tasked with deciding whether we would have set aside a particular verdict. That is not the question presented or the review employed. As mentioned, this Court instead reviews the trial judge's findings for abuse of discretion. And after review, it is clear the record supported the trial judge's finding of a compromise verdict. The transcript showed obvious juror confusion during deliberations, coupled with the special verdict itself, which reduced or denied uncontested damages. Based on various indicia of compromise, the trial judge did not abuse his discretion by granting Wilson's motion for a new trial following the first trial based on a compromise verdict.

¶31. **AFFIRMED.**

RANDOLPH, C.J., KITCHENS AND KING, P.JJ., COLEMAN, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR.