

[Cite as *Jones v. Camargo*, 2010-Ohio-6483.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94974

TINA JONES

PLAINTIFF-APPELLANT

vs.

NEMESIO CAMARGO, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-683009

BEFORE: Rocco, P.J., Blackmon, J., and Boyle, J.

RELEASED AND JOURNALIZED: December 30, 2010

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KENNETH A. ROCCO, P.J.:

{¶ 1} Plaintiff-appellant, Tina Jones, asserts that the common pleas court erred by denying her motion for a new trial. We find the court did not abuse its discretion by denying appellant's motion. Therefore, we affirm.

{¶ 2} The complaint filed January 26, 2009 alleged that appellant was a passenger on a motorcycle operated by defendant-appellee, Nemesio Camargo, when the motorcycle struck a motor vehicle that was traveling in the opposite direction and turned in front of him. Appellant claimed that Camargo was acting within the scope of his employment with defendant-appellee, All Season Contracting and Landscaping, at the time of the collision. She urged that Camargo negligently failed to control the motorcycle and that All Season was liable for his actions under the doctrine of respondeat superior.

{¶ 3} The case proceeded to a jury trial beginning February 1, 2010. At the conclusion of the trial, the jury returned a unanimous verdict for appellees. The court entered judgment for the appellees on February 9, 2010.

{¶ 4} On February 17, 2010, appellant filed her motion for a new trial. In the motion, appellant's counsel alleged that he received an anonymous letter from a juror on February 14, 2010, a copy of which he attached to the motion. The juror stated that he or she "did not think the case was decided on the facts," that the jurors "saw [Camargo] make threatening comments

and outbursts during the trial,” and that the jurors observed him “talking loudly into his phone that he ‘would get’ anyone that crossed him.” The juror stated that “we [the jurors] discussed it but since the police never kept him out or arrested him, we were not going to put our lives on the line.”

{¶ 5} Also attached to appellant’s motion was an affidavit from Aaron Agosto. Agosto said he saw Camargo talking on his cell phone in the hallway outside the courtroom on the last day of trial. Five or six jurors were standing a few feet away. Agosto did not hear exactly what Camargo said, but did hear him comment about “not get[ting] in my way.” He then dropped a newspaper and a piece of paper on the floor. He picked up the newspaper, but left the paper there.

{¶ 6} In a thoughtful memorandum opinion, the trial judge concluded that the letter from the anonymous juror was inadmissible because the writer could not be identified and therefore the letter could not be authenticated. The trial judge further determined that the Agosto affidavit was not clear or positive evidence aliunde that any juror was threatened or intimidated by Camargo. Therefore, the court held that appellant did not present evidence of operative facts sufficient to prove that she was entitled to a new trial, and denied appellant’s motion. Appellant now appeals from this order.

{¶ 7} Civ.R. 59(A) provides in pertinent part that “[a] new trial may be granted to all or any of the parties and on all or part of the issues upon any of

the following grounds: (1) Irregularity in the proceedings of the court, jury, magistrate, or prevailing party * * *; (2) Misconduct of the jury or prevailing party; * * *.” Appellant’s motion sought a new trial on the ground that Camargo, one of the prevailing parties, intimidated the jury. We review the trial court’s decision on this motion for abuse of discretion. *Harris v. Mt. Sinai Med. Ctr.*, 116 Ohio St.3d 139, 2007-Ohio-5587, 876 N.E.2d 1201, ¶35. “In situations such as this one, appellate courts should defer to trial judges, who witnessed the trial firsthand and relied upon more than a cold record to justify a decision.” *Id.* at ¶36, citing *Mannion v. Sandel* (2001), 91 Ohio St.3d 318, 322, 744 N.E.2d 759.

{¶ 8} Appellant failed to present any admissible evidence of misconduct by Camargo. Cf. *East Ohio Gas v. Walker* (1978), 59 Ohio App.2d 16, 394 N.E.2d 348 (motion for a new trial supported by evidence of irregularity was improperly denied). The purported juror letter was not signed, nor was its alleged author identified; there was no way to ascertain whether the letter was what appellant claimed it to be. See Evid. R. 901(A). The Agosto affidavit did not actually allege any misconduct by Camargo. It only said that Camargo conducted an “angry” telephone conversation in front of the jurors outside the courtroom, made eye contact with the jurors, and dropped a piece of paper. There was no evidence of any implicit or explicit threat to the jurors based on Mr. Agosto’s affidavit alone. Appellant cannot use

statements from the juror letter to give substance to Camargo's anger and infer that it was directed at the jurors. Therefore, we find the trial court did not abuse its discretion by denying appellant's motion for a new trial.

Affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
MARY J. BOYLE, J., CONCU