

[Cite as *Hall v. Greater Cleveland Regional Transit Auth.*, 2018-Ohio-3582.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106527

TONJA M. HALL

PLAINTIFF-APPELLANT

vs.

**GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY**

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-16-871527

BEFORE: Blackmon, J., Kilbane, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: September 6, 2018

APPELLANT

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PATRICIA ANN BLACKMON, J.:

{¶1} Plaintiff-appellant, Tonja Hall (“Hall”), appeals from the jury verdict and judgment issued in favor of defendant-appellee Cleveland Regional Transit Authority (“GCRTA”) in Hall’s personal injury action. Hall assigns the following error for our review:

[The trial court violated local rules] and Ohio Rule of Civil Procedure 48 by not having the jury return to the courtroom, then, reading the verdict.

{¶2} Having reviewed the record and pertinent law, we affirm the decision of the trial court. The apposite facts follow.

{¶3} On November 7, 2016, Hall filed a pro se complaint against GCRTA, alleging she sustained injuries when a door closed on her while she was attempting to board a bus. The matter proceeded to a jury trial on November 7, 2017. The jury issued a verdict in favor of GCRTA.

{¶4} For her sole assignment of error, Hall complains that the trial court erred by failing to require the jury to return to the courtroom to read its verdict. In opposition, GCRTA asserts that the verdict was unanimously in favor of GCRTA, and that due to the absence of a transcript, we are to presume regularity and affirm.

{¶5} With regard to trial procedure, Civ.R. 48 states in relevant part:

In all civil actions, a jury shall render a verdict upon the concurrence of three-fourths or more of their number. The verdict shall be in writing and signed by each of the jurors concurring therein. All jurors shall then return

to court where the judge shall cause the verdict to be read and inquiry made to determine if the verdict is that of three-fourths or more of the jurors.

Upon request of either party, the jury shall be polled by asking each juror if the verdict is that of the juror; if more than one-fourth of the jurors answer in the negative, or if the verdict in substance is defective, the jurors must be sent out again for further deliberation. If three-fourths or more of the jurors answer affirmatively, the verdict is complete and the jury shall be discharged from the case. If the verdict is defective in form only, with the assent of the jurors and before their discharge, the court may correct it. * *

*.

{¶6} If an appellant believes that the jury's verdict is defective, the proper procedure is for the appellant to request the trial judge to poll the jurors. *Druzin v. S.A. Comunale Co.*, 8th Dist. Cuyahoga No. 102674, 2015-Ohio-4699, ¶ 18; *McKiernan v. Home Sav. of Am.*, 93 Ohio App.3d 13, 16, 637 N.E.2d 384 (3d Dist.1994). In the absence of such a request, a court must assume appellant did not believe the verdict to be substantially defective. *Id.* At the very least, the appellant should object prior to the jury being discharged as a means to preserve any argument on appeal. *Id.*

{¶7} With regard to appellate procedure, the appellant has the duty to file the transcript or such parts of the transcript that are necessary for evaluating the trial court's decision. App.R. 9(B); *Knapp v. Edwards Laboratories* , 61 Ohio St.2d 197, 199, 400

N.E.2d 384 (1980). Absent a transcript or alternative record under App.R. 9, we must presume regularity in the proceedings below. *Id.*

{¶8} In this matter, Hall initially indicated that the appeal was an App.R. 9(B) appeal that would include a transcript of the trial. However, Hall failed to timely file a transcript, and this court, *sua sponte*, gave her a 30-day extension of time within which to do so. After five weeks, the transcript was not filed. No statement of the evidence or agreed statement under App.R. 9(C) or (D) was filed to support the appeal, so this court converted this matter to an App.R. 9(A) appeal that included the court's original papers and exhibits.

{¶9} The trial court's journal indicates that the "jury delivered a verdict in favor of the defendant." The verdict forms, though not part of our record on appeal, are part of the trial court's docket.

{¶10} In light of the foregoing, there is no transcript or other record to support Hall's claim that the jury did not return to the courtroom to give its verdict, and there is no indication that Hall objected to the verdict or that the defense verdict is defective. Accordingly, we are compelled to presume the regularity of the verdict, and the record does not undermine that presumption.

{¶11} The assigned error is without merit.

{¶12} Judgment is affirmed.

It is ordered that appellee recover of 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.

PATRICIA ANN BLACKMON, JUDGE

MARY EILEEN KILBANE, P.J., and
EILEEN T. GALLAGHER, J., CONCUR