

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

REGINALD ECTOR AND JAMES MARK
BOUDREAU, A/K/A MARK JAMES
BOUDREAU,

Appellants

v.

STEPHEN A. KING AND RICHARD KING,

Appellees

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 128 EDA 2012

Appeal from the Judgment Entered February 23, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): August Term, 2003 No. 4788

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REGINALD ECTOR AND JAMES MARK
BOUDREAU, A/K/A MARK JAMES
BOUDREAU,

v.

STEPHEN A. KING AND RICHARD KING,

Appeal of: Stephen A. KING,

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IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 129 EDA 2012

Appeal from the Judgment Entered February 23, 2011
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): August Term, 2003 No. 4788

BEFORE: STEVENS, P.J., BOWES, J., and PLATT, J.*

MEMORANDUM BY STEVENS, P.J.

Filed: February 21, 2013

* Retired Senior Judge assigned to the Superior Court.

Appellants/Cross-Appellees Reginald Ector and James Mark Boudreau purport to appeal from the trial court's order denying their Motion for Reconsideration of the trial court's decision to grant Appellee Stephen A. King's Motion for Remittitur.¹ Appellee/Cross-Appellant Stephen A. King purports to appeal the trial court's denial of his post-trial motion.² The trial court prepared an opinion indicating that it believed that both appeals should be quashed as untimely filed. However, since the trial court entered judgment in favor of Appellants Ector and Boudreau after this appeal was filed, we treat the appeals as having been timely filed after judgment was entered. Nevertheless, as the trial court's opinion did not contain its specific conclusions or grounds for making its final decisions, we remand for the trial court to prepare a comprehensive opinion addressing the issues raised in the appeal and cross-appeal filed in this Court.

In November 2003, Appellants Ector and Boudreau filed this negligence action in connection with a motor vehicle accident that occurred on September 5, 2001, in which they alleged that Appellee King negligently made a left hand turn from a right lane and collided with Appellants' vehicle.

¹ An appeal does not lie from the trial court's denial of reconsideration, but from the underlying judgment. *Erie Ins. Exchange v. Larrimore*, 987 A.2d 732 (Pa. Super. 2009).

² The trial court's denial of post-trial motions is generally not an appealable order, but the subsequent judgment is appealable. *Prime Medica Associates v. Valley Forge Ins. Co.*, 970 A.2d 1149, 1154 n. 6 (Pa. Super. 2009).

The parties submitted this matter to arbitration on two separate occasions. Appellants appealed the decisions of the arbitrators and the matter proceeded to a jury trial.

On May 11, 2011, a jury found that Appellee King's negligence caused the accident and awarded Appellants Ector and Boudreau damages in the amount of \$250,000 and \$37,000, respectively. On May 20, 2011, Appellee King filed a Post-Trial motion and moved for a Judgment Notwithstanding the Verdict (JNOV) or in the alternative, a new trial. On September 26, 2011, upon the trial court's request, Appellee King filed a Post-Trial Motion seeking remittitur of the jury's verdict. Thereafter, the trial court prepared an order on September 28, 2011, denying Appellee King's post-trial motion. However, the trial court prepared a second order on October 18, 2011, granting Appellee King's motion for remittitur and reducing the jury's award to Ector and Boudreau to \$50,000 and \$25,000, respectively. Although the parties may have received notice of these rulings, these orders were not docketed until November 9, 2011. We note that the trial court never entered final judgment in favor of Ector and Boudreau in these orders.

On October 31, 2011, Appellants Ector and King filed a Motion for Reconsideration of the trial court's order granting remittitur. The trial court denied this Motion for Reconsideration in an order docketed November 15, 2011. On December 13, 2011, Appellants Ector and King filed an appeal to challenge the court's order granting remittitur. On December 22, 2011,

Appellee King filed a cross-appeal challenging the trial court's denial of its Post-Trial Motion.

On February 10, 2012, the trial court filed an opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) indicating that it believed both appeals should be quashed as untimely filed as Appellants' Motion for Reconsideration did not toll the time period for filing an appeal. On February 16, 2012, this Court entered an order *per curiam* directing the parties to praecipe the trial court prothonotary to enter judgment on the docket as required by Pennsylvania Rule of Appellate Procedure 301. The trial court entered final judgment on the lower court docket on February 23, 2012. As a result, we will treat the parties' appeals as if they were filed after the entry of judgment, which is the appealable order. **See** Pa.R.A.P. 905(a) ("A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof."); ***Am. & Foreign Ins. Co. v. Jerry's Sport Ctr., Inc.***, 948 A.2d 834, 842 (Pa. Super. 2008), *affirmed*, 606 Pa. 584, 2 A.3d 526 (2010) (treating the defendant's appeal from the verdict as having been taken from the final judgment when judgment was entered after the appeal was filed).

Appellants Ector and Boudreau claim the trial court erred in remitting the jury's verdicts to \$50,000 and \$25,000, respectively. In his cross appeal, Appellee King claims the trial court erred in refusing to grant his

motion for JNOV when the jury's verdict was not supported by the evidence presented at trial as Appellant Ector presented no evidence of wage loss, income loss, or payment of medical bills. Appellee King points out that as Appellant Ector was bound by limited tort as the driver of an uninsured motor vehicle, he was required to prove he sustained a "serious injury" in order to recover non-economic damages. Appellee King also claims he was entitled to a new trial as 1) Appellant's attorney made several inappropriate comments at trial that may have prejudiced the jury, 2) the trial court allowed the admission of an expert report discussing an MRI Appellant Ector received when neither the MRI films nor the report was provided to Appellee King to review and 3) the jury's verdict shocked the conscience.

Unfortunately, as the trial court believed that these appeals would be quashed as untimely, the trial court did not discuss the merits of any of the aforementioned issues. Accordingly, we remand this case to the trial court for the preparation of a comprehensive opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) that addresses each and every issue raised in Appellants Ector and Boudreau's appeal and Appellee King's cross-appeal. This opinion must be forwarded to this Court within sixty (60) days.

Case remanded. Panel jurisdiction retained.