

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 7, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-2964-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

REYNAULD QUILES,

PLAINTIFF-APPELLANT,

v.

**ST. PAUL FIRE AND MARINE INS., CO. AND
AMY ELLIOTT,**

DEFENDANTS-RESPONDENTS.

APPEAL from an amended judgment of the circuit court for Milwaukee County: JACQUELINE D. SCHELLINGER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

PER CURIAM. Reynauld Quiles appeals from the trial court's amended judgment finding him seventy percent causally negligent for injuries he allegedly suffered in an automobile accident with another motorist, Amy Elliott. Quiles argues that the trial court erred when it denied his motion to strike the affirmative defense of contributory negligence pled in the answer filed by

Elliott and St. Paul Fire and Marine Insurance Company (the insurer). Quiles also argues that the trial court erred when it denied his motions after verdict: (1) repeating the contention that the affirmative defense of contributory negligence was barred by the doctrine of claim preclusion; and (2) alleging that the jury's verdict was perverse or inconsistent because it failed to award him any damages for past pain and suffering. Because we conclude that the trial court properly exercised its discretion in rejecting the application of issue preclusion and correctly determined that the jury's verdict was not perverse or inconsistent, we affirm the amended judgment.¹

BACKGROUND

This case arises from an automobile accident that occurred on November 3, 1995, involving vehicles driven by Quiles and Elliott. Both drivers claimed they had the green light at the time of the accident.

Subsequently, Robert Elliott, owner of the vehicle operated by Amy Elliott, initiated a small claims action against Quiles for property damage to the Elliott vehicle. The small claims court entered a judgment dismissing the complaint and awarding costs to Quiles.² The small claims judgment did not include any findings.

Quiles later initiated this action. When Amy Elliott and the insurer answered and asserted an affirmative defense based on Quiles's contributory negligence, Quiles filed a motion to strike. Quiles argued that the previous small

¹ This appeal was expedited pursuant to RULE 809.17, STATS.

² *Elliott v. Granger, et al*, No. 96SC024039 (Mil. Co. Cir. Ct. March 7, 1997).

claims proceeding precluded litigation of the issue of Quiles's alleged contributory negligence. The trial court denied the motion on the basis of fundamental fairness.

The jury returned a verdict finding Quiles seventy percent negligent and Amy Elliott thirty percent negligent. The jury awarded Quiles \$1,050.00 for medical expenses but nothing for past pain and suffering.

The trial court denied Quiles's post-verdict motion on the issue of claim preclusion for the same reason it had denied his pretrial motion. The trial court denied Quiles's motion for a new trial on damages, ruling that the jury's verdict was not perverse or inconsistent. The trial court granted an amended judgment to Amy Elliott and the insurer.

DISCUSSION

We first address the issue of whether the trial court erred in refusing to bar Amy Elliott's and the insurer's affirmative defense that Quiles was contributorily negligent. The question of whether to bar a claim under the doctrine of issue preclusion is within the wide discretion of the trial court. *See Ambrose v. Continental Ins. Co.*, 208 Wis.2d 346, 350, 560 N.W.2d 309, 311 (Ct. App. 1997). When reviewing the trial court's exercise of discretion, this court will sustain the trial court's conclusion "if the trial court applied the proper law to the relevant facts of record and used a rational process to arrive at a reasonable result." *Id.*

The issue of whether to bar litigation under the doctrine of issue preclusion centers on considerations of fundamental fairness. *See id.* at 351, 560 N.W.2d at 311. Stated differently, a trial court's decision to apply issue preclusion to bar a claim turns on the trial court's sense of justice and equity on a case by

case basis. See *Michelle T. v. Crozier*, 173 Wis.2d 681, 690, 495 N.W.2d 327, 331 (1993). When addressing these matters of equity, the trial court may consider “some or all” of the following five “fundamental fairness” factors:

(1) could the party against whom preclusion is sought, as a matter of law, have obtained review of the judgment; (2) is the question one of law that involves two distinct claims or intervening contextual shifts in the law; (3) do significant differences in the quality or extensiveness of proceedings between the two courts warrant relitigation of the issue; (4) have the burdens of persuasion shifted such that the party seeking preclusion had a lower burden of persuasion in the first trial than in the second; or (5) are matters of public policy and individual circumstances involved that would render the application of collateral estoppel to be fundamentally unfair, including inadequate opportunity or incentive to obtain a full and fair adjudication in the initial action?

Id. at 688-89, 495 N.W.2d at 330-31 (footnote omitted).

In this case, the trial court considered and applied each of the five fundamental fairness factors to the relevant facts. The trial court gave particular weight to the fact that there was no record of what had actually occurred in the small claims action. The trial court concluded, therefore, that it could not determine how extensive the proceedings were or whether the issues germane to this litigation were addressed and adjudicated. The trial court also observed that large claims proceedings are handled in a manner quite different from small claims proceedings, where the rules of evidence are generally suspended under § 799.209(2), STATS., and the parties and witnesses may appear *pro se*. The trial court concluded that it would be fundamentally unfair to deny Amy Elliott and the insurer, neither of whom were parties to the small claims action and both of whom lacked standing to obtain review of the small claims judgment, the opportunity to prove their claim of contributory negligence.

We conclude that the record amply demonstrates that the trial court properly applied a correct standard of the law to the relevant facts and used a rational process to reach a reasonable result. Accordingly, we hold that the trial court did not misuse its discretion when it denied Quiles's motion to strike the affirmative defense of contributory negligence or his post-verdict motion renewing this request.

We next review the trial court's order denying Quiles's motion for a new trial on the ground that the jury's verdict was perverse or inconsistent. An appellate court's review of a jury's verdict is "severely circumscribed." *Stahler v. Beuthin*, 206 Wis.2d 610, 617, 557 N.W.2d 487, 489 (Ct. App. 1996). A jury's verdict must be affirmed "if there is any credible evidence to support [it]." *Id.* (citation omitted). This is more true when the verdict has the trial court's approval because the trial court is in a "better position to determine whether perversity permeated the verdict." *Redepinning v. Dore*, 56 Wis.2d 129, 134, 201 N.W.2d 580, 583 (1972). Further, credibility of witnesses and the assignment of weight afforded to witness testimony is left to the province of the jury. *Stahler*, 206 Wis.2d at 617-18, 557 N.W.2d at 489-90. Similarly, this court must accept the inference, if reasonable, drawn by the jury from the evidence. *See id.* at 617-18, 557 N.W.2d at 490.

Quiles argues that the jury's verdict was "inconsistent and perverse" because it awarded him \$1,050.00 for medical expenses and \$0 for pain and suffering. We disagree.

"A verdict is not inconsistent because it allows damages for medical expenses but denies recovery for personal injuries or pain and suffering." *Stahler*, 206 Wis.2d at 623, 557 N.W.2d at 492. Further, a verdict is perverse

when the record evinces the jury's refusal to follow the trial court's instructions on a point of law, or the verdict reflects highly emotional, inflammatory or immaterial considerations by the jury or its unfair pre-judgment of the case. *See Redepinning*, 56 Wis.2d at 134, 201 N.W.2d at 583.

Here, the trial court reviewed the jury's verdict and concluded that it reflected the jury's reasonable determination that Quiles suffered minimal damages consisting of medical expenses but that his complaints of pain and suffering, issues turning on the jury's unique role as arbiter of witness credibility, were not sufficient to sustain an award of damages. We further note that Quiles failed to cite any portion of the record to support the claim that the jury refused to follow the trial court's instructions or that its verdict was based on highly emotional, inflammatory or immaterial considerations, or an unfair pre-judgment of the case. We hold, therefore, that the trial court did not err when it denied Quiles's post-verdict motion for a new trial based on the contention that the verdict was perverse or inconsistent.

By the Court.—Amended judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

