

RENDERED: January 10, 1997; 2:00 p.m.  
NOT TO BE PUBLISHED

NO. 95-CA-001635-MR

SHIRLEY TEAL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE GEOFFREY P. MORRIS, JUDGE  
ACTION NO. 92-CI-004023

DOLLAR RENT-A-CAR and  
MARGARET ROTHMAN

APPELLEES

AND

NO. 95-CA-001636-MR

HUMANA HEALTH SERVICES

APPELLANT

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DOLLAR RENT-A-CAR and  
MARGARET ROTHMAN

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**OPINION**  
**AFFIRMING**

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BEFORE: WILHOIT, CHIEF JUDGE; JOHNSON and MILLER, Judges.

JOHNSON, JUDGE: Shirley Teal (Teal) and Humana Health Services (Humana) appeal a Jefferson Circuit Court judgment entered April 28, 1995, following a jury verdict that found no liability on the part of Margaret Rothman (Rothman), driver of a Dollar Rent-A-Car shuttle bus. Teal and Humana allege that the trial court erred by

not entering a directed verdict in their favor. We affirm the trial court.

On November 7, 1990, Teal, who was on a business trip for Humana Health Services, arrived at Louisville's Standiford Field after an airplane flight. As Teal sat in the back seat of a taxi, a collision occurred between a shuttle bus, driven by Rothman who was working for Dollar Rent-A-Car, and the taxi. The collision occurred when the taxi driver, Roger Peters (Peters), opened the door of the taxi. Teal alleged a back injury from the jolt of the collision and Humana paid her medical bills as well as workers' compensation benefits.<sup>1</sup>

Teal and Humana sued Rothman, Dollar Rent-a-Car, Peters, Adam Ferrell (owner of the taxi) and two taxi cab companies. At trial, Teal and Humana moved for a directed verdict on liability, which was denied by the trial court. The jury found Rothman not liable. Teal and Humana subsequently moved for a judgment notwithstanding the verdict, which the trial court denied. This appeal followed.

Our standard of review in determining whether a trial court has erred in not granting a motion for a directed verdict is clearly stated in Humana of Kentucky, Inc. v. McKee, Ky.App., 834 S.W.2d 711 (1992), as follows:

Upon review of the evidence supporting a judgment entered upon a jury verdict, the role of an appellate court is limited to determining whether the trial court erred in failing to grant the motion for directed verdict. All evidence which favors the prevailing party

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<sup>1</sup> Prior to this accident, Teal had a long history of serious back problems and the damage claim was strongly contested.

must be taken as true and the reviewing court is not at liberty to determine credibility or the weight which should be given to the evidence, these being functions reserved to the trier of fact. . . . The prevailing party is entitled to all reasonable inferences which may be drawn from the evidence. Upon completion of such an evidentiary review, the appellate court must determine whether the verdict rendered is "'palpably or flagrantly' against the evidence so as 'to indicate that it was reached as a result of passion or prejudice.'"

Id. at 718 (citations omitted) (emphasis original). A motion for directed verdict must be denied unless there is "'a complete absence of proof on a material issue in the action, or if no disputed issue of fact exists upon which reasonable men could differ.'" Everley v. Wright, Ky.App., 872 S.W.2d 95, 96 (1993), citing Taylor v. Kennedy, Ky.App., 700 S.W.2d 415, 416 (1985).

The evidence that we must consider which is favorable to Rothman includes: Rothman was in the middle driving lane stopped at a stop sign; Rothman observed Peters' cab door to be closed; Rothman pulled out slowly; Rothman heard a scraping sound near the rear of the bus which she believed to be a stop sign which was located to her left between the two driving lanes; no one saw the actual impact; there was no evidence of Rothman speeding, swerving, or being in the curb lane; and there was conflicting testimony regarding when the cab door was opened.

Taking all the evidence in Rothman's favor as true, the jury could have found that Rothman was not negligent and that Peters opened his door after the front of Rothman's shuttle passed and the opened door extended out into the middle lane striking the

shuttle bus. We hold that since material issues of fact as to liability were disputed, Humana's motion for a directed verdict was properly denied. We affirm the trial court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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