

RENDERED: November 24, 1999; 2:00 p.m.
 NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001224-MR

SCOTT BALL AND
BRENDA STERLING

APPELLANT

APPEAL FROM LAUREL CIRCUIT COURT
v. HONORABLE LEWIS HOPPER, JUDGE
ACTION NO. 96-CI-640

JOHN HANGER

APPELLEE

OPINION
AFFIRMING
*** * * * * *

BEFORE: GARDNER, HUDDLESTON AND KNOX, JUDGES.

GARDNER, JUDGE: Scott Ball and Brenda Sterling appeal from an final judgment of the Laurel Circuit Court in a personal injury action they brought against John Hanger. They specifically contest the circuit court's order denying their motion to alter, amend or vacate the judgment. They maintain that the jury's awards of damages were inadequate and were contrary to the evidence presented. After reviewing the record below, this Court affirms the circuit court's order denying their motion.

On May 7, 1997, a pickup truck driven by Ball, with Sterling as his passenger, was struck in the rear by a truck driven by Hanger. The accident occurred while Ball's vehicle was

stopped for traffic on Interstate 75 in Laurel County, Kentucky. Ball and Sterling went to a local emergency room that day for treatment and have claimed that they have suffered injuries as a result of the accident. They subsequently sought treatment in Michigan, Florida and Louisville, Kentucky.¹

In September 1996, Ball and Sterling brought an action against Hanger. The case proceeded to trial. The trial court granted a directed verdict for Ball and Sterling regarding the liability issue, and submitted the case to the jury on the issue of damages. The jury awarded Sterling past medical expenses of \$1,872.23 and \$150 for pain and suffering. It awarded Ball \$1,481 for past medical expenses, \$679.67 for motel and rental vehicle expenses, \$1,200 for lost wages and \$150 for pain and suffering.

Ball and Sterling subsequently moved the trial court to alter, amend or vacate the judgment. They sought a new trial on damages. The trial court denied their motion. Ball and Sterling have appealed to this Court.

Ball and Sterling argue that the trial court erred by denying their motion for a new trial. They contend that the damage awards should be vacated, and a new trial should be held on all issues of damages. They argue that the amount of medical expenses awarded to both of them was inadequate and was not based upon the evidence presented. They maintain that the pain and suffering awards were inadequate and also that the award of lost

¹Ball is a self-employed roofer who occasionally travels to other locations to work. This is why Ball and Sterling sought treatment in different locations.

wages to Ball was not sufficient. The trial court did not err by denying the motion for a new trial.

Generally, an injured party may recover necessary and reasonable medical expenses in a personal injury action.

Langnehs v. Parmelee, Ky., 427 S.W.2d 223, 224 (1967). In such actions, recovery has usually included only expenses incurred for treatment or cure of the particular injury. Shulz v. Chadwell, Ky. App., 558 S.W.2d 183, 188 (1977). The jury determines whether the entire medical bills submitted directly resulted from the accident in question. Id., at 189. See also Harr v. Betsy Ross Bakeries, Inc., Ky., 411 S.W.2d 681, 682 (1967). A jury's verdict regarding such matters should not be disturbed unless it is so disproportionate to strike the mind at first blush as resulting from passion and prejudice. Harr v. Betsy Ross Bakeries, Inc., 411 S.W.2d at 682.

Under Kentucky Rule of Civil Procedure (CR) 59.01, "[a] new trial may be granted to all or any of the parties and on all or part of the issues for . . . (d) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice or in disregard of the evidence or the instruction of the court." When presented with a motion for a new trial on grounds of excessive or inadequate damages, a trial court must decide whether the jury's award appears to have been given under the influence of passion or prejudice in disregard of the evidence or the court's instructions. Davis v. Graviss, Ky., 672 S.W.2d 928, 932 (1984). The trial court would apply the "first blush" rule set out above. Id. An appellate court

reviews the trial court's decision to deny a motion for a new trial and determines whether the trial court erred as a matter of law. Id.; Prater v. Arnett, Ky. App., 648 S.W.2d 82, 86 (1983). The trial court will not be held to have erred unless it abused its discretion. Prater v. Arnett, 648 S.W.2d at 86. The trial court is presumptively correct, and an appellate court must not hastily substitute its judgment for the trial court which monitored the trial. Id.

We decline to disturb the trial court's order denying Ball and Sterling's motion for a new trial. First, the award to Ball regarding lost wages was clearly reasonable. His testimony was rather vague regarding this matter. He stated that he earned approximately \$400 to \$600 per week and that he missed approximately three weeks of work following the accident. Thus, the \$1,200 award was within the parameters of the evidence presented. Second, the award for pain and suffering, while somewhat low, was not that far out of line with the evidence. Both Ball and Sterling stated that they suffered pain immediately following the accident for up to three weeks but that the major soreness went away after that. Evidence regarding the cause of the claimed lingering symptoms such as Ball's bad back and Sterling's migraine headaches was unclear. There was no definite showing that these conditions were linked to the accident. Third, the awards for medical expenses did not deviate so far from the evidence as to require a new trial. While the awards were lower than the expenses claimed by Ball and Sterling, evidence was presented at trial that some of the medical expenses

were for treatment of conditions that were not proven to be directly linked to the accident. A physician testified that the migraine headaches suffered by Sterling were an illness and were not caused by the accident. As earlier stated, the evidence did not clearly show that Ball's recurring back problems were related to the accident. The trial court did not abuse its discretion or err as a matter of law in denying the motion for a new trial.

For the foregoing reasons, the judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Maxine Higgason
Corbin, Kentucky

BRIEF FOR APPELLEE:

Deborah R. Lewis
Hazard, Kentucky