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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-1121-MR

MONICA TURPIN — APPELLANT

v.

APPEAL FROM JESSAMINE CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 22-CI-00480

THE ALLEN COMPANY, INC. — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, EASTON, AND KAREM, JUDGES.

KAREM, JUDGE: Following a jury trial in a suit filed by Monica Turpin ("Turpin") for negligence in a motor vehicle accident, Turpin appeals from the Jessamine Circuit Court's trial verdict and judgment granting judgment in favor of The Allen Company (the "Company"). Finding no error, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On May 16, 2022, David Chaney, the driver of a sweeper vehicle for the Company, was operating the vehicle southbound on the Nicholasville Bypass (hereinafter, the "Bypass") in the Bypass's left closed northbound lane. Turpin made a right-hand turn from Wichita Drive, entering the closed lane on the Bypass driving northbound. She drove head-on into the front of Chaney's sweeper vehicle, which was traveling in the opposite direction, and sustained injuries from the resulting collision.

On September 12, 2022, Turpin filed suit against the Company, asserting claims of negligence, negligence *per se*, negligent hiring, training, supervision, and retention, and punitive damages. The circuit court conducted a jury trial from May 19, 2025, to May 21, 2025. The jury unanimously determined that the Company complied with its applicable duties and was not liable for causing the accident at issue. This appeal followed.

We will discuss further facts as they become applicable.

ANALYSIS

1. THE CIRCUIT COURT CORRECTLY COMBINED BOTH OF THE COMPANY'S DUTIES IN ONE JURY INSTRUCTION.

On appeal, Turpin first claims that jury Instruction No. 1 was flawed because it failed to separate the specific duties of the Company into two

instructions: one for the operation of the machinery in the roadway and another for duties related to traffic control at the applicable intersection. Specifically, Instruction No. 1 stated the following:

> The Allen Company, Inc., by and through its agents, had the following duties:
>
> (a) to exercise ordinary care in the operation of machinery in the road; and
>
> (b) to exercise ordinary care in the execution of its traffic control obligations under the construction contract with Commonwealth of Kentucky, including compliance with all traffic control requirements therein.

Moreover, Interrogatory No. 1 questioned as follows:

> Do you believe from the evidence that The Allen Company, Inc. by and through its agents failed to comply with one or more of the duties set forth in Instruction No. 1 and that such failure was a substantial factor in causing the subject accident and the claimed damages?

"Alleged errors regarding jury instructions are considered questions of law that we examine under a *de novo* standard of review." *Hamilton v. CSX Transportation, Inc.*, 208 S.W.3d 272, 275 (Ky. App. 2006) (citation omitted).

Under Kentucky law, it is well settled that "[e]ach party to an action is entitled to an instruction upon his theory of the case if there is evidence to sustain it." *Farrington Motors, Inc. v. Fidelity & Cas. Co. of N.Y.*, 303 S.W.2d 319, 321 (Ky. 1957) (citations omitted). As discussed by the Kentucky Supreme Court:

> From the case law and commentary, it is clear that Kentucky law mandates the use of "bare bones" jury instructions in all civil cases. The Court of Appeals in this case correctly stated that jury instructions should refrain from elaborating on an abundance of detail, but still strike the proper balance in providing enough information to a jury to make it fully aware of the respective legal duties of the parties. Indeed, "bare bones" instructions serve the courts and juries well because they pare down unfamiliar and often complicated issues in a manner that jurors, who are often not familiar with legal principles, can understand.
>
> "Bare bones" instructions are proper if they correctly advise the jury about "what [the jury] must believe from the evidence in order to return a verdict in favor of the party who bears the burden of proof" on that issue. The question to be considered on an appeal of an allegedly erroneous instruction is whether the instruction misstated the law. It is within a trial court's discretion to deny a requested instruction, and its decision will not be reversed absent an abuse of that discretion.

Olfice, Inc. v. Wilkey, 173 S.W.3d 226, 229 (Ky. 2005) (citations omitted).

In this case, Turpin does not argue that the instructions were deficient or misstated Kentucky law regarding the Company's duties. Rather, Turpin essentially argues that the instruction's format was improper and should have consisted of two separate instructions.

However, Instruction No. 1 clearly identified the Company's duties to exercise ordinary care in operating the sweeper truck and to execute the traffic control obligations under its contract with the Commonwealth. There was nothing in the instruction that prevented the jury from finding that the Company violated

either duty, and Turpin's counsel had the opportunity to discuss with the jury both the instruction's contents and its implications. Indeed, Interrogatory No. 1 asked the jury whether they believed that the evidence showed that the Company "failed to comply with **one or more** of the duties set forth in Instruction No. 1," meaning only one breach was needed to find the Company negligent.

Here, the jury instructions presented did not misstate or mislead the jury. Indeed, the jury instructions "were complete and accurate instructions on Kentucky law." *Primal Vantage Company, Inc. v. O'Bryan*, 677 S.W.3d 228, 246 (Ky. 2022). Moreover, Turpin's counsel had every opportunity to clarify any concern about the application of the instructions to the facts and how liability should be assigned during closing arguments. Because the jury instructions adequately set out the applicable duties and standards of care, we affirm as to this issue.

2. THE JURY INSTRUCTION PROPERLY LISTED THE DUTIES OF TURPIN IN THE OPERATION OF HER VEHICLE.

Turpin next argues that Instruction No. 2 improperly "listed numerous statutory duties of Turpin, of which there was no evidence presented at trial." The Company contends that Turpin's argument is moot, as the jury never reached Instruction No. 2, which addressed Turpin's conduct.

Kentucky courts have recognized that "unless there is an actual case involving a present, ongoing controversy, the issues surrounding it become moot." *Dep't of Corrections v. Engle*, 302 S.W.3d 60, 63 (Ky. 2010) (citations omitted). "Our courts do not function to give advisory opinions, even on important public issues, unless there is an actual case in controversy." *Philpot v. Patton*, 837 S.W.2d 491, 493 (Ky. 1992).

In this case, the jurors unanimously answered "no" under Interrogatory No. 1, which asked, "Do you believe from the evidence that [the Company] failed to comply with one or more of the duties set forth in Instruction No. 1 and that such failure was a substantial factor in causing the subject accident and the claimed damages?" The end of Interrogatory No. 1 stated "[i]f you answered "NO" to Interrogatory No. 1 you have found in favor of [the Company] and you may return to the courtroom with your verdict. If you answered "YES" to Interrogatory No. 1, proceed to Instruction No. 2." The jury unanimously answered "no" to Interrogatory No. 1.

Therefore, once the jury found in favor of the Company under Instruction No. 1 on liability, it had no other instructions to consider, including Instruction No. 2. Thus, we agree with the Company that this issue is moot. We also hold that this issue does not meet any of the exceptions to the mootness doctrine that would permit us to review it.

Even if we were to find error in this instruction, the error would be harmless for the same reason – the jury never reached that instruction. *See CSX Transp., Inc. v. Begley*, 313 S.W.3d 52, 69 (Ky. 2010) (footnote citations omitted) ("When considering a claim of harmless error under [Kentucky Rule of Civil Procedure ("CR")] 61.01, the court determines whether the result probably would have been the same absent the error or whether the error was so prejudicial as to merit a new trial.").

3. THE TRIAL COURT PROPERLY EXCLUDED EVIDENCE OF A PRIOR ACCIDENT.

Turpin next contends that the circuit court erred in excluding evidence of a prior accident on the roadway. Specifically, Turpin states that she had been told by a responding officer that he was involved in another accident involving the Company and another vehicle at a different intersection. The circuit court ruled in the Company's motion *in limine* that this evidence must be excluded during the trial. The standard of review regarding a circuit court's rulings on evidentiary issues is abuse of discretion. *Manus, Inc. v. Terry Maxedon Hauling, Inc.*, 191 S.W.3d 4, 8 (Ky. App. 2006) (footnoted citations omitted). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000) (citation omitted).

Turpin cites to *Montgomery Elevator Co. v. McCullogh ex rel. McCullogh*, for the proposition that accidents which occur on "substantially similar circumstances" are relevant to show "the existence of a causative role [of a] dangerous condition, or a party's notice of such a condition." 676 S.W.2d 776, 783 (Ky. 1984) (quoting *Harris v. Thompson*, 497 S.W.2d 422, 429 (Ky. 1973)). Whether a prior incident is "substantially similar" to the incident at issue "is a matter of relevance to be decided in the discretion of the trial judge and will not be reversed unless there has been an abuse of discretion." *Bramblett v. Penski Truck Leasing Company, L.P.*, 598 S.W.3d 567, 576 (Ky. App. 2019) (citation omitted).

In this case, the circuit court clearly determined that the alleged other accident was not "substantially similar" or relevant. This evidence, which only serves to compare the Company's claimed negligence to that of strangers of unknown prudence in unknown circumstances, is not competent on the narrow issue of negligence. We can discern no abuse of the circuit court's discretion as to this issue and therefore affirm.

4. THE TRIAL COURT PROPERLY ADMITTED EVIDENCE FROM A NONPARTY'S SOCIAL MEDIA.

Turpin's final claim on appeal is that evidence of Turpin's fiancée's social media posts depicting Turpin that was not previously disclosed was improperly admitted as impeachment evidence. As previously discussed, the jury found the Company not liable for causing this accident and therefore the jury did

not deliberate regarding damages. The exhibits were relevant to contradict Turpin's claims of pain and suffering. However, damages were not decided by the jury in this case. If any error resulted from the circuit court's decision to admit the social media pictures, the error had no discernable impact upon how the jury resolved whether the Company failed to comply with any of its duties and that such failure was a substantial factor in causing the subject accident and therefore does not warrant reversal. *See* CR 61.01.

CONCLUSION

Based on the foregoing, we affirm.

ALL CONCUR.

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