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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000719-MR

GRETA Y. SMALLWOOD — APPELLANT

v.

APPEAL FROM GALLATIN CIRCUIT COURT
HONORABLE PAUL W. ROSENBLUM, JUDGE
ACTION NO. 03-CI-00153

JUDITH K. SCHNEIDER — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: LAMBERT, MOORE, AND NICKELL, JUDGES.

LAMBERT, JUDGE: Greta Smallwood appeals from a denial of her motion for a new trial. For the reasons set forth herein, we affirm the judgment of the Gallatin Circuit Court.

Smallwood filed an action for negligence against Judith Schneider as a result of a car wreck. Schneider had slowed to approximately five-ten miles per hour before rear-ending Smallwood, so the collision resulted in almost no visible damage to Smallwood's car. Additionally, Smallwood reported no injuries at the scene, and the

officer on the scene reported it as a non-injury accident. Smallwood drove herself away from the scene and went onto her daughter's school award program, but she later went to the emergency room with the primary complaint of neck pain.

Smallwood missed a total of three days of work due to the accident. She also completed two months of physical therapy per her physician's instructions. Three months later, Smallwood began a course of chiropractic treatment consisting of 120 visits over four years.

At trial, both Smallwood's family doctor and chiropractor testified that she was diagnosed with a cervical strain but that normal recovery time is within two months of the accident. Smallwood also undertook an independent medical examination with Dr. Steven Wunder. Wunder agreed with the diagnosis of a cervical strain and affirmed that she had significant recovery within the first two months of the accident. By the conclusion of her physical therapy, all indications were that she was pain free, had normal range of motion, and had been able to continue in her job. He testified further that her treatments and particularly the chiropractic care was excessive and not reasonable or necessary or related to the auto accident.

At trial, Smallwood sought medical expenses of $21,000.00 and wage loss of $11,000.00. She also sought $25,000.00 in future medical expenses and some $150,000.00 in past and future pain and suffering. The jury returned a verdict of past medical expenses in the amount $2,534.00 and wage loss of $524.00. They declined any

award for future medical expenses or pain and suffering. Smallwood moved for a new trial which was denied. She now appeals.

Smallwood first argues that the trial court erred by denying her motion for a directed verdict on the threshold issue of whether she had sustained more than $1,000.00 for reasonable and necessary medical treatment because of the auto accident. We agree but hold the error harmless.

A reviewing court is under a duty to consider the evidence in a light most favorable to the party opposing a motion for directed verdict. *Previs v. Daily*, 180 S.W.3d 435 (Ky. 2000). Furthermore, the trial judge may not enter a directed verdict unless there is a complete absence of proof on a material issue or no disputed issues of fact upon which reasonable minds could differ. *Bierman v. Klapheke*, 967 S.W.2d 16 (Ky. 1998). Moreover, we will only substitute our judgment if the trial court's ruling was "clearly erroneous." *Davis v. Graviss*, 672 S.W.2d 928 (Ky. 1984).

Even in reviewing the evidence in light most favorable to Schneider, it is clear from the testimony of the three separate physicians that Smallwood sustained more than $1,000.00 in reasonable and necessary medical expenses. Schneider was unable to rebut the medical testimony that Smallwood did incur over $1,000.00 in reasonable and necessary medical expenses, therefore we find that Smallwood was entitled to a directed verdict on this issue.

However, any error in this circumstance was harmless in light of the fact that the jury did not return a threshold verdict and in fact found in favor of Smallwood on

this issue, and this Court will not reverse a judgment based on harmless error. RCr 9.24. Rather, "[o]ur harmless error standard requires 'that if upon a consideration of the whole case this court does not believe there is a substantial possibility that the result would have been any different, the irregularity will be held nonprejudicial.'" *Matthews v. Commonwealth*, 163 S.W.3d 11, 27 (Ky. 2005) (quoting *Abernathy v. Commonwealth*, 439 S.W.2d 949, 952 (Ky. 1969), overruled on other grounds by *Blake v. Commonwealth*, 646 S.W.2d 718 (Ky. 1983)). Smallwood argues that the damages would have been greater if a directed verdict had been granted. We disagree, however, and do not believe there is a substantial possibility that the result would have been any different.

Smallwood further argues that the trial court erred in denying her motion for a new trial since the award of zero pain and suffering was inadequate damages or appears to be given under the influence of passion or prejudice or in disregard of the evidence or the instructions of the court. We disagree.

Smallwood presents no sound legal principle for her argument that zero pain and suffering was the influence of passion or prejudice. It has been held in Kentucky for some time now that damages for pain and suffering need not be awarded in all awards for medical expenses. *See Miller v. Swift*, 42 S.W.3d 599 (Ky. 2001). Additionally, in *Bledsaw v. Dennis*, 197 S.W.3d 115 (Ky.App. 2006), the evidence cited contradicting the plaintiff's "uncontroverted" evidence of pain and suffering was as follows:

> She did not request any medical care immediately after the accident, instead telling several individuals that she was

> "okay." The collision left no visible injury on her, and the police report listed the collision as a non-injury accident. Her first emergency room discharge released her to work the next day without work limitations. Moreover, no injuries were revealed by the x-rays which were taken during her second emergency room visit several days later . . . finally, the evidence shows that [plaintiff] was able to resume her normal school and work activities after a several week holiday break.

All of the above referenced factors apply to Smallwood's situation: 1) she reported no injury at the scene and had no visible injury; 2) the police report listed the collision as non-injury; 3) she missed only one day of work and then resumed work full-time; 4) her x-rays were negative, and she continued to perform her same job, missing only three days in a five year period. Therefore, we find *Bledsaw* to be dispositive on this issue. Additionally, where the jury's verdict is supported by the evidence, as in this case, the trial court's refusal to grant a new trial cannot be determined to be clearly erroneous.

Accordingly, we affirm the judgment of the Gallatin Circuit Court.

ALL CONCUR.

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