

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001559-MR

WILLIAM TIMOTHY WEBB
and ANNETTE WEBB

APPELLANTS

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 08-CI-00376

GARY R. MINIX and
INDUSTRIAL WELDING, LLC

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, STUMBO, AND WINE, JUDGES.

COMBS, JUDGE: William Webb appeals a judgment of the Boyd Circuit Court from a jury trial denying him an award of damages in a personal injury lawsuit. We affirm.

Webb and Gary Minix were involved in a car accident in February 2008 in Boyd County. Minix was the driver of a tractor trailer that rear-ended Webb's sports car. Webb sustained numerous serious injuries. He sued the employer of Minix as well as Minix himself. In July 2010, a jury found that Minix had not been negligent and did not award any damages to Webb. Webb now appeals.

This appeal is based on evidentiary issues. Webb claims that the court committed error when it allowed admission of certain testimony during the trial. However, Webb has failed to include either a video or a written transcript of the trial as part of the record. After searching the entire record before us, we have not found any indication that Webb attempted to make the transcript part of the record. We have no reason to believe that it is missing due to an error of either the clerk of the circuit court or of the Clerk of the Court of Appeals. Therefore, we are unable to address Webb's contentions. By law, we are compelled to assume that the missing record supported the decision of the trial court. *Commonwealth v. Thompson*, 697 S.W.2d 143, 145 (Ky. 1985).

We also note that *neither* of the parties' briefs complies with Kentucky Rule of Civil Procedure (CR) 76.12(4)(c)(iv), which requires references to the record in the statement of the case. Without citation to the record, we are not required to address the merits of the appeal. *Monumental Life Ins. Co. v. Dept. of Revenue*, 294 S.W.3d 10, 23 (Ky. App. 2008). In this case, we are unable to do so because material elements are absent from the record.

We also note that the appellants' "corrected" brief does not include the trial court judge in the certificate of service as required by CR 76.12(5).

We affirm the judgment of the Boyd Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

R. Jill Bruner
Georgetown, Kentucky

BRIEF FOR APPELLEE:

James H. Moore, III
Ashland, Kentucky