

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000177-MR

VICTORIA TURNER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 09-CI-01055

AMBER STONE and SHELTER MUTUAL
INSURANCE COMPANY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CAPERTON, AND VANMETER, JUDGES.

CAPERTON, JUDGE: Victoria Turner appeals from the January 13, 2011, judgment of the Fayette Circuit Court which denied Turner's motion for a new trial in her personal injury action against Amber Stone and Shelter Mutual Insurance Company ("Shelter Mutual"). Because we find no error with the trial court's judgment, we affirm.

Turner and Stone, while operating their individual vehicles, were involved in an automobile accident on November 27, 2007. Turner subsequently filed a lawsuit against Stone and Shelter Mutual seeking damages she suffered as a result of the accident. Following a two-day jury trial, Turner was awarded \$25,855.21 for medical expenses and \$0 for pain and suffering. Turner subsequently filed a motion for a new trial on the issue of pain and suffering. On January 13, 2011, the trial court issued a judgment in conformity with the jury's award and issued a separate order denying Turner's motion for a new trial. This appeal followed.

“It is well-established that appellate courts in this state review trial court rulings on a motion for new trial on grounds of inadequate damages under a clearly erroneous standard of review.” *Bayless v. Boyer*, 180 S.W.3d 439, 444 (Ky. 2005)(citation omitted). Indeed, the trial court's decision on the issue is given a great deal of deference. *Id.*

Turner's only argument on appeal is that her motion for a new trial was erroneously denied. Turner contends that the record is void of any evidence that she did not suffer pain and suffering from her injuries and thus reasons that this evinces a “clear finding” of the jury that all of Turner's injuries and related medical expenses were related to the motor vehicle collision. Therefore, Turner concludes that the jury's failure to award pain and suffering damages was inappropriate and the trial court erred by not ordering a new trial. We disagree.

It is well established that “[t]he law in Kentucky ... does not require a jury to award damages for pain and suffering in every case in which it awards medical expenses.” *Miller v. Swift*, 42 S.W.3d 599, 600 (Ky. 2001). It has further been held that a jury’s failure to award pain and suffering, when preexisting conditions may have been aggravated by the accident at issue, did not warrant a new trial. *Id.* Our focus, in a case of this nature, is on the relevance of the underlying evidence as it relates to the jury’s failure to award for pain and suffering, and not on the actual award itself. *See Dennis v. Fulkerson*, 343 S.W.3d 633, 635 (Ky.App. 2011).

In the case presently before us, a significant portion of Turner’s trial was devoted to determining the cause of her injuries. Dr. Michael Gilhuly testified that Turner sought treatment on December 27, 2007. However, this was approximately one month after the automobile accident and for a knee injury related to a slip and fall. Dr. William Moss testified that he had performed successful knee surgery on Turner and that she had required no additional treatment. Multiple witnesses, including the police officer who investigated the accident and the claims adjuster for Shelter Mutual, testified that there was only minor damage to Turner’s vehicle. Furthermore, Turner’s credibility was called into question when her testimony regarding airbag deployment and her physical ability to perform her job were contradicted by other witnesses.

Sufficient probative evidence was presented which directly challenged Turner’s claims that she had undergone additional pain and suffering as a result of

the automobile collision with Stone. Evidence suggested that Turner failed to indicate a knee injury at the time of the accident, that her knee injury may have been aggravated by other circumstances, and that she may have exaggerated the severity of the automobile accident. Accordingly, we cannot hold that the trial court exhibited clear error by denying Turner a new trial.

For the foregoing reasons, the trial court's January 13, 2011, order is affirmed.

ALL CONCUR.

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