

RENDERED: OCTOBER 17, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-001283-MR

KYLE GORE AND ANGEL ROBERTS GORE

APPELLANTS

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 08-CI-00544

DOUBLE D BAR, LLC; DONALD M. ROWAN;
DONALD M. ROWAN, D/B/A DOUBLE D BAR, LLC;
DIANE ROWAN; DIANE ROWAN,
D/B/A DOUBLE D BAR, LLC;
AND ESTATE OF CHARLES FREUNDT

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, MOORE, AND THOMPSON, JUDGES.

CLAYTON, JUDGE: This is an appeal from a judgment finding a drunk driver liable for injuries sustained as a result of a vehicle accident. The Appellants assert

that, not only should the driver be liable, but also the bar who served him as well.

Based upon the following, we affirm the decision of the trial court.

DISCUSSION

On May 23, 2007, Charles Freundt was driving his pickup truck while intoxicated and collided with Kyle and Angel Gore, who were riding a motorcycle. The Gores suffered severe injuries due to the accident and filed suit for their damages. The Gores filed suit against Freundt, the Double D Bar, LLC (“Double D”) as well as the company’s individual members, David and Diane Rowan. Freundt died during the pendency of this action and his estate conceded liability. At trial, the Gores asserted that Freundt became intoxicated at the Double D. A jury verdict awarded the Gores \$1,364,262.10 in damages against Freundt’s estate but did not find the Rowans or the Double D liable. The Gores brought this appeal arguing that the trial court applied an erroneous standard with respect to juror qualifications. The Gores argue that the court made it clear that it would only strike jurors for cause if they explicitly stated that they could not follow the law. The Appellees argue that the Gores did not preserve their jury challenges and, therefore, this issue may not be considered on appeal.

In Kentucky, in order to preserve for appeal a claim of juror bias, the party must, at the time of the peremptory challenges, use a peremptory challenge on the juror whom the trial court refused to remove for cause. *King v. Commonwealth*, 276 S.W.3d 270, 279 (Ky. 2009). The appealing party must also indicate on his strike sheet the potential jurors he would have removed through the

use of his peremptory challenge had the court struck the jurors for cause. *Gabbard v. Commonwealth*, 297 S.W.3d 844, 854 (Ky. 2009). Finally, the jury panel member who would have been struck must be seated as a juror. *Id.* In *Grubb v. Norton Hospitals, Inc.*, 401 S.W.3d 483 (Ky. 2013), the court held that the requirements of *Gabbard* (which followed *Shane v. Commonwealth*, 243 S.W.3d 336 (Ky. 2007)), are applicable in civil cases.

In the present case, the Gores did not identify on their strike sheets specific jurors that would have been removed with peremptory challenges had the jurors which they contend should have been struck for cause remained on the jury panel. In *Gabbard*, the court held that “[i]n order to complain on appeal that he was denied a peremptory challenge by a trial judge’s erroneous failure to grant a for-cause strike, the [party] must identify on his strike sheet any additional jurors he would have struck.” *Id.* The Gores failed to preserve the issue of the allegedly erroneous conduct on the trial court in failing to remove certain jurors for cause. The judgment of the trial court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEES:

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