

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001045-MR

JESSICA JACKSON AND
DANIEL E. JACKSON

APPELLANTS

v. APPEAL FROM WOODFORD CIRCUIT COURT
HONORABLE ROBERT G. JOHNSON, JUDGE
ACTION NO. 11-CI-00292

SCOTT M. GLADDIS, D.C.; AND
VERSAILLES CHIROPRACTIC, PSC

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: CLAYTON, NICKELL, AND VANMETER, JUDGES.

VANMETER, JUDGE: Jessica Jackson and Daniel E. Jackson appeal from the Woodford Circuit Court's judgment, entered on June 4, 2014, dismissing all of Jessica and Dan's claims after a jury returned a unanimous verdict in favor of Scott M. Gladdis, D.C. and Versailles Chiropractic, PSC, finding that Dr. Gladdis

provided appropriate chiropractic care and treatment to Jessica. For the following reasons, we affirm.

Jessica was involved in a motor vehicle accident in April 2010 and subsequently began treatment with Dr. Gladdis, a chiropractor, for complaints of neck pain, muscle spasms, and tenderness. Dr. Gladdis saw Jessica four times, and used the same chiropractic adjustment technique each time on the affected areas of her cervical spine. On Jessica's final visit to Dr. Gladdis, after some adjustments, Jessica began feeling dizzy and light-headed. Jessica informed Dr. Gladdis that she was experiencing nausea and a "spinning feeling," and Dr. Gladdis diagnosed her with vertigo. Dr. Gladdis helped Jessica to the restroom, where she began vomiting. After failing to reach Jessica's husband, Dan, Dr. Gladdis made arrangements for his office manager to transport Jessica to the emergency room.

At the hospital, Jessica was diagnosed with benign positional vertigo. All tests came back negative for any acute trauma, and CT studies of Jessica's cervical spine and brain showed no evidence of a vertebral artery dissection.¹ Four days later, Jessica saw a neurologist, Dr. Daniel Howley, who ordered MRA and MRI scans. The MRA was totally negative for dissection, but the MRI showed a "tiny area of ischemia," or a lack of blood most likely due to a "tiny microscopic clot." Dr. Howley told Jessica that she most likely suffered a minor stroke due to a vertebral artery dissection caused by chiropractic manipulation. Dr. Howley

¹ A vertebral artery dissection is a tear in the wall of the artery which connects the cervical spine and the cerebrum. Such a dissection allows blood to enter the arterial walls, dilating the vessel. Such dilation is a leading cause of stroke in otherwise young and healthy individuals. *See* <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2588305/> (accessed July 8, 2015).

testified, however, that the spot was clearly not a classic dissection, and that Jessica had made a nice recovery with a good prognosis. On Jessica's final visit to Dr. Howley, any abnormalities inferred from the previous MRI were not present or had resolved.

Jessica and Dan brought suit against Dr. Gladdis, claiming that his adjustment on June 18, 2010, caused Jessica to suffer a vertebral artery dissection. They also claimed that Dr. Gladdis's care and treatment of Jessica following the onset of her symptoms was inappropriate and he should have recognized her alleged stroke symptoms and acted accordingly. Dr. Gladdis presented expert testimony avowing that his technique, care and treatment of Jessica, both during her adjustments and following the onset of her symptoms that day, met the appropriate standard of care. Further, Dr. Gladdis offered proof that it cannot be known whether Jessica's dissection was caused by her motor vehicle accident or if the dissection occurred sometime later.

After seven days of trial, on May 28, 2014, the Woodford County jury returned a unanimous verdict in favor of Dr. Gladdis and Versailles Chiropractic. Accordingly, the trial court entered judgment dismissing all of Jessica and Dan's claims and ordering that they recover nothing from Dr. Gladdis and Versailles Chiropractic. Further, the trial court ordered Jessica and Dan to pay Dr. Gladdis and Versailles Chiropractic's costs of defending the action. From that judgment, Jessica and Dan appeal.

Jessica and Dan argue that the trial court's judgment was clearly erroneous, unsupported by substantial evidence, and ask that we reverse. In the alternative, they ask that this court grant a new trial. They further claim that the trial court erred by denying their motion for continuance, requested at the final pretrial hearing. Next, they claim that Dr. Gladdis misled the jury with false information. Lastly, they argue that Dr. Gladdis's refusal to provide his complete academic transcripts negatively impacted their case.

As an initial matter, we note that Jessica filed this appeal *pro se*. For that reason, she may only represent herself. She may not bring an appeal on behalf of Dan, since she is not a licensed attorney and may not practice law. "Only persons who meet the educational and character requirements of this Court and who, by virtue of admission to the Bar, are officers of the Court and subject to discipline thereby, may practice law. The sole exception is the person acting in his own behalf." *May v. Coleman*, 945 S.W.2d 426, 428 (Ky. 1997)(citation and quotations omitted). Consequently, all claims on appeal that Dan may have had are waived due to his failure to file a timely notice of appeal. We will only consider the issues raised on appeal as they apply to Jessica's claims for relief.

First, we will address Jessica's argument concerning a new trial. Jessica claims that the jury's verdict was clearly erroneous and not supported by substantial evidence, and thus she should be granted a new trial. However, Jessica

did not file a CR² 59.01 motion with the trial court.³ When a party fails to move the trial court for a new trial for any of the grounds enumerated in CR 59.01, an appeal on those grounds must be dismissed because the issue was not properly preserved. *See Payne v. Hall*, 423 S.W.2d 530, 532 (Ky. 1968). The trial court must have the opportunity to correct the alleged error or to deny the allegation of error as a prerequisite to appellate review; the appellate court may not hear such an allegation for the first time on appeal. *Id.* Since Jessica failed to file a CR 59.01 motion for a new trial with the trial court, the trial court has had no opportunity to address Jessica's claims of clear error and a lack of substantial evidence. Accordingly, this court has no alleged error to review and cannot grant her a new trial.

Furthermore, we do not believe the jury verdict was erroneous or unsupported by substantial evidence.

The role of the appellate court when deciding negligence issues of this sort is limited to viewing the evidence from a standpoint most favorable to the prevailing party. In negligence cases such as this one the verdict of the jury resolves any conflicts in the testimony and also any conflicts in the reasonable inferences to be drawn from the testimony in favor of the prevailing party . . . In short, an appellate court must not substitute its findings of fact for those of the jury if there is no evidence to support them.

² Kentucky Rules of Civil Procedure.

³ Jessica cites CR 52.03, which applies only to actions tried without a jury. We will instead interpret her argument as a request for a new trial pursuant to CR 59.01.

Bayless v. Boyer, 180 S.W.3d 439, 451 (Ky. 2005)(citation omitted). The jury in this case was presented with a great deal of expert testimony on the subject of Jessica's injury. The proffered evidence more than supported the jury's conclusion that Dr. Gladdis exercised the degree of care and skill expected of a reasonable chiropractor acting under the same circumstances. Thus, Jessica has offered this court no grounds for reversal of the jury verdict.

Next, Jessica maintains that the trial court erred by refusing to grant her a continuance of trial when she moved the court for such an accommodation at the final pretrial conference. "An application for a continuance is addressed to the sound discretion of the trial court and unless the discretion has been abused the action of that court will not be disturbed." *Wells v. Salyer*, 452 S.W.2d 392, 395-96 (Ky. App. 1970). In determining whether an abuse of discretion occurred, this Court looks to whether the trial court's decision was "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000). In this case, the trial had been continued once before, and the matter had been pending for three years with the trial date set for just over a month from the date of the pretrial conference. Jessica requested the continuance because only two of her fifteen witnesses, four expert and eleven lay, had conflicts. However, the trial court allowed video testimony from those two witnesses to be shown at trial. Jessica has provided no evidence that the video testimony, versus live testimony, in any way placed her at a

disadvantage. Given the court's interest in judicial efficiency, we do not believe the trial court abused its discretion in denying Jessica's motion for a continuance.

Jessica next claims that Dr. Gladdis mislead the jury with false information. Jessica names multiple instances in which Dr. Gladdis allegedly provided the jury with false information. However, she directs us to no point in the record in which she preserved this issue for appeal. From our review, Jessica made no objection to the trial court regarding any of the allegedly false information. As such "the trial court was given no opportunity to pass on these contentions, which is a prerequisite to appellate review." *Payne*, 423 S.W.2d at 532. The "function of the Court of Appeals is to review possible errors made by the trial court, but if the trial court had no opportunity to rule on the question, there is no alleged error for this court to review." *Kaplon v. Chase*, 690 S.W.2d 761, 763 (Ky. App. 1985). Without a ruling from the trial court on this issue, we have no error to review, and thus cannot address this argument.

Lastly, Jessica argues that Dr. Gladdis's refusal to provide her with his academic transcripts in discovery prevented her from presenting a clear case regarding Dr. Gladdis's education and knowledge of vertebral artery dissection and strokes. Again, Jessica failed to present this issue to the trial court. She points us to no instance in which she brought the supposedly erroneous objection to the trial court's attention. Since the trial court had no opportunity to rule on this issue, no alleged error exists for this court to review. *See Commonwealth of Ky., Dept. of Highways v. Williams*, 317 S.W.2d 483, 484 (Ky. 1958).

For the aforementioned reasons, the judgment of the Woodford Circuit Court is affirmed.

ALL CONCUR.

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