

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000981-MR

ERIC COPELAND

APPELLANT

v. APPEAL FROM WEBSTER CIRCUIT COURT
HONORABLE TOMMY W. CHANDLER, JUDGE
ACTION NO. 01-CI-00056

BETHEL MASON

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BARBER, AND DYCHE, JUDGES.

BARBER, JUDGE: Appellant, Eric Copeland, seeks review of a judgment of the Webster Circuit Court dismissing his complaint with prejudice, Copeland having failed to meet the threshold requirements of the Kentucky Motor Vehicle Reparations Act.¹ The Appellee, defendant below, is Samuel Mason. On appeal, Copeland argues that the jury instructions and the closing argument were improper. Finding no error, we affirm.

¹ KRS Chapter 304, Subtitle 39.

We refer to the record as necessary to resolve the issues before us. Copeland takes issue with jury Instruction No. 5, dealing with comparative fault, insofar as the instruction referred to "operating" a motor vehicle on a public highway. Copeland explains that the proof showed he was sitting in a parked car at the time of the accident, on a city street, not a highway, when it was hit head-on by Mason. It does not matter because the jury did not reach Instruction No. 5. Once the jury answered, "No," to both parts of Instruction No. 2 -- that it did not find from the evidence that Copeland had incurred medical expenses in excess of \$1,000.00, and that it did not find that Copeland had sustained permanent bodily injury as a result of the subject accident -- the jury was instructed to return to the courtroom. "[I]n order for an instruction to be prejudicially erroneous, the finding of the jury must give some reflection of that instruction."²

Next, Copeland asserts that the jury never should have been instructed on the amount of "medical damages," because they were stipulated to be \$9,805.63. Mason responds that although the parties agreed \$9,805.63 in medical expenses were *incurred*, the causation of those medical expenses was at issue.³ Moreover,

²*Coca Cola Bottling Co. of Shelbyville v. Creech*, 245 Ky. 414, 53 S.W.2d 745, 745 (1932).

³ The accident occurred on February 4, 2000. Copeland did not see Dr. Mesa until May 9, 2000. Dr. Mesa's testimony reflects

Mason asserts that the issue was not preserved, because Copeland did not object to the giving of Instruction No. 2, but only asked the court to require a finding on both parts of the Instruction. We agree.

CR 51(3) provides:

No party may assign as error the giving or the failure to give an instruction unless he has fairly and adequately presented his position by an offered instruction or by motion, or unless he makes objection before the court instructs the jury, stating specifically the matter to which he objects and the ground or grounds of his objection.

"The procedure outlined in CR 51 gives the trial judge an opportunity to correct any errors before instructing the jury. [footnote omitted] This Court has held time and time again that, in order to be considered on appeal, a specific objection must have been raised in the trial court," ⁴

Copeland's final assignment of error is that Mason's counsel improperly referred to the amount of the emergency room bill in closing argument, because it was not in evidence. Copeland complains that Mason's counsel "was allowed to tell the jury that the emergency room expenses only amounted to \$500.00.

that Copeland's knee problem was chronic, consistent with arthritis, rather than acute injury. Medical evidence also revealed a prior knee injury from a 1998 automobile accident.

⁴*Ellison v. R & B Contracting, Inc.*, Ky., 32 S.W.3d 66, 73 (2000).

. . . [and that] only the emergency room expenses . . . [were] reasonably related to the wreck."

During a bench conference, before closing argument, Mason's attorney explained that he wanted to show the emergency room bill to the jury, to support his argument that the sole medical expense related to the accident, itself, was less than \$1,000.00. Copeland's attorney responded that the emergency room bill was not in evidence. The parties had stipulated the total amount of medicals incurred, based upon bills submitted by Copeland. Although the individual medical bills were filed with the trial court, the stipulation of medical expenses read to the jury did not include a break out of the individual charges. Instead, the court recited the subtotal expenses from each provider (Trover Clinic: \$3,265.50; Methodist Ambulatory Care: \$162.00; Trover Clinic at Providence: \$182.50; and the Regional Medical Center: \$6,195.63) and the total expenses of \$9,805.63. The bill for emergency treatment on the date of the motor vehicle accident is included in the subtotal charges from the Regional Medical Center. The trial court stated that it would "let either one of you talk about it."

Where counsel exhibited to the jury a booklet about which he had previously interrogated the appellant, but which had not been officially introduced in evidence, although reference had been made to the booklet during the trial, the

court applied the rule that this amounted to its introduction in evidence.⁵ We find that reasoning applicable here.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Steve P. Robey
Providence, Kentucky

BRIEF FOR APPELLEE:

H. Randall Redding
Henderson, Kentucky

⁵ *Edwards v. Whitley City Sales*, Ky. 246 S.W.2d 1018, 1020 (1952).