

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001751-MR

NOLLAIG PREVIS

APPELLANT

v.

APPEAL FROM BOURBON CIRCUIT COURT
HONORABLE ROBERT OVERSTREET, JUDGE
ACTION NO. 00-CI-00051

PETE DAILEY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, GUIDUGLI AND McANULTY, JUDGES.

GUIDUGLI, JUDGE. Nollaig Previs ("Previs") appeals from a judgment of the Bourbon Circuit Court following a jury verdict in favor of Pete Dailey ("Dailey") in her action to recover damages for personal injuries. We affirm.

On May 29, 1999, Previs was riding her bicycle on Escondida Road in Bourbon County, Kentucky, when she was approached from behind by a vehicle operated by Dailey. Dailey's vehicle was a GMC pickup truck, and it was pulling two

wagons in tandem with a total length of approximately 48 feet. The record indicates that Previs's bicycle was being ridden near the right side of her lane.

As Dailey's truck approached Previs's bicycle, the latter was traveling up a steep hill at approximately one or two miles per hour. When Previs's bicycle crested the top of the incline and began moving on a slight decline, Dailey began to pass Previs and he drove his vehicle around the left side of her bicycle. In so doing, Dailey's truck moved into the lane directly to the left of the lane in which Previs was traveling.

When Dailey believed that he had passed Previs sufficiently to allow him to move back to the right, he corrected the path of the truck slightly so as to situate the vehicle back into the right lane and in front of Previs's bicycle. At some point, apparently after pulling back into the right lane, Dailey looked in the truck's right-side mirror and saw that one of the wagons he was pulling had impacted Previs's bicycle. Previs had been dislodged from the bicycle and had landed in a grassy area or ditch to the right of the roadway, where she had sustained injuries. Dailey then stopped his truck.

Previs filed the instant personal injury action in Bourbon Circuit Court seeking damages. Both parties' motions for a directed verdict were overruled, and the matter proceeded

to a jury trial. After hearing the evidence, including the testimony of Previs and Dailey, the jury returned a verdict in favor of Dailey.

The day or so after the verdict was returned, the trial judge, the Hon. Robert B. Overstreet, received a telephone call from the jury foreman, Jeffrey L. Norkus ("Norkus"). Norkus relayed to Judge Overstreet concerns he had regarding the jury's deliberation. Judge Overstreet then asked Norkus to memorialize the conversation in a letter, and the letter was received by the court on or about November 12, 2001. Copies of the letter were forwarded to the parties.

Norkus stated therein that he believed the jury had discussed a matter not presented at trial, to wit, whether a reasonable bicyclist would have pulled off the roadway to allow a large vehicle to pass. Norkus later gave a statement in chambers under oath which is contained in the record.

Previs then tendered several motions, including motions for a new trial, judgment notwithstanding the verdict, amended judgment, and motion to alter, amend or vacate the judgment. The motions were overruled, and this appeal followed. Previs first argues that the trial court committed reversible error when it failed to grant her motion for a directed verdict at trial. She maintains that she could not have been dislodged from her bicycle absent Dailey's negligence, and that the court

was duty-bound to recognize this fact and rule in her favor on this issue. She notes that Dailey testified that he either did not look in his mirror or could not have seen Previs until after she was dislodged from the bicycle, and claims that the totality of the facts and the law compelled the trial court to enter a directed verdict in her favor. She seeks an order reversing the judgment and remanding the matter for a new trial on the sole issue of damages.

We have closely studied Previs's argument and find no error in the trial court's denial of her motion for a directed verdict. As the parties are well aware, in ruling on a motion for a directed verdict the trial court is under a duty to consider the evidence in the strongest possible light in favor of the party opposing the motion, and must give the opposing party the advantage of every fair and reasonable inference which can be drawn from the evidence. Taylor v. Kennedy, Ky. App., 700 S.W.2d 415 (1985). On review of the trial court's denial of a motion for a directed verdict, all evidence which favors the prevailing party must be taken as true and the reviewing court is not at liberty to determine credibility or the weight which should be given to the evidence, these being functions reserved to the trier of fact. Lewis v. Bledsoe Surface, Ky., 798 S.W.2d 459 (1990).

We recognize that, at first blush, the record appears to contain evidence sufficient for a jury to conclude that Dailey operated his vehicle in a negligent fashion. It is uncontroverted that he had not fully passed Previs before directing his vehicle back into the right lane, and he all but admitted that he did not look in his rear view mirror when doing so. Nevertheless, it is still possible that the jury reasonably concluded either that he was not negligent, or if he was negligent that said negligence was not the cause of the collision. Dailey notes that Previs was not an experienced cyclist, that she may have accelerated while Dailey's vehicle was passing her, and that she stated that she did not see him. While much of this is speculative, the law required the trial judge to give Dailey every fair and reasonable inference from the evidence. Taylor, supra. In so doing, the trial judge properly denied Previs's motion for a directed verdict, and we find no basis for tampering with his ruling. For the same reason, we conclude that Previs was not entitled to a judgment notwithstanding the verdict. CR 50.02; Cassinelli v. Begley, Ky., 433 S.W.2d 651 (1968).

Previs next argues that the trial court erred in failing to grant a new trial, vacate the judgment, and/or provide other relief upon learning that jury foreman Norkus contended that the jury proceedings were improper.

Specifically, Previs notes that Norkus opined that the verdict was based not on the question of whether Dailey was negligent, but whether Previs should have pulled off the road to allow Dailey to pass. She directs our attention to Norkus's statement that, "[T]he decision of the jury was not based on any evidence. It was just based on what their personal feelings were." She goes on to contend that the jury violated the oath it took pursuant to KRS 29A.300 and failed to decide the case based on the court's instructions, and accordingly maintains the judgment should be reversed and the matter remanded.

We find no error on the issue. With few exceptions, a verdict cannot be impeached by the testimony of one juror. See generally, Doyle v. Marymount Hospital, Inc., Ky. App., 762 S.W.2d 813 (1988). Previs acknowledges the basis for this rule, to wit, that allowing a juror to single-handedly overturn a verdict after the verdict was rendered "would invite the very kind of mischief the [CR 59.01 new trial] rule was designed to obviate." Id. She contends that Doyle should not stand as an impediment to a new trial under the facts at bar because Norkus's assertion, if true, is so egregious as to deny her the constitutional right to a fair trial.

We are not persuaded that the trial court erred on this issue. Norkus's assertion is, at best, speculative, in that he claims to know the thought processes of the 10 jurors

who agreed that Dailey was not negligent. Doyle assumed that an aggrieved juror would complain, if at all, *before* the verdict is returned. This would seem especially true of the jury foreman, who is charged with the additional responsibility of presiding over the deliberations. It is also worth noting that Norkus was not among the group of 10 jurors who returned the verdict in favor of Dailey. While we have no basis for questioning either the sincerity or the veracity of Norkus's claim, it is clear that he did not agree with the 10 jurors and apparently viewed the deliberations differently than did those jurors. In sum, we must rely on the general rule expressed in Doyle, and cannot conclude that the trial court erred in failing to grant a new trial on this issue.

For the foregoing reasons, we affirm the judgment of the Bourbon Circuit Court.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
APPELLANT:

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BRIEF FOR APPELLEE:

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