

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000524-MR

KAYTE L. CLATER

APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE T. STEVEN BLAND, JUDGE
ACTION NO. 00-CI-01827

BONNIE F. HUTCHASON AND
SHELTER MUTUAL INSURANCE COMPANY

APPELLEES

CROSS-APPEAL NO. 2004-CA-000549-MR

BONNIE HUTCHASON

CROSS-APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE T. STEVEN BLAND, JUDGE
ACTION NO. 00-CI-01827

KAYTE CLATER AND
SHELTER MUTUAL INSURANCE COMPANY

CROSS-APPELLEES

CROSS-APPEAL NO. 2004-CA-000611-MR

SHELTER MUTUAL INSURANCE COMPANY

CROSS-APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE T. STEVEN BLAND, JUDGE
ACTION NO. 00-CI-01827

KAYTE CLATER AND
BONNIE HUTCHASON

CROSS-APPELLEES

OPINION AND ORDER

(1) AFFIRMING APPEAL NO. 2004-CA-000524-MR

(2) DISMISSING AS MOOT CROSS-APPEAL NOS.
2004-CA-000549-MR AND 2004-CA-000611-MR

** ** *

BEFORE: GUIDUGLI AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.¹

TAYLOR, JUDGE: Kayte L. Clater brings Appeal No. 2004-CA-000524-MR from a February 25, 2004, Judgment upon a jury verdict awarding her zero damages on a claim arising from an automobile accident in Hardin County. Bonnie Hutchason brings Cross-Appeal No. 2004-CA-000549-MR and Shelter Mutual Insurance Company (Shelter) brings Cross-Appeal No. 2004-CA-000611-MR, from the same Judgment. We affirm Appeal No. 2004-CA-000524-MR, and we

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

dismiss Cross Appeal Nos. 2004-CA-000549-MR and 2004-CA-000611-MR as moot.

Clater and Hutchason were involved in a motor vehicle accident on December 14, 1998. Clater was a passenger in a vehicle driven by her husband when their vehicle and Hutchason's vehicle collided. As a result, Clater filed a negligence action against Hutchason and Shelter. Therein, Clater claimed that Hutchason negligently operated her automobile which caused Clater to suffer various injuries, including a spinal injury and aggravation of a preexisting condition. Clater was diagnosed with spondylolisthesis and underwent major surgery in 1972. Hutchason eventually stipulated to liability, and the issue of damages was submitted to a jury. The jury found that Clater suffered no legally compensable damage as a result of the accident; thus, Clater's claims were dismissed. These appeals follow.

Appeal No. 2004-CA-000524-MR

We initially point out that Clater seems to raise various allegations of error in the statement of the case portion of her brief. These various allegations of error were not identified in her prehearing statement. Additionally, Clater has failed to cite this Court to a single case or statute in support of the allegations of error raised in her statement

of the case. Although we are unsure as to whether Clater intended these allegations to be raised on appeal, we nonetheless summarily reject them as being without merit. See Pierson v. Coffey, 706 S.W.2d 409 (Ky.App. 1985)(holding that failure of appellant's brief to comply with CR 76.12 precluded considering issues on appeal); Sallee v. Sallee, 142 S.W.3d 697 (Ky.App. 2004)(holding that issue not raised in prehearing statement or by timely motion is not properly before the Court).

In Clater's argument section of the brief, she raises one issue for our consideration - whether the jury's verdict awarding zero damages was "clearly erroneous". Clater has once again failed to indicate to this Court how this issue was preserved for our review. In her reply brief, Clater urges us to review this allegation of error under the palpable error rule. Ky. R. Civ. P. (CR) 61.02. To constitute palpable error, the error must affect the substantial right of the party and result in a manifest injustice.

To set aside a jury verdict, the verdict must be palpably and flagrantly against the evidence. Smith v. Dunning, 275 Ky. 733, 122 S.W.2d 781 (1938). At trial, a disputed factual issue surrounded whether Clater suffered an aggravation of her spondylolisthesis as a result of the accident. Clater presented evidence that her preexisting condition (spondylolisthesis) was worsened by the accident and that she

suffered additional nerve root damage to her spine. Conversely, there was evidence that Clater had suffered from spondylolisthesis for some twenty-six years and that the accident had not, in fact, exacerbated that spinal problem. Specifically, there was evidence that Clater's spondylolisthesis was rated at 50 percent slippage in 1972 and was rated by an expert witness, Dr. Dennis O'Keefe, at 41 percent slippage in 1996. Considering the conflicting evidence, we are unable to conclude there exists such an insufficiency of evidence that the jury's verdict constituted palpable error. CR 61.02; and Burgess v. Taylor, 44 S.W.3d 806 (Ky.App. 2001).

Cross-Appeal Nos. 2004-CA-000549-MR and 2004-CA-000611-MR

Hutchason and Shelter brought protective cross-appeals. As we affirm Clater's appeal, these protective cross-appeals are rendered moot, and the Court ORDERS Cross-Appeal Nos. 2004-CA-000549-MR and 2004-CA-000611-MR DISMISSED.

For the foregoing reasons, Appeal No. 2004-CA-000524-MR is affirmed; Cross Appeal Nos. 2004-CA-000549-MR and 2004-CA-000611-MR are dismissed.

ALL CONCUR.

ENTERED: July 1, 2005

/s/ Jeff S. Taylor
JUDGE, COURT OF APPEALS

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