

RENDERED: NOVEMBER 23, 2005; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001773-MR

SHERRIE DAWSON

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 02-CI-00696

STATE AUTOMOBILE MUTUAL INSURANCE COMPANY
D/B/A MERIDIAN MUTUAL INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: MINTON, SCHRODER, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Sherrie Dawson brings this appeal from a March 17, 2004, judgment of the Franklin Circuit Court upon a jury verdict dismissing her claim for underinsured motorists benefits from State Automobile Mutual Insurance Company, d/b/a Meridian Mutual Insurance Company (State Mutual). We affirm.

In June 2000, appellant was involved in a low speed collision with another car driven by Melissa Forman. Forman's

insurance carrier tendered to appellant the full amount of its policy's liability limits. Thereupon, appellant filed the instant action against State Mutual for recovery of underinsured motorist benefits under her motor vehicle insurance policy. She claimed to have sustained personal injuries in excess of the liability policy limits available upon Forman's vehicle. The matter was tried by a jury, and the jury returned a verdict in favor of State Mutual. Appellant's action was dismissed by judgment of the circuit court entered on March 17, 2004. Appellant filed a motion for judgment notwithstanding the verdict and a motion for a new trial which was denied by order entered August 5, 2004. This appeal follows.

Appellant contends the circuit court committed reversible error by failing to direct a verdict in her favor upon the issue of whether she incurred at least the threshold amount of \$1,000.00 in reasonable medical expenses as required by Kentucky Revised Statutes (KRS) 304.39-060(2)(b). A directed verdict is proper when viewing the evidence most favorable to the nonmoving party, a reasonable juror could only conclude that the moving party was entitled to a verdict. Lee v. Tucker, 365 S.W.2d 849 (Ky. 1963).

Appellant cites to Bolin v. Grider, 580 S.W.2d 490 (Ky. 1979) for the proposition that once medical bills have been submitted into evidence a rebuttable presumption arises that

such bills are reasonable. She particularly focuses upon the following language:

In this case Bolin did nothing to impeach the reasonableness of the amount of charges for "medical expense", however, she did strenuously attack the thesis that the "medical expense" was reasonably needed as a result of the collision which is the basis of this suit. Under such circumstances the probative force of the medical bills is so persuasive on the issue of the reasonableness of the amount of charges for "medical expense" that there is nothing for the jury to decide and the issue should not have been submitted to them.

Id. at 491 (citation omitted). Appellant emphasizes that there exists a distinction between evidence impeaching the reasonableness of the amount of medical expenses and evidence contesting causation. Appellant contends that State Mutual only presented evidence contesting causation and failed to present evidence attacking the reasonableness of her submitted medical expenses. As such, appellant argues that Bolin mandates a directed verdict upon the reasonableness of the amount of submitted medical expenses (some \$1,900.00). Even if the circuit court erred by failing to grant a directed verdict upon the reasonableness of the amount of medical expense, we are of the opinion that such error was merely harmless. Ky. R. Civ. P. (CR) 61.01.

In Bolin, the Court specifically pointed out:

We are unable to determine whether the jury's negative answer to the submitted question was based on their failure to be satisfied on the illusory issue of amount or on the real issue of causation or both. Because we can not rule out amount as a basis, we agree that a new trial is required.

Bolin, 580 S.W.2d at 491. Thus, the Bolin Court concluded that the error was reversible because the jury instruction merged the issue of the reasonableness of the amount of medical expense with the issue of causation. The Court was simply unable to discern whether the jury believed that Bolin failed to prove causation or failed to prove the threshold amount of reasonable medical expense.

By contrast, in the case *sub judice*, the jury was given a separate instruction upon causation which read as follows:

Are you satisfied from the evidence that plaintiff, Sherrie Dawson, sustained a permanent bodily injury within reasonable medical probability as a direct and proximate result of the motor vehicle accident of June 16, 2000?

The jury unanimously answered the above question in the negative. As the jury found that appellant failed to prove any injury caused by the accident, the failure of the circuit court to direct a verdict upon whether she met the \$1,000.00 medical expense threshold constituted harmless error. Accordingly, we

conclude the circuit court did not commit reversible error by denying appellant's motion for directed verdict upon the issue of medical expenses.

Appellant next asserts the circuit court committed reversible error by excluding evidence concerning the nature of her claim against State Mutual and excluding evidence that State Mutual was her underinsured motorist carrier.

The jury was informed that Forman was negligent in the collision and that appellant had a policy of insurance with State Mutual. She believes, however, that her inability to explain to the jury that she was pursuing underinsured motorist benefits against State Mutual was prejudicial. We disagree. As the jury found that appellant failed to prove causation, we again believe any error by the circuit court was merely harmless. Simply put, there does not exist a reasonable probability the verdict would have been different had the jury been informed that appellant was pursuing an underinsured motorist claim against State Mutual. See Crane v. Commonwealth, 833 S.W. 2d 813 (Ky. 1992). Upon the whole, we are of the opinion the circuit court did not commit reversible error in this regard.

For the foregoing reasons, the judgment of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Roy Church Gray
Martha C. Gray
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Robert R. deGolian
TAYLOR & DEGOLIAN
Louisville, Kentucky