

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-002508-MR

LARRY GATEWOOD

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN P. RYAN, JUDGE
ACTION NO. 02-CI-008446

SHIRLEY DUVALL, JR.

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: COMBS, CHIEF JUDGE; HENRY AND SCHRODER, JUDGES.

HENRY, JUDGE: Larry Gatewood appeals from a judgment of the Jefferson Circuit Court, and from that court's denial of his CR¹ 59.01 motion for a new trial based on an allegedly inadequate damages award. We affirm.

The sole issue presented is whether a jury verdict of damages of \$0.00 for pain and suffering is inadequate and inconsistent, in a case in which the jury awarded the plaintiff some of his medical expenses.

¹ Kentucky Rules of Civil Procedure.

On September 25, 2000, the Appellant, Larry Gatewood, was involved in a motor vehicle accident with the Appellee, Shirley Duvall, Jr. Gatewood filed a personal injury claim against Duvall, alleging negligence. Duvall admitted liability, but a trial was held to determine damages. After a three-day trial the jury returned a verdict of \$2,895.05 for past medical expenses, \$0.00 for lost wages, \$0.00 for impairment to labor and earn money, and \$0.00 for pain and suffering.

After the trial court entered its judgment on the verdict, Gatewood filed a timely CR 59 motion for a new trial, arguing that the award of pain and suffering was inadequate. In the motion, Gatewood argued that the jury's verdict was nonsensical since the jury awarded medical expenses, but no damages for pain and suffering. In its order denying the motion, the trial court stated that the jury was not bound to believe the subjective claims of pain and suffering offered by Gatewood, or the physician reports based upon those claims. The court also noted that Duvall had argued that Gatewood suffered from preexisting medical conditions and had been involved in another automobile accident on December 13, 2000, less than two months after his accident with Duvall. Gatewood appealed from the judgment and from the order denying the CR 59 motion.

Under CR 59.01(d), a new trial may be granted for "excessive or inadequate damages, appearing to have been given

under the influence of passion or prejudice or in disregard of the evidence or the instructions of the court." The decision whether to grant or deny a CR 59.01 motion "is a discretionary function assigned to the trial judge who has heard the witnesses firsthand and viewed their demeanor and who has observed the jury throughout the trial." Davis v. Graviss, 672 S.W.2d 928, 932 (Ky. 1984), overruled on other grounds by Sand Hill Energy, Inc. v. Ford Motor Co., 83 S.W.3d 483 (Ky. 2002), cert. granted, judgment vacated by Ford Motor Co. V. Smith, 538 U.S. 1028, 123 S.Ct. 2072, 155 L.Ed.2d 1056 (2003). Thus, the trial court's decision will be reversed only if it is clearly erroneous. Miller v. Swift, 42 S.W.3d 599, 600-01 (Ky. 2001). The trial court's decision is not clearly erroneous if the underlying verdict is supported by substantial evidence. Black Motor Co. v. Greene, 385 S.W.2d 954, 956 (Ky. 1965).

Duvall points out that in Miller v. Swift, the Kentucky Supreme Court held that it was not necessarily erroneous for a jury to award medical expenses without making an award for pain and suffering. Miller v. Swift, 42 S.W.3d at 602. Gatewood attempts to distinguish Miller from this case by noting that no probative evidence of pain and suffering was presented to the jury in Miller, but that such evidence was produced in this case. However, as this Court has held, a jury is not required to believe a plaintiff's claims of pain and

suffering. Spalding v. Shinkle, 774 S.W.2d 465, 467 (Ky.App. 1989).

In the case *sub judice*, evidence was presented from which the jury could have concluded that Gatewood's pain resulted from conditions or injuries unrelated to his accident with Duvall. The fact that the jury awarded Gatewood some of his medical bills does not necessarily reflect that the jury believed that his claims of pain and suffering damages were warranted. As noted by Duvall, the award could simply reflect a belief that Gatewood deserved to have his medical condition fully evaluated following the accident.

As it appears that the jury's verdict was supported by substantial evidence, the trial court's ruling is not clearly erroneous and will not be disturbed.

The Order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Michael E. Krauser
Edward A. Brutscher
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