

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-000321-MR

REGINALD DAVIS

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE LISABETH HUGHES ABRAMSON, JUDGE  
ACTION NO. 02-CI-001458

CITY OF LOUISVILLE/  
LOUISVILLE METRO GOVERNMENT;  
AND DENNIS LEBER, OFFICER

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: BARBER AND SCHRODER, JUDGES; BUCKINGHAM, SENIOR JUDGE.<sup>1</sup>

BARBER, JUDGE: Appellant, Reginald Davis (Davis), appeals the Jefferson Circuit Court ruling denying his motion for default judgment against Officer Dennis Leber and his motion for new trial on the grounds that the jury's verdict was the result of bias, passion or prejudice. We affirm the trial court's rulings.

---

<sup>1</sup> Senior Judge David C. Buckingham, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Davis claimed that he was injured when Officer Leber, responding to an emergency call, struck parked cars with his vehicle. Davis stated that he was struck by the parked cars when they were hit. Davis filed a civil suit on February 25, 2002, asserting that Officer Leber negligently operated his vehicle, striking a parked vehicle, which in turn struck Davis as he was about to enter the vehicle. Davis sued Leber individually, and also sued the City of Louisville, asserting that Leber was acting within the course and scope of his employment. Davis asserts that he was knocked unconscious by the impact. Davis claimed to have suffered injuries requiring a cast on his right leg and left wrist. Officer Leber testified that Davis was on the sidewalk when the collision occurred, and could not have been struck by the vehicles.

Davis asserts that when he attempted to have the complaint served on the officer, Officer Leber avoided service of process. Appellees admit this. The morning of trial, which was the fifth trial date set in the case, Officer Leber was present, and Davis attempted to have Leber served. The trial court stated that it was too late to serve the officer, and that Davis had ample opportunity to serve the officer at earlier trial dates and pre-trial hearings.

Davis then claimed that the record showed that Leber was served by a Special Bailiff on February 20, 2003. Davis

argued that he did not discover that fact until the day of trial. Leber denied that he was ever served. Davis moved for default judgment against the officer. The trial court denied the motion, both on the grounds that it was uncertain as to whether the officer had actually been served, and additionally because Davis had waited 20 months after the date of service to make the motion for default judgment. Trial courts have broad discretion in ruling on motions for default judgment, and that judgment will not be disturbed unless an abuse of discretion is shown. S.R. Blanton Development, Inc. v. Investor's Realty & Management Co., 819 S.W.2d 727, 730 (Ky.App. 1991).

The City stated before the Court that it was the responsible party as Officer Leber was acting within the course and scope of his employment at the time of the accident. The City notified the trial court that the City would pay any judgment rendered against Officer Leber. The City agreed to proceed without Officer Leber being a party to the action. Davis complained, stating that Leber had been served and he was therefore entitled to a default judgment against the officer. The court refused to add Leber as a party, and stated that while Davis could make a post-trial motion for default judgment, the liability of the officer was going to be the same as that of the City. The court stated that:

"It can just be understood that if you get a judgment it'll be against both the City and Officer Leber and if you don't get a judgment that will be absolving both the City and Officer Leber because that's the way I'm treating it."

We find no reversible error in the trial court's denial of the motion for default judgment.

The complaint and record did not support a potential finding of individual liability on the part of the officer. The City appeared in the action and defended the propriety of the officer's conduct, and its defense to the claims made. Where a defense is made, no default judgment is appropriate. Lexington-Fayette County Food And Beverage Association v. Lexington-Fayette Urban County Government, 131 S.W.3d 745, 754 (Ky. 2004).

At trial the jury found in favor of the City of Louisville. Officer Leber testified on behalf of the City. Davis contends that the jury's ruling was a result of bias, passion or prejudice. Davis notes that the jury submitted a written question regarding Interrogatory A. The question was:

Regarding Interrogatory A, if the answer is yes, does that mean we agree that actual injuries were sustained? If the answer is yes, does that mean that money must be awarded to the plaintiff?

Interrogatory A reads:

Are you satisfied from the evidence that Reginald Davis was in close enough proximity to have sustained any injuries as a direct result of the collision?

The trial court notified the jury that she could not answer their question. Davis provided an affidavit from the sole African-American member of the jury, stating that the jury was not concerned with deciding the case in accordance with the evidence, but wanted only to know if they had to give Davis a monetary award. The juror claimed that the remainder of the jury panel spent its time arguing over whether Davis could have put the casts on his extremities himself, and the fact that the casts were temporary and removable. The panel appeared to believe that Davis was not injured. The juror stated that the panel never discussed the truthfulness of the other witnesses.

It is a longstanding principle of law that a verdict cannot be impeached by the testimony of a juror. Rager v. Louisville & N.R. Co., 127 S.W. 155, 157 (Ky. 1910). A juror cannot impeach a jury's verdict by affidavit. Bowling v. Commonwealth, 168 S.W.3d 2, 5 (Ky. 2004). In the present case, the juror's proffered affidavit does not contain any factual allegations regarding the impropriety of the panel's conduct. The affidavit merely speculates bias or prejudice on the part of the panel as a whole. The affidavit is insufficient to support the grant of a new trial.

It is the province of the jury to determine the weight and credibility of the evidence before it. Commonwealth v.

Smith, 5 S.W.3d 126, 129 (Ky. 1999). This Court may not ignore the jury's determination "absent some legally compelling reason." Kroger Co. v. Willgruber, 920 S.W.2d 61, 67 (Ky. 1996). No legally compelling reason has been shown in the present case. The Jefferson Circuit Court's denial of the motion for new trial is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Aubrey Williams  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Gregory Scott Gowen  
Louisville, Kentucky