RENDERED: JULY 13, 2007; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001693-MR

JONAS SOSA SR. — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 04-CI-003798

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ABRAMSON, ACREE, AND WINE, JUDGES.

ABRAMSON, JUDGE: On May 5, 2003 near the intersection of Bardstown Road and Watterson Trail in Louisville, a vehicle owned by Louisville/Jefferson County Metro Government (the City) and operated by a City employee collided with a vehicle owned and operated by Jonas Sosa. There is no dispute, apparently, that the accident was the City's fault. Sosa subsequently corresponded with a City claims officer and demanded compensation for damage to his vehicle and for alleged personal injuries. The City

offered to repair Sosa's vehicle but refused his personal injury demands, on the ground that under the Kentucky Motor Vehicle Reparation Act's (MVRA) "no-fault" provisions Sosa was obliged to look to his own insurer for basic reparation benefits.

Dissatisfied with the City's position, Sosa brought the current action, asserting property and personal injury claims as well as claims for pain and suffering and for punitive damages to sanction what Sosa maintains was the City's bad faith refusal to settle his initial claims. The City again agreed to have Sosa's vehicle repaired and in accordance with its repair estimate offered to settle Sosa's suit for $1,778.03. Sosa rejected this offer and instead moved to amend his complaint to add several claims reflecting what he believed was the City's unreasonable refusal to meet his demands and its alleged mistreatment of him as a *pro se* litigant. Although it did not withdraw its offer to repair Sosa's vehicle, the City then moved to dismiss Sosa's complaint. On July 24, 2006, the trial court granted the City's motion (thereby in effect denying Sosa's motion to amend his complaint) and entered a judgment awarding Sosa the offered vehicle repair but otherwise dismissing his claims. Appealing from that judgment, Sosa contends that the trial court misapplied provisions of the MVRA, KRS Chapter 304 Subtitle 39. Convinced that the trial court correctly applied the law, we affirm.

Sosa acknowledges that he has not opted out of the MVRA, and that its no-fault provisions therefore apply to him. KRS 304.39-060. As the City and the trial court correctly note, KRS 304.39-060(2)(a) "abolishes" auto accident tort liability for bodily injury damages to the extent of the $10,000.00 basic reparation benefit each vehicle

owner is obligated under the MVRA to provide for himself and the other users of his vehicle. Thus, even though the accident in this case was the City's fault, under this statute Sosa (or his basic reparation insurer) was obligated to pay the first $10,000.00 of Sosa's alleged medical expenses. *Carta v. Dale,* 718 S.W.2d 126 (Ky. 1986). Sosa has not alleged that his expenses exceeded that amount. The City, therefore, did not mislead Sosa or in any way breach its duty of good faith toward him by relying on this statute and refusing Sosa's demands for medical expenses. The trial court, therefore, properly dismissed Sosa's claims for personal injury and for punitive damages.

KRS 304.39-060(2)(b), furthermore, provides that before the victim of an auto accident may recover in a tort action seeking such non-economic damages as pain and suffering, mental anguish, or inconvenience, he must establish that as a result of the accident he has incurred more than $1,000.00 in medical expenses or has suffered one of the statutorily specified injuries. *Shelter Insurance Company v. Humana Health Plans, Inc.,* 882 S.W.2d 127 (Ky.App. 1994). When Sosa failed to offer proof that he met either of these prerequisites, the trial court was required under the statute to dismiss his pain and suffering claim. Again, the trial court's ruling in no way violated Sosa's rights or discriminated against him as a *pro se* litigant. If this statutory restriction on his right to sue strikes Sosa as unfair, the unfairness is in the statute, not in the trial court's application of it to him. Our Supreme Court has held, moreover, that this limited restriction on a tort victim's right to sue is not unconstitutional. *Fann v. McGuffey,* 534 S.W.2d 770 (Ky. 1975). *See also, Probus v. Sirles,* 569 S.W.2d 707 (Ky.App. 1978).

Finally, Sosa complains that the trial court's judgment does not allow him to use the auto repair service he prefers. As we read the judgment, however, the City has conceded that certain repairs are reasonable and necessary and that $1,778.03 is a reasonable amount to cover them. Sosa is free to have those repairs performed, for that amount, by any repair service he wishes. The judgment will include additional repairs or additional amounts, however, only if Automotive Inspection Service and the City's agent agree that they are reasonable and necessary and only if Sosa agrees to have the additional repairs performed by the repair service specified in the judgment. Sosa has not referred us to any facts in the record which would indicate that this provision of the judgment is unreasonable. We cannot say, therefore, that the trial court's ruling constitutes an abuse of discretion, and so we may not disturb the judgment on this ground.

In conclusion, the MVRA imposes a trade-off: it limits the right of auto accident victims, such as Sosa, to seek tort damages in the large number of relatively minor injury cases, in exchange for simplified and expedited insurance settlement of such claims. The trial court correctly ruled that Sosa's claims were among those extinguished by this trade-off, and thus the court did not err when it dismissed Sosa's complaint. Accordingly, we affirm the July 24, 2006 judgment of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jonas Sosa Sr., *pro se*
Louisville, Kentucky

BRIEF FOR APPELLEE:

Gary W. Anderson
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Louisville, Kentucky