IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

2010-CA-01045

LISA WANSLEY

Appellant

vs.

VICTORIA BRENT

Appellee

BRIEF OF APPELLEE

On Appeal from the Circuit Court of the
First Judicial District of Hinds County, Mississippi

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Court may evaluate possible disqualification or recusal.

Victoria Brent
Plaintiff/Appellee

Lisa Wansley
Defendant/Appellant

Joe Tatum
Trial and appellate counsel for Victoria Brent

J. Scott Rogers
Trial counsel and counsel on appeal to Circuit Court for Lisa Wansley

Philip W. Gaines
Christopher D. Morris
Appellate Counsel for Lisa Wansley on appeal to the Supreme Court

Hon. Houston Patton
County Court Judge

Hon. Winston Kidd
Circuit Court Judge

SO CERTIFIED BY ME, this the 10th day of January, 2010.

Joe N. Tatum

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STATEMENT OF THE ISSUES

1. The trial court did not err in refusing to instruct the jury on comparative fault.

2. The trial court did not err in denying the Appellant's Motion for Judgment notwithstanding the verdict, Motion for new Trial, or Motion for Remittitur.

STATEMENT OF THE CASE

This is a car wreck case. In August 2006, Appellee Victoria Brent was driving south on Hanging Moss Road in Jackson when Appellant Lisa Wansley exited the Sav-A-Lot parking lot in Jackson, Mississippi in front of Brent in an effort to enter the northbound lane of Hanging Moss Road. Brent sued Wansley in County Court and a jury awarded Brent $55,000. R.E. 80[1]; CP. 69. Wansley appealed to the Circuit Court which upheld the County Court verdict. Wansley has now appealed the judgment of the Circuit Court. Wansley insists that the jury should have been given a verdict form which would have allowed them to also assign fault to Brent (CP. 63) as well as an instruction that the jury could find Brent negligent by failing to comply with M.C.A. § 63-3-603. So far, neither the County Court nor the Circuit Court has agreed with Wansley's reasoning. Hence, the instant appeal.

STATEMENT OF THE FACTS

As stated above, this is a car wreck case. Only two witnesses testified at the trial in County Court: the plaintiff Victoria Brent and a witness Daniel Wiggins. The Defendant , Lisa Wansley, did not testify.

On August 10, 2007, a rainy day (T. 34), Victoria Brent left her job to get some lunch. She headed south down Hanging Moss Road toward Northside Drive to get some food at one of the numerous fast food restaurants at that intersection. T. 5. Hanging Moss, at some point before the Sav-A-Lot, turns from a two-lane road into a four-lane road. Of the two lanes headed south, Brent was in the left lane, i. e, the south bound lane furthest from the parking lot exit. T. 5. A truck just ahead of Brent was also going south but in the right lane closest to the parking

[1] Brent is referring to Wansley's Record Excerpts.

lot. Being already on Hanging Moss Road, Brent had the right-of-way as opposed to Wansley who was exiting the Sav-A-Lot parking lot. As Brent was passing the Sav-A-Lot, Lisa Wansley pulled out of the Sav-A-Lot parking lot in front of Brent and the two cars collided.

Brent was taken by ambulance to St. Dominic Hospital. T. 12. The doctors there suspected a neck fracture and had several x-rays taken. T. 13. The doctors told Brent she suffered from a bruised sternum and that any pain she was suffering would probably be worse the next day. T. 15. The pain did get worse and she sought treatment from Dr. Tarver at the Flowood Medical Center some 16 times. T. 15, 31. At the time of the trial, October 2007, Brent testified that she was still suffering pain in her lower back and neck. T. 16. She no longer goes to the gym and it hurts for her to sit all day at her job. T. 17.

The driver of the truck, Daniel Wiggins, testified that he was in the lane next to the Sav-A-Lot parking lot but was somewhat straddling the next lane (Brent's lane) as well, since the size of his truck requires wide turns. In fact, Sav-A-Lot was his destination. Wiggins' flatbed truck was loaded with bales of cardboard so as Wansley sitting in the Sav-A-Lot parking lot could not see over the truck for southbound traffic on Hanging Moss Road. T. 45. Because of the size of his truck, any turns he makes are wide turns and he needs a certain amount of room to make them. T. 50. Wiggins stated that he was unable to make the right turn into the Sav-A-Lot parking lot as long as Wansley's vehicle was in the entrance/exit to the parking lot. Therefore, Wiggins came to a **complete stop** waiting for Wansley's vehicle to clear the exit/entrance lane. T. 44. Both Wiggins and Wansley sat in their respective vehicles **for two or three minutes**. T. 45. As Wiggins sat there, a vehicle (belonging to Brent) passed his truck in the left lane next to

his. T. 46. At the same time, Wansley exited the parking lot intending to enter the northbound lane (*Appellant's Brief p. 2*) and the two vehicles collided.

The defendant put on no evidence but requested a directed verdict after the plaintiff rested. T. 52-53. The motion was denied. The defendant requested that the court instruct the jury on comparative negligence but the court denied the instruction.

SUMMARY OF ARGUMENT

The trial court was entirely correct in refusing to give the jury a comparative negligence instruction in this case. The evidence shows that Wansley was blindly exiting a parking lot and crossing two lanes of traffic in so doing. An 18 wheeler was stopped in the lane closest to the Sav-A-Lot parking lot with bales of cardboard blocking Wansley's view of southbound traffic on Hanging Moss Road. Because of its size, the 18 wheeler was unable to enter the parking lot until Wansley moved her vehicle. Wansley moved into the 18 wheeler's lane of traffic and then collided with a vehicle (Brent's) in the second (left) southbound lane. Brent clearly had the right-of-way and she was in no way negligent in continuing in her lane of traffic with the expectation that a vehicle would not blindly make a left turn directly in front of her. All Wansley had to do to avoid this collision was to back her vehicle up a few feet so that the 18 wheeler truck could turn into the Sav-A-Lot parking lot and she (Wansley) could actually see oncoming traffic on Hanging Moss Road.

Even if the collision occurred as Wansley's counsel alleges, the collision just would have occurred a few seconds later as Brent's vehicle would have been a few feet further away from the Sav-A-Lot parking lot in the center lane. Brent still would have held the right-of- away.

Nor was the $55,000 awarded Brent on her specials of $6,465.40 a result of a runaway jury entitling Wansley to a new trial or a remittitur. The verdict was a mere eight-and-one-half times the specials and, as such, was well within the scope of verdicts upheld by this Court.

LAW AND ARGUMENT

1. The trial court did not err in refusing to instruct the jury on comparative fault.

Wansley's argument that Brent could also have been at fault was based on § 63-3-603 titled "Use of lanes". CP. 65. That statute states as follows:

Whenever any roadway has been divided into three (3) or more clearly marked lanes for traffic, **except through or bypassing a municipality**, the following rules in addition to all others consistent herewith shall apply:

> (a) A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.
>
> (b) A vehicle shall not be driven in the center lane upon a roadway which is divided into three (3) lanes except when:
>
> (i) **Overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance**;
>
> (ii) Such vehicle is in preparation for a left turn; or
>
> (iii) Such center lane is at the time allocated exclusively to traffic moving in the direction such vehicle is proceeding and is signposted to give notice of such allocation.
>
> (c) Official signs may be erected directing slow-moving traffic to use a designated lane or allocating specified lanes to traffic moving in the same direction, and drivers of vehicles shall obey the directions of every such sign.

> (d) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.
>
> (e) Persons riding bicycles upon a roadway shall not ride more than two (2) abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. Persons riding two (2) abreast shall not impede the normal and reasonable movement of traffic and, on a laned roadway, shall ride within a single lane.

Miss. Code Ann. § 63-3-603.

While Brent denies ever driving in the "center or turn" lane of Hanging Moss Road, nothing in M.C.A. § 63-3-603 prohibited her from doing so under the facts of this case. Brent testified that she never entered the center lane and always drove in the left southbound lane at all relevant times. For example, section 63-3-603(b)(i) specifically authorizes a driver to drive in the center lane when "overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance ." This is exactly what Brent would have been doing if one is to believe Wansley's counsel's version of events. Wansley put on no evidence at trial, so all of her factual allegations on appeal are strictly Wansley's counsel's spin on what occurred. Brent had every right to be using the left south-bound lane of a four-laned road and, indeed, she had the right-of-way and Wansley was the solely negligent party when she exited the Sav-A-Lot parking lot in front of Brent. Indeed, Wansley's exiting the Sav-A-Lot parking lot when Wiggins' large truck was obstructing her view of the right south-bound lane was reckless.

M.C.A. § 63-3-603(b) does not support Wansley's contention that Brent was solely or even partially responsible for the collision and the trial court (and the Circuit Court on appeal) was entirely correct when it refused to instruct the jury on comparative fault.

But even assuming Brent was using the "center or turn" lane (defined by M.C.A. § 63-3-603 as the center lane in a three lane road), she was using it correctly. Once she was in that lane, she had the right-of-way- and Wansley had no business turning in front of her blindly. So, once again, we have a scenario where the fault is 100% Wansley's.

The cases cited by Wansley are all inapplicable here. In *McRee v. Haney*, 493 So.2d 1299 (Miss. 1986), a police motorcyclist and the driver of an automobile were driving toward each other. At an intersection, the driver of the vehicle, Raney, began a left turn. At some point in the turn, he observed the motorcycle in the lane coming toward him and Raney stopped his vehicle hoping the motorcycle would go around him. *McRee*, 493 So.2d at 1300. Nevertheless, McRee, the policeman, crashed his vehicle into Raney's. *Id.* For reasons not apparent on the record, the jury found for Raney, the vehicle driver. On appeal, the Mississippi Supreme Court reversed finding that McRee was entitled to a peremptory instruction that Raney, by making a left turn in front of another vehicle, was negligent as a matter of law. *McRee*, 493 So.2d at 1301. This case supports Brent's case, not Wansley's. The person making a left turn may do so only if there is no traffic that would prevent him from doing so safely. In this case, Wansley exited a parking lot in front of a stopped 18-wheeler. Because of the position of the 18 wheeler, Wansley was unable to see Wansley in the lane next to the 18 wheeler and, thus, made a left turn at a time when it was unsafe to do so. Wansley, then, like, Raney, was negligent as a matter of law and there was no issue of comparative negligence for the jury to consider.

Nobles v. Unruh, 198 So2d. 245 (Miss. 1067) is also cited by Wansley in support of her case. In that case, a passenger was killed when the driver of his car attempted to pass a transport truck on a four lane highway. Instead of trying to pass in a lane going in the same direction as the transport truck, the automobile entered the lane going in the opposite direction and collided with a vehicle that was rightfully in that lane. The trial court entered judgment for the defendant. On appeal, the Court reversed holding that the jury should have been peremptorily instructed that a passing vehicle when it entered the passing lane (the lane in which traffic normally drove in the opposite direction) without first ascertaining it was safe to do so, was negligent as a matter of law. *Nobles*, 198 So.2d at 247. The same result was also had in *Nobles v. Unruh*, 198 So.2d 245 (Miss. 1967), also cited by Wansley even though it stands for the proposition that a vehicle attempting to pass another is automatically liable (liable as a matter of law) when he does so without first determining whether it is safe to do so. *Nobles*, 198 So. 2d at 247.

A case more like the instant one is *Rotwein v. Holman*, 529 So.2d 173 (Miss. 1988), in which Holman rear-ended another car as she was exiting a parking lot. The trial court gave a peremptory instruction in favor of the driver who had been rear-ended. *Rotwein*, 529 So.2d at 174-175.

The general rule is that "[t]he operator of a motor vehicle should stop before emerging from a private alley where stopping is essential to assure safety." CJS MOTORVEH § 688. This is why M.C.A. § 63-3-805 entitled "Entering highway; stop signs" states as follows:

> The driver of a vehicle shall stop as required by this chapter at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said through highway as to constitute an immediate hazard. However, said driver having so yielded may proceed and the drivers of all

> other vehicles approaching the intersection on said through highway shall yield the right-of-way to the vehicle so proceeding into or across the through highway.
>
> The driver of a vehicle shall likewise stop in obedience to a stop sign as required by this chapter at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

Miss. Code Ann. § 63-3-805. Thus, when a motorist enters the highway from a private driveway, that motorist is the **sole** cause of accident where it collides in the roadway with a motorist going within the speed limit. *Stribling v. Hauerkamp,* 771 So.2d 415, 417 (Miss.App. 2000).

In this case, Wansley exited the parking lot, crossed in front of the stopped 18-wheeler and collided with Brent's vehicle which had been hidden by the 18-wheeler and, because it was in a lane it had a right to be in, had the right of way. The trial court was perfectly correct to deny Wansley a comparative damages instruction. All of the liability in this case was Wansley's.

2. The trial court did not err in denying the Appellant's Motion for Judgment Notwithstanding the Verdict, Motion for new Trial, or Motion for Remittitur.

Wanlsey argues that the award of $55,000 is not supported by the evidence and is a reflection of the allegedly wrong instructions.

The standard of review for a directed verdict or a judgment notwithstanding the verdict also is de novo. *See United Am. Ins. Co. v. Merrill,* 978 So.2d 613, 624 (Miss.2007). " 'In essence, judgments as a matter of law present both the trial court and appellate court with the same question-whether the evidence, as applied to the elements of a party's case, is either so

indisputable, or so deficient, that the necessity of a trier of fact has been obviated.'" *Id.* quoting *White v. Stewman,* 932 So.2d 27, 32 (Miss.2006).

The standard of review for a motion for judgment notwithstanding the verdict requires that the Court consider the evidence in the light most favorable to the non-moving party, giving that party the benefit of all favorable inference[s] that may be reasonably drawn from the evidence. *Steele v. Inn of Vicksburg, Inc.,* 697 So.2d 373, 376 (Miss.1997). "If the evidence is sufficient to support a verdict in favor of the non-moving party, the trial court should deny the motion. *Henson v. Roberts,* 679 So.2d 1041, 1044-1045 (Miss.1996). In other words, the Court is to consider "whether the evidence, as applied to the elements of a party's case, is either so indisputable, or so deficient, that the necessity of a trier of fact has been obviated." *White v. Stewman,* 932 So.2d 27, 32 (Miss.2006).

Mississippi Code Annotated section 11-1-55 provides the standard for when a remittitur, or additur, for damages is appropriate. That statute states:

> The supreme court or any other court of record in a case in which money damages were awarded may overrule a motion for new trial or affirm on direct or cross[-]appeal, upon condition of an additur or remittitur, if the court finds that the damages are excessive or inadequate for the reason that the jury or trier of the facts was influenced by bias, prejudice, or passion, or that the damages awarded were contrary to the overwhelming weight of credible evidence. If such additur or remittitur be not accepted[,] then the court may direct a new trial on damages only. If the additur or remittitur is accepted and the other party perfects a direct appeal, then the party accepting the additur or remittitur shall have the right to cross[-]appeal for the purpose of reversing the action of the court in regard to the additur or remittitur.

Id. Whether a verdict is excessive is determined on a case-by-case basis, and a court should not disturb the award unless the amount, in comparison to the actual damages, "shocks the

conscience" of the court. *Entergy Miss., Inc. v. Bolden,* 854 So.2d 1051, 1058(¶ 20) (Miss.2003). In other words, the question is whether the verdict is so excessive or inadequate as to indicate bias, passion and prejudice on the part of the factfinder. *Walker v. Gann,* 955 So.2d 920, 931 (Miss.App. 2007).

The parties stipulated that Brent incurred medical bills in the amount of $6,465.40. CP. 125. A properly-instructed jury awarded her $55,000 or eight-and-one-half times the actual medical bills. The appellant did not include Brent's opening and/or closing statements to the jury in the record and, thus, to the extent that Wansley blames any improper argument on the part of Brent for the alleged impermissibly high jury award, that objection has been waived by Brent's failure to include those portions of the trial into the record. *Nelson v. State,* 919 So.2d 124, 126(¶ 7) (Miss.Ct.App.2005).

Brent was treated at the hospital the same day as the accident and was told she suffered from a bruised sternum and possible neck fracture. The pain got worse over time and she sought treatment from her treating physician some 16 times. At the time of the trial, October 2007, Brent testified that she was still suffering pain in her lower back and neck. T. 16. She no longer goes to the gym and it hurts for her to sit all day at her job. T. 17.

As a matter of law an amount some 15.78 times the compensatory damages is not excessive. In *Detroit Marine Engineering v. McRee*, 510 So.2d 462 (Miss. 1987), the plaintiff had accrued medical expenses of $18,000 and lost wages of $17,000. The jury awarded the plaintiff $1,000,000 which was upheld on appeal notwithstanding the defendant's argument that the verdict was excessive. *Detroit Marine Engineering*, 510 So.2d at 471. In *Cade v. Walker*, 771 So.2d 403, 409 (Miss.App. 2000), the Court affirmed an award amounting to 51 times the

amount of medical expenses. In that case, the court stated that there are no hard and fast rules or maximum multiple when it comes to damages.

> Though [the amount awarded by the jury] is almost three times the greatest multiple found in the cases we have reviewed, the amount of damages is primarily a concern for the jury. *Houston v. Page,* 208 So.2d at 905. The Mississippi Supreme Court has recognized that though the sky is not the limit with regard to jury verdicts, the jury necessarily has especially broad leeway. *Illinois Cent. R. Co.,* 750 So.2d 527, 534 (Miss.2000). We therefore defer to the jury and affirm the verdict and judgment of the trial court.

Cade, 771 So.2d at 410.

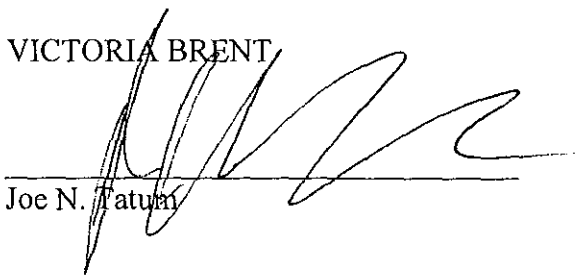
In this case involving over $6,000 in medical bills and continuing pain, an award of $55,000 is not excessive or unsupported by the evidence.

Conclusion

The jury was correctly instructed on the law of fault as it applied in this case. The verdict of $55,000 was not excessive given Brent's medical bills in excess of $6,000 and her testimony that she still felt pain as of the date of the trial. For these reasons, neither the Circuit Court nor the County Court's rulings should be overturned.

Respectfully submitted,

VICTORIA BRENT



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CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed a true and correct copy of the foregoing by United States Mail, first class postage prepaid to:

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This, the 10th day of January, 2010

Joe N. Tatum