

IN THE COURT OF APPEALS 2/25/97

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00415 COA

DEBRIA BLOUNT

APPELLANT

v.

ELAINE S. MILLS

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. BILLY JOE LANDRUM

COURT FROM WHICH APPEALED: JONES COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

J. ANDREW PHELPS

GEORGE W. SCHMIDT

ATTORNEYS FOR APPELLEE:

ROBERT D. GHOLSON

CRAIG NEWMAN ORR

NATURE OF THE CASE: CIVIL--NEGLIGENCE

TRIAL COURT DISPOSITION: VERDICT IN FAVOR OF DEFENDANT

BEFORE THOMAS, P.J., PAYNE, AND SOUTHWICK, JJ.

THOMAS, P.J., FOR THE COURT:

Blount filed suit against Mills for negligence arising out of an automobile accident. Following a jury verdict in favor of Mills, Blount appeals, raising the following issues as error:

I. WHETHER THE JURY VERDICT WAS CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE;

II. WHETHER THE TRIAL COURT ERRED IN REFUSING TO GRANT JURY INSTRUCTION P-1;

III. WHETHER THE TRIAL COURT ERRED IN REFUSING TO GRANT JURY INSTRUCTION P-10; and

IV. WHETHER THE TRIAL COURT ERRED IN REFUSING TO GRANT JURY INSTRUCTION P-12.

Finding no error, we affirm.

FACTS

On May 24, 1993, Elaine Mills failed to stop at a stop sign on Highway 11 and collided with the vehicle driven by Debria Blount. Mills admitted that she was negligent in the operation of her vehicle, and the case was tried on the issue of damages alone. Blount testified that she has sustained serious injuries to her neck, back, and left wrist in the accident and alleged that the accident had rendered her permanently disabled. Blount testified that she could not bend or lift anything weighing over ten pounds. She also testified that her wrist injury was so severe that she could not even hold a glass in her left hand. Blount submitted medical bills totaling \$3,827.71.

Mills presented evidence that Blount was not injured in the accident. Pictures of the vehicles involved

in the accident showed very slight damage. Mills also presented videotape surveillance evidence which showed that Blount was capable of doing physical activity such as bending, loading groceries, and walking apparently without discomfort which contradicted her testimony that she could not perform any such tasks. Mills also impeached Blount on numerous other points regarding her injuries.

The issue of damages was submitted to the jury, and the jury returned a verdict in favor of Mills.

ISSUES

I. WAS THE JURY VERDICT CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE?

Blount asserts that since Mills admitted that she negligently operated her vehicle and Blount offered evidence that she had incurred medical expenses, she should have been awarded damages. However, under Mississippi law, there are four elements a party must prove in order to recover in a negligence action: duty, breach of duty, causation, and damages. *Presswood v. Cook*, 658 So. 2d 859, 862 (Miss. 1995). The jury determines the question of negligence. *Id.*

Blount is not entitled to recover merely because she can establish the first two elements. Blount must also prove that she incurred damages as a result of the accident. The evidence of damages was hotly disputed by Mills at trial. The jury apparently chose to believe Mills' evidence and reject Blount's evidence. A determination of the credibility of witnesses is left to the discretion of the jury. *Henson v. Roberts*, 679 So. 2d 1041, 1044 (Miss. 1996).

The granting or denial of a motion for new trial is left to the sound discretion of the trial court, and we will not reverse such a ruling absent a finding that the trial court abused its discretion. *American Fire Protection v. Lewis*, 653 So. 2d 1387, 1390 (Miss. 1995) (citations omitted). We give "great weight and deference to juries on findings of fact and will not set aside a verdict unless it is against the overwhelming weight of the evidence and credible testimony. . . . [N]o jury verdict should be set aside lightly; the occasion for doing so should never arise except in rare and unusual cases." *Hans Const. Co. v. Drummond*, 653 So. 2d 253, 266 (Miss. 1995) (citations omitted).

The jury considered the conflicting testimony and resolved the conflict in favor of Mills. The trial court refused to substitute its opinion for the decision of the jury and properly denied the motion for new trial. When the evidence is in dispute, we refuse to interfere with the jury's decision. *Henson*, 679 So. 2d at 1004. This issue is without merit.

II. DID THE TRIAL COURT ERR IN REFUSING TO GRANT JURY INSTRUCTION P-1?

Blount asserts that the trial court improperly denied her peremptory instruction which read as follows: "The Court instructs the Jury to return a verdict in favor of the Plaintiff and to assess her damages accordingly." Blount argues that she proved damages since she submitted medical bills and such bills are presumed necessary and reasonable under section 41-9-119 of the Mississippi Code.

Section 41-9-119 provides that "proof that medical, hospital, and doctor bills were paid or incurred because of any . . . injury shall be prima facie evidence that such bills so paid or incurred were necessary and reasonable." Miss. Code Ann. § 41-9-119 (1972). However, Blount fails to recognize that the opposing party can rebut this prima facie showing. *Jackson v. Brumfield*, 458 So. 2d 736, 737 (Miss. 1984). The determination of whether the bills were necessary and reasonable is then left to the jury. *Id.*

A request for a peremptory instruction and a motion for JNOV are procedural vehicles for challenging the sufficiency of the evidence supporting the verdict. *James W. Sessums Timber Co. v. McDaniel*, 635 So. 2d 875, 880 (Miss. 1994) (quoting *Weems v. American Sec. Ins. Co.*, 450 So. 2d 431, 435 (Miss. 1984)). Each requires that the court consider all of the evidence before it at the time the motion is offered. *Id.*

Where such a request has been made, the trial court must consider all of the evidence--not just the evidence which supports the non-movant's case--in the light most favorable to the party opposed to the motion. The non-movant must also be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. If the facts and inferences so considered point so overwhelmingly in favor of the movant that reasonable men could not have arrived at a contrary verdict, granting the motion is required. On the other hand, if there is substantial evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions, the motion should be denied and the jury's verdict allowed to stand.

Id. Since Mills introduced substantial credible evidence that the medical bills were not necessary or reasonable, the trial court properly denied the peremptory instruction since the issue of damages was still in question.

Blount further asserts that if the trial court believed that the issue of damages was in dispute, then the trial court itself should have submitted only that issue to the jury. This is the precise action that the trial court took. The jury was instructed that Mills was negligent and that the only elements Blount had to prove were that Mills' negligence was the proximate cause of the accident and that Blount suffered damages as a result of Mills' negligence. There is no merit to this issue.

III. DID THE TRIAL COURT ERR IN REFUSING TO GRANT JURY INSTRUCTION P-10?

Blount asserts that the trial court erred in refusing to grant instruction P-10 which provided as follows:

The Court instructs the jury that Section 63-3-805 of the Mississippi Code of 1972, 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 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 approaching 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 the 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.

Blount asserts that the trial court should have granted this instruction since it "would have been beneficial to the jury in providing them with the requisite duties of a driver approaching an intersection where a stop sign is erected." Blount fails to recognize that Mills admitted that she had a duty to stop at the stop sign and that she breached this duty. As discussed above, these two elements of a cause of action for negligence were not at issue in the instant case. The trial court properly denied the instruction since it had no application to the issues. *See White v. Mississippi Power Co.*, 171 So. 2d 312 (Miss. 1965); *Yazoo & Miss. Valley R. Co. v. Aultman*, 173 So. 280 (Miss. 1937). There is no merit to this issue.

IV. DID THE TRIAL COURT ERR IN REFUSING TO GRANT JURY INSTRUCTION P-12?

Blount asserts that the trial court erred in refusing to grant instruction P-12, a special interrogatory to break down any damage award. This issue is moot since the verdict was in favor of Mills. However, even if Blount had been successful in her cause of action, this issue would still be without merit. Rule 49(c) provides that the trial court, in its discretion, may submit special interrogatories to the jury. M.R.C.P. 49(c). Rule 49(a) provides that the special interrogatory form should not be used "in simple cases where the general verdict will serve the ends of justice." M.R.C.P. 49(a). Since the only issue in the instant case was whether or not Blount was injured, this case certainly qualifies as a "simple case." *See W.J. Runyon & Son, Inc. v. Davis*, 605 So. 2d 38, 49 (Miss. 1992). The trial court did not abuse its discretion in refusing the special interrogatory form of the verdict.

THE JUDGMENT OF THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF JONES COUNTY IN FAVOR OF MILLS IS AFFIRMED. ALL COSTS ARE ASSESSED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN, P.J., BARBER, COLEMAN, DIAZ, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR. HERRING, J., NOT PARTICIPATING.