

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00265 COA**

RAYMOND C. WADE

APPELLANT

v.

DUDLEY K. HAMM

APPELLEE

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

DATE OF JUDGMENT:	2/14/96
TRIAL JUDGE:	HON. BILL JONES
COURT FROM WHICH APPEALED:	JACKSON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	DAVID C. FRAZIER
ATTORNEY FOR APPELLEE:	JOHN A. BANAHAN
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY
TRIAL COURT DISPOSITION:	JURY VERDICT THAT A RELEASE WAS NOT OBTAINED AS A RESULT OF FRAUD, COERCION, MISREPRESENTATION, ETC.
DISPOSITION:	REVERSED AND REMANDED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE BRIDGES, C.J., PAYNE, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

The two parties were involved in an automobile accident. A week later Raymond Wade in exchange for \$275 signed a release in favor of Dudley Hamm and State Farm Insurance. Subsequently Wade filed a personal injury action against Hamm. After the affirmative defense of accord and satisfaction was raised, a trial was held solely on the issue of whether fraud, coercion, duress or misrepresentation caused the release. The jury found the release to be valid. On appeal Wade argues that he was improperly denied the opportunity to present evidence that his medical expenses since the date of the release far exceeded the consideration that he received. We agree that supreme court authority requires that this evidence be admitted. Therefore we reverse.

STATEMENT OF FACTS

Wade filed a complaint on March 21, 1995 alleging that on July 29, 1994 the defendant Hamm negligently operated his automobile and caused Wade to be injured. One week after the accident, on August 5, 1994, Wade signed a release that among other things stated the following:

For the sole consideration of Two Hundred Seventy-Five Dollars, the receipt and sufficiency thereof is hereby acknowledged, the undersigned hereby releases and forever discharges Kevin Hamm and State Farm Insurance. . . from any and all claims, demands, damages, actions, causes of actions or suits of any kind or action whatsoever. . . which have resulted or may in the future develop from an accident which occurred on or about the 29th day of July, 94, at or near Ingall's. . . .

On February 13, 1996, a trial was held before a Jackson County Circuit Court jury on the sole question of the validity of this release. Prior to trial the court granted Hamm's motion in limine that excluded any evidence of medical expenses rendered to Wade after the date of the release. The jury found the release to be valid.

This appeal addresses only the validity of the order granting the motion in limine.

DISCUSSION

A motion in limine is a pretrial opportunity for a trial court and the parties to address the admissibility of evidence. It is appropriate when the moving party believes that the evidence at issue will prejudice its side of the case merely by preliminary mention of it at trial. *Gifford v. Four-County Elec. Power Ass'n*, 615 So. 2d 1166, 1171 (Miss. 1992). The order on Hamm's motion barred the introduction of certain evidence at a trial that solely concerned the validity of a release. The excluded evidence was the "medical expenses and/or treatment rendered after the date of the release, August 5, 1994. . . ."

Wade's argument on appeal is that evidence of medical expenses, which allegedly totaled approximately \$16,000, was "relevant evidence" in determining the validity of the August 5, 1994 release. Wade properly refers us to the following evidentiary rule:

"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

M.R.E. 401. Wade argues that the post-release medical expenses are "relevant for the trier of fact to consider in making its determination as to whether or not fraud, misrepresentation, coercion or duress was utilized in obtaining a plaintiff's signature on the release." The sole case cited by the plaintiff that discusses this question is *Parker v. Howarth*, 340 So. 2d 434 (Miss. 1976). There a release obtained by an insurance company was found arguably to be the result of overreaching, deception or fraud; a trial court order that dismissed the case on the pleadings was reversed. *Id.* at 438. In that case an uneducated, illiterate farm worker, who was in constant pain and apparently taking potent pain medicine, signed a release for injuries resulting from a tractor running over his pelvis. The claims adjuster testified that the \$800 paid for the release was for pain and suffering, and that the insurance company that he represented had agreed to pay all medical bills. The supreme court

noted that a dispute continued to exist over who would pay the medical bills. *Id.* at 437.

The part of the case relied upon by Wade states that the "inadequacy of consideration for a release. . . is a factor to be considered in determining whether or not the appellee was deceived or whether the appellee was satisfied in receiving only the amount paid. . . ." *Id.* As *Parker* makes clear, the issue is not whether the release in hindsight was a wise choice. It is whether the release was procured by fraud, deceit, or by misuse of a fiduciary relation. Thus the relevance of a disparity between the amount paid for a release and the subsequent medical bills attributable to an accident only arises if the party released had reason to know of that likely disparity and took steps to deceive the injured person. Making a bad bargain is not prevented by this case law, but being deceived into making one is. Wade testified that the claims adjustor told him that the release was solely to pay for his one lost day of wages at work. He further testified that since he did not yet know the extent of his injuries, he would not have signed a release that he knew released the defendant from all liability. *See Johnson v. Brewer*, 427 So. 2d 118, 124-25 (Miss. 1983).

Whether Wade was deceived by an experienced claims adjustor was the factual issue to be resolved by the jury. Two strikingly different stories were told the jury. In choosing which story to believe, the jury was entitled, according to *Parker v. Howarth*, to have before them evidence of potentially inadequate consideration. The defendant in turn may respond to that evidence in any manner found relevant, including the released party's lack of knowledge or reasonable basis to expect that subsequent expenses would be that large.

Again, a mere disparity between the amount paid for a release and the actual damages that ultimately are proven to have been released does not constitute grounds to set the contract aside. The disparity is nonetheless a factual matter to be presented to a jury.

We reverse and remand for further proceedings.

THE JUDGMENT OF THE CIRCUIT COURT OF JACKSON COUNTY IS REVERSED AND THE CAUSE IS REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. ALL COSTS ARE ASSESSED TO THE APPELLEE.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, AND PAYNE, JJ., CONCUR.