

IN THE COURT OF APPEALS 12/12/95
OF THE
STATE OF MISSISSIPPI
NO. 94-CA-00476 COA

CHARLES BRADBERRY

APPELLANT

v.

CENTRAL MISSISSIPPI FOODS, INC.

APPELLEE

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

TRIAL JUDGE: HON. HENRY ROSS

COURT FROM WHICH APPEALED: CIRCUIT COURT OF ATTALA COUNTY

ATTORNEY FOR APPELLANT:

RODERICK D. WARD, III

ATTORNEY FOR APPELLEE:

REEVE G. JACOBUS, JR.

NATURE OF THE CASE: TORT CLAIM FOR PERSONAL INJURY

TRIAL COURT DISPOSITION: JURY VERDICT IN FAVOR OF APPELLEE

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

PAYNE, J., FOR THE COURT:

Charles Bradberry sought personal injury damages from Central Mississippi Foods (hereinafter

"CMF"). The jury returned a verdict in favor of CMF. Feeling aggrieved, Bradberry appeals all rulings by the trial court denying Bradberry's motion for a mistrial as they pertain to violation of the collateral source rule and the motions in limine. CMF cross-appeals the lower court's denial of CMF's motion for summary judgment. Finding Bradberry's assignment of error to be without merit and dispositive of the case, we affirm.

STATEMENT OF THE FACTS

Bradberry filed suit against CMF for a personal injury which occurred at CMF's place of business while Bradberry was delivering products on behalf of his employer. A motion in limine was filed by Bradberry which sought to prohibit CMF's counsel from questioning and/or commenting on any collateral sources from which Bradberry received benefits, particularly workers' compensation, both past and present. CMF confessed this particular motion in limine preventing any mention of workers' compensation.

During opening statements, CMF's counsel mentioned that Bradberry filed for unemployment benefits. Bradberry's counsel timely objected as to the collateral source being mentioned. In response to the objection, CMF's counsel, in front of the jury, stated that he believed that he was prohibited from discussing Bradberry's workers' compensation benefits, not his unemployment benefits. Bradberry's counsel immediately moved for a mistrial which was denied by the trial court. After the jury's verdict in favor of the CMF, Bradberry made a motion for a new trial and/or a mistrial based upon CMF's counsel's comment in the jury's presence. The trial court denied the motion.

ARGUMENT AND DISCUSSION OF THE LAW

APPELLANT'S ISSUE:

WHETHER THE LOWER COURT ERRED IN FAILING TO GRANT APPELLANT A MISTRIAL OR NEW TRIAL WHEN APPELLEE'S ATTORNEY ANNOUNCED TO THE JURY, DURING OPENING STATEMENTS, THAT THE APPELLANT HAD RECEIVED WORKERS' COMPENSATION BENEFITS FOR THE PERSONAL INJURY WHICH WAS THE SUBJECT OF HIS CAUSE OF ACTION AND HAD APPLIED FOR UNEMPLOYMENT BENEFITS.

Bradberry argues that CMF's counsel's mention of unemployment compensation and workers' compensation violated the collateral source rule and the order of the trial court. Bradberry contends that the comments by CMF's counsel unfairly prejudiced him.

CMF contends that the comment was inadvertent. CMF argues that the trial court was in the best position to determine prejudice and any prejudice was cured when the trial court instructed the jury to disregard the earlier statement made by counsel. CMF also argues that there was no testimony or specific mention of benefits received by Bradberry.

The Mississippi Supreme Court has recognized that the magnitude of prejudice generated by the mention of insurance has been diminished because of the awareness juries have of the existence of liability insurance within our society. *Meena v. Wilburn*, 603 So. 2d 866, 874 (Miss. 1992) (citation

omitted). Certainly this awareness can be extended to the existence of other types of insurance including both workers' compensation and unemployment compensation. The mere mentioning of insurance in front of the jury is not cause for an automatic mistrial in all cases. *Id.* (citing *Anchor Coatings v. Marin Indus. Residential, Inc.*, 490 So. 2d 1210, 1219 (Miss. 1986)). The trial court is in the best position to determine prejudice, if any. *Meena*, 603 So. 2d at 874 (citation omitted). Thus, a large discretion has been vested in the trial court in determining prejudice as a result of comments concerning insurance during a trial. *Id.*

Upon review of the record and, specifically, the comment upon which Appellant complains, we find that while error, it was harmless error. The Mississippi Supreme Court has stated:

[W]e are mindful of the fact that the verdict of the jury is to be given great weight. No trial is free of error; however, to require reversal the error must be of such magnitude as to leave no doubt that the appellant was unduly prejudiced No trial is perfect, all that is guaranteed is a fair trial.

Davis v. Singing River Elec. Power Ass'n, 501 So. 2d 1128, 1131 (Miss. 1987) (where the issue was the admissibility of photographs) (citing *Parmes v. Illinois Cent. Gulf R.R.*, 440 So. 2d 261, 268 (Miss. 1983)); *see also Hatcher v. Fleeman*, 617 So. 2d 634 (Miss. 1993). In the present case, the trial court instructed the jury to disregard the statement made by CMF's counsel and overruled Bradberry's motion for a mistrial and new trial. Bradberry has failed to prove that he was unduly prejudiced in that no testimony was elicited on the subject of workers' compensation. We are of the opinion that the evidence offered was sufficient to support the jury's verdict and that Bradberry received a fair trial. Thus, we find that counsel's comment was harmless error. We caution, however, that our ruling in this case is fact specific and should not be interpreted as condoning the actions by CMF's counsel.

Because our ruling on Bradberry's assignment of error is dispositive of the case, we need not address CMF's cross-appeal issue. Accordingly, the trial court was correct in denying Bradberry's motions for mistrial.

**THE JUDGMENT OF THE CIRCUIT COURT OF ATTALA COUNTY IS AFFIRMED.
ALL COSTS ARE TAXED TO APPELLANT.**

**BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND
SOUTHWICK, JJ., CONCUR. FRAISER, C.J., CONCURS IN RESULT ONLY.**