

IN THE COURT OF APPEALS 2/25/97

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00594 COA

MARTIN MANGOLD

APPELLANT

v.

MELVIN MOON

APPELLEE

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

TRIAL JUDGE: HON. JAMES E. GRAVES JR.

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

JOHN F. SIMON JR.

ROBERT L. WELLS

ATTORNEY FOR APPELLEE:

WES PETERS

NATURE OF THE CASE: CIVIL: PERSONAL INJURIES SUSTAINED AS A RESULT OF
AUTOMOBILE ACCIDENT

TRIAL COURT DISPOSITION: PUNITIVE DAMAGES DENIED

BEFORE THOMAS, P.J., McMILLIN, P.J., AND KING, J.

KING, J., FOR THE COURT:

Martin Mangold appeals a judgment from the Circuit Court of Hinds County denying punitive damages in a negligence action resulting from an automobile accident. Mangold claims that punitive damages were appropriate, because Melvin Moon, the appellee, was driving under the influence of alcohol when he negligently collided into his already disabled automobile. Aggrieved with the court's judgment Mangold assigns the following issues for error: (1) the trial court erred in failing to admit into evidence Moon's automobile insurance policy for the purposes of determining his net worth for punitive damages assessment only; (2) the trial court erred in refusing to admit into evidence the statistical information concerning D.U.I. fatalities in Mississippi for consideration in determining punitive damages against Moon; (3) the trial court erred in limiting appellant's closing arguments to three minutes and presentation of evidence regarding punitive damages and in requiring the jury to return to deliberate punitive damages at 8:30 p.m. after deliberating on compensatory damages for approximately three hours; and (4) the trial court erred in denying appellant's motion for additur, or in the alternative, motion for a new trial as to punitive damages. We affirm.

FACTS

On May 1, 1992, Martin Mangold was injured in an automobile accident. Mangold was proceeding north on North State Street in Jackson, Mississippi, when Tasha Johnson crossed into his lane of traffic. Unable to avoid Johnson, Mangold's auto struck hers sending it off of the street and out of traffic. Mangold was not so lucky as his vehicle remained in the line of traffic, and an approaching vehicle driven by Melvin Moon collided with his disabled vehicle in the rear. When Moon's vehicle struck Mangold, Mangold was already unconscious inside the vehicle from the impact with Johnson's car. The impact from Moon's vehicle knocked Mangold out of his car and into a ditch. As a result of both impacts, Mangold suffered facial lacerations, which required 150 stitches, a concussion, a broken left shoulder, an injured left elbow, and an injured left ankle.

On June 22, 1992, Mangold filed a civil action against Johnson and Moon in the Circuit Court for the First Judicial District of Hinds County. Discovery revealed that Moon held an automobile liability insurance policy with limits of \$500,000.00 per person when the accident occurred. Moon moved in a motion in limine to exclude any evidence or reference to the insurance policy or its limits. The court granted this motion over Mangold's objection.

During trial, Mangold presented evidence that Moon was driving under the influence of alcohol when he collided with Mangold's car. Mangold presented expert testimony that a normal driver, not under the influence of alcohol, traveling approximately at the same speed as Moon, could have avoided striking Mangold's car. After presentation of all evidence and closing arguments, the jury deliberated and returned a verdict assessing Moon 25% at fault.

Immediately preceding the fault phase of the trial, the court informed the jury that it would be asked to consider punitive damages against Moon. While the jury deliberated on phase one of the trial, the court had ruled on motions in limine to exclude evidence of Moon's liability insurance, to exclude evidence of a report concerning statistical information regarding the number of deaths related to D.U.I.'s, and to admit evidence of a prior D.U.I. conviction. The court excluded evidence of the

insurance and the statistical information, but allowed the evidence of the Moon's prior D.U.I.

Mangold recalled Moon to the witness stand for further questioning and cross-examination. Both counsel made closing arguments and the jury retired to deliberate on the question of a punitive damage award. The jury denied punitive damages, and Mangold moved for an additur, or in the alternative, motion for a new trial as to punitive damages only. The court denied the motion, and Mangold appeals.

I.

THE TRIAL COURT ERRED IN FAILING TO ADMIT EVIDENCE OF MOON'S AUTOMOBILE INSURANCE POLICY FOR THE PURPOSES OF DETERMINING HIS NET WORTH FOR ASSESSMENT OF PUNITIVE DAMAGES.

AND

II.

THE TRIAL COURT ERRED IN REFUSING TO ADMIT INTO EVIDENCE STATISTICAL INFORMATION CONCERNING D.U.I FATALITIES IN THE STATE FOR CONSIDERATION IN DETERMINING PUNITIVE DAMAGES.

Whether or not evidence is admissible in a trial is largely within the discretion of the trial court. *Terrain Enter's, Inc. v. Mockbee*, 654 So. 2d 1122, 1131 (Miss. 1995). We will reverse a case on the admission or exclusion of evidence only if the court's actions result in prejudice or harm, or if a party's substantial right is adversely affected. *Id.*

As his first assignment of error, Mangold contends that the trial court erred by not admitting evidence of Moon's liability insurance for purposes of determining his net worth for the assessment of punitive damages. This issue was made moot when the jury failed to award Mangold punitive damages in his action against Moon. Notwithstanding the jury's determination, Mangold presents no authority that allows for the admission of liability insurance into evidence for the purpose of determining a party's net worth. Instead, Mangold unsuccessfully relies on *Sessums Timber Co. Inc., v. McDaniel*, which held that punitive damages could be paid from the proceeds of liability insurance, if the contractual language so permitted. *Sessums Timber Co. Inc., v. McDaniel*, 635 So. 2d 875, 883 (Miss. 1994). It is worth mentioning that in *Sessums*, the defendants acquiesced to the submission of evidence of liability insurance to the jury. However, that was not the case in this trial, and the court acted well within its discretion to exclude such evidence. Therefore, we do not find that the court's exclusion of this evidence affected a substantial right of the appellant, particularly since the jury determined that punitive damages were not appropriate in this case.

Secondly, Mangold contends that the trial court erred by excluding statistical information concerning

D.U.I. fatalities in Mississippi from being admitted into evidence. A review of the record indicates that the trial judge determined this evidence to be irrelevant in the present case. Again, absent prejudice or harm to the party's substantial right, it is within the trial court's discretion to exclude evidence. We do not find that the trial court abused its discretion by excluding the statistical evidence. Nor do we find that the exclusion of such generalized information resulted in prejudice or harm to Mangold's case. Furthermore, Mangold does not show that the admission of state statistics would have added any more to the presentation of his case against Moon. This claim of error is without merit.

III.

THE TRIAL COURT ERRED IN LIMITING PLAINTIFF'S CLOSING ARGUMENTS AND PRESENTATION OF EVIDENCE REGARDING PUNITIVE DAMAGES AND IN REQUIRING THE JURY TO RETURN TO DELIBERATE PUNITIVE DAMAGES AT 8:30 P.M. AFTER DELIBERATING ON COMPENSATORY DAMAGES FOR APPROXIMATELY THREE HOURS.

Mangold contends that the trial court committed error by limiting his closing arguments and presentation of evidence with regards to punitive damages. However, our review of the trial record does not reveal that the court placed any limitations on the parties' presentation of evidence or arguments in the punitive phase of the trial. In fact, the record reveals that counsel for Mangold told the court that it had about a ten minute presentation, and the court indicated that he should proceed. If the court limited Mangold's time for presenting his case it was not preserved on the record, nor was there an objection to such preserved on the record by Mangold. This Court cannot review an error that does not exist

Mangold also contends that the court erred in requiring the jury to deliberate the punitive phase of the trial after it had deliberated the compensatory phase for three hours. The record shows that the jury went into deliberations in the compensatory phase at 4:15 p.m. and at 6:57 p.m. the court called them back in to ask them whether they wanted to continue deliberating or return on Monday. The jury voted six to six to continue, and the court broke the tie in favor of continuing. We find no error in the court's action, particularly since the court is in a better position to determine the condition of the jury. We allow the trial judge broad discretion in determining when trials will begin and how long they will continue throughout the day. *Dye v. State*, 498 So. 2d 343, 344 (Miss. 1986) (citation omitted). Absent an abuse of that discretion, we will not interfere with the logistics of the trial court.

IV.

THE TRIAL COURT ERRED IN REFUSING MANGOLD'S MOTION FOR ADDITUR, OR IN THE ALTERNATIVE, MOTION FOR NEW TRIAL AS TO PUNITIVE DAMAGES ONLY.

The jury in this case refused to award Mangold punitive damages against Moon. Mangold moved the

court for an additur, or in the alternative, a new trial to consider punitive damages only. The court denied Mangold's motion, and he now contends that the trial court committed error by denying these motions. We will not reverse a trial court's ruling on a motion for additur, or new trial absent some showing that the jury rendered its verdict with bias, prejudice, or passion, or the verdict was contrary to the overwhelming weight of credible evidence. *Jesco, Inc. v. Shannon*, 451 So. 2d 694, 704 (Miss. 1984) (citations omitted). Our review of the record does not reveal any evidence of bias, passion, or prejudice, and Mangold fails to present any argument of the existence of such. The jury just did not find that the facts in this case presented a need to punish the Defendant by requiring that he pay punitive damages for his role in Mangold's automobile accident. We will not disturb the jury's decision. We affirm.

**THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY IS AFFIRMED.
COSTS OF APPEAL ARE TAXED TO THE APPELLANT.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, PAYNE,
AND SOUTHWICK, JJ., CONCUR.**

HERRING, J., NOT PARTICIPATING.