NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

CHARLES KOVLER Appellant v. SARAH HALLMAN AND STEPHANIE YOUNG Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2602 EDA 2012

Appeal from the Judgment Entered August 24, 2012
In the Court of Common Pleas of Bucks County
Civil Division at No(s): No. 200507402

BEFORE: BOWES, J., OTT, J., and STRASSBURGER, J.*

MEMORANDUM BY OTT, J.: **FILED October 25, 2013**

Charles Kovler appeals the judgment entered on August 24, 2012, in the Bucks County Court of Common Pleas. The underlying lawsuit arose from a rear end collision, in which defendant Sarah Hallman struck Kovler's car,[1] resulting in a jury verdict for Hallman. On appeal, Kovler argues the trial court abused its discretion (1) in failing to grant a mistrial when Hallman's counsel asked Kovler if this was his "eleventh lawsuit,"[2] and (2) in

---

* Retired Senior Judge assigned to the Superior Court.

[1] Stephanie Young was a pedestrian who allegedly caused traffic to stop in front of Kovler. Kovler, however, presented no evidence against Young at trial, and Young did not participate at trial or in these appellate proceedings.

[2] N.T., 4/26/2011, at 198.

permitting Hallman to introduce evidence of his prior and subsequent injuries. Based on the following, we affirm.

The trial court aptly summarized the facts underlying the motor vehicle accident as follows:

> [On September 25, 2005,] Kovler was operating his vehicle on a rain soaked two lane highway when he cleared the crest of a hill only to be confronted with a line of traffic that was stopped for a pedestrian in the street. Kovler initiated an emergency stop resulting in his vehicle swerving and possibly skidding to the side of the road, almost striking the guard rail. He then backed his vehicle back onto the roadway as … Hallman was clearing the crest of the hill and Hallman collided with the rear of the Kovler vehicle.

Trial Court Opinion, 12/4/11, at 1-2.

On November 2, 2005, Kovler filed a personal injury action against Hallman.[3] The case proceeded to arbitration. On June 28, 2010, a panel of arbitrators entered an award in favor of Hallman. Kovler appealed to the Bucks County Court of Common Pleas. Prior to trial, Kovler filed a motion *in limine* seeking to preclude Hallman from introducing at trial Kovler's medical records relating to prior and subsequent motor vehicle accidents. Following a pretrial hearing, the court granted in part, and denied in part

---

[3] Kovler also named the pedestrian, "Jane Doe Newman," as a co-defendant. He claimed that the pedestrian's "misconduct" in begging for money on the side of the road was a contributing factor to the accident. Amended Complaint, 11/9/2005, at ¶ 9. On April 27, 2006, upon stipulation of the parties, Stephanie Young was substituted for "Jane Doe Newman."

Kovler's motion. Specifically, the trial court ruled Hallman was permitted to cross-examine Kovler regarding his prior injuries, but only those injuries to the same parts of the body for which he claimed an injury in the present case. The court also ruled, "preliminarily … you cannot say or inquire into the manner of the sustaining of those injuries unless you can show that each of them is relevant." N.T., 4/25/2011, at 21-22.

The case proceeded to a jury trial. At the end of a contentious cross-examination of Kovler, counsel for Hallman asked him, "This accident is your eleventh lawsuit; correct?" N.T., 4/26/2011, at 198. Kovler's counsel immediately objected and moved for a mistrial. The trial court sustained the objection, but denied counsel's motion for a mistrial. The court also denied counsel's request for an immediate jury instruction directing them to disregard the statement. However, during its general charge, the court instructed the jury to disregard the statement regarding Kovler's eleven other lawsuits because it was irrelevant and unproven.[4] ***See*** N.T., 4/27/2011, at 150.

On April 27, 2011, the jury entered a verdict for Hallman. Kovler filed post-trial motions in which he challenged only the trial court's denial of his

---

[4] Kovler did not object after this charge was read to the jury.

motion for a mistrial.[5] Judgment was entered on the verdict on October 25, 2011, upon *praecipe* of Hallman, after the trial court did not rule on Kovler's post-trial motions within 120 days.[6] Kovler filed an appeal to this Court. However, on August 13, 2012, a panel of this Court quashed the appeal because Kovler's claim against Young remained outstanding.[7] Upon remand, the trial court entered judgment in favor of Young on August 23, 2012.[8] This appeal followed.[9]

---

[5] As related claims, Kovler argued that counsel for Hallman violated the pretrial preclusion order when she asked him about other lawsuits, and that the court's jury instructions were ineffective to cure any prejudice from the question.

[6] ***See*** Pa.R.C.P. 227.4(1)(b).

[7] ***See*** Pa.R.A.P. 341(b)(1) (final order "disposes of all claims and of all parties").

[8] In an August 23, 2012, order, the trial court noted that, upon remand, Kovler requested judgment be entered against Young. ***See*** Order, 10/23/2012, at 2.

[9] On September 24, 2012, the trial court directed Kovler to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). While Kovler complied with the trial court's directive, the statement he filed on October 9, 2012, was anything but concise. Indeed, he filed a 21-page document, which included a five-page summary of the trial testimony, and nine pages of text from other purported relevant cases. We remind Kovler Rule 1925(b) mandates that the statement shall "**concisely** identify" each ruling of the trial court which he intends to challenge, and "should **not** be redundant or provide lengthy explanations as to any error." Pa.R.A.P. 1925(b)(4)(ii), (iv) (emphasis supplied).

Although Kovler raises two separate issues on appeal, they are interrelated. He argues first the trial court abused its discretion when it failed to grant a mistrial following defense counsel's question, "This accident is your eleventh lawsuit; correct?" N.T., 4/26/2011, at 198. He contends that counsel's accusation was unfounded and "severely prejudicial," and that the counsel for Hallman purposefully violated the trial court's pretrial order so that she could argue to the jury the "litigious nature of [Kovler]." Kovler's Brief at 25. However, Kovler also argues that the trial court abused its discretion, in the first place, when it denied his pretrial motion. He asserts that Hallman should not have been permitted to cross-examine him regarding his prior and subsequent injuries without presenting her own medical expert to contradict his experts' reports. For these purported errors, Kovler seeks a new trial.

Our review of such claims is well-settled:

> When presented with an appeal from the denial of a motion for a new trial, our standard of review is whether the trial court committed an error of law that controlled the outcome of the case or committed an abuse of discretion. An abuse of discretion is not merely an error of judgment; it must be shown that the law was misapplied or overridden, or that the judgment exercised was manifestly unreasonable or the result of bias, ill will, prejudice, or partiality.

Cacurak v. St. Francis Medical Center, 823 A.2d 159, 164 (Pa. Super. 2003), *appeal denied*, 844 A.2d 550 (Pa. 2004). Furthermore, this Court has made clear that decisions concerning the admission or exclusion of

evidence, the granting or refusal of a mistrial, and the scope of counsel's cross-examination are similarly within the sound discretion of the trial court.[10] In determining whether the trial court abused its discretion in failing to grant a new trial, "we must consider, viewing the evidence in the light most favorable to the verdict winner, whether a new trial would produce a different verdict." ***Phillips v. Gerhart***, 801 A.2d 568, 571 (Pa. Super. 2002).

Taking his second issue first, we note that Kovler failed to challenge the trial court's pretrial ruling permitting Hallman to cross-examine him concerning his prior and subsequent related injuries in his post-trial motions. For that reason alone, we are permitted to find that the issue is waived. ***See Estate of Hicks v. Dana Companies, LLC***, 984 A.2d 943, 976 (Pa. Super. 2009) ("Even when a litigant files post-trial motions but fails to raise a certain issue, that issue is deemed waived for purposes of appellate review."), *appeal denied*, 9 A.3d 1051 (Pa. 2011) and 9 A.3d 1052 (Pa. 2011).

However, assuming *arguendo* Kovler had preserved this claim, we would conclude that he is entitled to no relief. Both the issue of liability and

---

[10] ***See Bugosh v. Allen Refractories Co.***, 932 A.2d 901, 911, 914-915 (Pa. Super. 2007) (admission of evidence and mistrial) (citations omitted), *appeal dismissed as improvidently granted*, 971 A.2d 1228 (Pa. 2009); ***Cacurak***, ***supra*** at 167 (cross-examination).

the issue of damages were hotly contested in this case. Hallman sought to attack Kovler's credibility on cross-examination by questioning him regarding similar injuries he claimed he received from other accidents. The trial court limited the cross-examination to prior injuries to the same parts of the body that Kovler claimed were injured in the accident *sub judice*. The court explained its ruling in its opinion as follows:

> Here, [Kovler] is claiming damages for injuries and in certain respects has withdrawn claims at trial for injuries that he previously claimed were caused by this accident in pre-trial discovery. He then gave sworn testimony in subsequent claims that the injuries in the subject accident were minimal for which little or no treatment was necessary.
>
> The relevancy of those prior injuries is so obvious that it is striking that [Kovler], who is a personal injury attorney, and his counsel would assert that such evidence was not relevant. In addition to the evidence being relevant from the standpoint of the causal link between this subject accident and the injuries claimed, evidence is admissible it if is competent for any purpose including credibility. Generally, evidence may be considered for any purpose for which it is material and relevant.
>
> [Kovler] claimed that he suffered certain injuries in the subject accident and after discovery was conducted wherein [Hallman] uncovered the existence of prior accidents and prior litigation in connection with those accidents, [Kovler] withdrew some of those claims and limited the duration of other claims. The fact that those claims were asserted in the first instance only to be refuted by the evidence discovered by [Hallman], is admissible for the purpose of determining [Kovler's] credibility.

Trial Court Opinion, 10/12/2012, at 3-4 (citations omitted). We detect no abuse of discretion on the part of the trial court in permitting cross-examination on this issue.[11] ***See Bruno v. Brown***, 200 A.2d 405 (Pa. 1964) (holding trial court abused its discretion in excluding testimony from three defense witnesses to contradict plaintiff's trial testimony that he did not suffer similar back injury in earlier accident as he claimed in the accident at issue; the testimony "was relevant to aid the fact finders in assessing the plaintiff's credibility in resolving whether or not his testimony as to his present back injuries, was believable and should be accepted.").

Kovler also contends, however, that the trial court abused its discretion when it failed to grant a mistrial after counsel for Hallman asked if this was his "eleventh lawsuit." While we agree that the statement of counsel was objectionable, and the trial court properly sustained an objection to the comment, we conclude that the court did not abuse its discretion when it denied the motion for a mistrial.

Contrary to Kovler's protestations, the mere mention of the words "eleventh lawsuit" did not violate the court's pretrial order. The pretrial order focused on the **cause** of Kovler's prior and subsequent injuries, and the court ruled "preliminarily … you cannot say or inquire into the manner of

---

[11] Clearly, Kovler put his credibility at issue when he chose to testify at trial.

the sustaining of those injuries unless you can show that each of them is relevant." N.T., 4/25/2011, at 22. ***Compare Poust v. Hylton***, 940 A.2d 380, 387 (Pa. Super. 2007) (trial court abused its discretion in failing to grant a mistrial upon counsel's "flagrant and intentional violation" of court's pretrial order banning reference to cocaine at trial).

Indeed, for most of the cross-examination, counsel for Hallman abided by the trial court's ruling. While she referred to his injuries from prior "incidents," she did not indicate that those incidents were other motor vehicle accidents. ***See*** N.T., at 153, 155, 173-175, 197-198. Kovler's attempt, in this appeal, to paint himself as the innocent victim of a smear campaign is unfounded. In fact, Kovler himself testified that one of his doctor's reports referred to "symptoms" from a December 2005 "motor vehicle accident." ***Id.*** at 163. Moreover, during his cross-examination, he confronted counsel for Hallman as to why she never inquired as to how the other injuries occurred, knowing full well that she was precluded from asking those questions as a result of the trial court's pretrial ruling. ***See id.*** at 174 ("You want to know how those things occurred?"); 175 ("You want to know how this incident occurred? You keep bringing these [prior incidents] up; you don't ask me how they occurred. Is there a reason for this?").

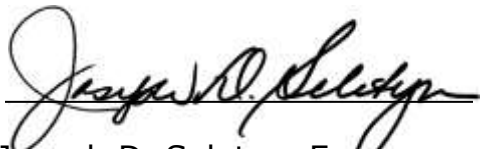
Therefore, based on the record, we do not find that the statement was so prejudicial as to warrant a new trial, or that a new trial would produce a different result. ***See Phillips supra***, at 571. The testimony of both

Hallman, and witness James Paul Stokes, indicated that Kovler backed onto the road, without hesitation, directly in the path of Hallman.[12] ***See*** N.T., 4/27/2011, 9-10, 65-66. Moreover, the trial court instructed the jury to disregard the statement as it was both irrelevant and unproven,[13] and "juries are presumed to heed a court's curative instructions." ***Bugosh***, ***supra***, at 915. Accordingly, Kovler is entitled to no relief.

Judgment affirmed.

Strassburger, J., files a dissenting statement.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/25/2013

---

[12] The jury's general verdict for Hallman makes it unclear whether they even considered the issue of damages.

[13] N.T., 4/27/2011, at 150.