

[Cite as *Braxton v. Kilbane*, 2018-Ohio-4610.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106574

JULIUS BRAXTON, ET AL.

PLAINTIFFS-APPELLANTS

vs.

ASHLEY KILBANE

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-847631

BEFORE: E.T. Gallagher, J., E.A. Gallagher, A.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: November 15, 2018

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EILEEN T. GALLAGHER, J.:

{¶1} Plaintiff-appellant, Julius Braxton, pro se, appeals the trial court's judgment, rendered following a jury verdict, that awarded him \$14,580 on his personal injury claim against defendant-appellee, Ashley Kilbane. Braxton claims the following two assignments of error:

1. The trial court committed reversible error when it allowed the defense attorney to continually make damaging remarks about my financial obligation of child support.
2. The trial court committed reversible error when it ignored statements by the defense attorney not pertaining to the case in question.

{¶2} We find no merit to the appeal and affirm.

I. Facts and Procedural History

{¶3} Braxton filed a complaint against Kilbane, alleging he sustained personal injuries as a result of Kilbane's negligent operation of a motor vehicle. In addition to physical pain and suffering, Braxton alleged that as a result of Kilbane's negligence, he sustained lost wages and "suffered financial loss because he was unable to seek new work." (Complaint ¶ 6, 42.)

{¶4} The case went to trial in February 2016, and a jury returned a verdict in the amount of \$12,600 in favor of Braxton. Braxton appealed the verdict, arguing the trial court erred by limiting his medical expert's testimony and by excluding testimony regarding an MRI of Braxton's wrist. This court affirmed the trial court's judgment on liability, but remanded the case to the trial court for a new trial on damages. *See Braxton v. Kilbane*, 8th Dist. Cuyahoga No. 104166, 2017-Ohio-185.

{¶5} During the second trial on damages, defense counsel questioned Braxton about a possible motive, other than physical injury, to explain why he failed to be gainfully employed for the previous four years. Defense counsel asked, in relevant part:

Q: Isn't it true, Mr. Braxton, that the reason why you haven't worked for the last four-plus years, is because you know that if you get a paycheck, the County is going to take money out of that?

* * *

Q: Isn't it true, sir that * * * you don't want to have the County take money out of a paycheck, because you owe for child support, don't you?

(Tr. 32.)

{¶6} Braxton denied that his failure to work was motivated by a child support obligation and denied knowing how much he was in arrears. Defense counsel suggested: "How about if I

tell you \$40,000 in child support?” (Tr. 33.) Braxton’s lawyer objected. The trial court sustained the objection and instructed defense counsel to “[g]et into another line of questioning.” (Tr. 33.) Defense counsel complied and changed the subject, but Braxton’s lawyer revisited the child support issue on redirect examination in an effort to rehabilitate Braxton’s image in the eyes of the jury. (Tr. 37.) After hearing all the evidence, the jury awarded Braxton damages in the amount of \$14,580.

{¶7} Braxton now appeals the trial court’s judgment.

II. Law and Analysis

{¶8} In the first assignment of error, Braxton argues defense counsel’s inquiry into his child support obligation prejudiced the jury’s decision on the amount of compensation to be awarded. In the second assignment of error, he argues the trial court erred when it ignored defense counsel’s questions about child support, which he claims were irrelevant to the issues in the case. We discuss these assigned errors together because they involve the same evidentiary issues.

{¶9} The admission of evidence lies within the broad discretion of a trial court. *State v. Noling*, 98 Ohio St.3d 44, 2002-Ohio-7044, 781 N.E.2d 88, ¶ 43. We, therefore, will not disturb the trial court’s evidentiary decisions in the absence of an abuse of discretion that has created material prejudice. *Id.*

{¶10} With certain exceptions, “[a]ll relevant evidence is admissible.” Evid.R. 402. Evid.R. 401 defines “relevant evidence” as “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.” Evid.R. 403(A) further provides that “relevant

evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.”

{¶11} Braxton asserted a lost wage claim, alleging that injuries caused by Kilbane’s negligence rendered him unable to work. Thus, Braxton made his ability to work a fact of consequence to the determination of the action. Braxton also testified that prior to the accident that caused his injuries, he was employed, but was paid “under the table.” (Tr. 30.) He admitted: “I didn’t pay taxes.”

{¶12} Based on this evidence, defense counsel suggested that since Braxton concealed his income while he was working and has not worked since the accident, he may be avoiding employment, not because of an injury, but to avoid paying child support. Such a question was authorized by Evid.R. 608(B), which permits cross-examination about specific instances of conduct concerning the witness’s character for truthfulness or untruthfulness. *State v. Chandler*, 8th Dist. Cuyahoga No. 105246, 2017-Ohio-8573, ¶ 8.

{¶13} Defense counsel’s inquiry into Braxton’s child support obligation as a possible motivation for unemployment was relevant to the assessment of Braxton’s credibility, the truth about his alleged inability to work, and ultimately his wage loss claim. The court sustained Braxton’s objection to a question regarding the specific amount of child support arrearage, probably because the probative value of the amount of the arrearage, which was substantial, was outweighed by the danger of unfair prejudice under Evid.R. 403. Therefore, that question, which was not relevant, was left unanswered.

{¶14} Under these circumstances, we find no error in the trial court’s decision to allow defense counsel to question Braxton about his child support obligation, particularly since the court limited the inquiry to the fact that Braxton owed child support and excluded irrelevant

evidence regarding the amount of the arrearage. Moreover, Braxton's lawyer rehabilitated his character and credibility on redirect examination by allowing Braxton to explain how he cared for his children since he has been unemployed. Therefore, Braxton was not prejudiced by defense counsel's questions about his child support obligation.

{¶15} The first and second assignments of error are overruled.

{¶16} The trial court's judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, JUDGE

EILEEN A. GALLAGHER, A.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR