

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ALISON L. WARREN,	:	JUDGES:
	:	W. Scott Gwin
Plaintiff-Appellee	:	John W. Wise
	:	John F. Boggins
-VS-	:	
	:	Case No. 2002CA00298
CHRISTINE M. KAISER,	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: 3/31/2003

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

Boggins, J.

{¶1} This is an appeal from a decision of the Common Pleas Court of Stark County which granted a motion for new trial after a jury verdict in favor of appellant.

{¶2} This cause arose out of an automobile accident of May 9, 1999 in which appellant made a left turn into the path of appellee.

{¶3} As liability was stipulated by appellant, the trial proceeded to the jury on the question of damages only.

{¶4} After the accident, appellee received medical treatment at Aultman Hospital as her nose was bleeding and she complained of other symptoms.

{¶5} Subsequently, she received other medical treatment and physical therapy.

{¶6} The sole Assignment of Error is:

I.

{¶7} "THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING APPELLEES A NEW TRIAL ON THE ISSUE OF PERSONAL DAMAGES BECAUSE THE VERDICT WAS SUPPORTED BY COMPETENT SUBSTANTIAL AND CREDIBLE EVIDENCE."

{¶8} Civil Rule 59 provides the grounds applicable as to a motion for new trial.

{¶9} "CIV. R. 59 NEW TRIALS

{¶10} "(A) Grounds

{¶11} "A new trial may be granted to all or any of the parties and on all or part of the issues upon any of the following grounds:

{¶12} "(1) Irregularity in the proceedings of the court, jury, magistrate, or prevailing party, or any order of the court or magistrate, or abuse of discretion, by which an aggrieved party was prevented from having a fair trial;

{¶13} “(2) Misconduct of the jury or prevailing party;

{¶14} “(3) Accident or surprise which ordinary prudence could not have guarded against;

{¶15} “(4) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice;

{¶16} “(5) Error in the amount of recovery, whether too large or too small, when the action is upon a contract or for the injury or detention of property;

{¶17} “(6) The judgment is not sustained by the weight of the evidence; however, only one new trial may be granted on the weight of the evidence in the same case;

{¶18} “(7) The judgment is contrary to law;

{¶19} “(8) Newly discovered evidence, material for the party applying, which with reasonable diligence he could not have discovered and produced at trial;

{¶20} “(9) Error of law occurring at the trial and brought to the attention of the trial court by the party making the application;

{¶21} “In addition to the above grounds, a new trial may also be granted in the sound discretion of the court for good cause shown.

{¶22} “When a new trial is granted, the court shall specify in writing the grounds upon which such new trial is granted.

{¶23} “On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and enter a new judgment.

{¶24} “(B) Time for motion

{¶25} “A motion for a new trial shall be served not later than fourteen days after the entry of the judgment.

{¶26} “(C) Time for serving affidavits

{¶27} “When a motion for a new trial is based upon affidavits they shall be served with the motion. The opposing party has fourteen days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty-one days either by the court for good cause shown or by the parties by written stipulation. The court may permit supplemental and reply affidavits.

{¶28} “(D) On initiative of court

{¶29} “Not later than fourteen days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party.

{¶30} “The court may also grant a motion for a new trial, timely served by a party, for a reason not stated in the party's motion. In such case the court shall give the parties notice and an opportunity to be heard on the matter. The court shall specify the grounds for new trial in the order.”

{¶31} The Ohio Supreme Court in *Rohde v. Farmer* (1970), 23 Ohio St.2d 82 stated:

{¶32} “1. Where a trial court is authorized to grant a new trial for a reason which requires the exercise of a sound discretion, the order granting a new trial may be reversed only upon a showing of abuse of discretion by the trial court.

{¶33} “2. Where a new trial is granted by a trial court, for reasons which involve no exercise of discretion but only a decision on a question of law, the order granting a new trial may be reversed upon the basis of a showing that the decision was erroneous as a matter of law.”

{¶34} In order to find an abuse of discretion, we must determine that the trial court=s decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217. We must look at the totality of the circumstances in the case sub judice and determine whether the trial court acted unreasonably, arbitrarily or unconscionably.

{¶35} In conclusion, competent credible evidence indicated some damages to appellee, Allison Warren, although the extent thereof was subject to consideration by the jury.

{¶36} The trial court, therefore, did not abuse its discretion in granting a new trial.

{¶37} The Assignment of Error is denied and this cause is affirmed.

By: Boggins, J.

Gwin, P.J. and

Wise, J. concur.

Topic: New Trial