

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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| QUIDO DALPRA, ET AL | : | JUDGES: |
| | : | Hon. Julie A. Edwards, P.J. |
| Plaintiffs-Appellants | : | Hon. W. Scott Gwin, J. |
| | : | Hon. John W. Wise, J. |
| -vs- | : | |
| | : | Case No. 2010-CA-00007 |
| DOUGLAS J. BLILE | : | |
| | : | |
| Defendant-Appellee | : | <u>OPINION</u> |

CHARACTER OF PROCEEDING: Civil appeal from the Stark County Court of Common Pleas, Case No. 2007CV02990

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: September 7, 2010

APPEARANCES:

For Plaintiffs-Appellants

STACIE L. ROTH
SCHULMAN ZIMMERMAN
& ASSOCIATES
236 Third Street S.W.
Canton, OH 44702

For Defendants-Appellees

DANIEL FUNK
BAKER DUBLIKAR BECK WILEY &
MATHEWS
400 South Main Street
North Canton, OH 44720

BARBARA J. MOSER
LAW OFFICES OF CRAIG S. COBB
815 Superior Avenue
Suite 1605
Cleveland, OH 44114

JOHN W. GOLD
WILLIAM J. PRICE
ELK & ELK CO., LPA
Landerhaven Corporate Center
6105 Parkland Blvd.
Mayfield Heights, OH 44124

Gwin, J.

{¶1} Plaintiffs-appellants Quido and Donna Dalpra appeal a judgment of the Court of Common Pleas of Stark County, Ohio, which granted a new trial on appellants' personal injury claim. Defendant-appellee is Douglas J. Blile. Appellants assign a single error to the trial court:

{¶2} "I. THE TRIAL COURT ERRED IN GRANTING A NEW TRIAL ON ALL ISSUES RATHER THAN SOLELY ON THE ISSUES OF PROXIMATE CAUSE AND DAMAGES."

{¶3} The record indicates appellants were injured in a motor vehicle collision. Appellant Donna Dalpra was driving south on Market Avenue in North Canton, Ohio, while appellee Douglas Blile was driving north on Market Avenue. Appellants allege appellee went left of center, and appellant Donna Dalpra swerved to the left across the center lane to avoid appellee. Appellants assert appellee swerved back into his lane and the parties' vehicles struck head-on in appellee's lane. Appellee has no memory of the accident because of his injuries, but his wife, a passenger in his car at the time, testified appellee never went left of center. Appellee maintained he was not responsible for the accident.

{¶4} Appellants presented the testimony of an orthopedic physician who treated both appellants. He testified the cause of appellants' injuries was the motor vehicle accident.

{¶5} The matter was tried to a jury, which completed interrogatories regarding its verdict. It found appellee Douglas Blile was negligent and appellant Donna Dalpra was not. The jury found appellee's negligence was not a proximate cause of appellants'

injuries. The jury returned general verdicts in favor of both appellee and appellants, and awarded no damages.

{¶6} Appellants filed a motion for judgment notwithstanding the verdict, or in the alternative, for additur, or for a new trial on the issues of proximate cause and damages. The court found it could not grant additur without both parties' consent, and appellee did not consent. The trial court found because liability was contested and the liability and proximate cause were intertwined, a new trial on all issues was appropriate. The court found it was patently unfair to the appellee to grant a new trial on damages only.

{¶7} Civ. R. 59 (A) states:

{¶8} "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:

{¶9} ***

{¶10} "(5) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice;

{¶11} ***

{¶12} "(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;

{¶13} ***

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

{¶15} A decision on a motion for new trial lies within the sound discretion of the trial court. *Yungwirth v. McAvoy* (1972), 32 Ohio St. 2d, 285, 61 O.O. 2d 504, 291 N.E. 2d 739. This court may not disturb the trial court's decision unless we find an abuse of discretion, *Id.* The Supreme Court has repeatedly held the term abuse of discretion implies the court's attitude is unreasonable, arbitrary, or unconscionable. See, e.g. *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217, 450 N.E. 2d 1140. When we apply the abuse of discretion standard, we may not substitute our judgment for that of the trial court. *Pons v. Ohio State Medical Board*, 66 Ohio St. 3d 619, 621, 1993-Ohio-122, 614 N.E. 2d 748.

{¶16} An appellate court may order the retrial of only those issues of the original trial which we find resulted in prejudicial error, *Mast v. Doctor's Hospital North* (1976), 46 Ohio St. 2d 539, 75 O.O. 2d 556, 350 N.E. 2d 429. However, Civ. R. 59 authorizes a trial court to order a new trial on any or all of the issues. The grant of a new trial on only part of the issues is rarely exercised in jury trials because so often the issues are intertwined. *Drehmer v. Fylak*, 163 Ohio App. 3d 248, 2005-Ohio-4732, 837 N.E. 2d 802, at paragraph 10, citing 2 Kline & Darling, Baldwin's Ohio Civil Practice (1997), Section 59:4.

{¶17} The case at bar is similar to the one this court reviewed in *Sims, Executrix of the Estate of William E. Sims, Deceased v. Arnold Rosenblatt, M.D.* (July 31, 2000), Stark Appellate No. 1999-CA-00332. In *Sims*, the jury found, by way of interrogatories, that Dr. Rosenblatt was negligent for failing to properly advise Sims of the appropriate medical treatment, failing to properly monitor his condition, and failing to recommend surgical intervention. However, the jury also found Dr. Rosenblatt's negligence was not

the proximate cause of Sims' death, even though all the experts agreed at trial that the failure to treat his condition was the proximate cause of Sims's death. This court found the inconsistency in the verdict goes, not only to damages, but also to the issue of proximate cause. We noted a new trial on damages alone is usually granted only when liability is not contested. *Sims* at page three, citations deleted.

{¶18} We agree with the trial court that the verdicts appear irreconcilable. We also agree the jury's determination on the issue of negligence is so intertwined with the issues of proximate cause and damages that the entire case must be retried.

{¶19} The assignment of error is overruled.

{¶20} For the foregoing reasons, the judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed.

By Gwin, J.,
Edwards, P.J., and
Wise, J., concur

HON. W. SCOTT GWIN

HON. JULIE E. EDWARDS

HON. JOHN W. WISE

