

[Cite as *Stadler v. Barney*, 2005-Ohio-6720.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86040

MELISSA STADLER, ET AL.

Plaintiffs-Appellees

vs.

MICHELE EARNEY

Defendant-Appellant

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JOURNAL ENTRY

and

OPINION

DATE OF ANNOUNCEMENT
OF DECISION:

December 20, 2005

CHARACTER OF PROCEEDING:

Civil appeal from
Common Pleas Court
Case No. CV-517659

JUDGMENT:

REVERSED AND REMANDED

DATE OF JOURNALIZATION:

APPEARANCES:

For Plaintiffs-Appellees:
(Jeffrey Perry)

HAROLD L. LEVEY
526 Superior Avenue, #410
Cleveland, Ohio 44114

For Defendant-Appellant:

THOMAS M. COUGHLIN, JR.
TIMOTHY P. WHITFORD
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1360 East Ninth Street, #1000
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COLLEEN CONWAY COONEY, P.J.:

{¶ 1} Defendant-appellant, Michele Earney ("Earney"), appeals the trial court's decision granting plaintiff-appellee, Jeffrey Perry ("Perry"), a new trial. Finding merit to the appeal, we reverse and remand with instructions.

{¶ 2} In 2003, Melissa Stadler ("Stadler") and Perry filed a complaint against Earney for damages incurred as a result of a car accident.¹ Perry's claims proceeded before a jury, and the jury returned a verdict in favor of Perry and against Earney for zero dollars. The trial court granted Perry's motion for a new trial, finding "that the jury award of zero dollars was inadequate and against the manifest weight of the evidence."

{¶ 3} Earney appeals this decision, raising two assignments of error. Finding the first assignment of error dispositive, it will be addressed first.

{¶ 4} In her first assignment of error, Earney argues that the trial court abused its discretion in granting a new trial, because the jury's verdict was not against the manifest weight of the evidence.

{¶ 5} Civ. R. 59(A) states, in relevant part:

"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:

* * *

¹Stadler dismissed her claims without prejudice pursuant to Civ.R. 41(A).

(4 Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice;

* * *

(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;

(7) The judgment is contrary to law;

* * *

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

When a new trial is granted, the court shall specify in writing the grounds upon which such new trial is granted."

{¶ 6} The grant or denial of a motion for a new trial pursuant to Civ.R. 59(A) is committed within the sound discretion of the trial court and will not be reversed upon appeal absent an abuse of that discretion. *Green v. Krill Co.*, Cuyahoga App. Nos. 80636 and 80665, 2002-Ohio-4427, citing *Rohde v. Farmer* (1970), 23 Ohio St.2d 82, 91, 262 N.E.2d 685. The term "abuse of discretion" connotes more than an error of law; rather, it implies that the court's judgment is unreasonable, arbitrary, or unconscionable. *Id.*

{¶ 7} In the instant case, the trial court granted Perry's motion because the "jury award of zero dollars was inadequate and against the manifest weight of the evidence." Although the court specified the grounds for granting the new trial, the court failed to articulate its reasons for making such finding. In *Antal v. Olde Worlde Products, Inc.* (1984), 9 Ohio St.3d 144, 459 N.E.2d 223, the Ohio Supreme Court stated in its syllabus:

"[w]hen granting a motion for a new trial based on the contention that the verdict is not sustained by the weight of the evidence, the trial court must articulate the reasons for so doing in order to allow a reviewing court to determine whether the trial court abused its discretion in ordering a new trial."

{¶ 8} Whether the trial court has given sufficient reasoning is determined on a case-by-case basis. *Antal*, supra at 226, citing *Clemmer v. Hartford Ins. Co.* (1979), 22 Cal.3d 865, 151 Cal. Rptr. 285, 587 P.2d 1098; *Mannion v. Sandel*, 91 Ohio St.3d 318, 2001-Ohio-42, 744 N.E.2d 759. However, "such reasons will be deemed insufficient if simply couched in the form of conclusions and statements of ultimate fact." *Antal*, supra.

{¶ 9} The trial court's judgment entry provided conclusory statements that the verdict was inadequate and against the manifest weight of the evidence. It did not provide adequate reasoning to allow us to determine the basis for finding that a new trial was warranted. The judgment entry does not state why or in what way the jury verdict was inadequate or why it was against the manifest weight of the evidence. Without this reasoning, we cannot properly review this appeal to determine whether the trial court abused its discretion in granting a new trial. Therefore, this matter is remanded to the trial court to articulate its specific reasons for granting a new trial.

{¶ 10} Accordingly, the first assignment of error is sustained and the second assignment of error is moot.²

²In the second assignment of error, Earney argues that sufficient evidence existed to

{¶ 11} Judgment reversed and case remanded for the court to articulate its reasons for granting a new trial sufficient for appellate review.

It is, therefore, considered that said appellant recover of said appellees the costs herein.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas 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.

DIANE KARPINSKI, J. CONCURS

CHRISTINE T. McMONAGLE, J. DISSENTS
(SEE SEPARATE DISSENTING OPINION)

PRESIDING JUDGE
COLLEEN CONWAY COONEY

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's

support the jury verdict.

announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86040

MELISSA STADLER, ET AL,	:	
	:	
Plaintiffs-Appellees	:	D I S S E N T I N G
	:	
v.	:	O P I N I O N
	:	
MICHELE EARNEY,	:	
	:	
Defendant-Appellant	:	

DATE: December 20, 2005

CHRISTINE T. McMONAGLE, J.:

{¶ 12} Respectfully, I dissent.

{¶ 13} The majority in this matter orders reversal of the judgment entry granting a new trial and a remand to the trial court to provide further analysis in support of its decision to vacate the jury's award of zero dollars. I would analyze the reasons given by the trial judge for granting a new trial ("the jury award of zero dollars was inadequate and against the manifest weight of the evidence") and review whether the order of new trial was error. I find that it was.

{¶ 14} In the trial of this matter, there was evidence that the impact was minor -- a transfer of paint from one vehicle to the other. There was no objective finding of injury from the emergency room. Prior to and at the time of the accident, defendant was

treating for the same pain complained of here, and a reasonable jury, based upon the facts of this case, could clearly find "no proximate cause." Defense counsel's statements in final argument that damages should be limited to \$2,000 or the emergency room bill may be an admission of some threshold on **damages** (should the jury find proximate cause), but it was not an admission of proximate cause. Even if the appellant proved duty, breach and damages, a failure of proof upon the issue of proximate cause would indeed result in the verdict rendered here. Accordingly, I would reverse the order of a new trial and reinstate the jury's verdict.