

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 88994**

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**WILLIE HUMPHRIES, ET AL.**

PLAINTIFFS-APPELLEES

vs.

**SCOTT HAVER**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED AND REMANDED

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Civil Appeal from the Cuyahoga  
County Court of Common Pleas  
Case Nos. CV-554908 and 556416

**BEFORE:** Sweeney, A.J., Gallagher, J., and McMonagle, J.

**RELEASED:** January 24, 2008

**JOURNALIZED:**

[Cite as *Humphries v. Haver*, 2008-Ohio-221.]

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{¶ 1} Defendant-appellant, Scott Haver (“Haver”), appeals from the trial court’s decision that granted plaintiffs-appellees’ Willie and Carolyn Lofton Humphries (“Willie” and “Carolyn”)(“collectively referred to as “appellees”) joint motion for a new trial following a defense verdict on each of their claims against him. For the reasons that follow, we affirm and remand.

{¶ 2} This lawsuit involves an automobile collision. Immediately preceding the accident, Willie had turned his vehicle right while Haver had turned his vehicle left onto East 22<sup>nd</sup> Street. Carolyn was a passenger in Willie’s vehicle.

{¶ 3} Carolyn commenced a lawsuit against both Willie and Haver, in which Willie filed a cross-claim against Haver.<sup>1</sup> Willie commenced a separate action against Haver. Haver’s motion to consolidate the cases was granted and the matter proceeded to a jury trial.

{¶ 4} It is undisputed that the collision occurred in March 2003 on East 22<sup>nd</sup> Street in Cleveland, Ohio. Humphries and Haver both turned onto East 22<sup>nd</sup> from opposite directions. Humphries was westbound on Central and stopped behind another car at a red traffic light. At the same time, Haver was exiting the inner belt from the eastbound ramp opposite Humphries in one of two left turning lanes. Haver did not notice Humphries’ vehicle until after he turned left. Haver’s vehicle collided into the left rear side of Humphries’ vehicle.

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<sup>1</sup>According to Carolyn, she settled her claims against Willie prior to trial.

{¶ 5} Haver testified that he was aware of the laws, which require those making left hand turns to yield the right of way to oncoming traffic. Humphries stated that he did not stay in the far right lane of East 22<sup>nd</sup> Street due to the presence of parked cars. The parties all testified that there were vehicles parked in the right hand lane of East 22<sup>nd</sup> Street. However, the testimony conflicts as to how far down the street, and beyond the intersection, these particular vehicles were located.

{¶ 6} The trial court instructed the jury, which advised:

{¶ 7} “Now we have two Plaintiffs in this case, one who was driving and one who was not. The one who was driving is charged with contributory negligence by the other driver. You had to decide that question. His wife was not driving and she cannot be charged with negligence.

{¶ 8} “So you have to decide this case separately \*\*\*.”

{¶ 9} Humphries maintained that Haver’s failure to yield the right of way caused the accident while Haver claimed it was Humphries’ failure to turn into the closest curb lane that caused the accident. The jury was not instructed as to the statutory law in either regard as contained in R.C. 4511.36(A)(1) and R.C. 4511.42.

{¶ 10} The jury returned a defense verdict.

{¶ 11} Appellees filed a joint motion for new trial pursuant to Civ.R. 59(A)(6) and (7), arguing that the jury verdict was not supported by the weight of the evidence and that it was contrary to law. The trial court granted the motion and it is from this

decision that Haver now appeals and asserts a sole assignment of error for our review.

{¶ 12} “I. The trial court committed error in granting plaintiffs’ joint motion for a new trial.”

{¶ 13} In a recent decision, the Ohio Supreme Court reiterated the standard we are to employ in reviewing a trial court’s decision that grants a motion for new trial, which states:

{¶ 14} “Where in the exercise of discretion a trial court decides to grant a new trial and that decision is supported by competent, credible evidence, a reviewing court must defer to the trial court. In such a case, the reviewing court may not independently assess whether the verdict was supported by the evidence, *because the issue is not whether the verdict in [sic] supported by competent, credible evidence, but rather whether the court's decision to grant the new trial is supported by competent, credible evidence.*” *Harris v. Mt. Sinai Med. Ctr.*, 116 Ohio St.3d 139, 2007-Ohio-5587, emphasis added.<sup>2</sup>

{¶ 15} This standard applies to appellate review of a trial court’s decision to grant a new trial on the grounds that the jury’s verdict was against the manifest

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<sup>2</sup>At issue in *Harris* was this Court’s reversal of the trial court’s decision granting a motion for new trial. In the appellate opinion this Court based its decision on its finding, “that the jury verdict in this case was supported by substantial, competent, credible evidence; thus, we find error in the trial court’s decision to order a new trial.” *McLeod v. Mt. Sinai Med. Ctr.*, 166 Ohio App.3d 647, 655, 2006-Ohio-2206, ¶28. The Ohio Supreme Court reversed this Court on the basis that we had employed the wrong standard of review.

weight of the evidence. *Osler v. City of Lorain* (1986), 28 Ohio St.3d 345, 351. In *Osler*, the Ohio Supreme Court sustained the lower court's decision that granted a new trial on that basis and reasoned: "In ruling on a motion for a new trial, the trial court is afforded wide discretion in determining whether a jury's verdict is against the weight of the evidence, for the court must ensure, in its supervisory capacity, against a miscarriage of justice." *Id.*, citing *Rhode v. Farmer* (1970), 23 Ohio St.2d 82, 91-93 [other citation omitted]. "The trial court may examine the sufficiency of the evidence in so doing \*\*\* where the trial court's decision on the motion for a new trial involves questions of fact, as in this case, our task as a reviewing court is to 'view the evidence favorably to the trial court's action rather than to the jury's verdict.'" *Id.*, quoting *Jenkins v. Krieger* (1981), 67 Ohio St.2d 314, 320.

{¶ 16} In this case, the trial court granted appellees' motion for a new trial because it found the jury's verdict was not supported by the weight of the evidence and was contrary to law.

{¶ 17} The trial court properly detailed the evidence, which included that Haver did not yield the right of way. The trial court noted that Haver struck the rear side of Humphries' vehicle and that the evidence included testimony that vehicles were parked in the northern curb lane of East 22<sup>nd</sup> Street. The trial court also referenced the brevity of the jury's deliberations and the return of a defense verdict even in the case of Carolyn, who was a passenger and not alleged by any party to have contributed to the cause of the accident.

{¶ 18} There is competent, credible evidence that supports the trial court’s decision to grant a new trial in this case. Particularly, both appellees and the Haver testified that there were cars parked ahead in the curb lane of the street onto which Humphries made his right-hand turn; the only dispute was over how far down the street they were parked.<sup>3</sup>

{¶ 19} R.C. 4511.42 requires drivers who are making left-hand turns to yield the right of way to vehicles approaching from the opposite direction. It is undisputed that Humphries was stopped at a red light behind another vehicle and heading in the opposite direction from Haver. Humphries was turning right and Haver was turning left. The light turned green and the car in front of Humphries turned left and then Humphries made a right-hand turn. Haver turned left and then collided into Humphries’ vehicle. Haver testified that he did not even see Humphries’ vehicle until after he had turned left.

{¶ 20} While R.C. 4511.36(A)(1) provides that “the driver of a vehicle intending to turn at an intersection shall be governed by the following rules \*\*\* [A]pproach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway,” that did not alleviate Haver of his duty to yield the right of way. There is competent, credible evidence to support the trial court’s decision granting appellees’ motion for a new trial. Therefore, the trial court did not abuse its discretion and the sole assignment of error is overruled.

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<sup>3</sup>E.g., see, Tr. at pp. 118, 137, 142.

{¶ 21} Judgment affirmed and cause remanded for further proceedings.

It is ordered that appellees recover of appellant their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the 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.

JAMES J. SWEENEY, ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., CONCURS  
CHRISTINE T. McMONAGLE, J., DISSENTS  
(SEE SEPARATE DISSENTING OPINION)

CHRISTINE T. MCMONAGLE, J., DISSENTING:

{¶ 22} Respectfully, I dissent.

{¶ 23} The majority cites *Harris v. Mt. Sinai Med. Ctr.*, 116 Ohio St.3d 139, 2007-Ohio-5587, as dispositive of its decision to affirm the order of the trial judge for a new trial in this matter. I do not believe that the *Harris* case applies to the issue sub judice, and, further, even if the holding of *Harris* does apply, that holding would require reversal of the order for new trial.

{¶ 24} The Ohio Supreme Court in *Harris* affirmed a trial judge's decision to order a new trial pursuant to Civ.R. 59 (A)(1), (2), and (4). In pertinent part, those sections hold that a court may grant a new trial if the record reflects competent, credible evidence that there was: 1) irregularity in the proceedings by which the



aggrieved party was prevented from obtaining a fair trial; 2) misconduct of the jury or prevailing party; and 3) excessive or inadequate damages appearing to have been given under the influence of passion or prejudice.

{¶ 25} In this case, the trial court cited no section of Rule 59 upon which it relied in ordering the new trial, so we are left to analyze the words of the entry in order to determine the rationale for the court's ruling. The trial court stated:

{¶ 26} "It is apparent that the jury in this case, apparently being in a great hurry to go home at the end of the day, failed to give adequate consideration to the testimony of all witnesses, and rendered a verdict that is not supported by the weight of the evidence."

{¶ 27} The court gave no reason that the verdict was against the weight of the evidence and, in fact, the record is replete with ample evidence that plaintiff was negligent in causing the accident.<sup>4</sup> Even the footnote of the majority points out that the passenger settled with the plaintiff for her injuries. A verdict finding negligence on behalf of the plaintiff is consistent with that settlement. While there seems to be agreement of the parties that the deliberations in this matter took place in less than an hour, the verdict was unanimous, wholly consistent with the interrogatories, and, further, consistent with evidence produced by both parties. The law prescribes no

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<sup>4</sup>The court in its decision and the majority in its opinion go to some length to analyze traffic statutes to conclude there was evidence as to fault by the defendant. However, it is dispositive of this issue that the jury was not instructed as to these statutes, neither party requested instruction on these statutes, and neither party objected to their absence from the instructions.

period of time which a jury must deliberate, and a quick verdict is no more suspect than a slow one.

{¶ 28} In granting a new trial, the trial court stated further:

{¶ 29} “In addition, it is apparent that the jury entirely failed to consider the claims of the two plaintiffs separately. Since the passenger cannot be charged with contributory negligence, the jury must in its haste have concluded that Defendant was guilty of no wrongdoing, notwithstanding the statute which applies to this case.”

{¶ 30} The court seems to suggest in this finding that the jury returned the wrong verdict because it misunderstood the concept of contributory negligence. I am constrained to point out that the doctrine of contributory evidence was discarded by the State of Ohio over twenty years ago. It did not control deliberations here; the jury was, through the interrogatories, more-or-less correctly instructed on comparative negligence and their answers to the interrogatories are consistent with that concept and likewise consistent with the verdict rendered by the jury.

{¶ 31} I agree with the majority that the standard of review in determining whether the court erred in ordering a new trial is abuse of discretion, and, further, if there is competent credible evidence in the record that supports the judge’s decision to order a new trial, the court will not be seen to have abused its discretion. In this case, however, there is no evidence whatsoever, let alone competent and credible evidence, of any reason whatsoever to order a new trial. The judgment of the trial court ordering a new trial should be vacated and the matter referred back with

direction to enter judgment for the defendant consistent with the unanimous verdict of the jury.