

83-LW-1472 (10th)

Beverly Klamfoth, Plaintiff-Appellant, Richard Klamfoth, Plaintiff-Appellee

v.

James H. Wells, Defendant-Appellee.

No. 82AP-874 (REGULAR CALENDAR).
10th District Court of Appeals of Ohio, Franklin County.
Decided on April 21, 1983.

APPEAL from the Franklin County Common Pleas Court.

MESSRS. HAMILTON, KRAMER, MYERS, SUMMERS & CHEEK, and MR. ROBERT L. SUMMERS, for appellants.

MESSRS. LANE, ALTON & HORST, and MR. JOHN M. ALTON, for appellee.

OPINION

STRAUSBAUGH, J.

This is an appeal by plaintiff Beverly Klamfoth from a judgment in the Common Pleas Court in her favor in the amount of \$1,465.18 and in the amount of zero dollars for plaintiff Richard Klamfoth.

The record indicates that on June 21, 1977, a 1974 Mercury Marquis, operated by plaintiff Beverly Klamfoth, was struck in the rear by a 1970 Nova driven by defendant damaging Mrs. Klamfoth's vehicle and causing her to suffer personal injury. Defendant was not injured. Defendant admitted negligence and the case was tried on the issues of proximate cause and damages. At the trial, there was testimony and evidence that plaintiff Beverly Klamfoth was taken to the Mount Carmel East Emergency Room; that she became nauseated, was given muscle relaxers and advised that she had a slight concussion; and, that her treating physician found a strain in the neck, tenderness in both brachial plexus and that she was experiencing pain. Dr. Richard Briggs, an orthopedic specialist, found that she suffered cervical myospastic syndrome, prescribed medication, physical therapy, and the use of a transcutaneous nerve stimulator and cervical traction. Dr. Warren Leimbach and Dr. James Vaughn gave similar testimonies to the preceding doctors. Plaintiff Richard Klamfoth testified that he received bills from the various doctors pertaining to her treatment.

The jury returned a verdict and judgment was rendered in favor of plaintiff Beverly Klamfoth in the amount of \$1,465.18 and in the amount of zero dollars for plaintiff Richard Klamfoth from which judgment plaintiff Beverly Klamfoth brings this appeal setting forth the following two assignments of error:

"I. The verdict was inconsistent in the form of the award and inconsistent in awarding medical expenses, but no award for pain and suffering and, therefore, invalid and contrary to law.

"II. The inadequacy of the verdict returned by the jury was so gross as to shock the senses of justice and fairness and was clearly against the manifest weight of the evidence and contrary to law."

We find both assignments of error to be well taken and they are, therefore, sustained. The jury, in spite of the instructions received from the trial court, was obviously confused, giving the medical damages which should have been awarded to the plaintiff Richard Klamfoth, instead to plaintiff Beverly Klamfoth, the amount being to the exact penny of the medical bills in evidence. Furthermore, if it is assumed that the jury awarded the damages to the wrong plaintiff, it becomes obvious that the jury awarded not one cent to plaintiff Beverly Klamfoth for pain and suffering of which there was ample evidence. Two recent cases presented very similar problems as did this case. *Bentley, et al. v. Click*, (Aug. 15, 1978), No. 78AP-29, unreported (1978 Decisions 2189); *Basye v. Whitlock*, (Nov. 12, 1981), No. 81AP-314, unreported (1981 Decisions 3639).

We find the case of *Conde v. Cox* (1962), 115 Ohio App. 278, to be clearly distinguishable from the instant case

inasmuch as, in Conde, there was evidence that the medical expenses were incurred on the wife's credit; whereas, in the instant case, there was evidence that the medical bills were sent to the husband. Likewise, in Vassallo v. Dach (Dec. 11, 1980), Nos. 80AP-366 and 80AP-367, unreported (1980 Decisions 3736), we find that the facts again are distinguishable from the evidence in the present case. We further find that the error herein is not one of mere form but rather a matter of substance and that plaintiff Beverly Klamfoth had not waived the right to raise the issues on appeal because of failure to make a timely objection to the form and content of the verdict rendered by the jury.

We find both assignments of error to be well taken and are therefore sustained. The judgment is reversed and this cause is remanded to the Common Pleas Court for further proceedings in accordance with law and this decision.

Judgment reversed and cause remanded.

WHITESIDE, P.J., and NORRIS, J., concur.