

ANNE PAYNE v. CSX TRANSPORTATION, INC.

(Appellee)

(Appellant)

Issues

1. Whether, in reversing the new-trial order under the applicable federal standard of review, the Court of Appeals failed to give proper deference to Judge Wimberly's first-hand assessment of various errors at trial.
2. Whether the Court of Appeals' summary reversal of Judge Workman's rulings excluding specific-causation testimony from Plaintiff's experts is irreconcilable with the gatekeeping role courts must perform under *McDaniel v. CSX Transportation, Inc.*, 955 S.W.2d 257 (Tenn. 1997), and whether, under the proper standard of review, those rulings were within Judge Workman's discretion.
3. Whether the Court of Appeals erred in holding that, after the jury returned its initial verdict, Judge Wimberly had no discretion to give the jury an accurate, non-duplicative instruction that was necessary to correct the court's (and Plaintiff's counsel's) prior incomplete statements of the law regarding the consequences of the jury's findings.
4. Whether the Court of Appeals deviated from this Court's precedents as well as Tennessee's statutory right to poll jurors by ordering Judge Wimberly to enter judgment on an initial verdict that was rejected by all but one juror when polled and that the jury subsequently revised after further deliberations.

5. Whether the Court of Appeals exceeded its authority by barring Judge Wimberly from considering on remand arguments made in CSX Transportation, Inc.'s post-trial motions that he did not resolve when granting CSX Transportation, Inc.'s motion for a new trial.

Facts

Winston Payne ("Mr. Payne") worked for CSX Transportation, Inc. ("CSXT") as a trainman and a switchman from 1962, until his retirement in 2002. From 1962 until approximately 1988, Mr. Payne was a pack-a-day cigarette smoker. In 2005, Mr. Payne was diagnosed with lung cancer, for which he underwent extensive treatment, including chemotherapy and radiation treatments.

In 2007, Mr. Payne sued CSXT under the Federal Employers Liability Act ("FELA"), alleging that CSXT had been negligent in exposing him to asbestos, diesel fumes and radioactive materials in the course of his employment, and that CSXT had violated federal statutes and regulations enacted for the safety of railroad employees, making CSXT negligent per se, all resulting in Mr. Payne's injuries. Mr. Payne died on January 24, 2010, and his wife, Anne Payne ("Mrs. Payne"), was substituted as the plaintiff.

The case was tried for ten days over a two-week period in November 2010. At the close of the proof, the trial court instructed the jury and provided a verdict form that included special interrogatories. The trial court specifically instructed the jury that a finding of contributory negligence on the part of Mr. Payne would reduce any award of damages to Mrs. Payne in proportion to the percentage of such contributory negligence, but that the jury was to determine the amount of any damages without making that reduction. The trial court also instructed the jury with respect to the issue of alleged statutory and regulatory

violations. However, the court did not instruct the jury that a finding of such violations and the resulting negligence per se would preclude the reduction of any damages recoverable by Mrs. Payne that otherwise would occur as the result of a finding of contributory negligence on the part of Mr. Payne.

The jury determined that CSXT was negligent and that it had violated certain statutes and regulations, such that it also was negligent per se, causing injury to Mr. Payne. The jury also determined that Mr. Payne was contributorily negligent and that his negligence was a 62% cause of his injuries. The jury initially returned a verdict in favor of Mrs. Payne in the amount of \$8,600,000.00. However, upon questioning by the trial court and a further instruction on the effect of the jury's determination of statutory and regulatory violations on the amount of damages recoverable by Mrs. Payne, the foreman of the jury requested that the jury be permitted to further deliberate. The jury deliberated for an additional eight minutes and returned with a revised verdict reducing the damages awarded to Mrs. Payne to \$3,200,000.00 "@ 100%."

On December 7, 2010, Mrs. Payne moved the trial court to enter judgment on the jury's original verdict in the amount of \$8,600,000.00. CSXT opposed the motion and moved the court to enter judgment on the jury's revised verdict in the amount of \$3,200,000.00. On March 7, 2011, the trial court entered judgment on the revised verdict.

On April 6, 2011, CSXT moved the trial court for a judgment notwithstanding the verdict or, in the alternative, for a new trial. According to CSXT, the trial court had committed numerous errors at trial with respect to the admission of evidence and the instruction of the jury. On September 6, 2011, the trial court granted CSXT's motion for a new trial. On March 9, 2012, the original trial judge recused himself, and the case was assigned to a new trial judge.

On September 4, 2012, CSXT moved in limine to exclude the testimony of Mrs. Payne's expert witnesses with respect to the issue of specific causation; i.e., whether Mr. Payne's alleged exposure to asbestos, diesel fumes and/or radioactive material had caused his injuries. The trial court granted CSXT's motion and excluded Mrs. Payne's experts' specific causation testimony. CSXT then moved for summary judgment based upon Mrs. Payne's inability to establish the essential element of causation. In response, Mrs. Payne conceded that without the expert testimony, she could not establish causation. Consequently, on November 2, 2012, the trial court granted CSXT's motion and dismissed the case.

Trial Court Action

As noted, after further instructing the jury and allowing it to further deliberate and return a revised/reduced verdict, the trial court entered judgment on that verdict. The trial court then granted CSXT a new trial, and the original trial judge recused himself. The trial court thereafter granted CSXT's motion in limine to exclude expert testimony, granted CSXT's motion for summary judgment, and dismissed the case.

Court of Appeals Decision

The Court of Appeals reversed the judgment of the trial court ordering a new trial. The Court of Appeals further reversed the judgment of the trial court granting CSXT's motion in limine and granting summary judgment and dismissing the case. The Court of Appeals remanded the case to the trial court, with instructions to the original trial judge to review the evidence at trial and enter judgment in the amount of \$8,600,000.000 if he determines that the verdict is not against the clear weight of the evidence. If, however, he determines that the \$8,600,000.00 verdict is against the clear weight of the

evidence, the Court of Appeals instructed that the original trial judge enter judgment in the amount of \$3,200,000.00.

Permission to Appeal

CSXT filed for permission to appeal the judgment of the Court of Appeals, and the Supreme Court granted its application. Therefore, CSXT is the appellant, and Mrs. Payne is the Appellee.

Text of 45 U.S.C. § 53 (FELA)

Contributory negligence; diminution of damages

In all actions on and after April 22, 1908 brought against any such common carrier by railroad under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: Provided, That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

Appellant (CSXT) Argument

CSXT argues that the trial court did not act arbitrarily or abuse its discretion in ordering a new trial, particularly when evaluating that decision under the appropriate deferential standard of review applicable to such decisions.

According to CSXT, a new trial was justified on the basis of the trial court's errors with respect to the admission of certain evidence at trial and with respect to its instructions to the jury. CSXT further argues that the trial court did not err in thereafter excluding the specific causation testimony of Mrs. Payne's experts and in granting summary judgment in favor of CSXT and dismissing the case.

CSXT argues that the Court of Appeals erred in holding that the trial court had committed error in further instructing the jury and in permitting the jury to further deliberate and return a revised verdict. According to CSXT, the trial court's additional instruction was proper, accurate, and necessary to correct its prior incomplete instruction. Further according to CSXT, the trial court's obligation to correctly instruct the jury did not end until the jury's verdict had been accepted by the court and the jury had been discharged.

CSXT argues that the remedy imposed by the Court of Appeals, remand with instruction to enter judgment on the jury's original verdict, was in error. CSXT contends that the Court of Appeals erred in resurrecting a verdict rejected by the jury when it was polled.

Finally, CSXT argues that if the case is remanded to the trial court, the court should be permitted to determine those issues which were pretermitted by the grant of a new trial. Those issues include, according to CSXT, whether CSXT is entitled to a judgment as a matter of law and whether it is entitled to a new trial because the verdict is against the clear weight of the evidence.

Appellee (Mrs. Payne) Argument

Mrs. Payne argues that the trial court's original instructions to the jury were proper and sufficient, and that the trial court erred in further instructing the jury

and in permitting it to further deliberate and to return a revised verdict. Mrs. Payne further argues that the trial court erred in ordering a new trial. According to Mrs. Payne, the trial court did not commit errors with respect to the admission of evidence or its instructions to the jury such as would warrant the grant of a new trial.

Mrs. Payne argues that the trial court erred in excluding the specific causation testimony of her expert witnesses and in granting summary judgment in favor of CSXT and dismissing the case.

Mrs. Payne argues that the Court of Appeals should have ordered the trial court to simply enter judgment on the jury's original verdict on remand. Alternatively, Mrs. Payne argues that any new trial on remand should be limited to the issue of damages and that there are no pretermitted issues to be addressed by the trial court.

CASE GLOSSARY

ANNE PAYNE v. CSX TRANSPORTATION, INC.

Contributory Negligence- In a case under FELA, negligence of the employee which causes or contributes to cause the injury claimed.

Motion in Limine- A motion made in advance of trial, as in this case to exclude certain anticipated testimony or evidence.

Negligence Per Se- Conduct which is in violation of a statute or regulation may be deemed to be negligent as a matter of law.

Special Interrogatories- Questions to be answered by the jury in reaching its verdict in a case.

Specific Causation- A condition or circumstance which not only may generally cause injury of the type claimed, but which also is proven by the testimony and/or evidence in the case to have caused the specific injury claimed by the plaintiff.