UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 672

September Term, 2015

LOUISE V. JOYNER

v.

VEOLIA TRANSPORTATION SERVICES, INC.

Kehoe,
Reed,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: May 10, 2017

*Kehoe, J. joins in Part 1 of this opinion but recused himself from Part II and did not participate in the conference or approval of that portion of the opinion.

After a two-day trial in October 2014, a jury in the Circuit Court for Baltimore City found that John Gaskue[1], a bus driver for appellee Veolia Transportation Services, Inc., was not negligent in loading appellant, Louise V. Joyner, onto a Maryland Transportation Authority (MTA) bus. Appellant filed a motion for judgment notwithstanding the verdict ("JNOV") pursuant to Rule 2-532, asserting that, based on the evidence, the "jury could not possibly find Mr. Gaskue **not** negligent." The trial court denied the motion and this appeal ensued. Appellant contends that the trial court erred in denying her motion for JNOV. We hold that the jury's verdict was amply supported by the evidence and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 5, 2013, Mr. Gaskue, the bus driver and an employee of appellee, placed Ms. Joyner, a wheelchair-bound MTA customer, on a steel lift to allow her to board an MTA bus. Assisting Ms. Joyner was Mr. Gaskue, the bus driver and an employee of appellee. After raising the steel lift to the proper height to allow Ms. Joyner to board the bus, Mr. Gaskue proceeded to board the bus in order to load Ms. Joyner from inside the bus. As Mr. Gaskue moved toward the front of the bus, the wheelchair tipped backwards and Ms. Joyner fell on her back. Mr. Gaskue was the only employee of appellee assisting Ms. Joyner in boarding the bus. These facts are derived from the testimony of Ms. Joyner's physician and Mr. Gaskue; Ms. Joyner did not testify at trial.

[1] The appellee's driver's name is John Gasque, but his surname was spelled "Gaskue" throughout the transcript. We will use "Gaskue" as used in the transcript.

Ms. Joyner's counsel based his legal theory at trial on a statement found in a document titled "Veolia Transportation World Class Safety Procedures and Policies" which provides: "Operators are not permitted to leave passengers unattended on lifts in the upward position, on inclines or ramps." Ms. Joyner's counsel contended that Mr. Gaskue left Ms. Joyner "unattended" when he placed her in the upright position on the lift and then left her to enter the bus. Mr. Gaskue testified that he did not violate any policy because he "didn't actually leave her." He testified that he was attempting to follow the proper procedure by getting on the bus to pull Ms. Joyner's wheelchair into the bus from the lift. Both Mr. Gaskue and Jeffrey McFarland, a road supervisor for appellee, testified that Mr. Gaskue's actions in attempting to board Ms. Joyner onto the bus complied with all safety protocols and procedures.

The jury found that appellee was "not negligent" in attempting to board Ms. Joyner onto the bus.[2] The trial court then denied appellant's JNOV motion, leading to this appeal.

STANDARD OF REVIEW

The applicable standard of review was concisely stated in *Southern Management Corp. v. Taha*:

> An appellate court considering the denial of a motion for JNOV must determine whether the record contains legally relevant and competent evidence, however slight, from which a jury rationally could have found in appellee's favor.

[2] Mr. Gaskue was not personally sued. Appellant sought to hold appellee vicariously liable for Mr. Gaskue's negligence as an employee acting within the scope of employment.

> In our review of the trial court's decision, we consider the evidence, and all reasonable inferences that may be drawn from that evidence, in the light most favorable to the party in whose favor the verdict was rendered. Moreover, all evidentiary conflicts are resolved in favor of the party who prevailed below. On the other hand, we will reverse a trial court's denial of a motion for JNOV when the verdict is unsupported by the evidence or legally flawed.

137 Md. App. 697, 714 (2001) (internal citations omitted), *vacated on other grounds*, 367 Md. 564 (2002).

DISCUSSION

I.

Judgment Notwithstanding the Verdict

We begin our analysis with principles of negligence law learned by every first year law student.

> A properly pleaded claim of negligence includes four elements. The plaintiff must allege "(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty."

Todd v. Mass Transit Admin., 373 Md. 149, 155 (2003) (citation and internal quotations omitted).

In terms of duty, a common carrier, such as appellee, is charged with the highest degree of care to its passengers. *Washington Metro. Area Transit Authority v. Reading*, 109 Md. App. 89, 100 (1996). "A duty is breached when a person or entity fails to conform to an appropriate standard of care." *Troxel v. Iguana Cantina, LLC*, 201 Md. App. 476, 501 (2011). The Maryland Civil Pattern Jury Instructions § 19.1 (4th ed., 2013 Supp.)

define "negligence" as "doing something that a person using reasonable care would not do, or not doing something that a person using reasonable care would do. Reasonable care means that caution, attention, or skill a reasonable person would use under similar circumstances."

The record in this case is replete with evidence supporting the jury's verdict that Mr. Gaskue was not negligent. Jeffrey McFarland, the road supervisor for appellee's para-transit division, testified that he was familiar with the policies and procedures required to transport wheelchair-bound passengers. He described the procedure for loading a wheel-chair bound passenger onto a company bus:

> [Appellee's Counsel] Now let me ask you generally, before we get to the specifics of this case, in terms of an MTA mobility bus, transportation of a person in a manual wheelchair, could you walk us through the normal procedure for loading such a person onto an MTA mobility bus?
>
> [Mr. McFarland] Sure. What a driver would normally do, when you pull up to a location, either the customer is outside or he would go to the door to get the customer. Once they get to the vehicle, the driver will engage the customer's brakes on the chair. He'll open the doors. He'll get a remote that actually controls the lift. He'll lower the lift, make sure it's level on the ground, both flaps are down at which point he'll take the customer's wheelchair, put it onto the lift backwards whereas her back is facing towards the back inside of the vehicle. At that point he will make sure that the wheels are locked again. Once the wheels are locked, the driver does put the remote down, walk towards the front of the vehicle to get into the vehicle to go and retrieve the customer.
>
> [Appellee's Counsel] I think you left one step out there. He puts the lift up before he goes into the vehicle, right?
>
> [Mr. McFarland] Yes. Yes. Yes. He raises the lift up.

Mr. McFarland investigated the accident involving Ms. Joyner and his investigation report was admitted into evidence. He testified, without objection, that he did not find "any breaches of safety protocols" or "deviations from normal safety practices." Mr. McFarland's testimony alone is sufficient to sustain the jury's determination that Mr. Gaskue was not negligent. However, the jury also heard Mr. Gaskue explain his procedure for transporting wheelchair-bound passengers. As to the incident involving Ms. Joyner, he unequivocally denied deviating from any "proper procedures and protocols" concerning his attempt to load her onto the bus. Viewing the evidence in a light most favorable to appellee as the non-moving party, there is legally competent and sufficient evidence to support the jury's verdict that Mr. Gaskue, appellee's employee, was not negligent in assisting Ms. Joyner onto the bus. We therefore affirm the trial court's denial of the motion for judgment notwithstanding the verdict.

II.

Civil Contempt

Additionally, appellant's attorney Ricky Nelson Jones ("Mr. Jones") appeals an Order of Contempt wherein Judge Pamela J. White found Mr. Jones in contempt for violating the scheduling order.[3] Because we hold that Judge White erred in finding Mr. Jones in contempt, we vacate and remand.

[3] Although the record does not indicate that Mr. Jones filed his own notice of appeal, nor a separate appellate brief, we broadly construe notices of appeal and may consider his claim. *See City Homes, Inc., v. Hazelwood*, 210 Md. App. 615, 699 (2013).

Judge White first encountered Mr. Jones at a hearing on May 5, 2014, to consider appellee's motion to dismiss Ms. Joyner's punitive damages claim. The result of that motion is not at issue here, but according to Mr. Jones, Judge White insulted him and showed harshness toward Ms. Joyner at this hearing.

Pursuant to the Circuit Court Scheduling Order, the parties were to participate in a pre-trial conference on September 17, 2014. The order required all parties as well as their representatives to attend. Judge Paul E. Alpert and ADR Deputy Director Jeff Trueman conducted the pre-trial conference, and although Mr. Jones attended in his capacity as Ms. Joyner's counsel, Ms. Joyner did not attend the conference.

On October 9, 2014, Judge White issued a Show Cause Order requiring that both Ms. Joyner and Mr. Jones appear in court on October 31, 2014, to show cause why they should not be held in constructive civil contempt for failing to comply with the Scheduling Order. Six days later, on October 15, 2014, Judge White was scheduled to preside over Ms. Joyner's trial. Prior to trial, however, Mr. Jones moved that Judge White recuse herself based on the events of the May 5, 2014, hearing. Judge White granted Mr. Jones's motion, stating,

> . . . [B]ecause I am incredulous, because I am in disbelief, because I find myself incapable of believing virtually anything that Mr. Jones has just told me, I'm in the unfamiliar territory of finding that I must recuse myself from any further proceedings in this case because I cannot believe anything that the Reverend Ricky Nelson Jones Esquire—I'm reading off the letterhead—tells me.

Judge White declined, however, to recuse herself from the contempt hearing scheduled for October 31, 2014.

In a written opinion dated November 12, 2014, Judge White found Mr. Jones in contempt of court. She ordered that Mr. Jones could purge his contempt by satisfying the following conditions: 1) indemnifying Veolia Transportation Services, Inc. for attorney's fees for the pre-trial conference incurred on September 17, 2014; 2) indemnifying Veolia Transportation Services, Inc. for attorney's fees related to the Show Cause hearing on October 31, 2014; and 3) writing letters of apology to both Judge Alpert and Mr. Trueman for his rude and uncivil behavior at the pre-trial conference.

"[T]he appropriate sanction for a . . . scheduling order violation is largely discretionary with the [trial] court." *Maddox v. Stone*, 174 Md. App 489, 501 (2007) (quoting *Admiral Mortgage v. Cooper*, 357 Md. 533, 545 (2000)). "An appellate court may reverse a finding of civil contempt only 'upon a showing that a finding of fact upon which the contempt was imposed was clearly erroneous or that the court abused its discretion in finding particular behavior to be contemptuous.'" *Gertz v. Md. Dept. of Env't*. 199 Md. App. 413, 424 (2011) (quoting *Royal Inv. Group, LLC v. Wang*, 183 Md. App. 406, 448 (2008), *cert. dismissed*, 409 Md. 413 (2009)).

We initially note that no testimony or other evidence was produced at the contempt hearing; accordingly, there was no evidence that Mr. Jones had been rude or exhibited uncivil behavior toward Judge Alpert or Mr. Trueman at the pre-trial conference. By ordering Mr. Jones to write letters of apology for rude and uncivil behavior, the trial court erroneously found Mr. Jones to have behaved in such a manner without any evidence in the record to support that finding.

Because the trial court found, without any evidentiary support, that Mr. Jones was rude and uncivil at the pre-trial conference, we are concerned that the court may have been influenced by its interaction with Mr. Jones as reflected at the October 15, 2014 hearing. Under these circumstances, Mr. Jones is entitled to a fair and impartial hearing with a judge other than Judge White. We therefore vacate the finding of contempt and the related sanctions. On remand, the Administrative Judge of the Circuit Court for Baltimore City may decide whether to hold another Show Cause hearing and, if so, should assign a different trial judge to preside over those proceedings.

Finally, we invoke Judge Wilner's wisdom as expressed in *Betz v. State*, 99 Md. App. 60, 68 (1994): "Judges, too, are human and have human emotions; they get angry, often for good reason. But, unlike other people, judges have the sovereign power to punish, to deprive persons of their liberty and property, and that alone requires that they restrain their irritation."

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY DENYING APPELLANT'S JNOV MOTION AFFIRMED. JUDGMENT OF CONTEMPT VACATED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLANT TO PAY 75 PERCENT OF COSTS AND APPELLEE TO PAY 25 PERCENT OF COSTS.