

SUPREME COURT OF ALABAMA

Campbell v. Kennedy

275 So. 3d 507 (Ala. 2018) · Decided October 26, 2018

SUMMARY

The Alabama Supreme Court affirmed a \$3 million jury verdict for injuries sustained when a passenger van collided with a construction motor grader. The court held that conflicting evidence regarding the motor grader's operation, traffic controls, and the plaintiff's conduct supported submitting contributory negligence to the jury. The court also upheld a spoliation-of-evidence jury instruction and declined to disturb the compensatory-damages award.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Sellers, Justice; Stuart, Chief Justice; Bolin, Justice; Parker, Justice; Main, Justice; Wise, Justice; Bryan, Justice; Mendheim, Justice
JURISDICTION	Alabama
DECIDED	October 26, 2018
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from a judgment entered on a jury verdict awarding Kennedy \$3,000,000 in compensatory damages. They challenged the denial of their motions for judgment as a matter of law, a new trial, and remittitur.
STANDARD OF REVIEW	For a JML, the Supreme Court applies the same standard as the trial court, viewing the evidence in the light most favorable to the nonmovant and asking whether substantial evidence supports submission of the factual issue to the jury. Jury-instruction error requires reversal only if prejudicial. A jury verdict is presumed correct, with that presumption strengthened by denial of a new-trial motion. A compensatory-damages award will not be disturbed absent bias, prejudice, improper motive or influence, mistake of law, disregard of the facts, or clear abuse of discretion.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential.
PARTIES	Stuart McQuaid Campbell, Jr., Tomlin Construction, LLC v. Eduard David Evans Kennedy

TOPICS

negligence contributory negligence evidence damages appellate procedure

PRACTICE AREAS

torts construction law evidence remedies appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred in denying a JML because Kennedy was contributorily negligent as a matter of law for violating Alabama's Rules of the Road.
2. Whether the trial court committed reversible error by instructing the jury on spoliation of evidence.
3. Whether the \$3,000,000 compensatory-damages verdict was excessive and required a remittitur or new trial.

HOLDINGS

1. The trial court properly denied the defendants' JML motion because conflicting evidence supported different inferences regarding whether Kennedy was justified in crossing the double-yellow line, whether the motor grader was actually engaged in highway work, and whether it displayed required lights or signals. Contributory negligence therefore remained a question for the jury.
2. The trial court properly instructed the jury on spoliation because sufficient evidence supported an inference that the damaged front axle was not preserved after the defendants had been notified of the potential litigation and the axle's importance to Kennedy's investigation. The instruction did not constitute reversible error because it was not prejudicial.
3. The \$3,000,000 compensatory-damages verdict was not shown to be flawed, and the trial court properly denied remittitur and a new trial. The Supreme Court would not substitute its judgment for that of the jury based solely on the amount of the award or comparisons to verdicts in other cases.

KEY QUOTATIONS

“Contributory negligence is an affirmative and complete defense to a claim based on negligence.” (at 511)

“Spoliation is an attempt by a party to suppress or destroy material evidence favorable to the party's adversary.” (at 513-514)

“Accordingly, because there is nothing in the record to suggest that the jury verdict was flawed, this Court lacks the authority to invade the province of the jury with regard to its compensatory-damages award.” (at 519)

FACTUAL BACKGROUND

Kennedy was driving northbound on Highway 43 when he encountered Campbell operating Tomlin Construction's motor grader in the same lane within a road-construction zone. Kennedy crossed the double-yellow line to pass the grader, and the grader then turned left, causing a collision. Kennedy suffered bilateral jaw

fractures, a comminuted femur fracture, a pulmonary contusion, substantial medical treatment, continuing leg pain, and work-related physical limitations. After Kennedy's counsel sent a preservation letter, the damaged front axle was removed from the grader and was not available for inspection in its immediate post-accident condition.

PROCEDURAL HISTORY

Kennedy sued Campbell and Tomlin Construction for negligence arising from a collision between his passenger van and Tomlin Construction's motor grader in a construction zone. The defendants moved for summary judgment, arguing that Kennedy was contributorily negligent as a matter of law; the trial court denied the motion. At trial, the court submitted contributory negligence and spoliation issues to the jury, which returned a \$3,000,000 verdict for Kennedy. The trial court denied the defendants' postjudgment motion for JML, a new trial, or remittitur, and the Supreme Court of Alabama affirmed.

DISPOSITION

affirmed

CASES CITED

- Palm Harbor Homes, Inc. v. Crawford, 689 So. 2d 3 (Ala. 1997)
- Carter v. Henderson, 598 So. 2d 1350 (Ala. 1992)
- West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989)
- Cloverleaf Plaza, Inc. v. Cooper & Co., 565 So. 2d 1147, 1149 (Ala. 1990)
- Daniels v. East Alabama Paving, Inc., 740 So. 2d 1033, 1037, 1044, 1049 (Ala. 1999)
- Norfolk Southern Ry. v. Johnson, 75 So. 3d 624, 639 (Ala. 2011)
- Ridgeway v. CSX Transp., Inc., 723 So. 2d 600, 606 (Ala. 1998)
- Savage Indus., Inc. v. Duke, 598 So. 2d 856, 859 (Ala. 1992)
- Nunn v. Whitworth, 545 So. 2d 766, 767 (Ala. 1989)
- Nelms v. Allied Mills Co., 387 So. 2d 152, 155 (Ala. 1980)
- Underwriters Nat'l Assurance Co. v. Posey, 333 So. 2d 815, 818 (Ala. 1976)
- King v. W.A. Brown & Sons, Inc., 585 So. 2d 10, 12 (Ala. 1991)
- Wal-Mart Stores, Inc. v. Goodman, 789 So. 2d 166, 176 (Ala. 2000)
- May v. Moore, 424 So. 2d 596, 603 (Ala. 1982)
- Russell v. East Alabama Health Care Auth., 192 So. 3d 1170, 1177 (Ala. Civ. App. 2015)
- White v. Fridge, 461 So. 2d 793 (Ala. 1984)
- Alpine Bay Resorts, Inc. v. Wyatt, 539 So. 2d 160, 162 (Ala. 1988)
- Coca-Cola Bottling Co. v. Parker, 451 So. 2d 786, 788 (Ala. 1984)
- Barko Hydraulics, LLC v. Shepherd, 167 So. 3d 304, 309 (Ala. 2014)
- Alabama Power Co. v. Mosley, 294 Ala. 394, 401, 318 So. 2d 260, 266 (1975)
- Pitt v. Century II, Inc., 631 So. 2d 235, 239 (Ala. 1993)

