

OHIO COURT OF APPEALS, TWELFTH APPELLATE DISTRICT

Long v. Harding

2021-Ohio-4240 (Ohio Ct. App. 2021) · No. CA2020-11-120 · Decided December 6, 2021

SUMMARY

The Ohio Twelfth District Court of Appeals reviewed a personal-injury judgment arising from an automobile accident. The court held that the trial court did not abuse its discretion by refusing to excuse a prospective juror for cause or by allowing a defense medical expert to testify despite alleged discovery deficiencies. The court also addressed the jury's limited damages award to Jeffrey Long and rejection of Karen Long's loss-of-consortium claim.

CASE DETAILS

|                       |                                                                                                                                                           |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Ohio Court of Appeals, Twelfth Appellate District                                                                                                         |
| WRITING FOR THE COURT | M. Powell, J.; Piper, P.J.; Byrne, J.                                                                                                                     |
| JURISDICTION          | Ohio                                                                                                                                                      |
| DECIDED               | December 6, 2021                                                                                                                                          |
| DOCKET                | CA2020-11-120                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                  |
| PROCEDURAL POSTURE    | Civil appeal from a Butler County Court of Common Pleas judgment entered after a jury trial in a personal-injury and loss-of-consortium action.           |
| STANDARD OF REVIEW    | Abuse of discretion for the trial court's rulings on challenges for cause, discovery sanctions or exclusion of expert testimony, and allocation of costs. |
| PRECEDENTIAL VALUE    | published Ohio Court of Appeals opinion                                                                                                                   |
| PARTIES               | Jeffrey Long, Karen Long v. Michael J. Harding                                                                                                            |

TOPICS

- personal injury
- loss of consortium
- discovery dispute
- expert testimony
- appellate procedure

PRACTICE AREAS

- torts
- civil procedure
- evidence
- appellate procedure

## QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by refusing to excuse prospective Juror 929 for cause based on alleged bias against personal-injury plaintiffs.
2. Whether the trial court abused its discretion by refusing to exclude the defense expert's testimony as a discovery sanction when the expert's reports disclosed his opinions and their bases but some referenced materials were not produced.
3. Whether the trial court abused its discretion under Civ.R. 54(D) by splitting costs between Karen Long and Michael Harding after the jury found for Harding on Karen's separate loss-of-consortium claim.

## HOLDINGS

1. The trial court did not abuse its discretion by denying the challenge for cause because Juror 929's statements reflected skepticism about fraudulent or exaggerated claims, not an inability to be fair and impartial or an unwillingness to follow the law.
2. The trial court did not abuse its discretion by denying the motion to exclude Dr. Wunder's testimony because his timely disclosed reports stated his opinions and their bases, the Longs did not obtain an order compelling production or otherwise timely seek enforcement of their discovery requests, and the expert did not present new or different opinions at trial.
3. The trial court did not abuse its discretion by splitting costs between Karen and Harding because Karen was not the prevailing party on her separate and independent loss-of-consortium claim.

## KEY QUOTATIONS

*"Although the decision to impose discovery sanctions is a matter within the sound discretion of the trial court, 'the exclusion of reliable and probative evidence is a severe sanction and should be invoked only when clearly necessary to enforce willful noncompliance or to prevent unfair surprise.'"* (¶ 35)

*"Sanctions provided for in Civ.R. 37(B) result from a violation of a discovery order, not merely from a discovery request."* (¶ 38)

*"Although 'a loss of consortium claim is derivative in that it is dependent upon the defendant's having committed a legally cognizable tort upon the spouse who suffers bodily injury, it is nonetheless legally separate and independent from the claim of the spouse who suffered the bodily injury.'"* (¶ 49)

## FACTUAL BACKGROUND

On March 10, 2016, Michael Harding swerved left of center to avoid a stopped vehicle and sideswiped Jeffrey Long's vehicle after Jeffrey attempted to avoid a head-on collision. Jeffrey claimed that the accident caused a lumbar disc herniation, continuing symptoms, surgery, and substantial limitations affecting his jewelry business and household activities; Harding presented medical and biomechanical expert testimony attributing the more serious condition to preexisting degeneration and disputing causal connection. Harding admitted negligence before trial, leaving proximate cause and damages for the jury. The jury awarded Jeffrey \$7,296.02, awarded Karen nothing on her loss-of-consortium claim, and the trial court split costs between Karen and Harding.

## PROCEDURAL HISTORY

Jeffrey Long sued Michael Harding for negligence arising from an automobile accident, and Karen Long later asserted a loss-of-consortium claim. Harding admitted negligence, and the case proceeded to a six-day jury trial limited principally to proximate cause and damages. The jury awarded Jeffrey \$7,296.02, found for Harding on Karen's loss-of-consortium claim, and the trial court split costs between Karen and Harding. The Longs appealed the denial of a challenge for cause to a prospective juror, the denial of their motion to exclude Harding's expert, and the allocation of costs.

## DISPOSITION

affirmed

## CASES CITED

- Hall v. Banc One Mgt. Corp., 114 Ohio St.3d 484, 2007-Ohio-4640, ¶ 1
- Hunt v. E. Cleveland, 8th Dist. Cuyahoga No. 105953, 2019-Ohio-1115, ¶ 37
- Gurley v. Nemer, 9th Dist. Summit No. 21965, 2004-Ohio-5169, ¶¶ 5-6
- Berk v. Matthews, 53 Ohio St.3d 161, 169 (1990)
- Klem v. Consol. Rail Corp., 191 Ohio App.3d 690, 2010-Ohio-3330 (6th Dist.)
- Mezatasta v. Ent. Hill Farm, 6th Dist. Erie No. E-15-037, 2016-Ohio-3371
- Nakoff v. Fairview Gen. Hosp., 75 Ohio St.3d 254, 256, 1996-Ohio-159
- Grady v. Charles Kalinsky, D.D.S., Inc., 165 Ohio App.3d 306, 2005-Ohio-5550, ¶¶ 14, 17
- Nickey v. Brown, 7 Ohio App.3d 32, 34 (9th Dist. 1982)
- Rogers v. Credit Acceptance Corp., 9th Dist. Lorain No. 11CA010141, 2013-Ohio-1097, ¶ 10
- Grenga v. Bank One, N.A., 7th Dist. Mahoning No. 04 MA 94, 2005-Ohio-4474, ¶ 23
- Cox v. MetroHealth Med. Ctr. Bd. of Trustees, 8th Dist. Cuyahoga No. 96848, 2012-Ohio-2383
- Weimer v. Anzevino, 122 Ohio App.3d 720 (7th Dist. 1997)
- Jackson v. Booth Memorial Hosp., 47 Ohio App.3d 176 (8th Dist. 1988)
- Shumaker v. Oliver B. Cannon & Sons, Inc., 28 Ohio St.3d 367 (1986)
- Walker v. Holland, 117 Ohio App.3d 775 (2d Dist. 1997)
- Waste Mgt. of Ohio, Inc. v. Mid-America Tire, Inc., 113 Ohio App.3d 529 (2d Dist. 1996)
- Amerifirst Savings Bank of Xenia v. Krug, 136 Ohio App.3d 468 (2d Dist. 1999)
- O'Connor v. Cleveland Clinic Found., 161 Ohio App.3d 43, 2005-Ohio-2328 (8th Dist.)
- Bradford v. Callaghan, 8th Dist. Cuyahoga No. 56310, 1989 Ohio App. LEXIS 4979 (Nov. 30, 1989)
- Marcus v. Rusk Heating & Cooling, Inc., 12th Dist. Clermont No. CA2012-03-026, 2013-Ohio-528
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)
- Nithiananthan v. Toirac, 12th Dist. Warren Nos. CA2014-02-021, CA2014-02-028, and CA2014-08-114, 2015-Ohio-1416, ¶¶ 88-89
- State ex rel. Gravill v. Fuerst, 24 Ohio St.3d 12, 13 (1986)
- Vance v. Roedersheimer, 64 Ohio St.3d 552, 555, 1992-Ohio-89

- Gauthier v. Gauthier, 12th Dist. Warren Nos. CA2018-09-098 and CA2018-09-099, 2019-Ohio-4208, ¶ 64
- Wigglesworth v. St. Joseph Riverside Hosp., 143 Ohio App.3d 143, 150 (11th Dist. 2001)
- Schaefer v. Allstate Ins. Co., 76 Ohio St.3d 553, 557, 1996-Ohio-368
- Richard v. Wal-Mart Discount Stores, 2d Dist. Miami No. 98 CA 48

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