

SUPREME COURT OF ALABAMA

Unicare, Inc. v. Felicia Peoples Hood

823 So. 2d 1252 (Ala. 2001) · No. 1991003 · Decided April 20, 2001

SUMMARY

The Supreme Court of Alabama held that the trial court erred by denying Unicare's post-judgment motion for a remittitur without stating reasons and by failing to conduct a requested hearing under Rule 59(g), Ala. R. Civ. P. The court remanded for a hearing addressing the damages challenge and allegations concerning jurors' voir dire responses, including whether Unicare was probably prejudiced. The reporter's note states that the appeal was later dismissed on the appellant's motion.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Woodall, Justice; Moore, C.J.; Houston, J.; Lyons, J.; Johnstone, J.
JURISDICTION	Alabama
DECIDED	April 20, 2001
DOCKET	1991003
DISPOSITION	remanded
PROCEDURAL POSTURE	Unicare appealed from a judgment entered on a jury verdict awarding Hood \$5 million in a wrongful-death action. The Supreme Court of Alabama remanded for the trial court to provide reasons for denying the motion for remittitur and to conduct the hearing requested on Unicare's post-judgment motion, including the juror voir-dire allegations.
STANDARD OF REVIEW	The trial court's determination of probable prejudice from allegedly improper voir-dire responses is reviewed for abuse of discretion. The Supreme Court stated that it could not determine whether an abuse of discretion occurred without an adequate record.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Alabama; precedential.
PARTIES	Unicare, Inc. v. Felicia Peoples Hood, as personal representative of the Estate of Willie Hazel Strickland, deceased

TOPICS

motion for new trial

motion for reconsideration

damages

appellate procedure

civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

torts

remedies

QUESTIONS PRESENTED

1. Whether the trial court erred by denying Unicare's post-judgment motion without holding the hearing requested under Rule 59(g), Ala. R. Civ. P.
2. Whether the trial court erred by denying the motion for remittitur without stating the reasons for the denial.
3. What procedure the trial court must follow on remand in addressing the allegations that two jurors failed to disclose prior representation by Hood's counsel.

HOLDINGS

1. When a party requests a hearing under Rule 59(g), Ala. R. Civ. P., the trial court must provide the parties an opportunity to be heard before ruling on the post-trial motion. The trial court erred by denying Unicare's motion without holding the requested hearing.
2. A trial court must state the reasons supporting its denial of a motion for remittitur. Because the trial court denied Unicare's remittitur motion without such a statement, the case had to be remanded for entry of an order complying with that requirement.
3. When a motion for new trial alleges improper responses or a lack of responses by veniremembers during voir dire, the trial court must inquire whether the movant was probably prejudiced. If probable prejudice resulted, the motion for new trial must be granted.

KEY QUOTATIONS

"Rule 59(g), Ala. R. Civ. P., provides that post-trial motions "shall not be ruled upon until the parties have had opportunity to be heard thereon." (823 So. 2d at 1253)

"In determining the merits of a motion for a new trial that is grounded on allegedly improper responses, or a lack of responses, by veniremembers during voir dire, the trial court must inquire as to whether the movant was probably prejudiced." (823 So. 2d at 1254)

FACTUAL BACKGROUND

A jury awarded Felicia Peoples Hood, as personal representative of her mother's estate, \$5 million in a wrongful-death action against Unicare. Unicare's post-judgment motion challenged the verdict as excessive, requested a remittitur and a hearing under Alabama Rule of Civil Procedure 59(g), and alleged that two jurors failed to answer voir-dire questions about prior representation by Hood's attorneys. The trial court denied the motion without holding the requested hearing and without stating reasons for denying remittitur.

PROCEDURAL HISTORY

Hood filed a wrongful-death complaint on April 8, 1995, concerning the death of her mother, Willie Hazel Strickland. The jury returned a \$5 million verdict on December 8, 1999, and the trial court entered judgment that day. Unicare filed a comprehensive post-judgment motion requesting oral argument, challenging the damages award, and alleging that two jurors failed to disclose prior representation by Hood's counsel. The trial court denied the motion without a hearing or explanation, prompting the appeal. The Supreme Court remanded with instructions; the reporter's note states that the appeal was later dismissed on Unicare's motion on August 24, 2001.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court must conduct the requested hearing on Unicare's post-judgment motion, including the damages and remittitur issues and the allegations concerning the two jurors' failure to answer voir-dire questions. It must enter an order stating the reasons for denying remittitur, inquire whether Unicare was probably prejudiced by the jurors' conduct, and file a return with the Supreme Court within 56 days after release of the opinion. After the return, Unicare may file a brief within 14 days, Hood may respond within 7 days, and Unicare may reply within 7 days.

CASES CITED

- Green Oil Co. v. Hornsby, 539 So. 2d 218 (Ala. 1989)
- BMW of North America, Inc. v. Gore, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996)
- Hammond v. City of Gadsden, 493 So. 2d 1374 (Ala. 1986)
- Kitchens v. Maye, 623 So. 2d 1082 (Ala. 1993)
- Freeman v. Hall, 286 Ala. 161, 238 So. 2d 330 (1970)
- Eaton v. Horton, 565 So. 2d 183 (Ala. 1990)
- Ayres v. Lakeshore Community Hosp., 689 So. 2d 39, 42 (Ala. 1997)

OPINION

WOODALL, J.

823 So. 2d 1252 (2001) UNICARE, INC. v. Felicia Peoples HOOD, as administrator of the Estate of Willie Hazel Strickland, deceased. 1991003. Supreme Court of Alabama. April 20, 2001. *1253 John N. Leach of Helmsing, Leach, Herlong, Newman & Rouse, P.C., Mobile, for appellant. Sam E. Loftin of Loftin, Herndon, Loftin & Hall, Phenix City; and James P. Graham, Jr., Phenix City, for appellee.

WOODALL, Justice. Unicare, Inc., appeals from a judgment based upon a jury verdict awarding Felicia Peoples Hood, as personal representative of the Estate of Willie Hazel Strickland,

deceased, \$5 million. Hood filed a complaint for the allegedly wrongful death of Strickland, her mother, on April 8, 1995.

The jury returned its verdict on December 8, 1999, and the trial judge entered judgment in accordance with the verdict on that same day. On January 7, 2000, Unicare filed a comprehensive post-judgment motion, requesting oral argument.

The motion alleged that the verdict was excessive, and specifically requested "that the Court schedule a hearing in order to consider the factors outlined by *Green Oil Co. v. Hornsby*, 539 So. 2d 218 (1989) for a post-verdict review of an award of punitive damages and *BMW [of North America, Inc.] v. Gore*, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996)."

Additionally, the motion alleged that two jurors had improperly failed to answer questions by the trial judge during voir dire concerning their prior representation by either of the law firms representing Hood. The trial court did not hold the hearing requested by Unicare. Instead, the trial court denied the post-judgment motion on January 14, 2000, without explanation.

The post-judgment motion included a motion for a remittitur, challenging the jury's award as excessive. Hood concedes that the trial judge erred in denying the motion for a remittitur without providing a statement of the reasons for such denial.

Therefore, we remand this case for the trial court to enter an order stating the reasons supporting its denial of the motion for a remittitur. See *Hammond v. City of Gadsden*, 493 So. 2d 1374 (Ala.1986). On remand, the trial court is directed to enter an order in compliance with *Hammond*, and to file a return with this Court within 56 days after the release of this opinion.

Rule 59(g), Ala. R. Civ. P., provides that post-trial motions "shall not be ruled upon until the parties have had opportunity to be heard thereon." This Court has held that when a hearing is requested pursuant to Rule 59(g), the trial court errs in not granting a hearing. *Kitchens v. Maye*, 623 So. 2d 1082 (Ala.1993). Unicare unambiguously requested a hearing and, therefore, we hold that the trial judge erred in not affording Unicare an opportunity to be heard on its post-judgment motion.

In addition to the damages issue, the hearing on remand must also address Unicare's allegations concerning the allegedly improper failure by two jurors to answer questions during voir dire concerning their prior representation by the law firms representing Hood. Where such allegations are made, the trial court must inquire as to whether Unicare was probably prejudiced.

"In determining the merits of a motion for a new trial that is grounded on allegedly improper responses, or a lack *1254 of responses, by veniremembers during voir dire, the trial court must inquire as to whether the movant was probably prejudiced. If probable prejudice resulted from the veniremember's actions during voir dire, then the motion for new trial must be granted.

Freeman v. Hall, 286 Ala. 161, 238 So. 2d 330 (1970). In Freeman, the Court noted some of the factors that may be considered pertinent to the question of prejudice. Among those factors are 'temporal remoteness of the matter inquired about, the ambiguity of the question propounded, the prospective juror's inadvertence or willfulness in falsifying or failing to answer, the failure of the juror to recollect, and the materiality of the matter inquired about.'

286 Ala. at 167, 238 So.2d at 336. The question of prejudice is a matter within the trial court's discretion. Eaton v. Horton, 565 So. 2d 183 (Ala.1990)." Ayres v. Lakeshore Community Hosp., 689 So. 2d 39, 42 (Ala.1997) (emphasis added). Without an adequate record, this Court cannot determine whether the trial court abused its discretion in denying the motion for new trial.

When the trial court files its return in this Court, the appellant will have 14 days to file a brief to argue its positions; the appellee will then have 7 days in which to respond. Following the filing of the appellee's brief, the appellant will then be given 7 days to file a reply brief. REMANDED WITH INSTRUCTIONS.[*] MOORE, C.J., and HOUSTON, LYONS, and JOHNSTONE, JJ., concur.

NOTES [*] Note from the reporter of decisions: The Supreme Court's docket sheet indicates that on August 24, 2001, the appeal was dismissed on motion of the appellant.