

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Cook v. Cook

216 W. Va. 353 (2004) · Decided December 1, 2004

SUMMARY

The Supreme Court of Appeals of West Virginia answers a certified question concerning proof of future damages for lost income following a personal injury. The court holds that a permanent physical impairment is not required; instead, the lasting consequence of the negligent act must be established with reasonable certainty. The type of evidence required depends on the nature of the claimed consequence and need not always be medical evidence.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Albright; Davis; File; Reserves; Right
JURISDICTION	West Virginia
DECIDED	December 1, 2004
DISPOSITION	reversed
PROCEDURAL POSTURE	Certified question from the Circuit Court of Kanawha County regarding the legal standard for proving future damages in the form of lost earnings.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	published
PARTIES	Tifinie Cook v. Faith Woods Cook

TOPICS

- personal injury
- damages
- compensatory damages
- standard of review
- appellate procedure

PRACTICE AREAS

- torts
- remedies
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether *Jordan v. Bero* requires a personal injury plaintiff to demonstrate through medical evidence the permanent deterioration of her physical condition to claim lost future wages where the loss depends on

proving a specific employment opportunity was permanently lost due to the defendant's tortious conduct.

HOLDINGS

1. A permanent physical impairment is not the only type of lasting consequence that will sustain an award of future damages. The *Jordan v. Bero* test requires that either the negligently inflicted injury or its direct consequences be proven to a reasonable degree of certainty to have a lasting, permanent future effect.
2. The evidence needed to establish a lasting or permanent consequence with reasonable certainty is determined by the nature of the consequence and does not necessarily have to be medical evidence. For obvious injuries, lay testimony may suffice; for obscure injuries, expert testimony is required.

KEY QUOTATIONS

“To form a legal basis for recovery of future permanent consequences of the negligent infliction of a personal injury, it must appear with reasonable certainty that such consequences will result from the injury; contingent or merely possible future injurious effects are too remote and speculative to support a lawful recovery.” (at 358)

“Where an injury is of such a character as to be obvious, the effects of which are reasonably common knowledge, it is competent to prove future damages either by lay testimony from the injured party or others who have viewed his injuries, or by expert testimony, or from both lay and expert testimony, so long as the proof adduced thereby is to a degree of reasonable certainty. But where the injury is obscure, that is, the effects of which are not readily ascertainable, demonstrable or subject of common knowledge, mere subjective testimony of the injured party or other lay witnesses does not provide sufficient proof; medical or other expert opinion testimony is required to establish the future effects of an obscure injury to a degree of reasonable certainty.” (at 360)

FACTUAL BACKGROUND

In 1999, an automobile collision occurred where Faith Woods Cook's car collided with Tifinie Cook's car. At the time, Tifinie Cook was a member of the Air National Guard. She alleged that due to injuries from the accident, she was involuntarily discharged and became ineligible for reenlistment. She sued for negligence, seeking future lost wages and benefits from the Air National Guard.

PROCEDURAL HISTORY

The underlying tort action involved a 1999 automobile collision. Appellant sought partial summary judgment on liability, which was granted. She then filed a motion in limine regarding the proof needed for future lost wages. The circuit court certified the legal question to the West Virginia Supreme Court of Appeals, answering it in the affirmative (requiring proof of permanent medical injury). The Supreme Court disagreed and answered the certified question in the negative.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The case is remanded to the Circuit Court of Kanawha County for further proceedings consistent with the Supreme Court's legal conclusions. The trial court is to apply the proper standard for future damages as clarified by the Supreme Court.

CASES CITED

- Jordan v. Bero, 158 W. Va. 28, 210 S.E.2d 618 (1974)
- Gallapoo v. Wal-Mart Stores, Inc., 197 W. Va. 172, 475 S.E.2d 172 (1996)
- Flannery v. U.S., 171 W. Va. 27, 297 S.E.2d 433 (1982)
- Kessel v. Leavitt, 204 W. Va. 95, 511 S.E.2d 720 (1998)
- Wilson v. Fleming, 89 W. Va. 553, 109 S.E. 810 (1921)
- Adkins v. Foster, 187 W. Va. 730, 421 S.E.2d 271 (1992)
- Bower v. Westinghouse Elec. Corp., 206 W. Va. 133, 522 S.E.2d 424 (1999)
- Gerver v. Benavides, 207 W. Va. 228, 530 S.E.2d 701 (1999)
- Liston v. Univ. of West Virginia Bd. of Trustees, 190 W. Va. 410, 438 S.E.2d 590 (1993)
- Kincaid v. Mangum, 189 W. Va. 404, 432 S.E.2d 74 (1993)