UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

THOMAS NEELY,

Plaintiff,

v. **No.: 3:05-CV-304**
Guyton

FOX OF OAK RIDGE, INC.,

Defendant.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR A NEW TRIAL

Comes now the Plaintiff, Thomas Neely, hereinafter ("Plaintiff") and moves this Honorable Court for a new trial pursuant to Federal Rules of Civil Procedure 49(b) and 59. In support of this Motion Plaintiff should show as follows:

Statement of Facts and Argument

On June 21, 2006, following a two-day trial the Jury in this case returned an inconsistent verdict finding the Defendant, Fox of Oak Ridge, Inc., hereinafter ("Defendant") negligent in this cause of action, but not the legal cause of injuries to Plaintiff. *See* Verdict Form, attached hereto as "Exhibit A". The jury then awarded Plaintiff $30,000.00 in compensatory damages. Exhibit A. The Plaintiff hereby asks this Court for a new trial because the verdict is inconsistent with the answers under Rule 49(b) and it reflects a lack of understanding and state of general confusion on the part of the jury.

The Plaintiff is entitled to a new trial under Federal Rule of Civil Procedure 49(b).

In determining what constitutes an inconsistent verdict, Federal Courts must turn to state law. Tipton v. Michelin Tire Co., 101 F.3d 1145, 1148 n.4 (6th Cir. 1996). Under Tennessee state

law a Defendant is not liable for damages unless all the elements of negligence are proven by a preponderance of the evidence, including the element of proximate or legal cause. McClenahan v. Cooley, 806 S.W.2d 767, 774 (Tenn. 1991). The Jury's verdict is internally inconsistent as well as inconsistent with Tennessee state law. Id. In order for the Jury to award compensatory damages to the Plaintiff, they should have found that the Defendant was the legal cause of the Plaintiff's injuries as Tennessee law requires and as they were instructed in the Preliminary Jury Instructions, attached hereto as ("Exhibit B"). McClenahan, 806 S.W.2d at 767 (1991).

Under the Federal Rule of Civil Procedure 49(b) when one of more of the Jury's answers to interrogatories are inconsistent with the judgment, the trial court may "enter the judgment, according to the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial." Fed. R. Civ. Pro. 49(b).

In this case the trial court did not enter judgment, according to the answers, as a $30,000.00 damage award is not in accordance with the answer number two (2) on the Jury's verdict form, nor did the trial court return the jury for further consideration of its answers and judgment, therefore this Court should order a new trial pursuant to Fed. R. Civ. Pro. 49(b). *See* Hinkle v. Waddell, NO. 90-648, 1991 U.S. App. LEXIS 23535 at *8 (E.D. Ky. Sept. 27, 1991) (A trial court should rectify an inconsistent verdict by sending the jury back for further deliberation or by ordering a new trial).

The Plaintiff is entitled to a new trial under Federal Rule of Civil Procedure 59.

Federal Rule of Civil Procedure 59 allows for a new trial where there has been a trial by jury, for any reason for which new trials have been granted by courts of the United States. Fed. Rule of Civ. Pro. 59(a). The Court of Appeals for the Sixth Circuit has held that it is an "abuse of discretion for a trial court to not grant a new trial when a jury verdict reflects a lack of understanding or general

state of confusion on the part of the jury." Hopkins v. Coen, 431 F.2d 1055, 1059 (6th Cir. 1970). *See also* Holloway v. McIntyre, 838 F.2d 471 (6th Cir. 1988).

The inconsistent findings in the instant case illustrate the very confusion and lack of understanding present in Hopkins which led the Sixth Circuit Court of Appeals to remand that case for a new trial. In Hopkins two Plaintiffs, Terry Eugene Hopkins was injured and George R. Hopkins was killed while traveling in the same automobile which was involved in a collision with the Defendant, Edward Coen. Hopkins, 431 F.2d at 1057 (1970). Following the trial, the Jury rendered a several inconsistent verdicts. Id. at 1059. The first verdict simultaneously found for Terry Hopkins in the amount of $75,000.00 and against Defendant, Edward Coen. Id. The second verdict found against Terry Hopkins and for the Defendant, Edward Coen. Id. The third verdict found for George R. Hopkins in the amount of zero dollars, and against Edward Coen. Id. Lastly, the fourth verdict found against George R. Hopkins and for Edward Coen. Id. As the Hopkins Jury could not have found the Defendant, Edward Coen, simultaneously liable and not liable to the two plaintiffs for the same accident, the Sixth Circuit Court of Appeals remanded the case for a new trial. Hopkins, 431 F.2d at 1059 (1970).

In the case-at-bar, like Hopkins, the Jury found simultaneously for and against the Defendant in finding the defendant was not the legal cause of Plaintiff's damages, yet still liable to the Plaintiff for damages sought. Id. While the facts in Hopkins differ from the facts in the immediate case, the Jury committed essentially the same error by finding both for and against the Defendant for damages arising from the same accident. Thus, indicating both the general state of confusion on the part of the jury and lack of understanding that caused the Sixth Circuit Court of Appeals to remand Hopkins for a new trial.

CONCLUSION

Wherefore, the Plaintiff respectfully asks this Court to order a new trial as allowed by Federal Rule of Civil Procedure 49(b) as remedy for a verdict inconsistent with the Jury's interrogatory responses. In addition, the Plaintiff asks this Court to Order a new trial under Federal Rule of Civil Procedure 59 as the Sixth Circuit Court of Appeals has held that a new trial must be awarded when an inconsistent verdict reflects a jury's state of confusion or lack of understanding. Hopkins, 431 F.2d at 1059 (1970).

Respectfully submitted this 30th day of June, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2006, a copy of the foregoing Memorandum in Support of Plaintiff's Motion for a New Trial was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

s\Michael C. Inman
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