

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

THOMAS NEELY,)
)
Plaintiff,) No. 3:05-CV-304
)
vs.) Knoxville, TN
) June 21, 2006
) 9:30 a.m.
FOX OF OAK RIDGE, INC. and)
BENJAMIN H. CURD,)
)
Defendants.)

EXCERPT OF TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE H. BRUCE GUYTON
UNITED STATES DISTRICT JUDGE

FILED
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U.S. DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE, TENNESSEE
CLERK

ORIGINAL

APPEARANCES:

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1 This cause came on for hearing on the 21st day of
2 June, 2006, in the United States District Court for the Eastern
3 District of Tennessee, Northern Division, the Honorable
4 H. Bruce Guyton, presiding.

5 The Court having been duly opened, the following
6 excerpt of proceedings requested by the Honorable H. Bruce
7 Guyton, was had, to-wit:

8 DEPUTY CLERK: All rise.

9 (Jury in at 5:10.)

10 THE COURT: Will the foreperson of the jury
11 please stand.

12 Madame Foreperson, has the jury reached a
13 verdict?

14 MADAME FOREPERSON: Yes, we have.

15 THE COURT: And is it a unanimous verdict?

16 MADAME FOREPERSON: Yes, it is.

17 THE COURT: And have you signed the verdict
18 form?

19 MADAME FOREPERSON: Yes, I have.

20 THE COURT: All right. At this time, the
21 Court is going to read the verdict. And the Court is
22 going to then ask the jurors whether this is a
23 unanimous verdict of all the jurors.

24 "We, the jury, unanimously make the following
25 findings:

1 Question No. 1: Was the Defendant, Fox of Oak
2 Ridge, Inc. negligent?"

3 And your answer is: "Yes."

4 "No. 2: Was the Defendant, Fox of Oak Ridge,
5 Inc.'s negligence a legal cause of injuries to the
6 Plaintiff, Thomas Neely?"

7 And your answer: "No."

8 And you have gone on and answered No. 3.

9 I will read the answer to the verdict: "What
10 is the total amount of compensatory damages that the
11 plaintiff Thomas Neely is entitled to recover?"

12 And your answer is: "\$30,000."

13 It is signed by Ms. Hensley. Is this verdict
14 the unanimous verdict of all members of the jury?

15 All right. If so, please raise your right
16 hand signifying a unanimous verdict.

17 At this time, I'm going to excuse the jury and
18 take up the matter with the attorneys. It will just
19 take a moment.

20 Mr. Marcus, if you will just have them wait
21 for me in the conference room.

22 (Jury out at 5:12.)

23 DEPUTY CLERK: Please be seated.

24 THE COURT: Would the attorneys like to see
25 the verdict form, because the Court has got a problem.

1 MR. ENGLISH: I'm sure that you read it
2 correctly, but --

3 THE COURT: No, I read it correctly. But I
4 just think that maybe the verdict form should have
5 been more detailed.

6 Perhaps the verdict form should have said, If
7 your answer to No. 2 is yes, proceed to No. 3.

8 MR. WOODFIN: I don't know how to respond,
9 Your Honor, other than the fact that it appears that
10 they did not believe that all of the damages and
11 injuries were somehow related to the negligence of Fox
12 of Oak Ridge, and that's why they came up with the
13 number that they did.

14 The question may have said, Do you feel like
15 they're responsible for injuries? They may have felt,
16 no, but been able to award him damages for expenses
17 that he had as well as injuries that he received.

18 MR. ENGLISH: It's just inconsistent, Judge.
19 If they answered, no, then we should get no damages,
20 which they did. And the damages is an inconsistent
21 verdict. I don't see how it can stand.

22 THE COURT: The jury clearly has indicated the
23 intent to award monetary damages.

24 MR. ENGLISH: Yes, sir.

25 THE COURT: And yet they did answer "No" to

1 Question No. 2.

2 It indicates to the Court that either the
3 Court's jury verdict form could have better, which
4 maybe it should have -- I'll look at it again -- or
5 they didn't understand the jury instruction.

6 Now, we can bring the jury back in and
7 instruct them again on that and try to clarify this.
8 I'm open to any other suggestions.

9 MR. ENGLISH: Your Honor, in light of this
10 verdict, it's inconsistent, I think I would just move
11 for a judgment notwithstanding the verdict and a new
12 trial.

13 I don't think it can be cured by this jury
14 since they've said they didn't think Oak Ridge is --
15 Fox of Oak Ridge was the legal cause of plaintiff's
16 injuries even though they thought they were
17 negligent -- and then they awarded damages.

18 MR. WOODFIN: And again, I think in reading
19 that verdict form, it may not be as inconsistent as we
20 think when the question is: "Did the negligence cause
21 injury?"

22 They answered that "No," but felt compelled to
23 award damages.

24 There was proof before this Court that
25 damages, medically, were approximately \$30,000. So I

1 don't see too much inconsistency in the verdict at
2 all.

3 And the question was very specific. We all
4 approved the verdict form. And I think we are forced
5 to live with the decision of this jury.

6 MR. ENGLISH: But it's an inconsistent
7 judgment, Your Honor.

8 THE COURT: Well, let's take a minute. Let me
9 think about it. Let me think about what we're going
10 to do with this.

11 MR. WOODFIN: And that can be taken up,
12 perhaps, on a motion for a new trial later. But I
13 think that's the verdict we have today.

14 THE COURT: Well, let me see if the jury can
15 figure out a way to fix this situation before I let
16 them go. Just give me a couple of minutes.

17 (The court is in recess.)

18 DEPUTY CLERK: This Court is again in session.

19 THE COURT: Okay. We've got several options
20 that we can pursue. And I've been going over those
21 options, weighing the pros and cons of them.
22 Obviously, there's an ambiguity in the wording and/or
23 inconsistency.

24 One of them would be to revise the verdict
25 form and give it to the jury and tell them to start

1 over. I don't know that I can do that.

2 The other option is to bring the jury in and
3 make sure they are unanimous as to Question No. 2.
4 And if they are, then my intention would be to ask the
5 foreperson if they answered "No" to No. 2, then why
6 did they go on and answer No. 3?

7 And based on that information, if that clears
8 up the ambiguity -- perhaps it will. And if it
9 doesn't, then the Court is going to let the jury go
10 and proceed on.

11 MR. WOODFIN: Your Honor, obviously, you can
12 do whatever you see fit in this situation, but I don't
13 necessarily view the ambiguity, I guess, the way the
14 Court does.

15 If they had been asked injuries and damages
16 and came up with that figure, I don't think we have a
17 question. But I think it's very consistent for them
18 to rule that the injuries were not caused, based on
19 the proof that was presented, yet awarded amounts for
20 medical expenses that were proven in this case, which
21 were very close to the figure that they arrived at.

22 If the Court sees a problem with the verdict,
23 I'm a little bit concerned about questioning the jury
24 further about why they came up with that number.

25 I guess we have to look at it from the

1 perspective of -- the answer to the second question
2 should just prevent my client from being awarded
3 damages at all.

4 So if anybody has a problem here, it probably
5 should be me. But I'm not asking the Court for any
6 relief. I am asking the Court to allow this verdict
7 to stand, poll the jury on unanimity, and see if they
8 all agree with that number and the reason they arrived
9 at that.

10 And then if motions, post trial, are filed by
11 either side, for whatever reason, we can take those up
12 at that time. But I think the appropriate thing to do
13 would be to poll the jury and see if they're unanimous
14 in their decision.

15 If their decision wrong, or some party feels
16 like they have been wronged by their decision, I guess
17 post-trial motions would be appropriate.

18 I'm not prepared, and don't want to be
19 prepared to argue any post-trial motions today. I
20 will say that no motion was made after the close of
21 plaintiff's proof, so I'm not sure they are entitled
22 to ask for a judgment notwithstanding the verdict of
23 this case on the damages issue, which is what we're
24 dealing with here.

25 So I think on behalf of my client, I would

1 just request the Court consider asking the jury their
2 opinion about whether or not this is unanimous.

3 If they say that they were, let the verdict
4 stand, and let us file motions to clear it up if it
5 needs to be cleared up.

6 THE COURT: Well, of course, either party can
7 file a motion in the nature of a mistrial even after
8 the verdict has been returned if the verdict is a
9 flawed one.

10 Is there anything else you want to add,
11 Mr. English?

12 MR. ENGLISH: Yes, Your Honor. It's obviously
13 an inconsistent verdict for them to find Fox negligent
14 and say that Fox did not cause the injuries, and then
15 to award damages. You just can't do that.

16 If they had said "Yes" to Question No. 2, and
17 given us \$30,000, we would be stuck with it.

18 But to say, No, they're not liable for any
19 damages, and to give \$30,000, that's a very
20 inconsistent verdict. And it just can't stand, Your
21 Honor.

22 I think I agree with Clint on that. I think
23 it would be very prejudicial to my client to bring the
24 same jury in here that has just held up their hand and
25 sworn that this was their verdict unanimously and ask

1 them again about it and try to break it down. I think
2 we need another jury to try this case.

3 THE COURT: All right. Well, I appreciate
4 those comments. It's difficult to know exactly what
5 to do. But we're going to ask one question, and we're
6 going to see if we get some clarification, and then
7 we're going to go from there.

8 Bring the jury in.

9 (Jury in at 5:30.)

10 DEPUTY CLERK: This Court is again in session.
11 Please be seated.

12 THE COURT: I'm sorry to keep you-all longer.
13 But before the Court can accept the verdict form, the
14 Court will need to make another inquiry with regard
15 to -- and the Court understands your response to
16 Question No. 1 being, "Yes."

17 Question No. 2: "Was the Defendant Fox of Oak
18 Ridge, Inc.'s negligence a legal cause of injuries to
19 the Plaintiff Tom Neely?"

20 Your answer is "No."

21 And is that the unanimous verdict of everyone
22 on the jury? Please raise your right hand if it is.

23 All right then. All right hands were raised.

24 I must ask you, Madame Foreperson, given that
25 answer to Question No. 2, why did the jury proceed to

1 answer Question No. 3?

2 MADAME FOREPERSON: We felt like it was
3 appropriate for some compensatory (sic.) to be given
4 to the plaintiff for what he has gone through so far,
5 because there was negligence on the part of Fox in Oak
6 Ridge.

7 THE COURT: All right. Very good. I
8 appreciate your clarification on that response.

9 I'm going to let you go now. Thank you for
10 your service, very much. Our jury system couldn't
11 exist without you, of course. You are the most
12 important element of it. We appreciate your service.

13 Your verdict and the reasons for your verdict
14 are your own. You do not have any obligation to
15 discuss them with anyone if you don't want to.

16 We have a local rule in the Eastern District
17 of Tennessee that the attorneys are not allowed to
18 contact you to discuss your verdict with you unless
19 they first receive permission from the Court to do
20 that. The Court has not given these attorneys
21 permission to call or otherwise contact you to discuss
22 your deliberations or your verdict.

23 All right. Thank you, very much.

24 Madame Clerk, if you will make sure the jury
25 goes to the proper place.

1 And you are to call Friday after 5:00 for
2 future service. Thank you.

3 (Jury out at 5:35.)

4 THE COURT: All right, Mr. English.

5 MR. ENGLISH: I will renew my motion for a
6 judgment notwithstanding the verdict.

7 She said, and I think I quote, We felt it was
8 appropriate to give them something even though they
9 didn't think it was related causally to the negligence
10 of Fox.

11 It's just a very inconsistent verdict, and I
12 don't think it will stand.

13 THE COURT: All right. Well, I'm not going to
14 take up any oral motions at this time. Obviously,
15 you've made a motion on the record.

16 The Court is going to enter a verdict to the
17 plaintiff in the amount of \$30,000.

18 I understand there may be motions -- written
19 motions. The Court will take them up.

20 It's not the first time that we've had a jury
21 verdict form come back with inconsistent or ambiguous
22 findings in it. We do the best we can.

23 Maybe the verdict form should have been more
24 clear. Maybe the jury instructions should have been
25 more clear. Maybe they didn't understand the

1 instructions. Who knows?

2 But the Court is going to find that the
3 testimony of the foreperson of the jury was that the
4 jury felt that the plaintiff was entitled to be
5 compensated in this case in the amount of 30,000. So
6 the Court is going to enter a judgment in that amount.

7 MR. ENGLISH: Thank you, Your Honor.

8 MR. WOODFIN: Thank you, Your Honor.

9 THE COURT: Thank you, Counsel.


10 Madame Clerk.

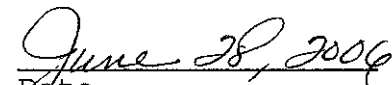
11 DEPUTY CLERK: Please rise. This court is
12 adjourned until 10:00 tomorrow morning.

13 (END OF PROCEEDINGS.)

14 (The foregoing were all the proceedings requested to be
15 transcribed.)

16 "I certify that the foregoing is a correct transcript from the
17 record of proceedings in the above-entitled matter."

18
19 
20 Dana Holloway, Court Reporter


21 Date

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24

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