

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

THOMAS NEELY,

Plaintiff,

v.

No.: 3:05-CV-304
(Phillips/Guyton)

FOX OF OAK RIDGE, INC. and

Defendant

DEFENDANT'S RESPONSE TO MOTION FOR NEW TRIAL

Comes now the defendant, and in response to plaintiff's motion for a new trial, would state unto this Honorable Court as follows:

The defendant respectfully asserts that the verdict entered as the judgment of this Court was entered appropriately. There is no inconsistency with the verdict. If the Court does find some inconsistency, then the substantive law of Tennessee requires that the Court uphold the verdict if it is able to do so, which obviously the Court did in this case. Finally, while not conceding that any error was committed by the Court in entering this verdict as judgment, any possible error which the plaintiff has raised or could raise is harmless under Rule 61 of the Federal Rules of Civil Procedure, because the alleged inconsistency causes no direct harm to the plaintiff.

I. There is no inconsistency with the verdict

As indicated by the jury in this case, and the subsequent entry of the judgment by this Court, the unanimous verdict was that the defendant's employee was negligent, with said negligence being vicariously attributable to the defendant. Before entering the general verdict, the jury also unanimously held that the "injuries" of the plaintiff were not legally caused by the negligence of the

defendant. Clearly, the jury unanimously believed that the plaintiff's credibility had been impeached to the point that any expert proof supporting injuries was given little or no weight. In fact, the foreperson of the jury commented after the Court inquired that they wanted to give the plaintiff "something" for what he had gone through. There is no inconsistency in the amount of the verdict or the response to the interrogatories submitted with the request for the general verdict. The jury clearly articulated a verdict that reflected the proof in this case. The plaintiff's attempt to characterize the verdict as inconsistent is an attempt to get this Court to overturn this clear message from the jury that the plaintiff did not suffer the damages he alleged, much to his dissatisfaction. The amount of the verdict does not even meet the jurisdictional requirements of this Court. As will be pointed out below, the result of the plaintiff's alleged "inconsistency" is that he has a judgment for \$30,000 against the defendant. Had the "consistency" advocated by the plaintiff occurred, the judgment should have been for nothing.

II. This Court properly entered the judgment in accordance with Fed. R. Civ. P. 58.

This Court provided both sides with its proposed jury charge and the form asking for a general verdict accompanied by interrogatories. While not conceding that the verdict is "inconsistent", this Court followed the appropriate steps in the entry of the judgment. Assuming *arguendo* that the answers to the interrogatories contain some inconsistency, any inconsistency contained therein exists between the general verdict and the interrogatories, not the interrogatories themselves. For example, the answers to the interrogatories do not create a blatant inconsistency. It is within the scope of the jury's authority to find someone negligent and that the negligence was not a legal cause of the injuries claimed. An inconsistency within the interrogatory responses themselves might warrant a new trial, if for example the interrogatory responses indicated that the

defendant was not negligent, yet found his negligence to be the legal cause of the injuries claimed by the plaintiff. In this case, the plaintiff is asking for relief based upon his claim that the inconsistency exists between the general verdict, and the interrogatory responses.

In that situation, Rule 49(b) of the Federal Rules of Civil Procedure governs. According to this Rule, the Court has three options when presented with allegedly inconsistent interrogatory responses related to the general verdict, “When the answers are consistent with each other, but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with 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.” Rule 49(b) Fed R. Civ. P. (2005).

The Court in this case, after inquiring of the foreperson, accepted that the verdict in this case could be reconciled, despite plaintiff’s attempt to characterize his dissatisfaction with the result as “inconsistent.” Although the plaintiff also seeks relief based on what he terms “lack of understanding and general confusion on the part of the jury,” there is no citation to any point in this trial as to what caused this alleged misunderstanding and confusion. As stated early, neither party objected to the jury charge or the interrogatories submitted to the jury. Both sides had the opportunity to review the documents before the case was submitted to the jury.

This Court clearly understood that under Rule 49(b) it had the option of entering this verdict as a judgment. The Court exercised extreme caution, and before entering the judgment, questioned the jury in open Court. After being satisfied that the verdict could be reconciled with the answers to the interrogatories, judgment was appropriately entered in this case.