

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

for the verdict, and entered judgment in accordance with Federal Procedure and Tennessee substantive law.

IV. The plaintiff fails to demonstrate how it has been prejudiced by this alleged error.

The plaintiff's motion claims to be for a "new trial" under Rule 49(b) or Rule 59. Since the judgment has been entered, the proper motion for relief should be under Rule 59, with the allegedly inconsistent verdict being the reason for the relief sought. The party making the Rule 59 motion must meet the burden of proving that grounds exist for a new trial, and that an occurrence before the entry of the judgment affected substantial rights. Under Rule 61 of the Federal Rules of Civil Procedure any error affecting a party's substantial rights could be deemed harmless, and would not be grounds for granting a new trial. See Fed. R. Civ. P. 61 (2005).

While not conceding that this Court committed any error, the defendant contends that the Court's entry of this judgment is at best, harmless error. The plaintiff is advocating that the jury had a lack of understanding and was in a state of general confusion, presumably because the plaintiff was awarded damages when he was not supposed to be awarded damages. There are no citations to the record which support this argument. Although the jury may have answered one of the interrogatories in a way that did not exactly match the general verdict, the alternative for the plaintiff would have been worse. The jury's intention was clear. When asked by the Court the reason for what the plaintiff thought was the "inconsistency," the foreperson of the jury commented that the plaintiff ought to be given something. The Court recognized the jury's logic, as does the defendant; - the weight of the evidence was such that the plaintiff failed to carry his burden of proving that he was entitled to all elements of damage claimed.

The jury's verdict and the entry of the judgment affected the substantial rights of the **defendant** who could make the argument that if it was not the legal cause of damages to the plaintiff, then no judgment should be entered against it. Rather, the defendant and the Court understood that the verdict could easily be reconciled when considered with the proof in this trial. The plaintiff does not argue that the verdict was against the great weight of the evidence, because the verdict is completely consistent with the weight of the evidence at trial. The plaintiff's attempt to characterize the Court's entry of this judgment as error amounts to error that is harmless to the plaintiff, considering how the plaintiff has classified the error.

V. Conclusion

This Court committed no error in entering this judgment. The Court followed Rule 49(b) of the Federal Rules of Civil Procedure and entered this general verdict as a judgment. The Court is permitted to do such in a case with a general verdict accompanied by interrogatories, when the "inconsistency" is between the interrogatories and not the interrogatories and the general verdict. Also, the verdict is not inconsistent. Tennessee law requires that a trial court take all steps reasonably allowed to give credence to a jury verdict. Given the proof in this case, and the Court's careful steps before entering the judgment, it is plain that the intent of the jury is permissible under the law. While the plaintiff may not be happy with the verdict and judgment, it is an accurate reflection of the proof presented in this case, and should not be disturbed by this Court.

WHEREFORE, the defendant prays that the plaintiff's motion for a new trial be DENIED, and requests that the Court consider oral argument of this motion.