

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

III. Tennessee Law requires that this Court find this judgment be upheld.

Since this case was submitted to the Court under diversity jurisdiction, this Court must look to Tennessee substantive law as to what constitutes an inconsistent verdict. Tennessee law holds that even though a verdict can be defective in form, it is to be enforced if it sufficiently defines the issues in a way that that enables the Court to intelligently articulate a judgment. Alley v. McLain's Inc. Lumber and Construction, 182 S.W.3d 312 (Tenn. Ct. App 2005) *perm app. denied*. In the Alley decision, the Court of Appeals overturned a verdict that was facially inconsistent, because the statute upon which the case was based required a finding of negligence before damages could be awarded. In the case at bar, the jury found that the defendant was negligent, and awarded damages. Although they also indicated in response to another interrogatory that the negligence of the defendant was not the legal cause of the plaintiff's injuries, it is not inconsistent to hold that damages could be awarded against a negligent party. This Court obviously agreed, and held that the verdict could intelligibly be articulated into a judgment. Tennessee law also holds as follows:

It is the duty of the court in construing verdicts to give them the most favorable interpretation and to give effect to the intention of jurors if that intention be permissible under the law and ascertainable from the phraseology of the verdict. If after an examination of the terms of the verdict the court is able to place a construction thereon that will uphold it, it is incumbent on the court to do so.

Briscoe v. Allison, 290 S.W.2d 864, 868 (Tenn. 1956).

This Court met that duty in this case. To second guess the jury at this point will do a disservice not only to the parties in this case, but the Court system as well. Tennessee law does not consider this verdict to be inconsistent, because as pointed out above, the intention of the jury is easily reconciled with the general verdict. In fact, this Court, in an effort to make sure this verdict could be reconciled, retired to chambers, inquired through the foreperson of the jury as to the reason

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.