

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.

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.

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.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2006, a copy of the foregoing response to motion 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.

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This 5th day of July, 2006.

S\ Clint J. Woodfin
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