

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

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|-------------------------|---|-----------------|
| THOMAS NEELY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 3:05-CV-304 |
| |) | (Guyton) |
| FOX OF OAK RIDGE, INC., |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM AND ORDER

This case came before the Court on July 12, 2006 for a hearing on the Plaintiff's Motion For A New Trial [Doc. 32], and the Defendant's Response [Doc. 35] in opposition thereto. Robert English and Michael Inman were present for the plaintiff. Clint Woodfin was present for the defendant.

This is a personal injury case. The plaintiff alleges that while driving his vehicle in a safe and reasonable manner his vehicle was struck in the rear by a vehicle being operated negligently by an employee of the defendant. The plaintiff alleges several types of damages, including permanent disability and future lost wages.¹ The defendant admits that its employee was acting in the scope of employment when the collision occurred, but that the employee was not negligent. Further, the defendant disputes the amount and extent of the damage and injury claimed by plaintiff to have been caused by the accident.

In an action for negligence, the plaintiff must prove five elements: (1) a duty of care owed to the plaintiff by the defendant; (2) conduct by the defendant constituting a breach of that

¹At trial, the plaintiff asked the jury to award total damages in excess of \$400,000.

Finally, the defendant argues that the Court properly discerned the intent of the jury and gave effect to it.

The Court finds that the jury charge given in this case was adequate and properly informed the jury of the applicable law. Neither party objected to the jury charge.

Likewise, neither party objected to the verdict form used in this case. The Court, however, finds that the verdict form, which the Court prepared, is deficient in one respect and potentially deficient in a second respect. First, the verdict form does not explicitly tell the jury not to answer question no. 3 if its answer to question no. 2 is “no.” Such a direction was included after question no. 1. Second, the use of the word “injuries” in question no. 2 and the word “damages” in question no. 3, perhaps confused the jury and contributed to the jury returning the verdict form as it did.

The Court also finds that the jury’s verdict contained an answer, to question no. 2, which is inconsistent with the general verdict. The Court attempted to reconcile this inconsistency by questioning the jury foreperson, and the Court initially concluded that it had done so. However, after reading the transcript of the jury foreperson’s statement, and considering the case law cited by the parties in the Motion [Doc. 32] and the Response [Doc. 35], the Court must reconsider. Clearly, the jury did not follow the law set forth in the jury charge, and therefore, the Court must conclude that the jury was confused when it completed the verdict form. The explanation given by the foreperson for the inconsistent verdict can only be accepted as resolving the inconsistency with the use of the Court’s subjective interpretation of the meaning of the foreperson’s comment. However, the verdict of the jury must not be such that the subjective interpretation of the Court is required to discern it.