IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN DAVID WITT, and SUTTON BUS & TRUCK COMPANY,	§	No. 594, 2005
Defendants Below, Appellants,	§	
v.	§	Court Below: Superior Court of the State of Delaware
MARIE E. VOGT,	§	in and for Kent County
	§	C.A. No. 03C-09-023
Plaintiff Below, Appellee.	§	

Submitted: July 26, 2006
Decided: September 21, 2006

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices.

O R D E R

This 21st day of September, 2006, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) John D. Witt and Sutton Bus & Truck Company (collectively, Sutton) appeal the judgments entered against them in this personal injury action. They argue that: (i) the $800,000 jury verdict was excessive; (ii) the trial court erred in allowing opposing counsel to argue the "golden rule;" and (iii) the trial court erred in allowing testimony about health care costs and health care insurance.

2) On October 9, 2001, Marie E. Vogt, who was 16 years old, was driving to work after school when she was struck by a bus owned by Sutton. Witt, who was

driving the bus, ran a red light and hit the driver's side door of Vogt's car. She had to be removed from the car with the "Jaws of Life" and spent the next five days in the hospital, heavily medicated. Vogt suffered eight broken ribs, a punctured lung, a herniated disk, and other related injuries. She will suffer pain from those injuries for the rest of her life.

3) Sutton first argues that the trial court erred in denying his motion for remittitur. He claims that the record establishes, "no scarring, no surgical intervention, no lost earning capacity, or lost earnings, no medical expenses and no future disability." In describing Vogt's condition as he does, Sutton ignores the fact that Vogt was a teenager when she suffered permanent injuries that will leave her in pain for the rest of her life. She was too young to suffer lost earnings, but she suffered lost high school experiences that money will never compensate. The trial court decided that the verdict was not against the great weight of the evidence, that it did not appear to be the result of passion or prejudice, and that it did not shock the court's conscience. Based on our review of the record, we conclude that the trial court acted well within its discretion in upholding the jury verdict.

4) Sutton next argues that Vogt violated the so-called "golden rule" prohibition during closing argument. It is settled law that a party may not ask the jurors to put themselves in the plaintiff's shoes and then render a verdict that they would want for

themselves.[1] In discussing comparative negligence, Vogt made the following argument to the jury:

> Now, defendant has the burden of proof on this. And, again, I ask you: What did Marie do wrong? She drove that day like each and every one of us drive. When we stop at a red light and it turns green, we start forward. We assume that cross traffic now facing us, a red light, will stop. We keep a lookout, but we don't go stop and – everybody, traffic moves – and that's what Marie did.
>
> * * *
>
> At any rate, the defendants charged that Marie was negligent, that she didn't act as a reasonable person would have acted under similar circumstances. The Court defined negligence for you, and that's just the conduct of a reasonably prudent person. Marie acted like all of us would act, like all reasonable people would act and, therefore, she was not contributorily negligent.

The trial court refused Sutton's request for a curative instruction, finding that Vogt's comments were not improper. We agree. Vogt did ask the jurors to consider how they behave when driving through an intersection with a green light, but Vogt did so in the context of arguing that she acted reasonably. Vogt did not appeal to the jurors' sympathy; she only appealed to their common sense and their experience driving a car.

[1] *Delaware Olds, Inc. v. Dixon*, 367 A.2d 178, 179 (Del. 1976).

5) Finally, Sutton complains that the trial court erred in overruling his relevance objection when Vogt's mother was asked about her concerns for Vogt's future. In responding to that question, Mrs. Vogt said:

> A. I simply have concerns for her. I mean, emotionally, it's bad enough; but medically, with my insurance company, she will be out on her own when she's 24. And my concern is how the insurance companies in the future will treat her with these preexisting conditions and would she – how would we pay for it if they do determine, well, it is preexisting. It's a huge – the health insurance is a huge concern.

Sutton again objected, pointing out that Mrs. Vogt was speculating about future health care costs. The trial court then instructed the jury to disregard Mrs. Vogt's response. The trial court explained that the answer was "pure speculation" and that the jury was not to engage in speculation.

6) Sutton argues that the cautionary instruction was insufficient to cure the prejudicial effect of Mrs. Vogt's improper response. At trial, however, he accepted the court's curative instruction without comment, and never asked for any other relief. "This Court has repeatedly held that even when prejudicial error is committed, it will usually be cured by the trial judge's instruction to the jury to disregard the remarks."[2] Here, where the trial court gave a curative instruction, and Sutton never asked for

[2] *Pennell v. State*, 602 A.2d 48, 52 (Del. 1991).

additional relief, we find that the trial court acted well within its discretion in denying Sutton's motion for a new trial.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice