

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

KEITH D. PUGH,)
)
Plaintiff,)
)
v.)
) C.A. No. 09C-07-255 MMJ
WILMER E. DAVIS,)
SCOTT SLOVER,)
)
Defendants.)
)

Submitted: July 29, 2014
Decided: August 12, 2014

Upon Plaintiff's Motion for a New Trial
DENIED

MEMORANDUM OPINION

Gary W. Aber, Esquire, Wilmington, Delaware, Attorney for Plaintiff

Michael F. McTaggart, Esquire, Lynn A. Kelly, Esquire, Department of Justice,
Wilmington, Delaware, Attorneys for Defendants

JOHNSTON, J.

FACTUAL AND PROCEDURAL CONTEXT

This litigation arises from an automobile accident which occurred on July 31, 2007. The Delaware State Police were pursuing a driver, Defendant Wilmer Davis, traveling east on Old Baltimore Pike. Plaintiff Keith Pugh was traveling west at the same time. Defendant Corporal Scott Slover, a member of the Delaware State Police, deployed “Stop Sticks” in an attempt to bring Davis’s vehicle to a halt. Davis’s vehicle struck the Stop Sticks and subsequently collided with Pugh’s vehicle. As a result of the collision, Pugh suffered severe injuries.

Pugh brought an action against Corporal Slover and Davis. Pugh alleged Corporal Slover acted with gross or wanton negligence when deploying the Stop Sticks, so as to be liable under 10 *Del. C.* § 4001. Pugh sought damages from both defendants as joint tortfeasors.

At trial, Corporal Slover requested an emergency instruction in his proposed jury instructions. The instruction was based on Superior Court Civil Pattern Instruction 10.6. The Court modified the instruction, adding additional language. The emergency instruction given to the jury stated:

10. SPECIAL DOCTRINES OF TORT LAW

- Actions Taken in Emergency Situations § 10.6

ACTIONS TAKEN IN AN EMERGENCY – General

When a person is involved in an emergency situation not of his own making and not created by his own negligence, that person is entitled

to act as a reasonably prudent person would under similar circumstances.

Therefore, if you find that Corporal Slover was confronted by an emergency situation when defendant Davis attempted to injure police officers and fled [from] the officers, you should review Corporal Slover's conduct in light of what a reasonably prudent trained law enforcement officer would have done under those circumstances.

On June 19, 2014, a jury found in favor of Pugh and against Davis in the amount of \$250,000. The jury found in favor of Corporal Slover on Pugh's claim of gross and wanton negligence. On July 2, 2014, Plaintiff filed a motion for a new trial pursuant to Superior Court Civil Rule 59(a).

STANDARD OF REVIEW

To warrant granting a motion for a new trial, "the verdict must be manifestly and palpably against the weight of the evidence or for some reason, or combination of reasons, justice would miscarry if it were allowed to stand."¹ Delaware law gives great deference to jury verdicts.² "In the face of any reasonable difference of opinion, courts will yield to the jury's decision."³ When the court considers a motion for a new trial, "there is a presumption that the jury verdict is correct."⁴

¹ *Broderick v. Wal-Mart Stores, Inc.*, 2002 WL 388117, at *1 (Del. Super.).

² *Brittingham v. Layfield*, 2008 WL 4946217, at *3 (Del.).

³ *Id.*

⁴ *Daub v. Daniels*, 2013 WL 5467497, *1 (Del. Super.).

DISCUSSION

Pugh sets forth two bases in support of the grant of a new trial. First, the emergency instruction given to the jury was improper. Pugh argues that Corporal Slover had enough time to reflect on his actions and therefore he was not in an emergency situation. Second, a new trial is warranted because the verdict was against the great weight of the evidence.

Emergency Jury Instruction

As to the first basis, Corporal Slover argues that the emergency instruction was proper. Corporal Slover asserts that he was faced with a serious incident involving a dangerous, noncompliant driver. The Recom tape admitted into evidence at trial documented Trooper Rash advising assisting units that he had been struck, and that Davis was taking the light at Old Baltimore Pike.⁵ Trooper Rash states “he just tried to run me over.”⁶ Shortly thereafter, Corporal Slover advises that he placed the Stop Sticks.⁷

The Court finds that the emergency jury instruction was not improper. The emergency instruction—“*if* you find that Corporal Slover was confronted by an emergency situation . . .”—lets the jury decide if Corporal Slover was confronted by an emergency. Pugh argues that Corporal Slover had time to reflect and

⁵ Pl. Op. Br. Ex. 4.

⁶ *Id.*

⁷ *Id.*

therefore an emergency instruction is inappropriate. However, the Court finds that whether an emergency existed is a disputed question of fact. Pugh's arguments go to the weight the jury gave to the evidence of alleged emergency.

A party has "the unqualified right to have the jury instructed with a correct statement of the substance of the law."⁸ The emergency jury instruction is a correct statement of law and does not infringe on Pugh's unqualified right.

Verdict is not Inconsistent with the Evidence

Pugh argues that a new trial is warranted because the verdict goes against the great weight of the evidence. When reviewing a motion for a new trial, the Court views the evidence in the light most favorable to the prevailing party because the verdict was in that party's favor.⁹ The Court finds that the evidence, particularly the Recom Tape and Corporal Aube's expert testimony that Davis' evasive driving was a primary contributing factor to the accident, would allow a reasonable jury to find in favor of Corporal Slover.

CONCLUSION

The Court finds that the emergency instruction given to the jury was not improper and does not warrant a new trial. The Court finds that the jury's verdict was not inconsistent with the weight of the evidence.

⁸ *Culver v. Bennett*, 588 A.2d 1094, 1096 (Del. 1991); *Flamer v. State*, 490 A.2d 104, 128 (Del. 1984).

⁹ *Broderick v. Wal-Mart Stores, Inc.*, 2002 WL 388117, at *1.

THEREFORE, Plaintiff's Motion for a New Trial is hereby DENIED.

IT IS SO ORDERED.

/s/ Mary M. Johnston

The Honorable Mary M. Johnston