No. 30254 - Randle L. Miller v. Randall A. Jeffrey and Laurel Coal Corporation, a West Virginia Corporation

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OF WEST VIRGINIA

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Davis, C.J., dissenting:

Randle Miller (hereinafter referred to as "Mr. Miller") received an adverse jury verdict on injuries he sustained from an automobile collision he claimed was caused by Randall Jeffrey (hereinafter referred to as "Mr. Jeffrey").[1] One of the issues presented by Mr. Miller was that the trial court improperly allowed the jury to consider evidence that he was not wearing a seatbelt at the time of the accident. The majority agreed with Mr. Miller and reversed the judgment. For the reasons set out below, I dissent.

A. The Jury Did Not Rely on the Seatbelt Evidence

Footnote six of the majority opinion summarily rejects Mr. Jeffrey's contention that the jury failed to consider the seatbelt evidence in rendering its verdict. The opinion states that "[w]e find this argument unavailing, as we cannot know what the jury considered, in spite of the presence of significant evidence that Mr. Miller may have caused the accident." This conclusion by the majority opinion is wrong. The record is quite clear as to what the jury considered. The majority opinion simply ignored the evidence in order to attain its desired result.

[1]Mr. Jeffrey's employer, Laurel Coal Corporation, was also named as a defendant.

The verdict form illustrated that the jury did not consider any evidence regarding seatbelt use for purposes of assessing comparative negligence or the mitigation of damages. The relevant portion of the jury verdict form revealed:

VERDICT FORM

1. Do you find, by a preponderance of the evidence that Defendant Randall Jeffrey was negligent and that his negligence was a proximate cause of the accident?

Yes ____ No X

If you answered "no" to the foregoing, then you must not answer any more questions on this form and shall return a verdict in favor of the Defendant. However, if you answered "yes", please proceed to the next question.

2. Do you find, by a preponderance of the evidence, that the Plaintiff Randle Miller was negligent and that his negligence was a proximate cause of the accident?

Yes ___ No ___

3. Please apportion the negligence of the parties, percentage wise. Remember, the two figures must total 100%. If you answered "No" to the preceding question, then you should put "0" for Plaintiff, Randle.

Plaintiff, Randle Miller _____%
Plaintiff, Randall Jeffrey _____%

Clearly, the verdict form showed that the jury did not believe that Mr. Jeffrey was at fault in causing the accident. Consequently, the jury never reached the issue of seatbelt use. That issue would have been relevant only if the jury had concluded that Mr. Jeffrey was in someway negligent. To the extent that the majority opinion found that evidence involving the use of seatbelts should not have been allowed, then the jury verdict form indicates that such error was harmless as the jury never considered the seatbelt

evidence. In essence, the jury attributed no fault to Mr. Jeffrey. Until the decision in this case, the rule in our jurisprudence has been that "[a] judgment will not be reversed because of the admission of improper or irrelevant evidence when it is clear that the verdict of the jury could not have been affected thereby." Syl. pt. 7, *Torrence v. Kusminsky*, 185 W. Va. 734, 408 S.E.2d 684 (1991). *Accord* Syl. pt. 3, *McDougal v. McCammon*, 193 W. Va. 229, 455 S.E.2d 788 (1995); Syl. pt. 7, *Starcher v. South Penn Oil Co.*, 81 W. Va. 587, 95 S.E. 28 (1918). Based upon the foregoing authority, the longstanding harmless error rule required this Court to affirm the judgment in this case.

B. The Wright Decision Does Not Control this Case

The majority opinion concluded that "the language of syllabus point two of *Wright v. Hanley*, 182 W. Va. 334, 387 S.E.2d 801 (1989), controll[ed]" the disposition of the instant case. In syllabus point 2 of *Wright*, this Court held that "[i]n the absence of a mandatory statutory duty to wear seat belts, evidence of plaintiff's failure to wear a seat belt is not admissible in a negligence action to assess plaintiff's percentage of fault or to show plaintiff's failure to mitigate damages." Neither the facts nor the holding in *Wright* controlled the disposition of this case.

Wright involved an accident on a "public highway" during a time period when West Virginia had no mandatory seatbelt law. Thus, *Wright's* pronouncement was limited to public highways when no authority for wearing seatbelts existed. However, in the instant case, the accident occurred on a "private, nonpublic, road." More importantly, authority existed that required seatbelts to be worn on the private road.

The majority opinion conspicuously omitted mentioning that the owner of the private road, Hobet Mine, had a written rule that required the use of seatbelts while driving on its private road. In fact, Mr. Miller's employment as a security guard at Hobet Mine required him to enforce the written seatbelt rule. Mr. Miller admitted this fact during cross examination:

> Q. As a security guard, were you advised as to the use of seat belts for people on the property?
>
> A. Seat belts, drive on the left-hand side, it's a haul road.
>
> Q. So that was the rule that Hobet had for the people on the property?
>
> A. Yes.
>
> . . . .
>
> Q. At the time of this accident, you understood, then, that you were to be using a seat belt on the roadway, as well as keeping to the left?
>
> A. Yes.

In view of the fact that Hobet Mine had a written rule requiring the use of seatbelts on its private road, the decision in *Wright* simply has no application in this case.

C. The Majority Decision is Against Public Policy

In 1993, the legislature responded to the deaths and catastrophic injuries that had been occurring in many automobile accidents by enacting a mandatory seatbelt law for public highways. *See* W. Va. Code § 17C-15-49 (1993) (Repl. Vol. 2000). The seatbelt issue became a public policy matter because of the overwhelming evidence that seatbelt use could diminish the extent of injuries sustained in

automobile accidents. Hobet Mine took the initiative to adopt this public policy position by creating a written rule mandating the use of seatbelts on its active private road. Hobet Mine went so far as to employ security guards, such as Mr. Miller, to enforce its private roadway rules. The majority opinion has destroyed Hobet Mine's initiative to save lives and prevent serious injuries on its private road. *C.f. Brown v. Carvill*, 206 W. Va. 605, 527 S.E.2d 149 (1998) (motorcyclist decapitated by chain strung between two posts across private road).

To be consistent with public policy, the majority opinion should not have created a rule that discourages private road owners from establishing safety measures to protect persons driving on their private roads. Syllabus point 4 of the majority opinion states "[w]hen our mandatory seatbelt statute . . . is inapplicable, evidence of a plaintiff's failure to wear a seatbelt is not admissible in a negligence action to assess plaintiff's percentage of fault or to show plaintiff's failure to mitigate damages." This pronouncement is simply inconsistent with the strong public policy promoting the use of seatbelts to save lives and prevent unnecessary injuries. *See, e.g.*, 17C-15-49(f) ("[T]he governor's highway safety program, in cooperation with the division of public safety and any other state departments or agencies and with county and municipal law-enforcement agencies, shall initiate and conduct an educational program designed to encourage compliance with safety belt usage laws.").

The proper rule of law that should have been formulated by the majority in this case required application of W. Va. Code § 17C-15-49, instead of the application of the *Wright* decision. Under W. Va. Code § 17C-15-49(d), the failure to wear seatbelts is not admissible as evidence of

contributory or comparative negligence, or in mitigation of damages. However, the statute provides a caveat which states:

> That the court may, upon motion of the defendant, conduct an in camera hearing to determine whether an injured party's failure to wear a safety belt was a proximate cause of the injuries complained of. Upon such a finding by the court, the court may then, in a jury trial, by special interrogatory to the jury, determine (1) that the injured party failed to wear a safety belt and (2) that the failure to wear the safety belt constituted a failure to mitigate damages. The trier of fact may reduce the injured party's recovery for medical damages by an amount not to exceed five percent thereof.

W. Va. Code § 17C-15-49(d). Logically, this provision should apply analogously to civil actions involving accidents that occurred on private roads when, at the time of an accident, the owners of such roads had in place written rules requiring the use of seatbelts.

Consequently, in the instant case, I believe the majority opinion should have formulated a rule that incorporated W. Va. Code § 17-15-49(d). It is quite unfortunate that the majority chose to abandon logic and instead created a rule of law that encourages drivers not to wear seatbelts on private roads.

Even though I believe public policy required the principles of W. Va. Code § 17C-15-49 to be applied to this case, I do not believe that such an application would have entitled the plaintiff to a new trial. As I indicated earlier, the jury did not consider seatbelt evidence on any issue in this case. The jury concluded that Mr. Jeffrey did not cause the accident. As such, no new trial should have been granted.

Therefore, I dissent. I am authorized to state that Justice Maynard joins me in this dissenting opinion.