

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Scott Sadler and Corrina Sadler,
Plaintiffs Below, Petitioner**

vs) No. 11-0664 (Jefferson County 09-C-283)

**Nationwide Property and Casualty
Insurance Company, Defendant Below,
Respondent**

FILED

June 22, 2012

**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

MEMORANDUM DECISION

Petitioners Scott and Corrina Sadler appeal the Circuit Court of Jefferson County's March 16, 2011, order denying their motion for a new trial in their lawsuit against their homeowner's insurer, Respondent Nationwide Property and Casualty Insurance Company. Petitioners are represented by Christopher J. Regan, while respondent is represented by Lucien G. Lewin, Bridget M. Cohee, Jason P. Foster, and Michelle E. Piziak.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

On the evening of April 4, 2009, a fire occurred in the home of Scott and Corrina Sadler, Mrs. Sadler's parents Felix and Wilhelmina Angula, the Sadlers' three children, and a niece. No person was injured in the fire, but pets were killed. The house and its contents suffered significant damage and the family had to live elsewhere while repairs were made. The Sadlers and Mrs. Angula owned the home and filed a claim with their homeowners' insurer, Nationwide. The policy had limits of \$424,700 on the dwelling, \$297,290 on personal property, and \$424,700 for loss of use.

The Sadlers allege that, without conducting an investigation, a Nationwide investigator immediately accused them of committing arson. The Sadlers deny committing arson and point out that none of their belongings, photographs, or pets were removed from the home before the fire, and that they would not have allowed their son to be in the home had they known it was on fire. The Sadlers assert that Nationwide knew by April 22, 2009, that outside laboratory results were negative for the presence of ignitable fluids, and Nationwide declined the opportunity to perform testing on electrical devices in the area where the fire erupted. The Sadlers assert that, nonetheless, Nationwide continued to allege arson and on May 7, 2009, issued a reservation of rights letter citing the policy's intentional acts exclusion. The Sadlers assert that Nationwide demanded that they submit to examinations under oath, during which time Nationwide belittled them for hours and insinuated that

since they had experienced financial difficulty and were behind on their mortgage, they must have intentionally set the fire.

The Sadlers assert that Nationwide delayed resolving their claim for almost a year, first by refusing to abandon the fraud investigation despite a lack of evidence, and then by undervaluing the home. The Sadlers assert that shortly after the fire, a Nationwide adjustor verbally estimated the claim at between \$500,000 and \$600,000, but on May 18, 2008, Nationwide presented a non-negotiable, “full payment” check for \$148,756 for the structural damage. The Sadlers and Mrs. Angula refused this check.

Nationwide responds that it engaged in a reasonable fire investigation and adjustment of the claim. Nationwide asserts that it had insured an over-mortgaged house, which suffered an incendiary fire in a matter of minutes, while the financially-strapped named insured, Mr. Sadler, was home alone. Mrs. Sadler and their son had been home, but they left briefly to run an errand. When Mrs. Sadler and the child left, there was no smoke or fire in the basement room where the fire began; upon their return just eight to fifteen minutes later, there was smoke and a raging fire. Nationwide asserts that while firefighters were combating the blaze, Mr. Sadler was observed smoking a cigar and drinking a beer. The Nationwide investigator testified that the day after the fire, the neighborhood had a “festive atmosphere[.]” Nationwide asserts that the Sadlers had a huge financial motive to burn down their home because they had missed multiple mortgage payments and were subject to foreclosure, were grossly behind on their bills, and were spending \$2,000 more per month than they were earning. Nationwide denies that its investigator accused the Sadlers of arson without performing any investigation; rather, Nationwide asserts that the investigator inartfully answered a question when explaining that arson is always a consideration for an incendiary fire.

Nationwide argues that the Sadlers caused difficulties in adjusting the claim, including by insisting that the entire home be gutted, with all walls, wiring and insulation replaced, even in rooms that were only touched by smoke. Nationwide asserts that the Sadlers also unreasonably objected to having their household contents professionally cleaned and restored, and that as late as nine months after the fire the Sadlers were still submitting incomplete claims for the home’s contents. Nationwide states that the day after the fire, it commenced paying for the family to live in a temporary residence in their own neighborhood, and that these payments continued throughout the investigation.

Nationwide disputes that its adjustor estimated the claim at \$500,00 to \$600,000. Nationwide says that the May 15, 2009, check for structural repairs in the amount of \$148,756 was based upon an expert repair estimate. Nationwide asserts that on June 5, 2009, the Sadlers expressed dissatisfaction with the estimate, so Nationwide requested an appraisal. Nationwide says that on July 7, 2009, the Sadlers delayed the appraisal. Nationwide asserts that the Sadlers failed to explain why they objected to Nationwide’s estimate and failed to provide copies of an estimate that they had obtained. Nationwide took Mr. Sadler’s examination under oath on July 29, 2009, and took Mrs. Sadler’s examination under oath on August 10, 2009. Nationwide asserts that by October 16, 2009, which was four days after the errata sheets and transcript certifications for these examinations were received from the Sadlers’ counsel, Nationwide retracted the reservation of rights letter. Nationwide argues that the Sadlers provided an interim structural repair estimate on September 21, 2009, and provided a final structural repair estimate on December 16, 2009, and within thirty to forty-five days thereafter, Nationwide re-inspected the home.

The insurance claim was settled during a mediation held on March 4, 2010. It was agreed that Nationwide would pay the Sadlers and Mrs. Angola \$260,000 for structural damages plus \$225,896.16 for the home's contents and their loss of use. This was in addition to money for the family's rent, certain expenses, and certain items of personal property that Nationwide had paid during the eleven months the insurance claim was pending. Nationwide states that in total it paid the Sadlers and Mrs. Angola over \$640,000.

Mr. and Mrs. Sadler and Mrs. Angola (collectively referred to as "plaintiffs") then filed the instant lawsuit against Nationwide. They asserted, inter alia, violation of the Unfair Trade Practice Act ("UTPA"), West Virginia Code § 33-11-4; a claim for damages under *Hayseeds, Inc. v. State Farm Fire and Casualty Company*, 177 W.Va. 323, 352 S.E.2d 73 (1986); violation of the covenant of good faith and fair dealing; intentional infliction of emotional distress; and entitlement to punitive damages. After hearing the evidence at trial, the jury answered special interrogatories finding that Nationwide did violate the implied covenant of good faith and fair dealing, and that plaintiffs had substantially prevailed on their claim for policy benefits (i.e., the *Hayseeds* claim). However, the jury also found that Nationwide did not violate the UTPA, did not commit the intentional infliction of emotional distress, and did not act with actual malice for purposes of an award of punitive damages.

With regard to the two claims for which the jury found in favor of plaintiffs, the verdict form instructed the jury to "set forth the full amount of damages which you find will fully compensate the Plaintiffs" for their "net economic loss caused by the delay" and for their "annoyance, aggravation and/or inconvenience." The jury awarded no damages in either category to Mr. and Mrs. Sadler. The jury awarded \$100,000 to Mrs. Angola for her annoyance, aggravation and/or inconvenience, but awarded no damages to Mrs. Angola for net economic loss caused by the delay. In addition, because the jury found that plaintiffs had substantially prevailed on their insurance claim, in accordance with *Hayseeds*, the circuit court ordered Nationwide to pay the plaintiffs' attorney's fees in the amount of \$119,478.66.

The plaintiffs moved for a new trial, which the circuit court denied by order of March 16, 2011. Mr. and Mrs. Sadler now appeal that denial to this Court. We have held that "'the ruling of a trial court in granting or denying a motion for a new trial is entitled to great respect and weight, [and] the trial court's ruling will be reversed on appeal [only] when it is clear that the trial court has acted under some misapprehension of the law or the evidence.' Syl. pt. 4, in part, *Sanders v. Georgia-Pacific Corp.*, 159 W.Va. 621, 225 S.E.2d 218 (1976)." Syl. Pt. 2, *Estep v. Mike Ferrell Ford Lincoln-Mercury, Inc.*, 223 W.Va. 209, 672 S.E.2d 345 (2008).

**Denial of new trial on the issue of damages for Nationwide's liability
under *Hayseeds* and the covenant of good faith and fair dealing**

In their first assignment of error, the Sadlers argue that the circuit court erred in denying them a new trial on the issue of damages. They argue that because the jury found that Nationwide breached the implied covenant of good faith and fair dealing and that the Sadlers and Mrs. Angola substantially prevailed on their insurance claim, then the jury was required to award damages to the Sadlers. They argue that Nationwide ultimately paid nearly double its pre-litigation offer for the structural repairs. We have held that "[w]henver a policyholder substantially prevails in a property damage suit against its insurer, the insurer is liable for: (1) the insured's reasonable attorneys' fees

in vindicating its claim; (2) the insured's damages for net economic loss caused by the delay in settlement, and damages for aggravation and inconvenience.” Syl. Pt. 1, *Hayseeds*.

The Sadlers argue that an award of zero damages for net economic loss and for aggravation and inconvenience was not within the bounds of the evidence. They argue that a family of eight was out of their home at least nine months longer than necessary, sleeping on air mattresses and using cardboard boxes for furniture, because of Nationwide’s delays and arson accusations. They assert that they were forced to weather a lengthy period of uncertainty over whether Nationwide was going to accept their claim, all the while being pressured to accept an insufficient settlement. Moreover, the Sadlers argue that the verdict is inconsistent because the jury awarded Mrs. Angula \$100,000 for her annoyance, aggravation and inconvenience as a result of Nationwide’s actions, but the jury failed to award the Sadlers any damages for their annoyance, aggravation and inconvenience caused by these same actions.

Nationwide argues that the verdict was not so low that reasonable men could not differ about it, and that the Sadlers merely want a “second bite at the apple.” Nationwide asserts that the jury heard an abundance of evidence about payments Nationwide made to or on behalf of the plaintiffs throughout the course of the investigation; about the Sadlers’ own actions that delayed the claim; and about the Sadlers’ financial condition which presented a strong motive for arson. Nationwide argues that the jury could have reasonably concluded that any annoyance and inconvenience was caused by the fire itself, or by the Sadlers’ actions, or by the Sadlers’ preexisting financial condition – not by the manner in which Nationwide handled this claim. Nationwide argues that the jury could have reasonably found that, unlike the Sadlers, Mrs. Angula did not act to delay the claim and thus was entitled to damages for her annoyance, aggravation and inconvenience.

“In an appeal from an allegedly inadequate damage award, the evidence concerning damages is to be viewed most strongly in favor of the defendant.” Syl. Pt. 1, *Kaiser v. Hensley*, 173 W.Va. 548, 318 S.E.2d 598 (1983). Moreover, “[w]e will not find a jury verdict to be inadequate unless it is a sum so low that under the facts of the case reasonable men cannot differ about its inadequacy.” Syl. Pt. 2, *Fullmer v. Swift Energy Co., Inc.*, 185 W.Va. 45, 404 S.E.2d 534 (1991).

In light of the facts of this case, we cannot find that the circuit court acted under any misapprehension of the law or evidence when denying the motion for new trial on the issue of damages. The jury was asked to separately determine damages for the Sadlers and for Mrs. Angula in amounts that would fully compensate them. Examining the evidence in a light most favorable to defendant, the jury could have reasonably determined that the Sadlers contributed to a delay in processing the claim, but Mrs. Angula did not contribute to any delay, thus only Mrs. Angula was entitled to damages for annoyance, aggravation, and inconvenience. Moreover, in light of the payments for rent, expenses, and certain items of personal property that Nationwide made during the pendency of the claim, in addition to the amount of the final settlement, the jury could have reasonably concluded that the plaintiffs had already been compensated for their net economic loss. Finally, the circuit court awarded the plaintiffs their attorney’s fees in accordance with Syllabus Point 1 of *Hayseeds*.

**Denial of new trial on the issue of whether Nationwide was liable for the UTPA,
intentional infliction of emotional distress, and punitive damages claims**

With regard to the jury's finding of no liability for the plaintiffs' remaining claims, the Sadlers argue that the jury was improperly biased by Nationwide's repetitious, ad hominem attacks on the Sadlers regarding their finances and prior financial choices. The Sadlers assert that the "avalanche" of irrelevant and prejudicial attacks at trial lasted for hours on end. The Sadlers say that they were denounced as tax cheats because, several years after discharging a tax liability in a lawful bankruptcy case, they received a tax refund; that they were belittled because they received mortgage foreclosure notices; that they were repeatedly denounced for eating at inexpensive fast food restaurants, purchasing cigars, and purchasing items at a fishing store while their mortgage was in arrears; and much more. The Sadlers argue that this information and argument was made only to prejudice the jury against them, that it was not relevant to any claim or defense, and that it was not admissible as character evidence.

Nationwide responds that the circuit court did not abuse its discretion in permitting cross-examination about the Sadlers' financial choices and condition. Nationwide argues that this evidence was relevant and admissible to rebut the accusations that Nationwide delayed payment, requested unnecessary information, and committed unlawful insurance practices. Nationwide argues that the Sadlers' financial situation gave them a strong motive for arson and was also probative as an alternate cause for their alleged emotional distress. Nationwide also argues that plaintiffs' counsel elicited information about the Sadlers' financial status during direct examination.

"The action of a trial court in admitting or excluding evidence in the exercise of its discretion will not be disturbed by the appellate court unless it appears that such action amounts to an abuse of discretion." Syl. Pt. 10, *State v. Huffman*, 141 W.Va. 55, 87 S.E.2d 541 (1955), overruled on other grounds by *State ex rel. R.L. v. Bedell*, 192 W.Va. 435, 452 S.E.2d 893 (1994). *Accord* Syl. Pt. 7, *State ex rel. Weirton Med. Ctr. v. Mazzone*, 214 W.Va. 146, 587 S.E.2d 122 (2002).

Upon a review of the appendix record and the parties' arguments, we cannot conclude that the circuit court abused its discretion in admitting the evidence, or that the court acted under some misapprehension of the law or evidence when denying the motion for new trial on this basis. The jury heard evidence from both sides and we decline to second-guess the jury's decision.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: June 22, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh