

Patrick N. Wilson  
Circuit Court Clerk  
Red. Codes: 18-100-1000

FILED 12/14/2018 4:25 PM  
CC-24-2016-C-160  
Marion County Circuit Clerk  
Morgantown, West Virginia

In the Circuit Court of Marion County, West Virginia

Christopher McKenzie, )  
Anna McKenzie, )  
Plaintiffs, )  
)  
vs.) )  
)  
Donald L Sevier, )  
Cassandra Sevier, )  
Defendants )  
)

Case No. CC-24-2016-C-160

ORDER DENYING PLAINTIFF'S MOTION FOR A NEW TRIAL AND GRANTING PLAINTIFF'S MOTION FOR SANCTIONS

The Court had both Plaintiff and Defendants submit a proposed order reflecting the Court's findings of fact and conclusions of law according to each party's respective positions. The Court did not adopt the entire recitation of either party but has adopted a portion of the proposed findings as drafted by the Defendants denying Plaintiff's Motion for a New Trial.

1. The above-styled action was fairly tried with proper instructions to the jury, with the verdict not being contrary to the evidence.
2. Accordingly the verdict cannot be set aside, therefore, the motion for new trial should be denied. Neely v. Belk, Inc., 222 W.Va. 560, 668 S.E.2d 189 (2008).
3. A new trial should not be granted unless it is reasonably clear that prejudicial error has crept into the record or that substantial justice has not been done. State ex rel. Meadows v. Stephens, 207 W.Va. 341, 532

S.E.2d 59 (1997).

4. When a case such as this action involves conflicting testimony and circumstances which have been fairly tried, under proper instructions, the verdict of the jury must not be set aside unless that verdict is plainly contrary to the evidence or without sufficient evidence to support it. Neely v. Belk, Inc., 222 W.Va. 560, 668 S.E.2d 189 (2008).

5. It is the peculiar and exclusive province of the jury to weigh the evidence and to resolve questions of fact when the testimony of witnesses regarding them is conflicting and the finding of the jury on such facts will not ordinarily be disturbed. Graham v. Crist, 146 W.Va. 156, 118 S.E.2d 640 (1961).

6. The plaintiff identifies three (3) basis to disregard the jury's verdict in this action.

7. First, the plaintiff asserts that the verdict of the jury was inadequate. Next, the plaintiff asserts that the verdict of the jury was inconsistent. Finally, the plaintiff complains he was prejudiced by the denial of his motion to bifurcate which was denied by the Court prior to trial. The Defendants object to Plaintiff's motion.

8. The Court has thoughtfully reviewed and considered all arguments, briefing, and supplemental arguments and briefing of the parties and will deny Plaintiff's Motion for a New Trial on all three grounds.

9. The August 24, 2018 verdict should not be disturbed as the case was fairly tried and the jury was not tainted.

Accordingly, the verdict of the jury in this action must not be set aside, therefore, the motion of the plaintiff for a new trial is **DENIED**.

Further, the Court had held in abeyance Plaintiff's previous July 2018 request for sanctions dating back to Defendants' failure to comply with Court orders requiring production and supplementation of certain discovery including cell phone records, insurance policies, and discovery responses. The Court finds it appropriate at this time to **GRANT** the motion for sanctions requested pursuant to Plaintiff's July 19, 2018 motion for sanctions in the approximate amount of \$4,000.00. Plaintiff's counsel shall submit the verified affidavit attesting to amount of time spent for approval of the Court by December 21, 2018.

The Clerk is directed to send a certified copy of this Order to all counsel of record.

/s/ Patrick N. Wilson  
Circuit Court Judge  
16th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courtswv.gov/e-file/](http://www.courtswv.gov/e-file/) for more details.