

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
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Granted Appeal Summary

Case

TAMARA AL-SARAY v. SHARON ELIZABETH FURR
(Record Number 230488)

From

The Court of Appeals of Virginia.

Counsel

Douglas B. Wessel (Wessel Law) for appellant.

Julie S. Palmer (Harman Claytor Corrigan & Wellman), Frank E. Hudson, III, and David W. Drash (Teumer & Drash) for appellee.

Assignments of Error

A. The Court of Appeals Panel majority erred in setting aside Tamara's \$7,000,000 jury verdict against defendant Furr on grounds that there was insufficient or "no" evidence that defendant was a proximate cause of this accident.

1. The Panel majority erred by limiting its consideration of what caused this accident to the final 4 seconds before impact and by not properly considering the surrounding facts and circumstances of this accident.

2. Even assuming *arguendo* that the Panel majority was correct in limiting its consideration of what caused this accident to the final 4 seconds before impact, the majority conceded that if the crossing (Spurlock) vehicle started moving slowly across the intersection at 4 seconds before the crash, then defendant Furr had "ample opportunity" to avoid this accident; the majority disregarded critical testimony by Burke that the crossing vehicle indeed started moving slowly across the intersection at 4 seconds before the crash so that the crossing Spurlock vehicle became "a visible obstacle that [Furr] had ample opportunity to see and avoid."

3. The Panel majority erred in disregarding, or diminishing the significance of, evidence that *well before the 4 seconds before impact and continuing to impact*: defendant Furr was driving with impaired vision and without the glasses she needed in order to drive safely; she failed to see and react to the crossing vehicle that was there to be seen; and she was speeding or driving at an unreasonable speed under the circumstances.

4. In determining as a matter of law that defendant Furr was not a proximate cause of this accident, the Panel majority erred in not adhering to this Court's appellate standards of review.

Assignments of Cross-Error

The Court of Appeals decided the case in Furr's favor based upon Furr's first assignment of error, which concerned the circuit court's denial of Furr's motion to strike at the close of Al-Saray's evidence. The Court of Appeals declined to address the merits of Furr's remaining assignments of error.

If this Court finds that the Court of Appeals erred in reversing the circuit court's judgment in favor of Al-Saray, then Furr assigns error to the Court of Appeals' refusal to rule on Furr's other assignments of error:

1. The circuit court erred in rejecting Furr's proposed Jury Instruction T.
2. The circuit court erred in denying Furr's motion to set aside the verdict based upon its rejection of proposed Jury Instruction T.
3. The circuit court erred in denying Furr's motions for mistrial based on Al-Saray's counsel's statements in closing argument that "a grandfather [got] killed" and that Furr "killed a man" in the subject accident.
4. The circuit court erred in denying Furr's motion for sanctions regarding Al-Saray's refusal to participate in the Rule 4:10 exam by Furr's expert, Dr. Wilken; specifically, by ruling Dr. Wilken could not explain at trial why he did not examine Al-Saray, by denying Furr's request for a second Rule 4:10 exam by Dr. Wilken, and by denying Furr's motion to continue the trial date so as to obtain a Rule 4:10 exam.
5. The circuit court erred in granting Al-Saray's motion for sanctions and instructing the jury that Furr's expert, Dr. Wilken, did not examine Al-Saray, without permitting Dr. Wilken to explain why he did not examine her.
6. The circuit court erred in excluding evidence, testimony, argument, or commentary regarding Spurlock's plea of guilty to a traffic citation following the subject accident.
7. The circuit court erred in precluding Furr's expert, Dr. Falconer, from testifying at trial concerning "second hit phenomenon" and that Al-Saray's advancement of symptoms after January 2015 was a result of a second accident that occurred in August 2016.
8. The circuit court erred in precluding Furr's expert, Dr. Wilken, from testifying at trial (a) that a person does not experience cognitive decline several years after a head injury and that cognitive decline several years after a head injury would suggest an alternate cause; and (b) that the plaintiff's recurrence of psychiatric distress and behavioral symptomatology long after the subject accident suggests an alternate etiology.