COURT OF APPEALS OF VIRGINIA

Record No. 1522-25-4

JEFFREY C. SNEIDER
v.
KIMBERLY FOX

Present: Judges O'Brien, Friedman and Frucci
Argued at Fredericksburg, Virginia

Opinion Issued October 13, 2026*

FROM THE CIRCUIT COURT OF LOUDOUN COUNTY
Matthew P. Snow, Judge

Stephen G. Donches II (Donches Law PLLC, on briefs), for appellant.

Timothy P. Bosson (Robert G. Rose; Bosson Legal Group, PC, on brief), for appellee.

MEMORANDUM OPINION BY
JUDGE STEVEN C. FRUCCI

Jeffrey C. Sneider appeals a jury verdict finding that he assaulted Kimberly Fox and awarding her compensatory and punitive damages. He asserts that the circuit court erred by denying: (1) his motion to compel Fox to submit to a Rule 4:10 examination; (2) his motion to bifurcate trial with respect to the issue of punitive damages; and (3) his motion for mistrial based on Fox's testimony about her post-incident medical treatment. Finding no error, we affirm the circuit court's judgment.[1]

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

[1] This Court hereby grants Sneider's motion for leave to amend opening brief.

BACKGROUND[2]

On October 21, 2021, Fox and Paula Bayliss were riding horses eastbound on a gravel road near Fox's home when Bayliss noticed an SUV quickly approaching from behind them. The SUV, driven by Sneider, drove up to the "haunches of [Fox's] horse." Fox attempted to move away from the SUV, but Sneider blocked Fox's path and told Fox that her horse was "smarter than [she] is." Sneider then drove away causing his SUV to throw gravel and dirt on Fox's horse.

Sneider's actions caused Fox's horse to become "dangerously upset," and Bayliss and Fox attempted to calm the horse down. As they did, Sneider returned and drove his SUV within two feet of Fox's horse causing the horse to become "very upset." Sneider repeated to Fox that her horse was "smarter than [her]." After Sneider drove away the second time, Fox and Bayliss began to return to Fox's home. As they did, Sneider quickly drove past them a third time.

On October 17, 2023, Fox sued Sneider for assault alleging that she had "suffered severe emotional distress" from a "near death experience" and continued to "experience stress related to the incident." Fox demanded a jury trial and asked for an award of compensatory and punitive damages. The circuit court entered a uniform pretrial scheduling order setting April 3, 2025, as the deadline for Sneider to identify his expert witnesses.

On April 8, 2025, Sneider moved to compel Fox to submit to a mental examination by a forensic psychiatrist based on the allegations in her complaint and her discovery responses reporting that she suffered from "nightmares, sleep deprivation, and other detrimental psychological effects" after the incident. Sneider argued that he had good cause to file his

[2] We review the evidence, and all inferences that may reasonably be drawn from it, in the light most favorable to Fox, the prevailing party in the circuit court. *Bitar v. Rahman*, 272 Va. 130, 137 (2006).

motion because Fox had refused to provide him with documentation concerning her mental health notwithstanding his discovery requests.

Fox opposed Sneider's motion, arguing that her mental health was not in controversy and that there was no good cause for her to submit to a mental examination because she had not alleged that she suffered from a psychiatric condition following the incident. Rather, Fox explained that she sought to recover "emotional damages" for her "emotional distress." She alternatively argued that Sneider's motion was untimely because he filed it five days after the deadline to identify his experts had passed.

On April 23, 2025, Fox provided Sneider with copies of her pre-incident mental health records, which were handwritten by her psychologist and largely illegible. The circuit court heard Sneider's motion to compel Fox to submit to a mental examination two days later. At the hearing, Sneider emphasized the illegibility of the handwritten records and argued that he would be prejudiced in defending against Fox's claim of severe emotional distress unless she submitted to a mental examination.

After considering the parties' arguments, the circuit court denied Sneider's motion to compel Fox to submit to a mental examination. In support of its ruling, the circuit court observed that neither party had designated an expert who could testify regarding Fox's emotional distress or psychological impairment and that Fox's lay testimony would be subject to "a credibility analysis." The circuit court found that the parties were "on the same level playing field" and stated that it was "not inclined to order an examination" given that the case began in 2023 and that the deadline to designate expert witnesses had passed. The circuit court noted that "the lynchpin" of its decision was that Fox had not designated an expert witness.

Sneider also moved *in limine* to exclude evidence of his "significant net worth." He acknowledged that evidence of his net worth was relevant to the issue of punitive damages but

argued that such evidence should be excluded unless the jury first found him liable for assault and awarded Fox compensatory damages. On the first day of trial, Sneider asked the circuit court to bifurcate the issue of punitive damages. Sneider recognized that bifurcation was "disfavored" and suggested that the "ruling could be handled either with a separate verdict or with [the circuit court] making a determination that a prima facie case for punitive damages has not been established and the jury will not hear it until it has."

The circuit court declined to bifurcate the issue of punitive damages noting that it was "an issue that should've been addressed at the pretrial conference." Instead, the circuit court determined that it would issue a limiting instruction to the jury, which ultimately stated that the jury "must not consider [Sneider's] financial condition or net worth when determining whether [Sneider] is liable . . . or to the amount of any compensatory damages you may award." The circuit court also ruled that Fox had to make "a prima facie showing" in support of her punitive damages claim before introducing evidence of Sneider's net worth.

At trial, Bayliss explained that there was no traffic on the gravel road at the time of the incident and that she and Fox were as close to the edge of the road as they could have been. Bayliss testified that she was afraid for Fox's safety throughout the incident and that it was reasonable for Fox to have feared for her life. Fox's husband testified that Fox was "very distraught" after the incident and spent that evening shaking and crying. He further testified that Fox stopped riding horses for several weeks after the incident, had "[s]leepless nights" and nightmares, and had not ridden a horse on the gravel road since the incident. Fox's neighbor similarly testified that Fox "cr[ied] a lot" and "could hardly talk" following the incident.

Fox called Sneider as an adverse witness after the circuit court determined that she had stated a prima facie claim for punitive damages. Before Sneider's testimony, the circuit court instructed the jury as follows:

> You must not consider the defendant's financial condition or net worth when determining whether the defendant is liable to the plaintiff or to the amount of any compensatory damages you may award. Determinations as to liability must be based solely on the evidence presented concerning the defendant's conduct and whether it satisfies the elements of the plaintiff's claims. Evidence of the defendant's net worth or financial condition is relevant only to a determination of the size of any punitive damages award if and/or when awarded.

Sneider then testified that he had a net worth of $70 million at the end of 2024.

Fox testified that a spooked horse will "go through anything and over anything to get away" and that she expected her frightened horse to "rear, spin, [and] take off" during the incident. Fox explained that she was "highly anxious," "numb," and "afraid" after the incident. She added that she could not ride her horse for "[a] good couple of months" following the incident and no longer rides alone or on the gravel road.

Fox acknowledged that she had experienced anxiety before the incident but maintained that her anxiety had been "in a pretty good place" and that she had never been diagnosed with an anxiety disorder. She admitted during her direct examination that she had mentioned the incident to her psychologist, who had been treating her since before the incident. In response to other questions posed by her counsel, Fox testified that she struggled with "horrible" anxiety and nightmares following the incident, that Sneider had hired a personal investigator to "interrogate [her] neighbors," and that Sneider was a "bully."

Sneider moved for a mistrial at the conclusion of Fox's direct examination because Fox admitted that she had been treated by a psychologist after the incident and failed to provide her post-incident medical records during discovery. Fox responded that her post-incident medical records were not relevant because she sought "garden variety emotional distress damages" and did not seek to recover for her post-incident medical treatment. The circuit court took Sneider's motion under advisement pending evidence of Fox's alleged discovery violations.

During cross-examination, Fox admitted that she had been treated by a psychiatrist and therapist before the incident. She explained that she suffered from severe anxiety near the end of 2020 and would sometimes shake and "cry for no reason." Fox maintained, however, that she did not seek treatment in connection with the incident and conceded that she had no medical documentation supporting her claim of severe emotional distress.

After the close of Fox's case-in-chief, Sneider renewed his motion for a mistrial and presented Fox's response to one of his requests for production of documents, which represented that she did not have any medical records related to the incident. Sneider also presented Fox's objections to several interrogatories concerning her post-incident mental health treatment as well as an email from Fox's counsel stating that she was "not claiming any medical/mental health treatment or medications at this time." Sneider argued that Fox's failure to disclose her post-incident medical records during discovery prejudiced his ability to defend against Fox's claim that her mental health worsened after the incident. Fox responded that she did not specifically seek treatment because of the incident and that her post-incident medical records were not "causally related" to the incident.

The circuit court denied Sneider's motion for mistrial. The circuit court also ruled, however, that Fox was bound by her pretrial representation that she was not claiming medical or mental health treatment and instructed the jury to disregard her testimony that she had discussed the incident with her mental health providers.

During his closing argument, Sneider emphasized Fox's pre-existing anxiety and that she had failed to present evidence that her mental health worsened because of the incident. He also emphasized that Fox failed to introduce expert testimony concerning her mental health and failed to "go to a doctor" or a therapist. Fox responded that she did not seek treatment for the incident because she was "already in treatment."

The jury found that Sneider assaulted Fox and awarded her $50,000 in compensatory damages and $500,000 in punitive damages. The circuit court remitted the award of punitive damages to $350,000 and entered a final judgment otherwise consistent with the jury's verdict. Sneider appeals.

ANALYSIS

I. Rule 4:10 Examination

When the mental condition of a party "is in controversy," a circuit court "may order the party to submit to a . . . mental examination." Rule 4:10(a). "The order may be made only on motion for good cause shown." *Id.* Whether to order a party to submit to a mental health examination "is in the sound judicial discretion of the court on the showing made." *Va. Linen Serv., Inc. v. Allen*, 198 Va. 700, 703 (1957). We review a circuit court's ruling on the grant or denial of a discovery request under an abuse of discretion standard. *Patel v. Rabinowitz ex rel. Lakhani Assocs., LLC*, 75 Va. App. 663, 669-70 (2022) (quoting *Temple v. Mary Washington Hosp., Inc.*, 288 Va. 134, 139 (2014)).

Sneider asserts that the circuit court erred by denying his motion to compel Fox to submit to a mental examination because her mental condition was "in controversy" and he had good cause to file his motion. Specifically, he argues that Fox's mental condition was material to her claim of emotional distress and that there was good cause to grant his motion because Fox's pre-incident medical records were illegible and she failed to provide her post-incident medical records. Sneider contends that the circuit court's focus on the parties having a "level playing field" was flawed and deprived him of the opportunity to obtain relevant information concerning Fox's claims.

As an initial note, contrary to Sneider's characterization of the circuit court's ruling, the record establishes that the circuit court declined to grant his motion to compel Fox to submit to a

mental examination because the case had been pending for nearly two years and the deadline to designate expert witnesses had passed. The circuit court bolstered its ruling with its finding that it would not prejudice Sneider because the parties were "on the same level playing field." Although the circuit court identified Fox's lack of an expert witness as the "lynchpin" of its decision, that statement viewed in context simply reflects that the circuit court may have reconsidered its ruling under different circumstances. Indeed, this Court will not "fix upon isolated statements of the trial judge taken out of the full context in which they were made, and use them as a predicate for holding the law has been misapplied." *Hamad v. Hamad*, 61 Va. App. 593, 602 (2013) (quoting *Damon v. York*, 54 Va. App. 544, 555 (2009)).

Sneider argued below that the allegations in Fox's complaint placed her mental health in controversy. Noting how he did not move to compel Fox to submit to a mental examination until after the deadline to identify his experts had passed and nearly two years after the case began, the circuit court found Sneider's motion as untimely and determined that he would not be prejudiced by the denial of the motion because Fox also had not designated an expert witness. Under these circumstances, we cannot say that the circuit court abused its discretion by denying Sneider's motion for lack of good cause.[3]

II. Bifurcation

Whether to grant a motion to bifurcate trial "is a matter for the [circuit] court's discretion and requires consideration of whether any party would be prejudiced by granting or not granting such [motion], as well as the impact on judicial resources, expense, and unnecessary delay."

[3] As we affirm the trial court's denial of Sneider's motion to compel Fox to submit to a mental examination for lack of good cause, we do not address whether Fox's mental health was "in controversy" under Rule 4:10(a). *See Thomas v. Commonwealth*, 303 Va. 188, 198 (2024) ("The doctrine of judicial restraint dictates that generally we decide cases 'on the best and narrowest grounds available.'" (quoting *McGhee v. Commonwealth*, 280 Va. 620, 626 n.4 (2010))).

Allstate Ins. Co. v. Wade, 265 Va. 383, 393 (2003). The circuit court's ruling on a motion to bifurcate trial will be upheld "unless the trial court plainly abused its discretion." *Id.* at 392.

Sneider maintains that the circuit court abused its discretion by denying his motion to bifurcate the issue of punitive damages. He argues that no reasonable court could conclude that the probative value of his net worth outweighed its "foreseeable and substantial prejudicial impact." He also argues that the circuit court's instructions were insufficient to cure such prejudice because his net worth "would naturally bleed into deliberations on liability and compensatory damages." In sum, Sneider contends that any jury would have been unduly influenced by evidence of his net worth when determining liability and compensatory damages.[4] We disagree.

To begin with, we need not reject Sneider's claim that evidence of net worth can, under certain circumstances, prejudice a jury's finding of liability and award of compensatory damages. Here, though, the circuit court addressed that potential prejudicial impact by issuing a limiting instruction before the evidence of Sneider's net worth was introduced and a similar instruction before the jury retired to deliberate. "A jury is presumed to follow the court's instructions, and an appellant who challenges a verdict bears the burden of rebutting that presumption." *Centra Health, Inc. v. Mullins*, 277 Va. 59, 81 (2009). Sneider has not assigned error to the jury's verdict or argued that it demonstrates that the jury did not adhere to the circuit court's instructions. Consequently, the circuit court did not err in finding that its instructions to

[4] Sneider raises several new arguments for the first time on appeal in support of his claim that the trial court erred by denying his motion to bifurcate. These arguments include that the judicial concerns of "efficiency, expense, or delay were negligible," that "empirical research" shows that jury verdicts are "systemically distorted" when jurors are exposed to information inviting "moral condemnation," and that other jurisdictions impose "substantially greater structural protections before permitting wealth evidence to reach the jury." "Procedural-default principles require that the argument asserted on appeal be the same as the contemporaneous argument at trial." *Bethea v. Commonwealth*, 297 Va. 730, 743 (2019). Accordingly, we will not consider Sneider's new arguments.

the jury were sufficient to cure the potential prejudice caused by its denial of Sneider's motion to bifurcate.

Additionally, the record shows that Sneider did not raise his motion to bifurcate until the first day of trial. The circuit court determined that his motion was untimely and should have been raised at the pretrial conference. Furthermore, the circuit court adopted Sneider's recommendation to prohibit Fox from introducing evidence of his net worth absent a finding that she had presented a prima facie claim for punitive damages. For all these reasons, the circuit court did not abuse its discretion by denying Sneider's motion to bifurcate given that it took multiple actions to offset the risk of prejudice to Sneider and the impact of bifurcation on judicial resources. *See Wade*, 265 Va. at 393-94 (affirming a circuit court's denial of a motion to bifurcate the issue of punitive damages where nothing "suggested that the refusal to bifurcate would have caused the jury to experience any greater difficulty in determining compensatory damages than normally present in cases in which a jury determines a defendant's liability for and the amount of compensatory and punitive damages in a single proceeding").

III. Mistrial

"A trial court's ruling denying a motion for mistrial will be set aside on appellate review only if the ruling constituted an abuse of discretion." *Gross v. Stuart*, 297 Va. 769, 774 (2019) (quoting *Allied Concrete Co. v. Lester*, 285 Va. 295, 308 (2013)). "This broad discretionary power reflects in part the principle that a jury is presumed to have followed a timely and explicit cautionary instruction directing it to disregard an improper remark or question by counsel." *Id.* (quoting *Lowe v. Cunningham*, 268 Va. 268, 272 (2004)). "[A]bsent a manifest probability of prejudice to an adverse party, a new trial is not required when a court sustains an objection to an improper remark or question by counsel and thereafter instructs the jury to disregard the remark or question." *Id.* (alteration in original) (quoting *Lowe*, 268 Va. at 272). "However, where the

prejudicial effect of an improper remark or question is overwhelming and cannot be cured by a cautionary instruction, the court is required to grant a new trial." *Id.*

"The trial court's determination whether a statement or question of counsel is so inherently prejudicial that the prejudice cannot be cured by a cautionary instruction must be guided by a consideration of several factors." *Lowe*, 268 Va. at 273. "These factors include the relevance and content of the improper reference, and whether the reference was deliberate or inadvertent in nature." *Id.* "The court also must consider the probable effect of the improper reference by counsel." *Id.* "To justify a new trial, the nature of counsel's improper reference must be 'likely to inflame the passion or instill a prejudice in the minds of the jury.'" *Id.* (quoting *Virginia-Lincoln Furniture Corp. v. S. Factories & Stores Corp.*, 162 Va. 767, 781 (1934)).

Sneider asserts that the circuit court erred by denying his motion for a mistrial because Fox's trial testimony contradicted her discovery responses. He argues that Fox concealed her post-incident mental health treatment to prevent him from preparing for trial, consulting expert witnesses, and effectively cross-examining her. He also argues that Fox's testimony "likely conferred unwarranted credibility on her damages claim by suggesting it was clinically validated." Sneider contends that the circuit court's cautionary instruction was insufficient to cure the prejudice of Fox's testimony because the testimony was relevant, deliberate, and had a substantial impact on the jury's verdict given the amount of damages awarded.

As a threshold matter, Sneider conflates the prejudice caused by Fox's alleged failure to disclose her post-treatment medical records, a discovery violation potentially sanctionable under Rule 4:12 if timely presented to the circuit court, with the prejudicial impact of Fox's testimony that she received post-incident mental health treatment. The circuit court specifically declined to rule on the former issue because it should have been raised before trial by a motion to compel.

Instead, the circuit court addressed the crux of Sneider's motion for mistrial: that Fox had testified contrary to her pretrial representation that she was not claiming post-incident mental health treatment.

Assuming without deciding that Sneider timely moved for a mistrial, we hold that the circuit court did not abuse its discretion by denying his motion. Although relevant to her claims, the record shows that Fox mentioned her post-incident treatment a single time. Moreover, that testimony was but one of the multiple references to the emotional impact that the incident had on her. For example, Fox's neighbor and husband testified that she was distraught and cried after the incident. Additionally, Fox and her husband testified that she stopped riding horses and had nightmares following the incident. Fox also explained that her anxiety had been "in a pretty good place" before the incident and that she was "highly anxious" afterward. The potential prejudice of Fox's testimony was further offset by her admission during cross-examination that she had no medical documentation supporting her claim of severe emotional distress.

The limited content of Fox's testimony concerning her post-incident mental health treatment, considered in context of cumulative evidence introduced at trial, supports a finding that her testimony did not cause a "manifest probability of prejudice" to Sneider. *Gross*, 297 Va. at 774 (quoting *Lowe*, 268 Va. at 272). The circuit court attempted to cure any potential prejudice caused by Fox's testimony by instructing the jury to disregard her testimony. We presume that the jury adhered to the circuit court's instruction. *Id.* Accordingly, the circuit court did not abuse its discretion by denying Sneider's motion for a mistrial given the absence of a manifest probability of prejudice caused by Fox's testimony. *Id.*

CONCLUSION

For the foregoing reasons, the circuit court's judgment is affirmed.

Affirmed.