

FILED

JUN 03 2015

FRESNO COUNTY SUPERIOR COURT

By _____ DEPT. 502

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO
UNLIMITED CIVIL DIVISION, B.F. SISK COURTHOUSE

VICTOR GARAY and OLGA LOPEZ
GARAY,

Plaintiffs,

vs.

GREYHOUND LINES, INC.,

Defendant.

EMILY MORENO, JOSE GONZALEZ,
MARIA AYD CORDOBA and SIENNA
AGUILAR,

Plaintiffs,

vs.

GREYHOUND LINES, INC.,

Defendant.

Case No. 10CECG03185

ORDER RE: MOTIONS
FOR NEW TRIAL

1 Plaintiffs, Victor Garay and Olga Garay ("Garays"), and
2 Emily Moreno ("Moreno") bring a motion for new trial. The Garay
3 plaintiffs argue the verdict is contrary to the weight of the
4 evidence. Moreno argues both that the verdict is contrary to
5 the weight of the evidence and that the court erred in admitting
6 evidence of alcohol consumption by two of the occupants of the
7 vehicle being ridden in by plaintiffs' decedents.

8 "A new trial shall not be granted upon the ground of
9 insufficiency of the evidence to justify the verdict or other
10 decision . . . unless after weighing the evidence the court is
11 convinced from the entire record, including reasonable
12 inferences therefrom, that the . . . jury *clearly* should have
13 reached a different verdict or decision." (Emphasis supplied.)
14 (Cal. Code Civ. Proc. §657.)

15 In *Perry v. Fowler* (1951) 102 Cal. App.2d 808, 810-811, 229
16 P.2d 46, the court summarized the modern standard to be applied
17 to the instant inquiry as follows:

18 Under our modern jury practice, unlike that
19 of the very early common law, the trial
20 court directs the jury hypothetically,
21 adapting its instructions in point of law to
22 the state of the evidence, putting it to the
23 jury to return a verdict in accordance with
24 the facts as it finds them to be, measured
25 by the law as set forth in the instructions.

1 The consequence of this procedure is that
2 the jury in finding a general verdict
3 actually returns a verdict embracing not
4 only matters of fact, but necessarily of law
5 as well. If the jury mistakes or disregards
6 the instructions or takes the law into its
7 own hands it may return a verdict manifestly
8 against the law and the credible facts in
9 the case. If the jury mistakes the accuracy
10 of the testimony as to the facts or the
11 credibility of certain witnesses or permits
12 prejudice to play a part in returning a
13 verdict it is plain that grave injustice may
14 likewise occur. To avoid any such untoward
15 result the law necessarily vests in the
16 trial judge the power and duty to set aside
17 such verdicts.

18 Accordingly, the judge presented with a motion for new
19 trial on the ground of insufficient evidence may review
20 conflicting evidence, weigh its sufficiency, consider
21 credibility of witnesses, reject any testimony believed false
22 and draw any reasonable inferences from the evidence. (*Id.*)
23 "The law . . . anticipates that 'when the evidence is nearly
24 balanced, or is such that different minds would naturally and
25 fairly come to different conclusions thereon,' the trial judge
will not disturb the verdict 'although his own judgment might

1 incline him the other way. In other words, the finding of the
2 jury is to be upheld by him as against any mere doubts of its
3 correctness.' (*Id.*)

4 The trial judge may not disregard the verdict or decide
5 what result should have been reached if the case had been tried
6 without a jury. (*Dominguez v. Pantalone* (1989) 212 Cal. App. 3d
7 201, 215-216.) Rather the verdict may be set aside only if the
8 court is convinced from the entire record, including reasonable
9 inferences, that the jury clearly should have reached a
10 different result. (Cal. Civ. Proc. Code § 657(7); *Big Boy v.*
11 *County of San Diego* (1984) 154 Cal. App. 3d 397, 406.) "Clearly"
12 within section 657 means more than just the existence of some
13 imbalance in the relative weights of the parties' respective
14 cases; it means instead without equivocation or decidedly. (See
15 *Romero v. Riggs* (1994) 24 Cal. App. 4th 117, 124 [new trial
16 properly granted for plaintiff because the medical evidence
17 supporting the plaintiff's case was overwhelming].)

18 Here, the jury answered only one question on the verdict
19 form: "Was Greyhound Lines, Inc. negligent?" That question was
20 answered "no," and the jury was instructed to go no further on
21 the form. Plaintiffs now argue that the evidence overwhelmingly
22 supported a finding of negligence on the part of Greyhound.
23 Greyhound argues the evidence on negligence supported the
24 verdict.
25

1 During the trial, plaintiffs contended that Greyhound's bus
2 driver, Mr. Jewett, was negligent for a number of reasons.
3 First, they contended he was traveling at an excessive rate of
4 speed. They also contended he was negligent because he was not
5 wearing his glasses, failed to slow for flashing lights on the
6 side of the road, changed lanes from the number two lane into
7 the number one lane shortly before impacting the stranded SUV,
8 and was driving in the number two or number one lane even though
9 he was not passing another vehicle.

10 As to the issue of the speed of the bus, there was strong
11 evidence in the form of eyewitness testimony which would support
12 a finding that the bus was travelling in excess of the speed
13 limit shortly before its impact with the stranded SUV occupied
14 by plaintiffs' decedents. This evidence consisted, in part, of
15 the following eyewitness testimony: (1) the testimony of Dr.
16 Jandi, who testified he saw the speedometer on the bus register
17 between 75 and 80 miles per hour shortly before the bus impacted
18 the SUV; (2) the testimony of Shonna Mazur, who, though deaf,
19 testified as to her observation that the bus was travelling 75
20 to 80 miles per hour just before the impact; (3) the testimony
21 of Mr. Coupland, who testified that he had his cruise control
22 set at 65 miles per hour and estimated the speed of the bus just
23 before impact at approximately 70 miles per hour. There was
24 little, if any, eyewitness testimony, and little evidence of any
25 kind, disputing this evidence. Neither was there credible

1 expert witness testimony supporting a finding the bus was
2 travelling at a speed at or below the speed limit. Evaluating
3 all the evidence, the court finds the bus was travelling in
4 excess of 65 miles per hour at and immediately before the
5 impact.

6 Though the evidence as to whether the driver was wearing
7 his glasses at the time of the accident was not undisputed, the
8 most credible evidence came from the Fresno County Coroner's
9 office, which has a policy to list personal items as belonging
10 to the decedent only if those items are found on the body or
11 clothing of the decedent. Here, the driver's glasses were
12 listed by the Coroner, indicating they were located on his
13 person and had not flown off his face in the impact as argued by
14 defendant, but were rather in his pocket. Other evidence
15 suggested the driver was not wearing glasses, including
16 testimony of witnesses who saw that he was not wearing his
17 glasses at various times during the trip. Finally, Dr. Eidal's
18 testimony that the damage to the glasses was not consistent with
19 the glasses being worn at the time of the impact supported
20 plaintiffs' position. Measured against this evidence, the
21 testimony of Lieutenant Krider was not persuasive because,
22 though he has training and experience in the accident
23 reconstruction field, his specific training and experience
24 related to eyeglass damage was less impressive than Dr. Eidal's
25 who routinely repairs glasses damaged under circumstances

1 similar to those presented here. Evaluating all the evidence on
2 the issue, the court finds the driver was not wearing his
3 glasses at and immediately before the impact.

4 There was additional evidence related to the driver's
5 negligence, including that he was operating in the number two,
6 and then the number one lane, even though he was not passing a
7 vehicle, that he was overdriving his headlights, and that he
8 failed to slow when confronted with flashers on the side of the
9 road near the overturned SUV. Expert testimony was presented by
10 plaintiffs that travelling in the number one lane under the
11 circumstances presented at the time was below the standard of
12 care for a professional bus driver. Though defendant attacked
13 this testimony on the basis of the qualifications of the
14 witnesses, it appears to the court that they were qualified to
15 express the opinions they did. Moreover, because the defendant
16 did not present a driving standards expert there was little
17 rebuttal of this evidence. The court thus finds the weight of
18 the evidence supports a finding of negligence on the part of the
19 bus driver because he was travelling in the number one lane at
20 the time of impact and immediately before.

21 Defendant relies heavily on the sudden emergency doctrine
22 as set forth in CACI No. 452 in support of its argument that the
23 driver was not negligent. CACI No. 452 requires that the actor,
24 in this case the bus driver, not cause the emergency, and that
25 he act as a reasonably careful person under the circumstances.

1 There is no question the driver was confronted with an
2 unexpected object in the roadway. However, for the reasons
3 stated above, the court cannot find on this record that the
4 driver was not negligent or that he did not, at least in part,
5 cause the emergency. The driver failed to take any action to
6 avoid the SUV; it thus cannot be said that he took a course of
7 action that in hindsight was not the better choice.


8 Since the jury only addressed the question of whether
9 defendant was negligent, and the verdict form instructed it to
10 go no further, it did not reach the issue of causation. Though,
11 as the court has found, evidence of defendant's negligence was
12 relatively strong, evidence of causation was relatively weak.
13 However, as the court reads Code of Civil Procedure section 657,
14 it is not the role of the court to address causation in dealing
15 with this motion because the jury made no finding regarding that
16 issue. Thus, the court has no way to evaluate whether the jury
17 should have reached a different result. It is not the court's
18 role in ruling on a motion for new trial to make factual
19 findings in the first instance; it is the court's role to
20 evaluate the findings and conclusions reached by the jury.
21 Since the jury did not address causation, neither does the
22 court.

23 Thus, on the sole question answered by the jury, "Was
24 Greyhound Lines, Inc. negligent?" the court finds the evidence
25 does not support the verdict. This finding makes it unnecessary

1 for the court to consider Moreno's alternate ground for the
2 motion, i.e., that the court erred in admitting evidence of
3 alcohol consumption.

4 For all of these reasons, the court grants plaintiffs'
5 motions for a new trial.

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10 Dated: 6-3-15


11 _____
12 Donald S. Black
13 Judge of the Superior Court
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SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, CA 93724 (559) 457-1900	COURT USE ONLY
TITLE OF CASE: Moreno vs Greyhound	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: 10CECG03185 DSB

Name and address of person served:

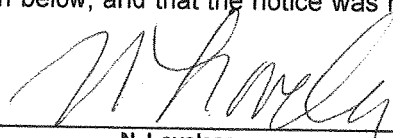
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CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the **Order Re: Motions For New Trial** was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed at, Fresno California, on:

Date: **June 3, 2015**

Clerk, by _____



N. Loveless

, Deputy

Jason A. Helsel, Fowler / Helsel / Vogt, 1401 Fulton St Suite 802, Fresno CA 93721