

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

KIM HILL, et al.,)
Plaintiff,)
v.)
FORD MOTOR COMPANY, et al.,)
Defendant.)

EDWARD ALEXANDER, CLERK

CIVIL ACTION
FILE NO. 16-C-04179-S2

ORDER GRANTING-IN-PART PLAINTIFFS' POST-TRIAL MOTION FOR SANCTIONS
AND ASSESSING JURY COSTS AGAINST DEFENDANT

Plaintiffs' Post-Mistrial Motion for Sanctions having been read, after considering the motion, Ford Motor Company's response thereto, all matters of record, and the applicable and controlling law, the Court finds as follows.

A. INTRODUCTION

The Court declared a mistrial in this case on the 15th day of trial, because of Ford Motor Company ("Ford") and its counsels' willful violation of a pretrial order prohibiting Ford's expert Dr. Thomas McNish from giving specific cause of death opinion testimony. That violation of the Court's order in *limine* was the culmination of Ford's continuing disregard for several pre-trial evidentiary rulings.

"The object of all legal investigation is the discovery of truth. Rules of evidence should be construed to secure fairness in administration, eliminate unjustifiable expense and delay, and promote the growth and development of the law and evidence to the end that the truth may be ascertained and the proceeding justly determined." O.C.G.A. § 24-1-1. See United States v. Augenblick, 89 S. Ct. 528 (1969) (where the Court held that the rules of evidence are designed in the interest of fair trials). Pursuant to O.C.G.A. 24-1-104 (a), it is the court's duty and

responsibility to render decisions and Orders on the rules of evidence, in allowing or excluding evidence.

To meet that duty, “[c]ourts have the power ‘to determine the manner in which they shall operate in order to administer justice with dignity and decorum, and in such manner as shall be conducive to fair and impartial trials and the ascertainment of truth uninfluenced by extraneous matters or distractions.’” Atlanta Newspapers, Inc. v. Grimes, 216 Ga. 74 (1960). “While a party is not entitled to a perfect trial -- a thing bordering on impossibility -- he is entitled to a fair trial, which the courts can and should afford.” Am. Oil Co. v. McCluskey, 118 Ga. App. 123 (1968), rev'd on other grounds, 225 Ga. 63 (1969), citing Lutwak v. United States, 73 S.Ct. 481 (1952). When a party usurps the Court’s authority, by disregarding the Court’s orders, that party violates the principles of justice which our evidentiary rules are designed to serve.

In support of their motion for sanctions, Plaintiffs pointed out numerous of Ford’s violations of this Court’s orders in *limine*. This Order will address the three of the Court’s orders as to which Ford’s violations were most troublesome and reproachable: (1) this Court’s order *in limine* of January 22, 2018, excluding evidence concerning Mr. and Mrs. Hill’s use of seat safety belts, or lack thereof, (2) this Court’s order *in limine* of February 12, 2018, excluding argument or suggestion of driver error or driver fault on the part of Melvin Hill, and (3) this Court’s order *in limine* of February 12, 2018, prohibiting Dr. Thomas McNish from opining as to the precise cause of death of Mr. or Mrs. Hill.¹

¹ The Court ruled that Dr. McNish was qualified to testify as an expert regarding motor vehicle accidents and general injuries resulting therefrom, but that Dr. McNish did not have sufficient skill or experience to provide expert opinion as to the cause of death of either decedent. (Order Regarding Motions *in Limine*, entered on February 12, 2018, at number 7.)

B. PROCEDURAL HISTORY AND FINDINGS OF FACT

Filed on July 15, 2016, as a renewal action, the parties have extensively and exhaustively litigated this case. Months prior to trial, the Court expended six full days immersed in pre-trial hearings, asking questions, and engaging counsel concerning their positions on all issues. Specifically, on October 30, 2017, through November 2, 2017, and on the 28th and 29th of November, 2017, the Court afforded both sides ample time to present arguments and evidence, regarding some eighty-six motions in *limine*, and regarding numerous other pre-trial motions and issues. The motions in *limine* heard on those six days included Plaintiff's motions in *limine* to exclude (1) "any argument, questioning, innuendo or evidence about alleged seatbelt use," (2) "argument of suggestion of driver error or driver fault on the part of Melvin Hill," including driver impairment, and (3) "reference to or testimony by Thomas McNish regarding the causes of Mr. and Mrs. Hills' injuries and deaths." Each of these motions was briefed by each side; and the parties' extensively discussed and debated each motion at oral argument. All trial counsel were present at the pre-trial motion hearings.

The Court took all matters under careful consideration. After lengthy review of the evidence presented, and the arguments of counsel, and upon a detailed analysis of the law, the Court entered rulings on all motions in *limine* by, at the latest, five weeks prior to trial.

After the Court entered its order excluding seat belt evidence, Ford filed a motion asking the Court to reconsider that order. On February 14, 2018, the Court denied Ford's motion for reconsideration, again making clear that seat belt evidence was not admissible under the circumstances of this case. Nevertheless, Ford deliberately injected the idea of seat belt use, as relevant, at least twice, before the jury.

During trial, the Court reiterated, numerous times, that Ford would not be allowed to insinuate that Mr. Hill was at fault, or that he was impaired at the time of the accident. Nevertheless, counsel for Ford brought up a GBI post-mortem toxicology-testing report on Mr. Hill's blood, in front of the jury, intimating that the results showed that Mr. Hill had alcohol in his blood. This example of Ford's willful disregard of the Court's orders in *limine* was particularly troubling, because the toxicology report showed that alcohol was not present in Mr. Hill's blood.

Similarly, during trial, the Court repeatedly restated that Dr. McNish would not be allowed to testify as to the particular causes of the Hills' deaths, but would only be allowed to testify as to causes of death generally expected in similar accidents. The Court's limitations on the scope of Dr. McNish's testimony were brought up several times by Ford, during the course of trial. Before Dr. McNish was to take the witness stand, Ford's counsel again argued against those limitations. The Court instructed Ford's counsel, Alan Thomas,² to explain to McNish, before his testimony began, that he would not be allowed to give specific cause of death opinions. Mr. Thomas assured the Court that he would so instruct Dr. McNish, before calling him to the witness stand. Mr. Thomas went out into the hall for the purpose of giving McNish instruction. Shortly thereafter, McNish began testifying. In clear disregard of the Court's ruling, Mr. Thomas asked Dr. McNish whether he agreed with Plaintiffs' experts' opinion as to the cause of Mr. Hill's death. Dr. McNish then opined, before the jury, to the very testimony that the Court prohibited – i.e., his opinion as to the cause of Mr. Hill's death.

In sum, the Court spent countless hours hearing, considering, reconsidering, researching, and ruling on the parties' exclusionary motions. During trial, the Court repeatedly reminded the

² Mr. Thomas appeared before the Court *pro hoc vice*. The Court will further address Mr. Thomas' privilege to appear *pro hac vice* infra, and in subsequent orders.

parties of its rulings *in limine*. Nevertheless, defense counsel continually and deliberately injected questions and comments, elicited testimony, and placed documents before the jury, concerning matters that this Court had ruled inadmissible. By this conduct, defense counsel arrogated the Court's gatekeeping function.

Ford and its counsel's actions outlined above showed manifest bad faith. Because Ford's appellate counsel was present at trial, weighing-in on issues as they arose, and having had access to daily copies of the trial transcript, one would have to suspend all common sense to believe that the violations were not deliberately calculated. Ford, intentionally, and after several warnings and admonitions, elicited testimony that forced this Court to declare a mistrial. Plainly, Ford willfully caused a mistrial in this case, in bad faith, and issue preclusion sanctions are appropriate.³

Under this Court's inherent authority, it may impose sanctions on the party or its attorney, to compel obedience to its orders and to control the conduct of its officers in furtherance of justice. While it was Mr. Thomas' conduct that ultimately caused the Court to declare a mistrial, the Court finds that he was acting as Ford's agent. Ford's corporate representative sat at counsel's table throughout trial, was privy to all that took place, and participated in the misconduct by mentioning seatbelts in his testimony. In this case, the Court finds it is appropriate to hold both counsel and Ford responsible for the necessary sanctions.

C. SANCTIONS

Based upon the history and findings above, and to ensure that Plaintiffs are afforded a fair trial, the Court finds that issue preclusion is appropriate for the retrial of this case. Additionally,

³ Ford's ability to appeal the Court's rulings with which it took exception was within arm's length. Upon verdict, likely days away, all rulings would have been directly appealable.

the Court finds it appropriate to assess Gwinnett County's trial costs against Ford, and its counsel.

1. Jury Costs

As a result of Ford and its counsel's willfully causing a mistrial, Gwinnett County's expenditure of \$10,440.00 to empanel a jury and to pay for juror time was wasted. The Court will award this amount against Ford and its attorneys.

2. Plaintiffs' Attorney Fees and Costs

The Court reserves ruling on Plaintiffs' O.C.G.A. § 9-15-14 motion for attorney fees and costs. The Court will schedule a hearing on Plaintiffs' motion. At that hearing, the Court will consider evidence and argument concerning whether Ford and/or its counsel's conduct warranted sanctions under Section 9-15-14, and, if so, concerning the amount of attorney fees and costs necessitated by Ford's conduct in causing a mistrial.

3. Facts Established and Issues Precluded

As further sanction for Defendant's willful misconduct, and in order to ensure an orderly and fair trial, upon the retrial of this case, the following matters will be deemed established:

- (1) That the roof on the subject 1999-2016 Super Duty trucks was defectively designed and dangerously weak;
- (2) That the roof on the subject 1999-2016 Super Duty trucks was susceptible to collapse or crush in a foreseeable rollover wreck which can cause death or serious injury to occupants of the trucks;
- (3) That the rollover wreck in this case was foreseeable;

(4) That Ford Motor Company's acts and/or failures to act, in selling trucks with such weak roofs amounted to a willful, and reckless, and a wonton disregard for life, for the purposes of the statute of repose;

(5) That Ford Motor Company knew of the dangers posed by the roofs in the subject trucks and therefore had a duty to warn members of the public of that danger, but willfully failed to warn the public; and

(6) That the defect in the roof of Mr. and Mrs. Hill's truck resulted in roof crush that caused the injuries that led to the deaths of them both.

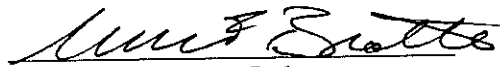
Thus, upon the retrial of this case, the only issues that the Court will allow for jury determination are (1) whether there is "clear and convincing evidence" that punitive damages should be imposed against Ford, (2) whether Mr. and/or Mrs. Hill endured pain and suffering, (3) the amount of compensatory damages, and (4) the amount of punitive damages, if any. With respect to punitive damages, the trial will be bifurcated.

D. CONTEMPT OF COURT AND *PRO HAC VICE* STATUS OF ALAN THOMAS

Alan Thomas was granted *pro hoc vice* status by this court On October 7, 2016, pursuant to Uniform State Court Rule 4.4. Before this case is scheduled for a second trial, the Court will convene a hearing at which Mr. Thomas will be required to show cause (1) why he should not be held in contempt of Court for his conduct outlined above, and (2) why his privilege to practice law in this Court should not be rescinded as a result of his trial conduct. See generally Ford Motor Company v. Young, 322 Ga. App. 348 (2013); Hood v. Carsten, 267 Ga. 579 (1997). See also Georgia Rules of Professional Conduct 3.3 (a) (1), 8.4 (a) (1) and 8.4(a) (4); O.C.G.A. 24-1-1, et seq.

WHEREFORE, Plaintiffs' Post-Mistrial Motion for Sanctions is granted-in-part as to issue preclusion, as set out above. The Court reserves ruling on that part of Plaintiffs' motion made pursuant to O.C.G.A. § 9-15-14. The amount of \$10,440.00 is hereby awarded against Ford and its attorneys and in favor of Gwinnett County, for juror costs.

SO ORDERED, this 19 day of July, 2018.


Shawn F. Bratton, Judge
State Court of Gwinnett County

cc:

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