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2014 IL App (3d) 130756-U

Order filed August 19, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

STEVEN D. HANSHAW and BRENDA J. HANSHAW,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit
	)	Peoria County, Illinois
Plaintiffs-Appellants,	)	
	)	Appeal No. 3-13-0756
v.	)	Circuit No. 12-SC-92
	)	
DEBRA BITNER,	)	Honorable
	)	David J. Dubicki,
Defendant-Appellee.	)	Judge, Presiding

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Carter and McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Trial court did not deny *pro se* plaintiffs a fair trial in their small claims action alleging defendant was negligent in causing an automobile accident in which plaintiffs sustained damages.

¶ 2 Plaintiffs Steven Hanshaw and Brenda Hanshaw filed a small claims action against defendant Debra Bitner to recover for damages they sustained in an automobile accident with Bitner. Following a hearing in which the Hanshaws appeared *pro se*, the trial court found in favor of the Hanshaws and against Bitner on liability. The trial court

awarded damages to Steven of \$375 plus costs of \$231, and awarded Brenda \$2,294.38. The Hanshaws appealed. We affirm.

¶ 3

### FACTS

¶ 4

Plaintiffs Steven Hanshaw and Brenda Hanshaw were involved in an automobile accident with defendant Debra Bitner on January 16, 2010. In January 2012, the Hanshaws, through counsel, filed a small claims complaint sounding in negligence against Bitner. In December 2012, the trial court granted a motion to withdraw filed by the Hanshaws' attorney. The motion stated that the Hanshaws requested counsel's withdrawal. The Hanshaws thereafter proceeded *pro se*.

¶ 5

A hearing took place in May 2012. At the onset of the proceeding, the judge noted that because it was a small claims action, he could and would “ ‘adjudicate the dispute[] at an informal hearing,’ ” and stated that “ ‘all relevant evidence shall be admissible.’ ” Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992). The trial judge further stated that it would relax the rules of procedure and evidence. The judge explained his role, including his ability to call and question witnesses. The judge set out the process for an informal hearing, explaining to the Hanshaws their burden of proof and how objections are handled. The judge explained the procedure of the trial, with the Hanshaws presenting their case first, and “after the plaintiff has completed their [*sic*] evidence,” Bitner presenting a defense. The judge defined testimony as “who, what, when, and where; times, places, and dates.” He advised the Hanshaws to ask one question at a time and answer only the question asked.

¶ 6

The trial judge asked various questions of the Hanshaws “in the form of a kind of an opening statement.” Brenda testified first for the plaintiffs. The judge examined her, establishing that Bitner turned left in front of the Hanshaws while they were proceeding

through an intersection on a green light. Brenda saw her family doctor for a sore knee a couple of days after the accident and followed up with him for an additional visit. Her knee issues were resolved within six weeks of the accident. Brenda presented a bill for \$106 for one office visit, which was adjusted to \$72.88, and said she spent \$4 on a prescription. Several weeks after the accident Brenda started to get headaches and sought treatment from her chiropractor. She did not initially connect the headaches to the accident. Steven questioned Brenda after stating that the trial court covered most of his questions, and defense counsel cross-examined Brenda. Before Brenda was released from the witness stand, the judge offered Steven the opportunity to ask additional questions for Brenda but Steven declined.

¶ 7 Laura Schelly, Brenda's chiropractor, testified for the Hanshaws and was questioned by the trial court. She had treated Brenda since 1989 and saw her for headaches in March 2010. At that time, Brenda thought she had slept "wrong" on her pillow. In April 2010, Schelly saw Brenda again. Because it was unusual for Brenda to seek treatment so soon after her last visit, Schelly questioned Brenda and learned Brenda had been in an automobile accident. Schelly took a spine x-ray and discovered that the ligaments in Brenda's neck were sprained. Brenda began biweekly treatments until a May 2010 exam indicated improvement. Brenda was discharged from Schelly's care in September 2010. In Schelly's opinion, Brenda's neck injury was causally related to the car accident.

¶ 8 At the end of his questioning of Schelly, the judge inquired as to whether Steven had any questions for the witness. The judge explained that Steven would get a chance to tell his side of the story "[b]ut now's a chance to ask this witness a question. And sometimes you can, through a question to a witness, elicit information that is support of

your position.” Steven did not examine Schelly and the defense cross-examined her. At the conclusion of cross-examination, the judge again asked Steven whether he had any questions for Schelly. When Steven said no, the judge asked whether the Hanshaws had bills for Schelly’s services. In response to Brenda’s inquiry as to whether they needed “to see a list of the bills” from Schelly, the judge stated that it was the Hanshaws’ case but he could ask some questions. Upon the trial judge’s additional questioning of Schelly, copies of the Schelly bills were admitted into evidence over objection of the defense. The trial court and defense counsel further questioned Schelly regarding the services on the bill. Per Steven’s request, Schelly was not released as a witness and was ordered to wait in the hallway.

¶ 9 Steven was examined by the trial court. His left shoulder was injured in the accident and he sought treatment from his regular doctor. He also suffered a bruise on his back. After approximately 30 days, his injuries were resolved. The office visit cost \$125. He did not lose pay from his job to see the doctor. Although the \$12,000 repair bill for the damage to his vehicle was paid by insurance, he was dissatisfied with the repair work and also wanted mileage for the multiple trips to take his vehicle in for repairs. Steven responded “no” to the trial court’s inquiry whether Steven had anything else to tell it “with regard to how the accident occurred or any injuries you believe you incurred as a result of the accident.” Brenda declined the opportunity to question Steven.

¶ 10 The trial court then asked the Hanshaws whether they had any more evidence to introduce. Steven indicated that they did not and that he had a couple of comments. The defense moved for a directed verdict, which the trial court denied before moving to arguments. The trial court explained to the Hanshaws:

“Please know that argument is basically where the plaintiffs tell me why they believe they’re entitled to recover something and how much they believe they’re entitled to recover and what they believe the evidence shows. And I have to base my decision on what I heard hear from the witness stand, so please know that any argument not based on evidence I heard at the witness stand is – I can’t consider that. So I want both of you to speak to the accident itself and to the injuries and damages that you believe you have incurred.”

¶ 11 The trial court went through with Steven the damages he was seeking, including medical and prescription expenses, mileage, pain and suffering, loss of use of the vehicle, subpoena and witness costs, and lost wages. The trial court noted that the Hanshaws did not present any evidence regarding mileage, loss of use and lost wages. Steven responded that the trial court never asked him about those damages. The trial court apologized if Steven misunderstood but reiterated that Steven was entitled to ask any questions the trial court did not ask.

¶ 12 The trial court awarded Steven \$375, which included \$125 for his medical expenses and \$250 for pain and suffering, and \$231 for costs. The trial court awarded Brenda \$2,294.38, which included 1,044.38 for her medical and chiropractic bills and \$1,250 for pain and suffering. Her costs were included in Steven’s award. The Hanshaws moved to reconsider, arguing that the trial court “prematurely end[ed]” their presentation of evidence. The trial court denied the motion. The Hanshaws appealed.

¶ 13 ANALYSIS

¶ 14 On appeal, we consider whether the trial court’s conduct denied the Hanshaws a fair trial. They argue that the trial court did not allow them to present all their evidence and provided insufficient instruction, engaged in inadequate questioning, and displayed ineffective leadership. The Hanshaws point to their *pro se* status and lack of knowledge of civil trial procedure as support for their argument.

¶ 15 The Canons of Judicial Conduct require a judge to accord the right to be heard to every person with a legal interest in a proceeding. Ill. S. Ct. Code of Jud. Conduct R. 63, canon 3. When a party proceeds *pro se*, “a judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of self-represented litigants to be fairly heard.” Ill. S. Ct. Code of Jud. Conduct R. 63, canon 3. In order to ensure a fair trial for a *pro se* litigant, a judge may explain matters usually not requiring explanation and point out rules and procedures that generally are not highlighted. *Oko v. Rogers*, 125 Ill. App. 3d 720, 723 (1984).

¶ 16 A trial judge is not required to apply a more lenient standard for a *pro se* litigant. *Multiut Corp. v. Draiman*, 359 Ill. App. 3d 527, 534 (2005). A party has a right to represent himself but must follow the same rules and courtroom procedures as parties represented by counsel. *Nat’l Bank of Austin v. First Wisconsin Nat’l Bank of Milwaukee*, 53 Ill. App. 3d 482, 489 (1977). *Pro se* litigants are presumed to have the full knowledge of applicable court rules and procedures and must comply with them. *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009). We will not reverse on the basis of a judge’s conduct unless it constituted an abuse of his discretion. *Oko*, 125 Ill. App. 3d at 723.

¶ 17 The Hanshaws point to the judge’s failure to allow an opening statement and maintain that he also prevented them from introducing evidence of damages, including

mileage, loss of use, pain and suffering, subpoena and witness costs, and lost wages. We find the trial court made reasonable efforts to facilitate the Hanshaws in presenting their case. The judge acknowledged that the Hanshaws were acting *pro se* and made efforts to adequately instruct them and to sufficiently question the witnesses. The trial court informed the parties at the onset of the hearing that he would relax the rules of evidence and procedure but would not eliminate them. He explained the general procedure of the hearing, including the order the parties would present evidence, objections and how they are handled, and the burden of proof. He clarified that “testimony consists of facts: who, what, when, and where; times, places, and dates.”

¶ 18 While the Hanshaws were not given an opportunity to present a formal opening statement, the judge questioned them about the facts of the case in lieu of an opening. He asked about the parties and their injuries, and acknowledged they were asserting medical bills and vehicle damage. The trial judge elicited specifics about the Hanshaws’ personal injuries, vehicle damage, medical bills, and other information concerning the accident during the presentation of testimony. In addition, the judge instructed the Hanshaws from time to time throughout the hearing. For example, after Brenda’s chiropractor testified, Steven sought to disagree with the witness about Brenda’s medical records. The trial court explained Steven could not cross-examine his own witness but would have the chance to tell his “side of the story,” that Steven could question the chiropractor, and that “sometimes you can, through a question to a witness, elicit information that is supportive of your position.” He also informed the Hanshaws what argument was and stated they should tell him how they proved Bitner was negligent, what injuries they sustained, and their damages.

¶ 19 The judge extensively questioned all the witnesses, including Steven, Brenda and Brenda's chiropractor. He peppered his inquiry with open-ended questions, such as "is there anything else you want to tell me about the accident or about its effect on you?" During the applicable testimony, the judge requested and was provided copies of the parties' medical bills. Brenda's chiropractic bills were the subject of questioning by the defense as well as the judge, and the Hanshaws' exhibits regarding the bills were admitted into evidence. After Brenda testified, Steven stated that the judge had "covered most" of his questions and conducted a short examination of Brenda. The judge also asked about lost wages and both Steven and Brenda testified that they did not miss any work because of their injuries and did not lose any pay for attending doctor visits. During argument on damages, Steven told the judge he wanted to recover for mileage, loss of use of the vehicle, and witness and subpoena fees, stating, "I guess I didn't know how to bring that up because I wasn't asked those questions." However, after the Hanshaws presented their witnesses, the trial court asked if they had any more evidence, to which Steven replied, "No. No more evidence now."

¶ 20 The judge properly declined to award damages on loss of use of the Hanshaws' vehicle or decrease in value because they did not present any testimony about how long they were without the vehicle, costs for a rental car, or fair market value of a replacement vehicle. The judge awarded damages for Steven's and Brenda's medical and chiropractic bills, pain and suffering and costs because the Hanshaws presented sufficient evidence of those damages. The judge's conduct throughout the hearing did not prohibit the Hanshaws from presenting their case adequately. Their lack of familiarity with litigation does not excuse their failure to sufficiently support their complaint. It was not the role of the trial judge to present their case. He exercised relaxed rules of procedure and

evidence, questioned the witnesses and the parties, and guided the Hanshaws through the hearing. We find the trial court's conduct was not an abuse of discretion and did not deny the Hanshaws a fair trial.

¶ 21 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 22 Affirmed.