H

Lora v. Escaffi
Fla.App. 3 Dist.,2005.

District Court of Appeal of Florida,Third District.
Eva de Jesus LORA and Jose Federico Lora, Appellants,
v.
Gina ESCAFFI, Appellee.
No. 3D04-1716.

March 9, 2005.

An Appeal from the Circuit Court for Miami-Dade County, Norman S. Gerstein, Judge.

Haas, Dutton, Blackburn, Lewis & Longley and Rebecca O'Dell Townsend (Tampa), for appellants.
Lauri Waldman Ross, Miami; Friedman & Friedman and John S. Seligman, Coral Gables, for appellee.

Before GREEN, WELLS, and ROTHENBERG, JJ.
WELLS, Judge.
Defendants in this personal injury action appeal the trial court's denial of their motion for new trial. They maintain that prejudicial comments by opposing counsel "resulted in a miscarriage of justice" requiring that the judgment be reversed and that a new trial as to comparative fault and damages be conducted. Having carefully considered the statements complained of in light of the evidence and verdict, we find no abuse of discretion in the court's ruling. As we observed in *Rohrback v. Dauer*, 528 So.2d 1362, 1363 (Fla. 3d DCA 1988), "even improper argument will not require a new trial if the remarks are not so egregious as to interfere with the essential justice of the result." *See* § 59.041, Fla. Stat. (2003) [FN1]; *Maksad v. Kaskel*, 832 So.2d 788, 793 (Fla. 4th DCA 2002)(concluding that "[g]enerally, a mistrial or new trial should be granted only when counsel's arguments are so inflammatory and prejudicial that they deny the opposing party a fair trial").

FN1. Section 59.041 provides:
No judgment shall be set aside or reversed, or new trial granted by any court of the state in any cause, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence or for error as to any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire case it shall appear that the error complained of has resulted in a miscarriage of justice. This section shall be liberally construed.

Accordingly, the order under review is affirmed.

GREEN, J., concurs.ROTHENBERG, Judge (concurring).
While I agree with the majority's opinion in its entirety, I write this concurring opinion in order to note with disapproval and disappointment the impropriety of plaintiff's counsel's comments and the frequency in which they occurred. While counsel's frustration was understandable, it does not excuse the opinions, personal assurances, and personal attacks which permeated his opening, closing, and rebuttal arguments. Each of us shares a common duty to The Florida Bar and our profession to conduct ourselves professionally and honorably. The judiciary, as guardians of the court and our profession, have the added responsibility to ensure that the process is not only fair, but is one which instills confidence in our system of justice and respect for the members of our profession.

Under most circumstances, plaintiff's counsel's remarks would have required the granting of a new trial and it would have ***614** been an abuse of discretion to refuse to do so. After a careful review of the entire trial transcript, I agree with my colleagues that the court did not abuse its discretion in this case where the trial court directed a verdict on the issues of liability, causation, permanent injury, and the seatbelt defense, and while ruling that there was no comparative negligence as a matter of law, simply submitted that issue to the jury "in the abundance of caution." The jury's sole determination in this case therefore, was the extent of the plaintiff's damages. Both sides' experts agreed that the plaintiff suffered permanent injury, that she continued to suffer pain, and that she was not a malingerer. The only real disagreement was

whether or not the plaintiff needed rotator cuff surgery. As the jury awarded less than the amounts requested by plaintiff's counsel for future medical treatment, pain and suffering, and future pain and suffering, I agree that counsel's improper arguments constitute harmless error.

Fla.App. 3 Dist.,2005.
Lora v. Escaffi
913 So.2d 613, 30 Fla. L. Weekly D677

END OF DOCUMENT