

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

BERNICE SHERMAN	:	
	:	
v.	:	
	:	
JAMES J. ANDERSON CONSTRUCTION and	:	MARCH TERM, 1999
COLANERO CONTRACTING COMPANY and	:	
THE CITY OF PHILADELPHIA	:	NO. 3237
	:	
v.	:	
	:	
TOTAL MAINTENANCE CENTER, INC.	:	

Myrna Field, J.

August 16, 2001

OPINION OF THE COURT

Plaintiff, Bernice Sherman, appeals from this court's order dated April 19, 2001, denying her motion for post-trial relief. For the reasons which follow, the motion was properly denied and judgment as entered on April 20, 2001, in favor of the defendants should be affirmed.

This case arises from injuries sustained by Bernice Sherman when she fell at the intersection of 20th Street and the Benjamin Franklin Parkway on August 4, 1997. After four days of trial, the jury returned a defense verdict finding that defendants were not negligent. Plaintiff timely filed her post-trial motion seeking a new trial on three grounds: 1) plaintiff's engineering expert was improperly precluded; 2) the court erred in limiting testimony regarding traffic control devices; and 3) defense counsel's misconduct was prejudicial. These will be discussed in turn.

The following facts were established at trial. On July 27, 1997, pursuant to a contract awarded by the Pennsylvania Department of Transportation ("PennDOT"), defendant James J.

Anderson Company (“Anderson”) began a repaving project which began at 16th Street and the Benjamin Franklin Parkway, went past the Philadelphia Museum of Art, and up to a portion of Kelly Drive. The road was to be milled and repaved and the work completed on August 7, 1997. Each day, while work was being performed, barricades were in place to divert pedestrians from the work areas. At the conclusion of each day’s work, each site was reopened. On August 4th, plaintiff, Bernice Sherman, was crossing the Parkway from the northeast corner of 20th and the Parkway, when she tripped and fell, sustaining injuries. Ms. Sherman brought suit claiming that the area had not been properly cleaned up and that such conduct constituted negligence. The jury found that Anderson had not been negligent.

When reviewing a jury’s verdict, the evidence must be viewed in the light most favorable to the verdict winner. Boutte v. Seitchik, 719 A.2d 319 (Pa. Super. 1998). A jury’s determination is not to be disturbed as long as there is sufficient evidence on the record to support it. Fannin v. Cratty, 331 Pa. Super. 326, 480 A.2d 1056 (1984).

Plaintiff argues that she is entitled to a new trial because her expert was improperly excluded. This argument is without merit. Plaintiff sought to introduce the testimony of Joseph A. Thompson, Jr., an engineer. The offer of proof was that he would have testified to the actual conditions and the necessity of warnings. However, he had admittedly never visited the site or even seen photographs taken on or near the date of the accident. Hence, he had no factual basis for his testimony. The jury heard conflicting testimony as to whether there was debris in the roadway. Jerry J. Naimoli, a project supervisor employed by Anderson, testified that there was not. Ms. Sherman said that there was debris and that she saw it before attempting to cross the street. Hence any testimony given by the expert about the necessity of

warning would have been irrelevant because plaintiff admitted that she said she saw debris before entering the roadway. Moreover, most of what the expert would have testified to was within the knowledge of the average juror; therefore, expert testimony was not warranted.

Pa.R.E. 702; Commonwealth v. Delbridge, 771 A.2d 1, (Pa. Super. 2001).

Plaintiff also complains of the court's decision to disallow testimony concerning the applicability of PennDOT's Manual on Uniform Control Device (MUTCD). Because plaintiff presented no authority to show that adherence to the MUTCD was mandatory, either under Pennsylvania or federal law, such testimony was properly excluded.

Finally, plaintiff asserts that she is entitled to a new trial because of prejudicial remarks made by defense counsel. This argument, too, must fail. In his closing speech, defense counsel referred to the testimony of Mr. Naimoli, a fact witness called by plaintiff, but an employee of defendant. Counsel then stated that plaintiff failed to present any contradictory evidence. Plaintiff objected on the ground that Mr. Thompson, the excluded expert, would have contradicted him. However, the testimony in question was fact, not opinion; therefore, Mr. Thompson, who admittedly never saw the site, had no basis upon which to contradict Mr. Naimoli factually. The defense argument was permissible and does not constitute the basis for a new trial.

For all of the above reasons, plaintiff's post-trial motion was properly denied. Judgment as entered on April 20, 2001, in favor of the defendants and against the plaintiff should be affirmed.

By the Court:

Myrna Field, J.