

CASE NO. 05-CI-1391

JM
1-15-07

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)

JOY MAYES

PLAINTIFF

VS.

**OPINION AND ORDER GRANTING
MOTION FOR NEW TRIAL**

ALLSTAR WASTE DISPOSAL TRUCK, INC.

DEFENDANT

This matter comes before the Court motion of the Plaintiff, Joy Mayes ("Ms. Mayes") for a New Trial. The Defendant, Allstar Waste Disposal Truck, Inc. ("Allstar"), has responded. After a careful study of the pleadings and relevant Court Rules and case law, the Court will grant the motion for a new trial.

OPINION

A jury heard this case on September 12, 2006. After they deliberated and delivered a verdict, the Court learned that one of the jurors was intoxicated and in possession of a water bottle full of vodka. The Court conducted an investigation into the matter, and the jury foreman informed the Court that the juror in question had been intoxicated during deliberations, was disruptive during such, and refused to cooperate with the other jurors. Apparently the juror eventually became so intoxicated that she could no longer participate in the deliberations. This juror was one of nine who signed the verdict form finding Allstar liable for the automobile accident at issue in the case. The

jury reached unanimous verdicts on the three remaining Instructions; thus, only the foreman's signature appears on each of those verdict forms.

Ms. Mayes argues a new trial is warranted in this case, citing Civil Rule of Procedure 59.01(a) and (b) in support of her argument:

A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes:

(a) Irregularity in the proceedings of the court, jury or prevailing party, or an order of the court, or abuse of discretion, by which the party was prevented from having a fair trial.

(b) Misconduct of the jury, of the prevailing party, or of his attorney.

Allstar responds that a new trial is not necessary, for several reasons: first, Ms. Mayes cannot be heard to complain as to the results concerning liability, in that the jury found for her on that issue, regardless of the subject juror's intoxication. Second, since an agreement of only nine of twelve jurors was required for the remaining three verdicts, the inclusion of the subject juror's vote is insignificant. Finally, Allstar cites two cases, Gordon v. Louisville, St. L. & T. Ry. Co., 29 S.W. 321 (Ky., 1895), and Smith Adm'x. v. Middlesboro Elec. Co., 174 S.W. 733 (Ky., 1915), both of which involved intoxicated jurors. The Court stated in Gordon that "It does not sufficiently appear that the juror was so drunk as to be incapable of properly deciding the case, and, besides, it is not likely that the jury were controlled or would be controlled by one drunken juror, if such a juror was among their number." In Smith, the Court denied a motion for a new trial based on juror intoxication, holding that "the occasional taking of intoxication spirits in moderate quantity by jurors" has not been held a

ground for a new trial in Kentucky.¹

The Court finds the cases cited in support of Allstar's arguments are distinguishable from the instant matter. This Court's colloquy with the juror in this case revealed her to be extremely intoxicated, such that she appeared confused and bewildered. Her gait was unsteady. The sheriff in control of the jury room could hear this juror yelling from inside the jury room. The foreman stated that she was disruptive, uncooperative and, eventually, unable to participate. While the jury did find in favor of Ms. Mayes, the Court finds that the trial and its resultant verdict were indeed compromised by this juror's misconduct and irregular behavior. The Court is aware that new trials are generally granted only in the most extreme of circumstances; however, the inexcusable, disruptive behavior of this juror was so extraordinary as to render this relief appropriate.

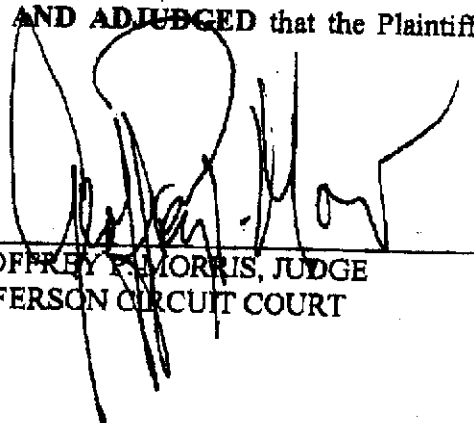
ORDER

WHEREFORE IT IS HEREBY ORDERED AND ADJUDGED that the Plaintiff's Motion for a New Trial be and hereby is **GRANTED**.

ENTERED IN COURT
DAVID L. NICHOLSON, CLERK

JAN -9 2007

BY  DEPUTY CLERK



GEOFFREY P. MORRIS, JUDGE
JEFFERSON CIRCUIT COURT

¹ It should be noted that the Court also stated: "It does not appear that any of the jurors were under the influence of liquors at any time during the trial, except in the case of one individual, and he was not under the influence of it at any time while the case was being heard or under consideration. 174 S.W. at 782.