

FILED BY Eg D.C.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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ROBERT R. DI TROLIO  
CLERK, U.S. DIST. CT.  
W.D. OF TENN. MEMPHIS

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

Case No. 98-3051

vs.

USCO LOGISTICS SERVICES, INC.

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR NEW TRIAL

Before the court is Plaintiff's motion for new trial. This matter came on for trial by jury, November 15 - 19, 1999 on Plaintiff's ADA claim. At the conclusion of the trial, the jury returned a verdict for the Defendant. Plaintiff now requests a new trial asserting that the jury's verdict is against the weight of the evidence, and that the jury did not adhere to the Court's instructions. Moreover, Plaintiff asserts that the imbedded bias against persons with aids impeded Plaintiff's ability to get a fair trial.

The decision of whether to grant a new trial is within the sound discretion of the trial court. *Clarksville-Montgomery County School System v. United States Gypsum Co.*, 925 F.2d 993, 1002 (6th Cir. 1991). Grounds for granting a new trial include a verdict against the weight of the evidence, excessive or insufficient damages, substantial error concerning the admission of evidence, and inconsistency in the verdict. *Montgomery Ward Co. v. Duncan*, 311 U.S. 243, 251, 61 S.Ct. 189, 85 L.Ed. 147 (1940). This is not an exhaustive

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list.

Federal Rules of Civil Procedure 59(a) which governs new trials, provides in relevant part:

(a). **Grounds.** A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law. . . .

A new trial may be granted if the jury's verdict is not supported by the weight of the evidence or "if the trial was unfair to the moving party." *Holmes v. City of Massillon*, 78 F.3d 1041, 1045-46 (6th Cir.) *cert. denied*, 519 U.S. 935 (1996). A new trial may be warranted based on substantial errors in the admission or exclusion of evidence, bias, or for any other reason which prevented a fair trial. 11 Wright, Miller & Kan, Fed.Practice and Procedure: Civil 2d § 2805. Moreover, the court has the authority within its discretion, whenever such action is required in order to prevent injustice. *Id.*

In the case at bar, the court will not address Plaintiff's claims of bias, as the court conducted an exhaustive voir dire on the subject of aids. Any prospective juror who manifested bias was excused accordingly.

Notwithstanding, after considering the totality of the evidence in this case, the court finds that the jury's verdict is not supported by the weight of the evidence, and should therefore be set aside.

Additionally, the court, within its discretion, permitted Defendant to cross examine Defendant's employees called by Plaintiff on direct examination. The court properly overruled Plaintiff's objections based on judicial discretion under the Rules. Fed. R. Evid. 611(a) gives the Court discretion to control the mode and order of interrogating witnesses.

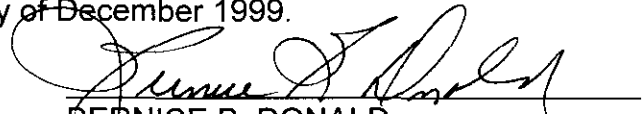
However, the Court should exercise reasonable care to "make the interrogation and presentment [of evidence] effective for the ascertainment of the truth". *Id.* The extent to which the Court permitted Defendant to lead key witnesses in the presentation of crucial evidence may have impeded "the ascertainment of truth", and denied Plaintiff a fair trial under the particular facts and circumstances of this case.

Thus, in order to prevent an injustice, and because the jury's verdict is not supported by the greater weight of the evidence, the court hereby grants Plaintiff's motion and orders a new trial.

In order to facilitate the just and expeditious resolution of this matter, the Court hereby sets this matter for a trial on the merits, January 31, 2000 at 9:00 a.m. A pretrial conference is scheduled for Thursday, January 20, 2000 at 4:30 p.m. No new dispositive motions will be considered, as the deadline for all such motions is past.

Any objections to the trial date, as established by this order, must be filed and served on opposing counsel on or before January 7, 2000.

IT IS SO ORDERED this 27<sup>th</sup> day of December 1999.

  
BERNICE B. DONALD  
UNITED STATES DISTRICT JUDGE