REL: June 5, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180154

Resurrection of Life, Inc., d/b/a Perfect Place Christian Academy, and Latoya Mitchell Dawkins

v.

Mark Dailey and Valerie Dailey, as parents and next friends of Christian Dailey, a minor

Appeal from Jefferson Circuit Court
(CV-15-904652)

MITCHELL, Justice.

Christian Dailey, a minor, suffered a catastrophic personal injury at a day-care facility run by Resurrection of Life, Inc., d/b/a Perfect Place Christian Academy ("Resurrection of Life"). Christian's parents, Mark and

Valerie Dailey, sued Resurrection of Life and its employee Latoya Mitchell Dawkins (hereinafter "the day-care defendants") on his behalf and, following a jury trial, obtained a sizable compensatory-damages award. The day-care defendants do not challenge the size of that award, likely because their lack of insurance and the discharge of the award through bankruptcy make it uncollectible. But they do challenge the trial court's refusal to grant them a new trial on the ground of juror misconduct. Because the day-care defendants are not entitled to a new trial, we affirm.

Facts and Procedural History

On September 25, 2015, an unsecured television fell onto Christian while he was sleeping at Perfect Place Christian Academy, a church-based day-care facility operated by Resurrection of Life. Christian was not yet two years old at the time of the incident. Parts of his skull were crushed from the impact, and he was put on a ventilator for nine days. He suffered developmental issues as a result of the incident.

On December 3, 2015, Mark and Valerie Dailey, as parents and next friends of Christian, sued Resurrection of Life, its owner Sharon Jones, and Dawkins, the employee directly

responsible for Christian's care, asserting claims of negligence, wantonness, and premises liability.[1] The Daileys demanded a trial by jury.

As the operator of an unlicensed church-exempt facility, Resurrection of Life was not required to have -- and did not have -- general liability insurance, nor was it subject to inspection or oversight by the Jefferson County Department of Human Resources ("Jefferson County DHR"). After Christian was injured, Jefferson County DHR conducted an investigation of the day-care defendants and, on November 29, 2016, filed a confidential report under seal with the trial court. Based primarily on Jefferson County DHR's confidential report, the Daileys moved for a summary judgment. On December 11, 2017, the trial court entered a partial summary judgment in the Daileys' favor on their negligence claim, leaving only the question of damages for the jury to decide.[2]

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[1]Jones was dismissed as a defendant by the trial court on May 14, 2018. Mark Dailey and Valerie Dailey also asserted, in their individual capacities, claims against the day-care defendants for loss of Christian's services and companionship.

[2]It appears that, before trial, the Daileys abandoned all other claims they asserted against the day-care defendants.

The trial began on May 14, 2018, with Judge Jim Hughey III presiding. On the second day of trial, the day-care defendants filed Chapter 7 bankruptcy petitions in the United States Bankruptcy Court for the Northern District of Alabama ("the Bankruptcy Court"), which automatically stayed the proceedings in the trial court. The Daileys immediately sought and obtained approval from the Bankruptcy Court to continue the trial on the condition that any judgment obtained would be subject to the jurisdiction of the Bankruptcy Court. The jury was then called back and the trial continued. The jury was not told about the day-care defendants' bankruptcies or that any damages awarded would likely be discharged.

The Daileys presented expert testimony regarding the extent of Christian's injuries, his continuing developmental problems, and the potential future costs of his care as a result of the injuries. At the time of trial, Christian was five years old. He could not talk or control his bowel movements and was subject to daily mood swings, fits, and outbursts. The Daileys' expert testified that Christian had a normal life expectancy but that the injuries resulting from the incident had caused developmental issues that would

necessitate 24-hour care for the rest of his life. The Daileys' expert estimated that the inflation-adjusted total cost of Christian's care after the age of 25 and continuing for the remainder of his life was between $18-20 million. The Daileys also asked the jury to consider in its verdict costs of medical care, the loss of earning potential for Christian, and compensation for Christian's pain and suffering. In their closing argument, the Daileys asked the jury to award them at least $50 million in compensatory damages.

After closing arguments, the trial court instructed the jury. In doing so, the trial court instructed the jury that no outside research, including Internet searches, should take place or be used by the jury in reaching a verdict. The jury began deliberations at 2:50 p.m. on May 17, 2018, and sent two notes to the trial court by the end of that afternoon. The first note stated: "We are unable to come to an agreement. Can we reconvene tomorrow morning or at your earliest convenience?" The second note stated: "What if we cannot come to an agreement on the amount ever?" The trial court shared both notes with the parties and their counsel. Believing that the jurors were merely tired, the trial court responded by

giving them the choice either to continue deliberating into the evening or to go home and continue deliberations the next day. The jury chose to go home and return the next day. Because Judge Hughey was unavailable to preside over jury deliberations the next day, he arranged instead for Presiding Judge Joseph Boohaker to preside over the jury's deliberations.

After deliberations restarted the next morning, the jury foreman conducted an Internet search for the definition of a word. The specific word is not disclosed in the record. Shortly after the Internet search, another juror sent a note to the trial court stating that "[i]n jury deliberations [the] internet was used to 'Google' terms and ways to calculate compensation." The trial court promptly discussed the note with the parties' counsel and offered both sides the opportunity to question the juror responsible for the alleged misconduct. Neither side agreed with that approach. Instead, the day-care defendants' attorney moved for a mistrial. The trial court thereafter immediately halted deliberations and brought the jury into the courtroom to investigate the alleged misconduct before ruling on the day-care defendants' motion.

The trial court first asked the jury whether "access [was] made to the internet for some information about how to calculate compensation." Juror R.L. volunteered that "there was a word that came up and they Googled the meaning of the word, what that word means, I remember that happening. It was a word. That's the only thing I know. That was it." No juror disputed Juror R.L.'s statement. The trial court then admonished the jury that its verdict must be based strictly on the law and the evidence presented, not on any outside information. At that point, the Daileys' counsel asked the trial court to ask the jurors if they were able to "decide this case without being influenced by one definition." With no objection by the day-care defendants' counsel, the trial court agreed and asked each individual juror two questions: (1) if he or she remembered the word or definition searched and (2) if the juror remembered, whether he or she would be able to disregard that extraneous information when determining the verdict. In response, 5 of the 12 jurors remembered the searched word, 2 remembered only that the searched word was a medical term, and the remaining 5 were unaware of an Internet search at all. Each juror, regardless of whether he or she

heard the definition, affirmed that he or she could and would disregard the definition in determining the verdict. The day-care defendants made no requests to the trial court to ask the jurors additional questions based upon the jurors' responses at that time. Following its questioning of the jurors, the trial court sent the jury back to the jury room to await further instructions.

The trial court and the parties' counsel then discussed the results of the investigation outside the presence of the jury. Judge Boohaker first noted that compensation calculations were not specifically mentioned by the jurors even though that issue was referenced in the note. Judge Boohaker indicated that he believed this was because the writer of the note was not privy to the Internet search. In response, counsel for the day-care defendants asserted his belief that the jurors were not being forthcoming about the extent of the Internet search and renewed the day-care defendants' motion for a mistrial or, in the alternative, asked if he could question the jurors directly about the contents of the note. Judge Boohaker disagreed with the day-care defendants and stated that he believed, based on his

evaluation of the jurors' demeanor and statements, that the jurors were able to reach a verdict based strictly on the law and evidence. Judge Boohaker then commented on the jury's ability to disregard the extraneous information, stating: "I've got to look at demeanor, body language, and what they say and how they say it. Yes, they can. Maybe that's a difficult thing to do, but they said they can. So I'm going to take them at their word that they can do that and let them continue on deliberating." At that point, the trial court denied the day-care defendants' motion for a mistrial, stating that it believed that its actions had cured any prejudice generated by the extraneous information and that it did not want to create further prejudice by highlighting the Internet search. The jury resumed deliberating and returned a verdict later that morning, awarding the Daileys $30.3 million in compensatory damages.

The next day, Juror P.W. telephoned the day-care defendants' counsel and discussed the case, including the Internet search. Following that phone call, the day-care defendants filed a motion for a new trial. The day-care defendants attached an affidavit from Juror R.L. to their

motion, which included a single paragraph about the Internet search:

> "On Friday morning, May 18, 2018, one of the jurors, the only male in the room who was also the foreperson of the jury, stated that 'based on my research, after looking further into this case our numbers are way off.' Prior to making this statement, this same guy had been on his laptop computer looking up a medical term. Additionally, he was on the computer for an extended amount of time while we were discussing damages and the cost of college tuition."

Juror R.L. did not assert in her affidavit that the verdict was influenced by the definition of the medical term or by any other extraneous information that was introduced into the jury room. The day-care defendants' counsel also submitted his own affidavit with the day-care defendants' motion. His affidavit stated that he had spoken to five jurors about the note discussing juror misconduct.

The Daileys opposed the day-care defendants' motion for a new trial and attached affidavits from Jury Foreman D.E., Juror P.W., and Juror S.T. Jury Foreman D.E.'s affidavit stated: "During our deliberations I used my computer to look up one medical term. While I don't remember the term it was just another word for head injury." Jury Foreman D.E.'s affidavit further stated that the jury verdict was "based only

on the evidence presented at trial and no internet search influenced or factored into our decision in any manner." Juror P.W., the juror who contacted the day-care defendants' counsel after the trial, also provided an affidavit suggesting that the Internet search was not a factor in the jury's deliberations. Juror P.W. stated:

> "Shortly after the trial I was able to speak with all of the attorneys in the courtroom except for [the day-care defendants' attorney] because he was already gone. I then contacted him by telephone since I was unable to speak with him at the courthouse.
>
> "My intention with the telephone call to [the day-care defendants' attorney] was not to indicate any misconduct regarding our deliberations or to indicate that internet searches in any way influence[d] our decision because those searches [were] never considered in assessing this case."

(Paragraph numbering deleted.) The relevant portions of Juror S.T.'s affidavit, also submitted by the Daileys, stated:

> "During deliberations we came across an unfamiliar term in the medical records. The foreman googled this term. Soon after he googled the term I told him we were not supposed to be doing any searches and he stopped.
>
> "I do not remember the term searched and we never discussed or used the searched information in our deliberations. This information did not factor into our decision making or verdict.

> "All our discussions and our verdict were based upon the evidence presented during the trial and not on any internet search or outside source.
>
> "There were no internet searche[s] performed after Judge Boohaker questioned us individually and as a group."

(Paragraph numbering deleted.)

After considering the materials filed by the parties, Judge Hughey, who was again presiding over the case, conducted a hearing on the day-care defendants' motion for a new trial. That motion was subsequently denied by operation of law under Rule 59.1, Ala. R. Civ. P., after the passage of 90 days, and the day-care defendants appealed. The Daileys state that the compensatory damages awarded have been discharged by the Bankruptcy Court.[3]

[3]No judicial record of the Bankruptcy Court's discharge has been provided, but both sides acknowledge that any damages are subject to discharge by the Bankruptcy Court. Although the Daileys are unable to recover the damages because of the Bankruptcy Court's discharge, the discharge does not extinguish the underlying debt. Easterling v. Progressive Specialty Ins. Co., 251 So. 3d 767 (Ala. 2017) ("'Although entry of a Chapter 7 debtor's discharge does not extinguish the debts, once the discharge is entered, the debtor is no longer personally liable for any of the discharged debts.'" (quoting In re Patterson, 297 B.R. 110, 112-13 (Bankr. E.D. Tenn. 2003))).

Standard of Review

The day-care defendants ask us to reverse the trial court's order denying their motion for a new trial. A ruling on such a motion rests within the sound discretion of the trial court and will not be reversed by this Court unless the trial court exceeded its discretion and the record shows plain and palpable error. Coots v. Isbell, 552 So. 2d 139, 142 (Ala. 1989). The sole ground on which the day-care defendants seek a new trial is juror misconduct. We will reverse a trial court's ruling on a motion for a new trial on the basis of juror misconduct only "when [the misconduct] indicates bias or corruption, or when the misconduct affected the verdict, or when from the extraneous facts prejudice may be presumed as a matter of law." Whitten v. Allstate Ins. Co., 447 So. 2d 655, 658 (Ala. 1984).

Analysis

Although the Bankruptcy Court has apparently discharged the $30.3 million damages award, the day-care defendants continue to challenge the judgment entered against them. The day-care defendants argue that the extraneous information to which certain jurors were exposed tainted the jury's verdict,

despite the trial court's curative actions before the jury delivered its verdict and despite the lack of evidence indicating that the extraneous information influenced that verdict.

Not every instance of juror misconduct requires a new trial. Dawson v. State, 710 So. 2d 472, 474 (Ala. 1997); Reed v. State., 547 So. 2d 596, 597 (Ala. 1989). Juror misconduct involving the introduction of extraneous information necessitates a new trial only when: "1) the jury verdict is shown to have been actually prejudiced by the extraneous material; or 2) the extraneous material is of such a nature as to constitute prejudice as a matter of law." Ex parte Apicella, 809 So. 2d 865, 870 (Ala. 2001) (abrogated on other grounds, Betterman v. Montana, __ U.S. __, 136 S. Ct. 1609 (2016)). But no single fact or circumstance determines whether a verdict is unlawfully influenced by a juror's misconduct. 809 So. 2d at 871. Instead, the unique facts and circumstances of each case determine whether juror misconduct resulted in prejudice requiring a new trial. See Reed, 547 So. 2d at 598.

A. Actual Prejudice

We begin by examining whether the introduction of the extraneous information "actually motivated the jury or any individual juror to decide in any particular way." Pearson v. Fomby, 688 So. 2d 239, 242 (Ala. 1997). Mere exposure to extraneous information does not, by itself, create actual prejudice. Id. When faced with an allegation of juror misconduct involving extraneous information, if the "trial court investigate[s] the misconduct and finds, based on competent evidence, the alleged prejudice to be lacking, this Court will not reverse." Reed, 547 So. 2d at 597. We therefore first determine whether the trial court adequately investigated the alleged juror misconduct before considering the evidence discovered in that investigation.

1. Adequacy of Investigation

Once a trial court is alerted to the possibility that jurors have been exposed to extraneous information, the court must reasonably investigate the circumstances and substance of the alleged exposure to determine whether the rights of a party have been prejudiced by the misconduct and whether the misconduct may be cured. Holland v. State, 588 So. 2d 543,

546 (Ala. Crim. App. 1991). What constitutes a reasonable investigation differs with each case -- the scope of investigation is dictated by the circumstances and is within the discretion of the trial court. Sistrunk v. State, 596 So. 2d. 644, 648-9 (Ala. Crim. App. 1992). If the investigation undertaken by the trial court is reasonable under the circumstances, this Court will not reverse its judgment simply because this Court might have conducted a different or more extensive inquiry. Id.

It is clear that the trial court in this case conducted a timely and reasonable investigation of the alleged misconduct and took appropriate steps to cure it. As soon as it received the note alleging juror misconduct, the court immediately contacted the parties and their counsel. Then, the court promptly stopped juror deliberations and brought the jury before it to investigate the content of the note. Once before the court, the entire jury panel was asked if the Internet had been used "for some information about how to calculate compensation." After Juror R.L. responded that the definition of one word was searched, the court then determined whether other jury members had been exposed to that

definition. The court did so by asking each individual juror whether he or she was aware of the Internet search and its substance. The court's investigation revealed that five jurors knew both the word searched and its definition found on the Internet, two jurors knew only that the searched word was a medical term, and five jurors were unaware that any Internet search had taken place. No juror stated that Internet research was used for compensation calculations or gave statements that conflicted with Juror R.L.'s statements. Once the scope of the misconduct was clear, the trial court assessed the demeanor and statements of each juror to determine if the jury was able to disregard the extraneous information to come to a verdict, and it admonished the entire jury panel that the jury's verdict should be based solely on the law and the evidence presented at trial.

Our conclusion that the trial court's investigation and curative instructions were adequate is bolstered by persuasive authority from a federal appellate court. The parties have not cited, and we have not found, another Alabama case involving extraneous information accessed during jury deliberations and discovered by the trial court before a

verdict was rendered. But similar circumstances arose in United States v. Wheaton, 517 F.3d 350 (6th Cir. 2008), and we find the analysis in that case persuasive. In Wheaton, the defendant moved for a new trial after it was discovered in the middle of jury deliberations that jurors had been exposed to extraneous information through a juror's personal laptop computer. On appeal, the defendant argued that the district court failed to thoroughly investigate the misconduct and that the extraneous information had influenced the jury's verdict. The United States Court of Appeals for the Sixth Circuit held that the district court acted appropriately when it promptly investigated the alleged misconduct by addressing the entire jury in open court and asking the jurors if the extraneous information accessed on the laptop computer would influence their decision and by "admonishing the jury for its outside investigation ... and giving a curative instruction to remind them that the verdict must be based solely on the evidence p+resented at trial." Id. at 361. Because the district court made an appropriate investigation and took appropriate actions to cure any defect resulting from the juror's misconduct, and because the defendant could not show any connection between

the extraneous information and the ultimate verdict, the Sixth Circuit Court of Appeals concluded that the defendant had not carried his burden of proving actual prejudice, and it affirmed the judgment. Here, the trial court's investigation and curative action was at least as thorough as that in Wheaton. We therefore hold that the trial court took proper steps to investigate the juror misconduct and to cure any prejudice that may have resulted from that misconduct.

The day-care defendants argue that the trial court should have investigated further to determine the identity of the writer of the note informing the trial court of the misconduct and the exact medical term searched. But a trial court investigating juror misconduct must "balance the probable harm resulting from the emphasis such action would place upon the misconduct" with the "likely extent and gravity of the prejudice generated by that misconduct." United States v. Chiantese, 582 F.2d 974, 980 (5th Cir. 1978). The trial court in this case weighed those opposing interests and concluded that additional questioning would "highlight the matter further," exacerbating the problem of the juror misconduct.

Under these circumstances, the trial court was justified in stopping its investigation when it did.

2. Evidence of Actual Prejudice

Next, we examine whether the introduction of the extraneous information created actual prejudice by influencing the jury's verdict. "[A]ctual prejudice may not be inferred from the exposure [to extraneous information] itself." Pearson, 688 So. 2d at 243. The day-care defendants were required to show that at least one juror had been motivated by the extraneous information to decide the case in a particular manner or that there was evidence proving that juror misconduct continued to occur and that the new misconduct affected the verdict. Ankor Energy, LLC v. Kelly, 271 So. 3d 798, 809 (Ala. 2018); Dawson, 710 So. 2d at 475; Bascom v. State, 344 So. 2d 218, 222 (Ala. Crim. App. 1977). The day-care defendants failed to make this showing.

Not a single juror affidavit submitted in connection with the day-care defendants' motion for a new trial stated that any juror's verdict was influenced by the extraneous information or that the improper jury conduct continued after the trial court's curative instruction. Although a juror is

generally prohibited from impeaching his or her own verdict, an exception is made where an affidavit presents evidence indicating that a juror was exposed to extraneous information and that such information influenced the juror's verdict. Ankor Energy, 271 So. 3d at 806. The juror affidavits submitted by both sides in this case confirm that juror misconduct occurred, but none indicates that the extraneous information affected the jury's verdict or attempt to impeach the validity of the verdict. Juror R.L.'s affidavit, submitted by the day-care defendants, stated that she saw the jury foreman using his laptop computer during deliberations and that he looked up the definition of a medical term. But her affidavit did not state that the verdict was affected by his misconduct. The foreman admitted in his affidavit that he conducted the Internet search during jury deliberations, but he stated that he could no longer remember the term that he searched, only that the term meant "head injury." His affidavit supports the trial court's denial of the day-care defendants' motion for a mistrial, because, as the foreman and as the person who conducted the improper Internet search, the fact that he could not remember the searched term indicates

that the term did not factor into the jury's determination of compensatory damages. The other two juror affidavits similarly stated that the verdict was rendered solely on the basis of the evidence presented at trial.

The trial court took adequate steps to investigate and cure the jury's initial misconduct, and there is no evidence indicating that the misconduct influenced the verdict or that any further misconduct took place after the trial court's admonishment of the jurors. The day-care defendants are thus not entitled to a new trial on the basis of actual prejudice.

B. Prejudice as a Matter of Law

A new trial may also be warranted on the basis of juror exposure to extraneous material when "the extraneous material is of such a nature as to constitute prejudice as a matter of law." Ex parte Apicella, 809 So. 2d at 870. This Court has presumed prejudice in some cases involving extraneous definitions. See, e.g., Ex parte Arthur, 835 So. 2d 981, 985 (Ala. 2002). But presumed prejudice is restricted to cases where the extraneous information considered by the jury was "'crucial in resolving a key material issue in the case.'" Dawson, 710 So. 2d at 475 (quoting Hallmark v. Allison, 451

So. 2d 270, 271 (Ala. 1984)). See also Ex parte Arthur, 835 So. 2d at 985; Ex parte Thomas, 666 So. 2d 855, 858 (Ala. 1995); Hallmark v. Allison, 451 So. 2d at 271. The day-care defendants do not explain how the definition of an unknown word for "head injury" could have had any impact on the compensatory damages awarded when the existence of a head injury was undisputed and was not even at issue in the case. Thus, because there is no evidence indicating that the extraneous information was crucial in resolving a material issue, there can be no presumed prejudice here.[4]

Conclusion

The extraneous information improperly accessed by a juror during deliberations did not taint the jury's verdict because the trial court made an adequate investigation following the discovery of the misconduct and took appropriate curative measures, and there is no evidence indicating that the extraneous information actually prejudiced the verdict.

[4]This Court expresses no opinion regarding the amount of damages awarded or whether such damages were supported by the evidence admitted at trial. The day-care defendants did not raise those issues with the trial court after the jury's verdict was announced or after the judgment was entered, nor have the day-care defendants raised those issues on appeal.

Further, the day-care defendants are not entitled to a new trial based on presumed prejudice because there is no evidence indicating that the extraneous information was crucial in resolving a key material issue in the case. We therefore affirm the trial court's judgment.

AFFIRMED.

Parker, C.J., and Wise, Mendheim, and Stewart, JJ., concur.

Bolin, Shaw, Bryan, and Sellers, JJ., concur in the result.