



Marshall v. Pierce

2005 UT App 299 (2005) | Cited 0 times | Court of Appeals of Utah | June 30, 2005

MEMORANDUM DECISION

Not For Official Publication

Before Judges Billings, Bench, and Orme.

Brenda J. Marshall appeals the district court's judgment of no cause of action and an order denying Marshall's motion for a new trial.

The core issue on appeal is whether the district court erred in finding that Marshall did not sustain "permanent disability or permanent impairment" pursuant to Utah Code section 31A-22-309(1)(a)(iii). Utah Code Ann. § 31A-22-309(1)(a)(iii) (2003). To successfully attack a factual finding of the district court, "an appellant must first marshal all the evidence in support of the finding." *Wilson Supply, Inc. v. Fradan Mfg. Corp.*, 2002 UT 94, ¶21, 54 P.3d 1177. Marshall has not met this burden.

Marshall failed to include in her brief a discussion of several important pieces of evidence that support the finding that her impairment was of a temporary nature. These include: (1) Marshall had two prior work-related back injuries; (2) Marshall received medical treatment for these injuries days before the accident; (3) after several months of treatment following the accident, there was a four-month gap in treatment, and the treatment received after the gap followed a third work-related injury; and (4) Marshall received no treatment at all for two years after being treated following the third work-related injury. The failure to completely marshal the supporting evidence is fatal to the appeal.¹ See *id.*

Marshall also contends that the district court should have ordered a new trial pursuant to rule 59 of the Utah Rules of Civil Procedure because the jury awarded inadequate general and special damages. See Utah R. Civ. P. 59(a)(5). "Under our rule 59, it is well settled that, as a general matter, the trial court has broad discretion to grant or deny a motion for a new trial." *Smith v. Fairfax Realty, Inc.*, 2003 UT 41, ¶25, 82 P.3d 1064 (quotations and citation omitted), cert. denied, 541 U.S. 960 (2004). Thus, "we will reverse only if there is no reasonable basis for the decision." *Id.* (quotations and citation omitted). The district court concluded that the jury, in awarding damages, had adopted the defense's position that Marshall's injury was only temporary. Because there was evidence in the record supporting the temporary injury theory, the district court did not abuse its discretion in denying Marshall's request for a new trial.



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Finally, Marshall argues that the district court's refusal to give several of her requested jury instructions was prejudicial error. We conclude that the district court did not err in failing to give the requested instructions.

Therefore, the district court's judgment is affirmed.

Russell W. Bench, Associate Presiding Judge

WE CONCUR:

Judith M. Billings, Presiding Judge

Gregory K. Orme, Judge

1. Because Marshall challenges the sufficiency of the evidence supporting a verdict, she "must marshal the evidence in support of the verdict and then demonstrate that the evidence is insufficient when viewed in the light most favorable to the verdict." *State v. Hopkins*, 1999 UT 98, ¶14, 989 P.2d 1065. Marshall has failed to meet this burden because she has not presented "every scrap of competent evidence introduced at trial which supports the very findings [she] resists." *West Valley City v. Majestic Inv. Co.*, 818 P.2d 1311, 1315 (Utah Ct. App. 1991). Thus, Marshall fails to convince this court that the evidence was "insufficient when viewed in the light most favorable to the verdict." *Hopkins*, 1999 UT 98 at ¶14.

