NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JOHN L. RUSSELL, Appellee	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JOHN CRANE, INC., F/K/A CRANE PACKING, Appellant	:	No. 2894 EDA 2003

Appeal from the Judgment Entered August 14, 2003, in the Court of Common Pleas of Philadelphia County, Civil Division, at No. 9906-3431.

BEFORE: JOYCE, BOWES AND JOHNSON, JJ.

MEMORANDUM: **FILED NOVEMBER 19, 2004**

John Crane, Inc., formerly known as Crane Packing ("John Crane"), appeals from the judgment entered in favor of Roberta Russell, executrix of the estate of John L. Russell, following a jury trial. Upon review, we affirm.

The record reveals that in June 1999, Roberta Russell instituted this action against John Crane and several other corporations as executrix of her deceased husband's estate and in her own right. The complaint alleged that Ms. Russell's deceased husband, John L. Russell, contracted mesothelioma as a result of exposure to asbestos-containing products manufactured by the defendant corporations. Following discovery, various defendants were dismissed from the case by grant of summary judgment.

The trial was conducted in a reverse-bifurcated fashion. On September 12, 2001, a jury awarded the decedent's estate $300,000 in

damages, and it awarded Ms. Russell $250,000 in damages. The second phase of the trial was concluded on December 17, 2002, when a jury apportioned liability among John Crane and three other defendants. John Crane filed a post-trial motion seeking judgment notwithstanding the verdict ("JNOV"), a new trial, or remittitur; Ms. Russell petitioned the trial court for delay damages. On August 13, 2003, the trial court issued an order: (1) denying John Crane's post-trial motion; (2) awarding delay damages to Ms. Russell; and (3) directing the prothonotary to enter judgment against John Crane in the amount of $152,879.43. This timely appeal followed.

John Crane raises three issues for our review:

> I. Whether the trial court erred in denying John Crane's motion for judgment notwithstanding the verdict?
>
> II. Whether the trial court erred in denying John Crane's motion for a new trial where the verdict was against the weight of the evidence?
>
> III. Whether the trial court abused its discretion in denying [John Crane's] motion to impeach [a witness] with evidence of his guilty plea in 1990 to theft by deception, where the probative value of the testimony greatly outweighed any prejudicial impact?

John Crane's brief at 4.

With respect to the first issue, we note the following principles:

> A JNOV can be entered upon two bases: (1) where the movant is entitled to judgment as a matter of law; and/or, (2) the evidence was such that no two reasonable minds could disagree that the verdict should have been rendered for the movant. When reviewing a trial court's denial of a motion for JNOV, we

> must consider all of the evidence admitted to decide if there was sufficient competent evidence to sustain the verdict . . . . Concerning any questions of law, our scope of review is plenary. Concerning questions of credibility and weight accorded the evidence at trial, we will not substitute our judgment for that of the finder of fact . . . . A JNOV should be entered only in a clear case. Our review of the trial court's denial of a new trial is limited to determining whether the trial court acted capriciously, abused its discretion, or committed an error of law that controlled the outcome of the case. In making this determination, we must consider whether, viewing the evidence in the light most favorable to the verdict winner, a new trial would produce a different verdict. Consequently, if there is any support in the record for the trial court's decision to deny a new trial, that decision must be affirmed.

Parker v. Freilich, 803 A.2d 738, 744 (Pa.Super. 2002) (quoting ***Buckley v. Exodus Transit & Storage Corp.,*** 744 A.2d 298, 304-305 (Pa.Super. 1999)) (internal citations omitted).

John Crane's first argument is grounded on the assertion that Ms. Russell did not present sufficient evidence to establish that her deceased husband handled or worked near any asbestos-containing products manufactured by John Crane. Specifically, John Crane contends that the testimony of Ms. Russell's sole product-identification witness, Thomas Batson, "was insufficient as a matter of law to sustain the verdict returned by the jury." John Crane's brief at 9.

The record establishes the following. At trial, Mr. Batson testified that he met John L. Russell around 1960 while both men were working aboard the U.S.S. Kitty Hawk, an aircraft carrier that was being constructed by the New York Ship Building Corporation in Camden, New Jersey. Mr. Batson,

who worked as a pipe fitter aboard the ship, testified that he worked with Mr. Russell, who was an engineer, for approximately two months in the ship's catapult area, and during that period, Mr. Batson worked with a rope-like, asbestos-containing packing material that was manufactured by "Crane." N.T. Trial, 12/6/02, at 21. According to Mr. Batson, the packing material emitted asbestos fibers that permeated the air whenever the material was cut or crushed, which occurred regularly because it was used "on every valve" in the catapult area. ***Id.*** at 23. Mr. Batson stated that Mr. Russell worked in the vicinity of the Crane packing material approximately twenty-four hours per week and that Mr. Russell undoubtedly inhaled asbestos fibers emitted by the Crane packing material because "[a]nybody [who worked] in that room had to breathe them in." ***Id.***

John Crane assails the reliability of Mr. Batson's direct testimony based on the following exchange, which occurred on cross-examination:

> Q: You don't know if it's Crane Company or John Crane, correct?
>
> A: I do now. At the time- Crane to me, they also made bathroom fixtures, not the same company. And as a plumber we used Crane packings [sic] and we used Crane fixtures. Okay? To me they ran together.
>
> I didn't specifically look at the box and see John Crane on it, no.
>
> Q: When did you gain this knowledge? When did you learn it was one or the other?
>
> A: When I sat down- I mean I knew this back then but when I finally sat down during this case and figured out that there were

> two companies [that bore the name Crane], which one was what. That's all.
> Q: Did you know that when you were deposed in this case?
>
> A: No, I didn't pay attention to this until, I don't know, a month or so ago.
>
> Q: So if you testified in your deposition that you didn't know if it was John Crane or Henry Crane or some other Crane-
>
> A: That's exactly right.

Id. at 99-100.

Thereafter, on re-redirect examination, plaintiff's counsel elicited the following testimony in an effort to rehabilitate the witness:

> Q: When you were questioned regarding the John Crane packing that [defense counsel] just asked you about in your own case, you testified that you used it in the fifties, sixties and seventies, is that right?
>
> A: Sure.
>
> Q: The Crane Company that you're talking about, [defense counsel] asked you about, you told us that was a plumbing type product, is that right, that was used?
>
> A: Yes.

Id. at 101.

John Crane posits that Mr. Batson's product-identification testimony is inherently unreliable because he testified that he "didn't specifically look at the box and see [the name] John Crane on it." ***Id.*** at 99. In addition, John Crane contends that Mr. Batson's trial testimony: (1) lacked credibility because it was inconsistent with his pretrial deposition testimony; and (2) failed to establish that the decedent inhaled asbestos fibers emitted by

the Crane packing material because Mr. Batson's direct testimony was "highly speculative and non-responsive to the direct inhalation question posed by [Ms. Russell's] counsel." John Crane's brief at 13. We decline to grant relief on this issue.

As John Crane acknowledges in its brief, this Court rejected an identical argument in ***Andaloro v. Armstrong World Industries***, 799 A.2d 71 (Pa.Super. 2002), wherein John Crane was one of several manufacturing companies that were being sued by individuals who developed asbestos-related diseases as a result of occupational exposure to asbestos-containing products. In ***Andaloro***, as in the case at bar, one of the plaintiffs, Charlotte Andaloro, proffered deposition testimony indicating that her deceased husband repeatedly had been exposed to an asbestos-containing material identified as "Crane packing." ***Id.*** at 87. A jury determined that John Crane was liable to various plaintiffs and awarded over $1,000,000 in damages.

On appeal, John Crane argued that the deposition testimony was speculative and therefore insufficient to establish product identification and exposure because the declarant could have been referring to another manufacturing company that bore the name "Crane." We rejected this argument, stating as follows:

> Upon consideration of the evidence adduced to establish that Franklin Andaloro was exposed to products manufactured by John Crane, Inc., we find the evidence legally sufficient to establish both exposure and product identity. Prior to his death from mesothelioma, Andaloro attested that he had worked with asbestos products for a period of eight years at the Philadelphia

> Naval Ship Yard. He recalled cutting asbestos packing for application to valve stems while he trained apprentices, and he remained in the area during clean-up when the other workers' use of brooms and blowers caused the air "to get dusty somewhat." He remembered specifically that the name "Crane packing" appeared on some of the packages of material he and the other workers used. Although John Crane urges in its brief that such a designation can only denote another defendant in whose moniker the name "Crane" also appeared, its assertions bear more properly on the weight of the evidence and, accordingly, have no bearing on this issue of legal sufficiency. We conclude, consequently, that John Crane has failed to establish any basis for entitlement to judgment n.o.v. Its assertions to the contrary are of no merit.

Id. at 87 (citations to record omitted).

In the instant case, as in ***Andaloro***, John Crane asks this Court to grant JNOV on the rationale that the plaintiff's product identification testimony was not credible, which is a challenge to the weight of the evidence. However, we will not substitute our judgment for that of the fact-finder regarding the credibility of witnesses and the weight attributed to the trial evidence. ***See Parker***, ***supra***. Herein, Mr. Batson, who admittedly could not recall during his pretrial deposition whether he had used John Crane products while working aboard the U.S.S. Kitty Hawk, ***see*** n.t. trial, 12/6/02, at 100, testified that he had in fact used "Crane packing" in the ship's catapult area, and that the packing material in question was made by

John Crane.[1] ***Id.*** at 21-23, 101. The jury credited this testimony, and we shall not disturb its determination. Hence, these claims must fail.

Next, John Crane argues that the trial court erred in denying its motion for a new trial because the verdict was contrary to the weight of the evidence. With respect to this claim, John Crane asserts that this Court should order a new trial for the reasons stated above, *i.e.*, that Ms. Russell's product-identification evidence was incredible and therefore insufficient to sustain the verdict. Again, we find that no relief is due.

Our scope and standard of review is settled. In reviewing an order denying a motion for a new trial, we must consider all of the evidence. ***Parker, supra***. Further, when presented with a challenge to the weight of the evidence, we will not award a new trial unless the verdict is so contrary to the evidence as to shock one's sense of justice. ***Id.*** The trial court's refusal to grant a new trial will not be disturbed absent a clear abuse of discretion or an error of law determinative to the outcome of the case. ***Id.***

In the present case, the trial court concluded that the verdict was not contrary to the evidence because the jury heard testimony indicating that: (1) the decedent worked in the vicinity of the Crane packing material approximately twenty-four hours per week for a period of two months; (2) the Crane packing emitted asbestos fibers that the decedent

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[1] We note that the caption indicates that John Crane, Inc. was formerly known as "Crane Packing," which was the name of the product identified by Mr. Batson, and John Crane does not assert that the caption is inaccurate.

undoubtedly inhaled; and (3) inhalation of those fibers was a substantial factor in causing the decedent's injuries. Trial Court Opinion, 10/10/03, at 5. As the record supports the court's determination, we find no abuse of discretion.

Finally, John Crane contends that the trial court erred in refusing to permit cross-examination of Mr. Batson regarding a 1990 conviction for theft by deception. Although the conviction occurred more than ten years before the first trial in this matter, John Crane asserts that it should have been permitted to question Mr. Batson about his 1990 conviction because Mr. Batson was Ms. Russell's only product-identification witness, and thus, his credibility was a pivotal issue.

As a general rule, the admissibility of evidence is a matter of trial court discretion, and an evidentiary ruling will not be reversed unless the complaining party shows that the trial court abused its discretion. ***Commonwealth v. Malloy***, 2004 Pa. LEXIS 2047 (Pa. September 1, 2004).

At the outset, we examine Pa.R.E. 609, which states in relevant part:

> **Rule 609. Impeachment by evidence of conviction of crime**
>
> (a) General Rule
>
> For the purpose of attacking the credibility of any witness, evidence that the witness has been convicted of a crime, whether by verdict or by plea of guilty or nolo contendere, shall be admitted if it involved dishonesty or false statement.
>
> (b) Time Limit

> Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction substantially outweighs its prejudicial effect . . . .

In the case *sub judice*, the trial court prohibited John Crane from questioning Mr. Batson about his 1990 conviction, for which Mr. Batson received a probationary sentence, because more than ten years had elapsed since the date of the conviction. As the trial court's ruling comports with the spirit and letter of Pa.R.E. 609, we find that the court did not abuse its discretion. ***Accord Commonwealth v. Summers***, 410 A.2d 336 (Pa.Super. 1979) (trial court did not commit abuse of discretion when it determined that twenty-four-year-old burglary conviction was too remote to be used for impeachment of prosecution witness).

Finding no merit to any of John Crane's appellate arguments, we affirm the judgment entered in favor of Roberta Russell.

Judgment affirmed.

Judgment Entered.

Prothonotary

Date: NOV 19 2004