

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

IRIS MONTGOMERY,	:	APPEAL NO. C-110662
	:	TRIAL NO. A-1009359
Plaintiff-Appellant,	:	
	:	JUDGMENT ENTRY.
vs.	:	
MOLLIE MARIE MAZIAR,	:	
	:	
Defendant-Appellant.	:	
	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

The parties in this case were in an automobile accident on November 28, 2008. Defendant-appellee Mollie Marie Maziar struck the rear of the vehicle of plaintiff-appellant Iris Montgomery. Maziar had been traveling approximately ten miles per hour at the time of the accident. Montgomery filed a lawsuit claiming that, as a result of the accident, she sustained personal injuries. The case proceeded to a jury trial. At the conclusion of the case, the jury found that Montgomery was not injured as a result of the accident and awarded no damages.

In her first assignment of error, Montgomery claims that the verdict was against the manifest weight of the evidence.

[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts. \* \* \* If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation

which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.

*Eastley v. Volkman*, \_\_\_ Ohio St.3d \_\_\_, 2012-Ohio-2179, \_\_\_ N.E.2d \_\_\_, ¶ 21, citing *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn. 3.

Montgomery argues that her claim was premised on the testimony of two medical professionals, whose “uncontradicted testimony” was that she was injured as a result of the accident. But one of the doctors did not know Montgomery’s history of prior back issues before opining that her back condition was caused by the accident. And Maziar provided expert testimony that indicated that the way Montgomery’s symptoms presented was inconsistent with a condition that would have been caused by the trauma of an automobile accident. The fact that the expert had not been involved in Montgomery’s treatment did not make his testimony untrustworthy as a matter of law.

Since the evidence is susceptible of more than one construction, we are bound to give it the interpretation that is consistent with the verdict. Montgomery’s first assignment of error is overruled.

In her second assignment of error, Montgomery claims that the trial court improperly allowed Maziar’s expert to testify regarding articles, treatises, and studies. But Montgomery failed to object to the use of this material, so we will only reverse if their use amounted to plain error. In civil cases, the Ohio Supreme Court has held that

the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.

*Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122-123, 679 N.E.2d 1099 (1997).

In light of the fact that the material was used only to buttress the expert’s own observations, we cannot conclude that the failure to sua sponte preclude the use of the

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

material seriously affected the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself. We therefore overrule Montgomery’s second assignment of error.

In her third assignment of error, Montgomery claims that the trial court improperly failed to instruct the jury “concerning objective and direct evidence in contrast to subjective and circumstantial evidence.” But the jury was properly instructed on direct evidence, circumstantial evidence, and the role of inferences. Additionally, Montgomery did not object to the instructions as they were presented to the jury. Pursuant to the standard set forth above, we again find no plain error and overrule Montgomery’s third assignment of error.

Having considered all assignments of error, we affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, J.J.**

To the clerk:

Enter upon the journal of the court on June 27, 2012

per order of the court \_\_\_\_\_.

Presiding Judge