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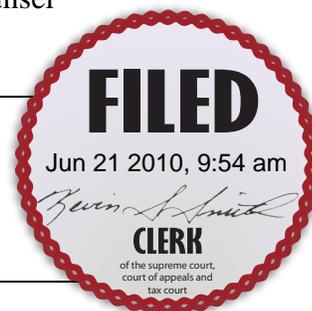
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**IN THE
COURT OF APPEALS OF INDIANA**



KASSAHUN T. METAFERIA,

Appellant,

vs.

JOHN ANCELET,

Appellee.

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No. 49A02-0908-CV-813

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Timothy W. Oakes, Judge
Cause No. 49D13-0608-CT-033038

June 21, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Kassahun Metaferia (“Metaferia”) filed a complaint in Marion Superior Court against John Ancelet (“Ancelet”), which alleged that Metaferia was injured as a result of Ancelet’s negligent operation of his vehicle. A jury trial was held, and the jury entered a verdict in favor of Ancelet after concluding that Metaferia was 65% at fault for the accident. Metaferia appeals and argues that he is entitled to a new trial under the doctrine of fundamental error.

Facts and Procedural History

On April 16, 2005, Metaferia was traveling from the Indianapolis International Airport to downtown Indianapolis when he was involved in an accident at the intersection of West Street and the Interstate 70 exit ramp. Metaferia’s vehicle was struck on the front left side and passenger side door by Ancelet’s vehicle. Witnesses to the accident stated that Ancelet ran a red light. However, at least one witness, who was in the vehicle behind Metaferia, stated that Metaferia ran the red light. Tr. pp. 249, 308-09.

After the accident, Metaferia was experiencing pain in his back, neck, elbow, and knee. He proceeded to the St. Vincent’s emergency room where he was prescribed ibuprofen for his pain. Metaferia saw Dr. Terry Mandell a few days after the accident, and Dr. Mandell prescribed pain medication and a course of physical therapy. Due to persistent problems with his right knee, Metaferia was also evaluated by an orthopedic specialist, Dr. Todd Midla. Dr. Midla eventually performed surgery on Metaferia’s knee.

On August 10, 2006, Metaferia filed a complaint in Marion Superior Court against Ancelet alleging that Metaferia suffered personal injury and property damage, which was caused by Ancelet’s negligent operation of his vehicle. Approximately four months later,

State Farm Mutual Insurance Company (“State Farm”) filed a small claims action against Metaferia seeking damages incurred by Ancelet as a result of the accident. On March 20, 2007, Metaferia moved to consolidate the small claims action with his personal injury claim pending in Marion Superior Court. The causes were consolidated by order dated May 9, 2007.

A two-day jury trial commenced on June 23, 2009. The jury found in favor of Ancelet after determining that Metaferia was 65% at fault for the accident at issue. Metaferia now appeals.

Discussion and Decision

Metaferia argues that he is entitled to a new trial under the doctrine of fundamental error because, he claims, “there are several prejudicial aspects of his trial, which, when considered collectively, demonstrate fundamental error occurred.” Appellant’s Br. at 8. Metaferia acknowledges that he failed to object to the alleged errors at trial, but contends that the doctrine of fundamental error may be raised in the context of civil litigation.

In support of his argument, Metaferia relies on United Farm Bureau Family Life Insurance Co. v. Foltz, 176 Ind. App. 217, 375 N.E.2d 601 (1978), in which our court observed: “Fundamental or plain error results only where a statement is made or an act is done which results in prejudicial error that goes to the very heart of a party’s case and *where that statement or act is wholly outside of the preventive or corrective powers of that party.*” Id. at 230-31, 375 N.E.2d at 611 (emphasis added). In Farm Bureau, the trial court gave a jury instruction that shifted the burden of proof and Farm Bureau did not object. On appeal, Farm Bureau argued that shifting the burden of proof deprived it of a

fair trial and due process of law. Our court concluded that “the error complained of by Farm Bureau was not fundamental error because it could easily have been corrected or, at least, preserved for appeal, if Farm Bureau had made a timely objection.” *Id.* at 231, 375 N.E.2d at 611.

In this case, the alleged error complained of by Metaferia consists of questions posed to witnesses or argument of opposing counsel. Specifically, Metaferia claims that 1) “defense counsel seemingly injected the specter of fraud into the trial by repeatedly referencing that Dr. Mandel treats patients who are involved in litigation,” and 2) Ancelet’s father, who testified at trial, “was allowed to insert value-laden, pejorative and objectionable commentary into the trial concerning the conduct and motives of the other witnesses at the scene.” Appellant’s Br. at 9, 11. However, such alleged error cannot be considered fundamental error because Metaferia could have easily corrected said error or, at a minimum, made appropriate objections thereby preserving the issues for appeal.

Metaferia also claims that a juror’s question during voir dire “about Metaferia’s citizenship further complicate[s] the specter of fraud overlaying his trial.” *Id.* at 12. Yet, after the juror in question was informed that Metaferia was a United States citizen and agreed that Metaferia had a right to be in court, Metaferia’s counsel accepted the juror. Therefore, we reject Metaferia’s argument that he did not receive a fair trial because the juror initially questioned whether Metaferia was a United States Citizen.

Metaferia’s claimed errors do not rise to the level of fundamental error in a civil context. Accordingly, we conclude that he is not entitled to a new trial.

Affirmed.

RILEY, J., and BRADFORD, J., concur.