

**STATE OF RHODE ISLAND
PROVIDENCE, SC.**

SUPERIOR COURT

(FILED: December 6, 2013)

GOVERNMENT EMPLOYEE INSURANCE :
COMPANY :
 :
v. :
 :
DOROTHY BLAIR, alias : **C.A. No. PC 12-3754**

DECISION

LANPHEAR, J. A motor vehicle collision occurred on October 20, 2010. Dorothy Blair rear-ended another vehicle on Reservoir Avenue in Cranston, near the intersection of Route 10. Colleen Kiernan claimed that she incurred property damage and personal injury from that collision and filed a claim with her insurer, the Government Employee Insurance Company (GEICO). As a result of that claim, GEICO satisfied the property damage claim and personal injury claim of Ms. Kiernan by making payments to Ms. Kiernan and on her behalf.

GEICO filed suit against Ms. Blair in July 2012 for her negligence in causing the collision. GEICO then served Ms. Blair in August 2012, but Ms. Blair never answered or otherwise responded to GEICO or the Court. Ms. Blair was defaulted in October 2012. To the Court’s knowledge, there was no motion to vacate the default, nor was any answer ever filed. In February and March 2013, GEICO moved to set the amount of the judgment and to enter judgment. GEICO was kind enough to provide notice of the date of the proof of claim hearing. GEICO appears to have re-served Ms. Blair with the hearing notice in March 2013.

On April 3, 2013, defense counsel entered for Ms. Blair. Counsel then appeared to contest the amount of damages to be awarded at the hearing. In Webster v. Perrotta, 774 A.2d 68, 78 (R.I. 2001), our Supreme Court declared: “Thus, although a plaintiff is relieved from the

burden of establishing liability in a defaulted case he or she nonetheless bears the burden of establishing the damages he or she is legally entitled to recover.” Therefore, the purpose of the hearing was only to determine the amount of damages.

At the proof of claim hearing, the proof took a curious turn. After Ms. Kiernan testified to the amount of her damages and was cross-examined, GEICO submitted medical affidavits of her medical providers (G.L. 1956 § 9-1-27) and rested. Ms. Blair was called in the defense case. Ms. Blair testified that she recalled the collision, but that the woman who drove the other vehicle was not Ms. Kiernan. At the conclusion of the hearing, GEICO moved that the testimony of Ms. Kiernan be stricken.

I

The Motion to Strike the Testimony of Ms. Blair

There is, and can be, no question of liability. As a result of her default, and as a matter of law, Ms. Blair was negligent and caused the damages to GEICO. GEICO satisfied Ms. Kiernan’s claim and sought recovery from Ms. Blair under subrogation principles. As the high court has stated, “Thus, due to their default, defendants are in a position of having admitted each and every material allegation of the plaintiffs’ complaint except as to the amount of damages suffered by plaintiffs. The element of proximate cause, as well as negligence, having been alleged in plaintiffs’ complaint is admitted due to the default of defendants and requires no further proof.” Calise v. Hidden Valley Condo. Ass’n Inc., 773 A.2d 834, 838 (R.I. 2001) (quotation omitted).¹ Calise then notes that raising defenses such as comparative negligence or issues of causation at a proof of claim hearing are inappropriate when the defendant has been

¹ Paragraph 5 of the Complaint states, “As a result of the negligence of the defendant [Dorothy Blair], the motor vehicle ran into, against, and upon the vehicle owned by Colleen Kiernan which at the time aforesaid was being operated by Colleen Kiernan, who was then and there and at all times in the exercise of due care. “

defaulted for failing. Calise, 773 A.2d at 838, citing Bashforth v. Zampini, 576 A.2d 1197 (R.I. 1990). Hence, the testimony of Ms. Blair cannot be used to question the liability of Ms. Blair for the motor vehicle collision.

While the issues of liability are all deemed admitted and remain unchallenged, the fact finder here is not determining liability. The Court is charged with determining the amount of damages, if any. Ms. Blair's testimony may be probative to the amount of damages or the credibility of the witnesses. Mindful of the inability to apply Ms. Blair's testimony to the issue of liability, comparative fault, or other liability defenses, the Court allows Ms. Blair's testimony.

The motion to strike is therefore denied.

II

Vacating the Default

If Ms. Blair had moved to vacate the default, cause has not been shown to the satisfaction of the Court to justify vacating the default. Clearly, Ms. Kiernan was served. She ignored the service of process and even admits rear-ending another car. She refused to respond to the Court and left herself in a most precarious position. Though she may doubt the sincerity of some of GEICO's witnesses now, she does not show even a scintilla of "good cause" for her failure to respond. Super. R. Civ. P. 55(c). Indeed, she offered no explanation for her tardiness or her failure to respond.² GEICO references an extensive string of federal cases to establish that a willful default should not be vacated. The default is not vacated.

² Ms. Blair never offered an explanation of why she failed to answer. She did not come forward until after the motor vehicle collision, after she failed to file a police report, after she received a demand letter from GEICO, after she was served with process, after she was defaulted *and* after she was served again.

III

The Motion to Strike the Police Reports

During Ms. Blair's cross-examination, GEICO offered police reports into evidence. The reports were offered to establish Ms. Blair's limited credibility, as she had been involved in other collisions and did not acknowledge them in her testimony. These police reports were not authenticated either by witness or by affidavit. Ms. Blair's counsel argued that the reports should not be admitted or marked as full exhibits. Ms. Blair acknowledged that she was involved in approximately five recent automobile collisions, but could not recall their locations. One of the police reports refreshed her recollection in part, as she eventually admitted being involved in the collision, which she had not recalled at all in her previous testimony. The reports were properly used in an attempt to refresh recollection, but remained inadmissible.

Though the reports are not admitted, the discussion of the reports and counsel's attempts to have them admitted through Ms. Blair's testimony assisted the court in measuring Ms. Blair's credibility. During the discussion, Ms. Blair eventually acknowledged involvement in other collisions. She did so only after seeing the alleged reports, which counsel handed to her in a vain attempt to lay a foundation for their admission.

Credibility is a constant problem for a finder of fact. It is the finder's role to determine whether or not a specific witness is telling the truth. A witness's memory and propensity for truthfulness are key factors in determining credibility. "One of the main functions of cross-examination is to afford an opportunity to elicit answers impeaching the witness's veracity, capacity to observe, impartiality, and consistency." McCormick on Evidence, 5th ed. Vol. 1, p. 97. Here, the mere discussion of police reports appropriately drew the witness to reveal her lack of candor on some, if not all, of the motor vehicle collisions. The discussion also revealed a

lack of memory—if she could not recall several collisions which she acknowledged, how did she have such a distinct recollection of the brief encounter on Reservoir Avenue in 2010?

Therefore, the reports are not admitted as full exhibits; yet, the witness's contemporaneous, sworn testimony (during the discussion of the reports) is appropriate for the fact finder to consider.

IV

Proof of the Claim

Ms. Blair's defense to the action and the motion for judgment is based on the contention that Ms. Kiernan was not truthfully testifying. According to Ms. Blair, Ms. Kiernan was not at the scene, and the driver of the other vehicle did not claim injury at the scene.

While doubting the credibility of Ms. Blair, as discussed above, the Court found Ms. Kiernan to be quite credible. Her memory was distinct, she was concerned about the high traffic and the safety of her child at the scene, and she revealed that her pain did not manifest itself until after the collision. She acknowledged that she was alarmed at the scene and did not promptly contact the police. Her testimony was consistent, she was careful to respond to both attorneys' questions completely and to the extent of her memory, she responded adequately and appropriately to cross-examination and her testimony remained consistent.

Ms. Blair never established that Ms. Kiernan or GEICO was defrauding the Court, nor did she establish, by even a preponderance of the evidence, that Ms. Kiernan was not the true driver of the vehicle which she rear-ended with her vehicle. Simply put, the Court is not persuaded by Ms. Blair's testimony and finds Ms. Kiernan to be a far more credible witness.

GEICO established the value of the damage to Ms. Kiernan's vehicle as \$3006.04 (Ex. 1). The medical expenses incurred total \$6495.00 (Exs. 2 and 3). GEICO also paid \$649.94 for

a rental vehicle, \$300.00 for the injuries to Ms. Kiernan's son, and \$20,000.00 for personal injuries to Ms. Kiernan (which apparently includes the medical bills and the \$10,998.00 in lost wages which Ms. Kiernan proved in her testimony).

V

Conclusion

Judgment shall enter in GEICO's favor for \$23,955.98, plus prejudgment interest, post-judgment interest and costs. Plaintiff's counsel shall prepare an appropriate judgment and deliver it to the court clerk in Courtroom 4 of the Providence County Courthouse.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Government Employee Insurance Company v. Dorothy Blair,
Alias

CASE NO: PC 12-3754

COURT: Providence County Superior Court

DATE DECISION FILED: December 6, 2013

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

For Plaintiff: Lynda L. Laing, Esq.

For Defendant: Peter J. Comerford, Esq.