



THE CITY OF KEY WEST

POST OFFICE BOX 1409
KEY WEST, FL 33041-1409
WWW.KEYWESTCITY.COM

Ronald Anglea v. City of Key West

2016-CA-918-K

Judge Timothy Koenig

Date of accident: 10/19/2014 city bus in Stock Island

Trial Memo

Plaintiff is a 65-year-old man who lives at 561-D Park Drive on Rockland Key. He has lived on and off of Key West and Big Pine Key since 1979. Plaintiff was born in CA, lived in HI, and went to high school in Jacksonville, FL. He currently lives with a roommate named Generva Coyle and pays \$600.00 per month in rent. He rents from Danny Acevedo (roofer). Plaintiff has been a widow for 4 years with no children.

Plaintiff has an engineering degree from the University of Florida and had a TV cable company based out of Big Pine Key called Paradise Engineering Corporation. The company engineered designs and plans for installing underground TV cable. The company dissolved in 2001. Plaintiff is a former homeowner in Big Pine Key. Plaintiff currently works part time in various ticket booths around town selling watersports trips for a company called Porter House Welcome Center. He has been known to occupy a booth on Duval St. across from Flamingo Crossing Ice Cream, as well as a booth at Margaritaville Resort. His boss is Shannon Gayton. At the time of the accident in October 2014, Plaintiff was also working part time at Dion's Convenience Store in Stock Island and as a bartender at Viva Saloon on Duval St. He stopped working at Dion's and Viva shortly after the date of injury.

Plaintiff claims that he has not driven since 2005. Plaintiff says that he was involved in a serious rear end car accident in Stock Island in 2005. He claims that he suffered a head injury and several contusions. He claims to have "fusion" in his neck, although he denies any prior neck or back surgeries. He also says that he had another motor vehicle accident in Jacksonville, FL in 1996 where he suffered a broken and removed right kneecap. He was driving a VW that rolled several times and he was ejected. He also claims to have suffered a head injury in that accident. He denies any walking or standing issues as a result. Plaintiff also claims to have had a 1976 worker's compensation injury to his back in

Jacksonville. No other treatment but for pain pills. Plaintiff also claims to have fractured his right ankle while playing football in high school with no resulting surgery. Plaintiff admits to having a "massive hemorrhagic stroke" in 2000. He was in a rehabilitation facility in Tucson, AZ for over a month while recovering. He claims that the left side of his

body was partially paralyzed for a couple of weeks. There is a vague reference to a 2nd stroke in 2014.

Plaintiff claims to enjoy fishing, scuba diving, snorkeling and “all things on the water”. He does not claim to be limited by his injury in doing these things, rather, “I just do it when I want to do it.” He does claim to have occasional pain only when he is reeling in a bigger fish while fishing. He states that his only current issues are that “I have not (sic) as great range of motion as I did before the injury.”

10/18/14: Plaintiff states that he had just finished his shift at Dion’s at around 11am and was getting on the City of Key West bus to go to his job at Viva. He states that he went to the 5th Ave and 5th St. intersection bus stop. Plaintiff states that he paid cash, saw the driver, Tim Haney (who was not the normal driver) and went to walk to the back of the bus to sit. He claims that although the bus was not full, he elected to sit in the back because he believed the seats to be more comfortable.

Plaintiff represents that he had walked all the way back to the rear seats, had already stepped up to the raised rear seats and was about to turn around 180 degrees to sit when the driver left the bus stop, thereby causing him to “fall”. When I asked him if he was still in the process of walking to his seat when the bus moved, he said no, that he had “finished walking to his seat already and was in the process of sitting down.” He then clarified and said that he was facing the forward-facing rear seat and was about to turn around 180 degrees to sit, when the bus began to move, causing him to lose his balance. He says that he tucked his arms in and fell to the ground on his left side (shoulder). He claims that there were no grab bars to hold on to at the rear of the bus. He says that he “may” have hit the seat on the way down but is not sure. He is very clear to state that he did not hyper-extend his arm or shoulder on the way down; rather, he tucked his arms in and fell. Plaintiff says that other passengers gasped or otherwise informed the driver non-verbally that something had happened. Plaintiff states that the driver looked back, saw him getting up from the ground to sit, then continued on. Plaintiff says that when the bus stopped again 4 miles later, at Palm Ave. depot. The driver asked him if he needed to go to the hospital and Plaintiff stated no, that he needed to go to work. Plaintiff states that he went to the hospital the next day, where they gave him a sling and referred him to Dr. Catana (ortho). Plaintiff did not have the rotator cuff repair until June 2015; 8-months later because he had no health insurance. Catana performed the surgery under a letter of protection. Plaintiff says that he did not stop work at the ticket booths because it was non-physical. He also claims that he continued working at Viva because it was Fantasy Fest time (October), but since it sold, he has not worked there since.

Plaintiff states that he elected early Social Security at 62-years old due to this injury and the resulting limit in income. He currently gets \$1,187.00 per month. He does not claim his income from ticket sales commission on his taxes.

Plaintiff claims to be able to lift his arm above 90 degrees, but not to 180 degrees. He states that he still rides a bicycle from time to time.

I did pull a lot of pictures off of Facebook showing Plaintiff “about town”. The deposition testimony of the driver Tim Haney indicated that Plaintiff had scuffed up and bloody knees

that day and appeared to be intoxicated. Since Plaintiff did not go to the ER until the next day, we do not have any medical reports to indicate intoxication. Further, in all candor, the bus driver came off as somewhat aggressive during deposition and angry that a suit was filed. Nevertheless, there are ample pictures on Facebook showing a pattern of daily drinking on the part of the Plaintiff. However, the requirements of 768.36 (2) are to show: *In any civil action, a plaintiff may not recover any damages for loss or injury to his or her person or property if the trier of fact finds that, at the time the plaintiff was injured:*

(a) *The plaintiff was under the influence of any alcoholic beverage or drug to the extent that the plaintiff's normal faculties were impaired or the plaintiff had a blood or breath alcohol level of 0.08 percent or higher; and*

(b) *As a result of the influence of such alcoholic beverage or drug the plaintiff was more than 50 percent at fault for his or her own harm.*

Without a blood alcohol showing of .08, or someone who can say that aside from his 2 strokes and head injuries, his normal faculties were impaired, proving this defense will be challenging. I have no Facebook pictures or records from 10/18/14 that I can use to support that defense as independent information. The only information I have is what Tim Haney is testifying to, and Plaintiff says that he was not the usual bus driver. Plaintiff states in deposition that the driver did not make inquiry into the Plaintiff's state until they got to the Palm Ave. stop; some 4 miles away. However, when I look at the surveillance footage, the driver let a handicapped passenger off at the Duck Avenue stop. When the driver was at the back of the bus resetting the seats once the wheelchair disembarked, Plaintiff is captured telling the driver that he had fallen earlier, and he wanted to make a note of it. The driver noticed his scuffed-up knees and asked Plaintiff about same. Plaintiff stated to the driver "that was from last night and had nothing to do with today". On the surveillance, the driver seemed relatively calm, and called in the complaint to dispatch immediately. There is no actual footage available of Plaintiff falling; only footage of Plaintiff sitting at the rear normally and the conversation between the driver and Plaintiff.

We went to mediation on this case and we reached an impasse. The Plaintiff was at \$85k and I was at \$20k. Since that time, we received a pre-trial proposal for settlement in the amount of \$42k. The parties reached a settlement agreement post-mediation for \$32k that is conditioned on approval by the City Commission. Trial has been set for October 15, 2018. The parties attended a pre-trial conference on 10/4/18 where we all announced ready for trial.

Nevertheless, I do have some level of concerns on this case. Although the bus surveillance footage cannot be used at trial (confidential and exempt under FL law), it does corroborate Tim Haney's testimony that Plaintiff's knees were scuffed up from a very recent fall, and the fact that Plaintiff admits to a fall prior to getting on the bus. Plaintiff presents as a very disheveled and long bearded man (see pics). When I met him at deposition, as well as at the pre-trial hearing on 10/4/18, he walked very slowly and shuffled his feet; consistent with someone who has experienced a stroke. His speech seems naturally slurred; again consistent with someone who suffers from the effects of a stroke. This can hurt us from the

perspective of establishing a 768.36 defense since the effects of a stroke can be confused with alcohol impairment and I am sure that that is how they will diffuse this affirmative defense. This is compounded by the *eggshell skull doctrine* (we take the Plaintiff how we find them) as well as the higher duty of care as a common carrier.

The only evidence we have of Plaintiff being a drunk are the Facebook pictures that show what can be argued as a *historical* pattern of excessive drinking; but again, none of it shows drinking on the date of the accident so it will likely be inadmissible, unless he claims that he *never* drinks, which is unlikely.

Plaintiff's medical bills total \$39,376.12 to Drs. Catana and Gill, as well as Lower Keys Medical Center for the rotator cuff repair. Given the higher duty of care that the city must abide by as a common carrier, the unlikelihood of proving a voluntary intoxication defense on the date of accident, tempered by his pre-existing health issues that mimic intoxication, a settlement of \$32k is very reasonable. I recommend approval of the settlement agreement.

Sincerely,
Ron Ramsingh 
Chief Assistant City Attorney
City of Key West