

MUSTAPHA EZZEDINE, Defendant/Appellant, v. **VARNIE SAMBOLA**,
Plaintiff/Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL
CIRCUIT, NIMBA COUNTY.

Heard MAY 19, 1988. Decided JULY 29, 1988.

1. The Civil Procedure Law, unlike the Criminal Procedure Law, does not require that a defendant be present at every stage of the trial.
2. The Civil Procedure Law provides that a party may be represented by himself in person or by an attorney or both.
3. A defendant may be required to be present in court where he is cited as a witness in his own behalf, but no trial may be postponed or continued simply because of the absence of the defendant even when he is cited as a witness.
4. The taking of exceptions to a ruling at a trial constitutes the correct preliminary step to confer appellate jurisdiction on the Supreme court.
5. Exceptions taken in the trial court and not included in the bill of exceptions are deemed waived by a party.
6. An exception shall be noted by a party at the time the court makes an order, decision, ruling, or comment to which he objects. A failure to note such exception shall prevent assigning it as error on review by the appellate court.
7. A party who excepts to an order, ruling, decision, comment and like is entitled to have his exception noted in the minutes of the court.
8. Exceptions must be taken to acts of the trial judge before they can be considered on appeal by the Supreme Court, and where not taken, an exception is deemed waived
9. It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of evidence.

10. The Supreme Court has authority to affirm, reverse, or modify a judgment on appeal or to render such judgment as the trial court should have rendered, within the reasonable discretion of the Court.

Appellee sued appellant for damages for injuries sustained by him when the appellant's vehicle in which he was traveling, and which at the time was being driven by appellant, ran into a trailer parked by the roadside. Appellee and his witnesses testified that the appellant, in his anger at someone, drove recklessly and that he refused to listen to the riders of the vehicle to drive with caution. Following a trial, the jury returned a verdict holding appellant liable to the appellee and awarding the latter \$60,000.00 for the injuries sustained by him. The verdict was confirmed by the trial court in its final judgment. From this judgment, an appeal was taken to the Supreme Court.

On appeal, the appellant argued that the trial judge had erred in denying his request for continuance, in his charge to the jury, in failing to pool the jury, and in affirming the verdict when the appellee had failed to prove his case by a preponderance of the evidence.

The Supreme Court, after a review of the case, rejected the several contentions of the appellant. The Court noted, with reference to the refusal of the trial court to grant a further continuance requested by the appellant so that he could be present in court, that as the appellant had not been cited as a witness to testify in his own behalf, it was not imperative that he be present in court for the trial as is the case in criminal proceedings where the defendant's presence is required. The Court noted also that as the appellant had not taken exceptions to the rulings of actions of the trial judge, he was considered to have waived the right to raise such issues on appeal. The Court observed that it could not hear or consider any issue to which no exceptions were taken or which, although taken, were not included in the bill of exceptions.

On the question of whether the appellee had proved by a preponderance of the evidence the liability of the appellant, the Court held that such proof had been made. The Court observed, however, that the medical report exhibited by the appellee did not show that the appellee was injured to such an extent as to warrant the exorbitant award made by the jury. The Court noted that the appellee had been released from the hospital the day following the accident and it reasoned that had the injuries been very serious, the appellee would have remained in the hospital for a longer period. Accordingly, under the power reserved to it by statute to affirm, reverse, or modify a judgment of the lower court and to give such judgment as should have been given by the trial court, the Supreme Court modified the award by reducing the same from

\$60,000.00 to \$15,000.00. As so modified, the judgment of the trial court was affirmed.

Toye C. Barnard appeared for the appellant. B. Anthony Morgan appeared for the appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

This case comes to this Court on appeal from the Eighth Judicial Circuit Court, Nimba County.

Appellee, plaintiff in the trial court, sued appellant, defendant in the said court, to obtain damages for injuries he sustained while riding to Sanniquellie in a car owned and driven by defendant. The appellee alleged in the complaint that the appellant had driven the car recklessly and had finally run into a trailer which was parked by the roadside somewhere between Unification Town and Sanniquellie. The injuries sustained by the appellee were described by the Chief Medical Officer at the Lamco Nimba Hospital as follows: "Multiple superficial facial lacerations with a frontal hematoma. Lacerated lower lip, lacerated upper lip mucosa." See Medical Report, No. 0362/'84, Dr. Konda Golafalie M.D. As a result of the injuries, appellee was admitted at the Lamco Hospital where he was treated and discharged the following day.

Appellee subsequently approached appellant to compensate him for the injuries he had sustained, but to no avail. Because appellee remained convinced that the defendant was angry with someone while driving from Unification Town to Sanniquellie, that he had driven too fast and recklessly, that he was cautioned to take care but ignored the said warning until he drove into the parked trailer and thereby caused the accident and the injuries to appellee, which appellee alleged to be permanent, appellee commenced an action of damages against the appellant.

Appellant filed an answer denying liability for the accident and the injuries sustained by the appellee. He contended that he had obtained a police clearance finding the driver of the trailer liable instead. He also referred to a judgment of the Nimba County Traffic Court which had earlier held the driver of the trailer liable for the accident. He therefore maintained that the complaint should be dismissed as frivolous and a mere tactic by appellee to enrich himself at appellant's expense. Appellant also contended that he had in fact exercised every care in driving until the trailer driver chose to stop abruptly in front of him, thus caused the accident, as evidenced by both the police clearance and the judgment of the traffic court

proferted with his answer.

At the trial appellant himself could not attend, but was represented by counsel. His counsel requested the court for postponement or continuance of the case on both the 9th and 12th September 1985, on the grounds that his client was ill and resting in Monrovia upon medical advise, and that since he was defending himself and was the principal witness in the case, the continuance would ensure his presence at a later trial. The trial judge denied the request on the ground that the case had been delayed and continued several times. The judge noted that in any case, since appellant was never cited as a witness, and was represented by counsel, the trial should be proceeded with.

Appellee produced two witnesses who were also riding with him in the defendant's car. They testified before the court and jury that the appellant had had a misunderstanding with a another person before they departed Unification Town for Sanniquellie, Nimba County, and that while driving the appellant had driven very fast and was unmindful of the road conditions. The said that although they had cautioned the appellant to use a little care, he continued to drive recklessly until he ran into a parked trailer and caused the accident alleged in the complaint.

Appellant's counsel produced no witnesses at all, not even to identify the traffic police clearance and the alleged judgment of the traffic court. Appellant himself was not in court to testify in his own behalf and to identify the proferted documents and there was no evidence of a subpoena being issued on him to appear as a witness in his own behalf.

After both sides had rested evidence, the jury deliberated and returned a verdict of liable against the appellant. In the verdict, the jury awarded appellee general damages in the amount of \$60,000.00 (Sixty Thousand Dollars). A motion for a new trial was filed, resisted and denied by the court, which thereafter rendered final judgment affirming the verdict. Counsel for appellant excepted to the judgment and announced an appeal to this Court which was granted. The appeal having been perfected, the case is now before this Court for our review.

In his ten count bill of exceptions, appellant accused the trial judge of being bias in refusing a continuance prayed for by appellant in order to ensure his appearance as he was to be a material witness in his own behalf. He also accused the trial judge of refusing to poll the jury after its deliberations, and asserted that the judge committed a reversible error in his charge to the jury also. Appellant alleged that the appellee

had not proved his allegations of a permanent injury, and argued that the award of \$60,000 by the jury and its affirmation by the trial judge were erroneous. Moreover, appellant referred to the police clearance and the traffic court judgment exonerating him from liability for the accident, noting that the judge committed a reversible error in refusing the admission of those documents into evidence.

For his part, appellee in his brief prayed that this Court uphold the judgment of the trial court since he had proved his case by a preponderance of the evidence. He maintained that the denial of appellant's motion for continuance and the alleged refusal of the trial judge to poll the jury after its verdict to ascertain whether there was agreement amongst the jurors regarding the verdict were never excepted to by the appellant, and that therefor those matters could not be raised as issues on appeal. Furthermore, he said, since the appellant had not objected to the charge to the jury, he could not legally assign same as error.

Concerning the absence of the appellant from the trial, appellee contended that not only was the appellant represented by counsel but also that he (appellant) was not cited or summoned to testify in his own behalf. Therefore, appellee concluded, his absence was no reason for a continuance.

From the foregoing contentions, this Court singles out four major issues for its review:

1. Whether or not it is legally required that a defendant in a civil case be present in court at every stage of the trial as is the case in a criminal proceeding.
2. Whether or not this Court can review issues on appeal that were not excepted to during the trial and made a part of the bill of exceptions.
3. Whether or not appellee had in fact proved his case by a preponderance of the evidence.
4. Whether or not under the scope of review this Court can reduce the amount of damages awarded.

Appellant's counsel has argued that the refusal of the trial judge to continue or postpone the trial until the appellant had a chance to attend, as he was his own major witness, was bias and a reversible error. Accordingly, with regards to the first issue,

we seek to know whether or not a defendant in a civil case should be present in court at every stage of the trial as in a criminal trial.

The Civil Procedure Law, unlike the Criminal Procedure Law, does not require that a defendant be present at every stage of the trial. In the Criminal Procedure Law the defendant is required to be present at each stage of the trial. Criminal Procedure Law, Rev. Code 2: 2.4. However, this is not the case in civil matters. The Civil Procedure Law provides that a party may be represented by himself in person or by attorney, or both. Civil Procedure Law, Rev. Code 1: 1.8. Of course a defendant may be required to be present in court where he is cited as a witness in his own behalf, but no trial may be postponed or continued simply because of the absence of defendant, even when he is cited as a witness unless it can be shown by the sheriff's returns that he was summoned to serve as a witness and every effort was made to get him to appear at the trial. Civil Procedure Law, Rev. Code 1: 21.5 (a) and (b); Revised Rules of Court, Circuit Court Rule 7.

At the trial in this case it was not shown that the appellant was summoned as a witness. In fact, he was represented by a counsel, albeit a careless one; and he was not slated to represent himself at the trial. Therefore, there was no legal reason for appellant to have been required to be present in court for the trial. Hence, there was no legal reason for the trial judge to grant a continuance.

We next proceed to the issue of whether or not this Court can review issues on appeal that were not excepted to during the trial and made a part of the bill of exceptions. Appellant alleges that he was denied the right of continuance and that the trial judge failed to poll the jury after its verdict. Appellee contends however that appellant did not except to the ruling on the subjects by the trial judge and that therefore this Court cannot legally piss on the said issues.

This Court has held in the past that the taking of exceptions to a ruling at a trial constitutes the correct preliminary step to confer appellate jurisdiction on this court. *Coleman et al. v. Beysolow et al.*, 12 LLR 234 (1955). This Court has also held that exceptions not included in the bill of exceptions are deemed waived by a party. *Richards v. Coleman*, 6 LLR 285 (1938); *Blamo v. Republic*, 17 LLR 232 (1965); *Monrovia Construction Company v. Wazani*, 23 LLR 58 (1974); *Wilson v. Dennis*, 23 LLR 263 (1974). Finally the statute itself provides that "[a]n exception shall be noted by a party at the time the court makes any order, decision, ruling, or comment to which he objects. Failures to note an exception to any such action shall prevent assigning it as error on review by the appellate court. The party who excepts is

entitled to have his exception noted in the minutes of the court." Civil Procedure Law, Rev. Code 1: 21.3.

We therefore conclude that exceptions must be taken to acts of the trial judge before they can be considered by this court on appeal; and where that is not done, an exception is deemed waived.

We shall now consider the third issue, which is whether or not appellee proved his case by a preponderance of evidence.

We realize from the records that appellant admitted the occurrence of the accident and the injuries sustained by appellee, even though in his answer he disavowed liability for same. However, at the trial appellee produced two other witnesses with whom he rode in the appellant's car at the time of the accident. These witnesses, together with the appellant, testified to the occurrence of the accident and how the appellant was angry when he left Unification Town on the day of the accident en route to Sanniquellie. They testified further that appellant was then driving very fast and was unmindful of the road conditions, and that as the car galloped and rocked from side-to-side, they warned him to exercise a little caution, but that he remained unmindful of their caution until he suddenly ran into a trailer parked by the side of the road, causing the accident in which appellant was flung outside the car which was itself damaged beyond repair. They concluded their testimony by stating that it was from this accident appellee sustained his injuries and was treated at and discharged by the Lamco Nimba Hospital, as was evidenced by the Medical Report issued by the said hospital.

The appellant for his part filed an answer, and, after several continuances, his counsel requested the trial court on the day of the trial to grant him a further continuance. This request was denied by the court and the trial was ordered proceeded with. Appellant's counsel produced no witnesses to back up his denial of appellee's charges against him. The appellant was not in court himself to testify to his own behalf and his counsel did not summon the traffic police to testify to the police clearance issued to appellant regarding the accident. The clerk of the traffic court was also not summoned to be in court to testify to the judgment of the traffic court exonerating appellant from liability for the accident and holding instead the trailer driver liable. Indeed, appellant's counsel was totally negligent in handling the matter, and appellant can blame none for the situation but himself and his counsel.

We are therefore of the opinion that appellee had proved his case by a preponderance of the evidence, while appellant did not produce any evidence. Our statute provides that: "It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of evidence." Civil Procedure Law, Rev. Code 1: 25.5.

The final issue is whether or not this Court can review and modify a verdict by reducing the amount awarded by the trial jury and confirmed by the trial court if the said amount is found to be unduly excessive.

We have authorities showing that the Supreme Court may affirm, reverse or modify a judgment on appeal or render such judgment as the trial court should have rendered; and this is in the reasonable discretion of the Court. *Vamply of Liberia, Inc., v. Bolo*, 27 LLR 358 (1978) *Wahab v. Helou Brothers*, 24 LLR 250 (1975); *Williams and Williams v. Tubman*, 14 LLR 109 (1960); *Simpson et al. v. Caranda and Jones-Clarke*, 13 LLR121 (1957); Civil Procedure Law, Rev. Code 1: 51.15 and 51.16.

In making use of this authority of the Court, we are of the considered opinion that the Medical Report exhibited by appellee failed to show very serious injuries as would have warranted an award of general damages in the amount of \$60,000.00. The said report even indicated that the appellee suffered "superficial lacerations" and that he was treated and discharged the following day. We note as a matter of fact that if the injuries appellee sustained had been very serious, he would have been admitted and treated over a longer period than indicated in the said report.

Therefore, while we have no quarrels with the verdict of liable against appellant, yet, we have reasoned that the general damages awarded are too high in the circumstances of this case. For that reason we feel constrained, in the interest of justice, to modify the said award to the sum of \$15,000.00 instead.

The Clerk of this Court is ordered to send a mandate to the trial court from whence this appeal arose to resume jurisdiction over the case and to enforce its judgment as modified. And it is hereby so ordered.

Judgment affirmed with modification.