Circuit Court for Baltimore City
Case No. 24-C-18-001335

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 646

September Term, 2019

JAMAAL TAYLOR

v.

TOKIO MARINE INSURANCE COMPANY, et al.

Graeff,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: June 18, 2020

Jamaal Taylor ("Taylor") was, on September 8, 2017, stopped in his car at a red light on Orleans Street in Baltimore City when his vehicle was struck in the rear by a car driven by Nistarsha Andrea McCoy ("McCoy"). At the time of the accident, McCoy's vehicle was insured under a policy issued by Farmers Insurance Company with liability limits of $30,000 per person and $60,000 per accident. Taylor was insured under a policy issued by Tokio Marine Insurance Company ("Tokio"); the Tokio policy included uninsured/underinsured motorist coverage with limits of $500,000 per accident.

Taylor brought a claim for personal injuries in the District Court for Baltimore City against McCoy. He claimed damages of $25,000. McCoy, by counsel, filed an answer in which McCoy contended that the accident was caused by an unknown or "phantom" driver.

Taylor filed an amended complaint in the District Court in which he added a second count, alleging a cause of action against Tokio, his own insurer. He alleged that Tokio's policy issued to him included coverage for damages caused by a "phantom vehicle that did not remain at the scene" of an accident, such as the phantom vehicle alleged by McCoy to have caused the subject accident. Taylor asked for damages in the amount of $25,000 in each count.

Tokio filed a jury trial demand and a request that the case be transferred to the Circuit Court for Baltimore City. After the case was transferred, Taylor filed a complaint in the circuit court that was, in substance, the same as the one filed in the District Court, except that he claimed damages "in excess of seventy-five thousand dollars" plus attorneys' fees and costs.

Prior to trial, Taylor's counsel took the deposition of McCoy. At the deposition, McCoy admitted that all three drivers involved in the accident remained at the scene until the police completed their investigation and thus no phantom vehicle was involved in the accident. Thereafter, Tokio filed a motion *in limine*, asking the court to exclude from the trial "the identification of and reference to Tokio[.]" In the alternative, Tokio asked that for the purposes of trial, the court sever the claim against it from the claim against McCoy. Taylor filed a written opposition to Tokio's motion and the matter was argued on the morning that trial was set to commence.

At the hearing, counsel for McCoy admitted that his client was liable for the accident. This admission eliminated any possibility that the jury would find that a phantom vehicle caused the accident. Counsel for Tokio then stated in open court that his client would pay any judgment rendered against McCoy that was over McCoy's $30,000 policy limit up to Tokio's $500,000 uninsured/underinsured policy limits if the court were to grant Tokio's motion to sever. Counsel for McCoy agreed with Tokio's counsel that it would be confusing to the jury if Tokio's claim was not severed from the case. McCoy's counsel also contended that under Section 19-511 of the Insurance Article, Taylor's breach of contract action against Tokio was not "ripe" because for there to be a breach of contract against Tokio, McCoy's carrier would first have had to have agreed to pay its $30,000 limits and then Tokio would have had to have refused to pay any additional monies; but here, it was undisputed that McCoy's carrier had not offered to pay its limits.

The trial judge did not grant Tokio's motion *in limine* but granted Tokio's motion to sever and excused counsel for Tokio. The court then allowed the jury to hear the case

with McCoy as the only defendant. In opening statements, counsel for both parties pointed out that the issue of liability need not be decided by the jury because McCoy admitted that her negligence caused the accident.

The jury returned a verdict in favor of Taylor and against McCoy in the amount of $1,560.36. Because the verdict was within the liability limits of McCoy's policy, the court immediately directed the clerk to enter a judgment against Taylor and in favor of Tokio as to Count II – the breach of contract count. Judgment was also entered in favor of Taylor against McCoy in the amount of the jury verdict.

Taylor filed a motion for new trial in which his sole contention was that the trial judge denied him the right to a fair trial because he granted Tokio's motion to sever. The court denied the new trial motion. This timely appeal followed, in which Taylor presents one question, which he phrases as follows:

> Did the trial court abuse its discretion and commit prejudicial error in severing the [a]ppellant's breach of contract claim for uninsured motorist benefits the morning of trial, resulting in prejudice of the [a]ppellant's right to recovery of fair damages by precluding him from identifying the breach of contract claim against the insurer or [identifying] the insurer as a defendant during the course of the trial?

DISCUSSION

Appellant argues:

> The [t]rial [c]ourt [d]eprived [a]ppellant of [h]is [r]ight to a [f]air [t]rial on [d]amages by [s]evering [a]ppellant's [b]reach of [c]ontract [c]laims for [u]ninsured [m]otorist [b]enefits[ ] and [p]recluding [h]im [f]rom [p]resenting [h]is [c]laim [a]gainst [h]is [i]nsurer to the [j]ury [d]uring the [t]rial.

In support of that argument, appellant places sole reliance on the case of *King v. State Farm*, 157 Md. App. 287 (2004). The *King* case had its origin on February 9, 2001 when Penelope King, when crossing a street while in the pedestrian crosswalk, was struck by an automobile driven by one Wendy Farley. *Id*. at 289. At the time of the accident, Ms. Farley was insured for liability under a policy issued by Allstate Insurance Company ("Allstate"). Allstate, on behalf of its insured, settled the case with Mr. and Mrs. King for $20,000. *Id*. at 289.

When the accident occurred, Mrs. King and her husband were insured by State Farm Mutual Automobile Insurance Company ("State Farm"), under a policy that contained underinsured motorist coverage ("UIM") with UIM policy limits of $100,000 per person and $300,000 per occurrence. *Id*. at 290. After the settlement with Allstate, Mrs. King and her husband brought an action against State Farm in which they claimed $80,000 in their addendum. In their complaint, the Kings also included a second claim against the insurance agent through whom they had obtained their State Farm policy. *Id*. at n.3. They also included a claim against State Farm, on a *respondeat superior* theory, based on the allegation that the insurance agent negligently failed to advise them "'of the alternatives or need for higher coverage limits for uninsured motorist coverage.'" *Id*. Prior to trial, the circuit court bifurcated the *respondeat superior* claim against State Farm and the negligence claim against the insurance agent from the claim against State Farm on its UIM policy. *Id*.

Before the UIM claim was tried, the Kings and State Farm agreed that Ms. Farley was solely responsible for the accident, that State Farm's UIM policy was in effect at the

time of the accident and that State Farm's limits were $100,000 per person/$300,000 per accident and that the credit against any verdict in favor of Mrs. King against State Farm would be $20,000. *Id*. at 290. The parties, however, "sharply disputed" the extent of Mrs. King's injuries. *Id*.

As of the date of trial, the only defendant before the court was State Farm, who, on the morning of trial, filed a motion *in limine* to prevent the plaintiffs from identifying it as the defendant. *Id*. Relying on Maryland Rule 5-411, which deals with the exclusion of references to liability insurance, State Farm argued that it was "'inherently prejudicial to discuss the insurance coverage.'" *Id*. Counsel for Mrs. King disagreed and argued that "'the mere fact that an insurance company is a party to a case is not a basis to claim prejudice.'" *Id*. Plaintiff's counsel also contended that State Farm "'now want[s] to make up a fictious case[.]'" *Id*. The trial judge in *King* granted the motion *in limine*. Her reasoning was as follows:

> [A]ll this jury is going to be asked to consider is the injuries suffered and the damages that they're entitled to.
>
> So, I agree there are cases where it would not be appropriate to limit any mention of State Farm. I don't think in the context it's presented here, or the posture of the case at this time that there is really any reason to get into that. The question is damages. So I am going to grant the defense motion *in limine* in terms of referencing the case.

Id. at 290-91.

The trial judge in *King*, acceding to State Farm's request, ruled that when the case was called, neither the name of State Farm nor Ms. Farley should be mentioned. *Id*. at 291. Once the jury was selected, the trial judge told the jurors:

> [T]he case which is pending before this Court now is a civil case and it involves an incident which occurred on February the 9th, 2001, in the vicinity of Kelly Avenue and Sulgrave Avenue in Baltimore City. On that date, Mrs. Penelope King, who is a plaintiff in this case, was a pedestrian. She was struck by a motor vehicle while she was crossing the street.
>
> It is admitted in this case that the driver of the car which struck Mrs. King was negligent in striking her and was the sole cause of the occurrence. It is further admitted and understood that Mrs. King was not at fault in any sense in this case.

Id.

During his opening statement, counsel for State Farm told the jury his name but did not tell them the name of his client. Instead, he said "'I'm the attorney for the defendant in this matter.'" *Id*. at 292.

After a three-day trial, the jury returned a verdict in favor of the Kings in the amount of $16,999.93. *Id.* Judgment on that verdict was entered as satisfied based on the Kings' prior settlement with Allstate. *Id*. The Kings appealed to this Court and contended that the trial judge committed reversible error because "'the identity of a party is not a matter of mere evidence, but is fundamental to the rule that the trier of fact must be aware of the real parties in interest to the litigation.'" *Id*. State Farm's rejoinder to that argument had two parts. First, it contended that Md. Rule 2-201, which requires that "'[e]very action shall be prosecuted in the name of the real party in interest,'" applies only to plaintiffs. It asserted that whether a defendant is to be identified is "an evidentiary ruling that, under the circumstances . . . [of the subject case], was within the discretion of the trial court." In the alternative, State Farm contended that the prohibition against identifying State Farm, even

if it were an abuse of discretion, was harmless error. *Id*. This Court reversed the judgment and remanded the case for a new trial. *Id*. at 303.

The *King* Court began its analysis by pointing out what the ordinary procedure should be when a UM/UIM carrier is sued for breach of contract. In that regard, the Court ruled that "[u]nder ordinary circumstances this contract action on first party coverage proceeds with the defendant insurer identified to the jury." Judge Rodowsky, speaking for this Court in *King*, then segued to a discussion about what courts in other states have said about cases that were litigated with the identity of a party not being identified. *Id*. at 294-98. In this regard, this Court analyzed "John Doe" cases where a litigant, almost always a plaintiff, was allowed to proceed using a pseudonym. *Id*. The *King* Court, quoting *Doe v. Rostker*, 89 F.R.D. 158, 161 (N.D.Cal. 1981), identified the characteristics of cases where plaintiffs were allowed to proceed anonymously:

> [t]he most common instances are cases involving abortion, mental illness, personal safety, homosexuality, transsexuality and illegitimate or abandoned children in welfare cases. The common thread running through these cases is the presence of some social stigma or the threat of physical harm to the plaintiffs attaching to disclosure of their identities to the public record.

157 Md. App. at 296.

The *King* Court went on to state that an analysis of out-of-state cases appeared to show that "concerns by plaintiffs that they will suffer adverse economic [as opposed to social] consequences unless permitted to proceed anonymously have not persuaded courts to conceal the identity of a litigant." *Id.* at 296.

We held that State Farm, a corporation, had no personal right of privacy and its "unsubstantiated belief" that disclosure of its identity as "the defendant would adversely

affect the jury's verdict furnishes insufficient justification for withholding from the jury, and from the general public, [its] identity as the defendant at a public trial." *Id*. at 298.

The *King* Court then turned to the issue as to whether failure to disclose State Farm's identity was prejudicial to the plaintiff. In that regard, the Court rejected State Farm's contention that because the sole issue presented in the case was the amount of damages the plaintiffs suffered, the identity of the defendant was irrelevant. *Id*. at 299. We rejected that argument because strong public policy reasons support the right of public access to civil proceedings. *Id*. at 299. "[T]he right of open access is a *public* one" and therefore, when that right is denied, it is not only the litigants that suffer damages. *Id*. at 297. Citing several out-of-state cases, we stressed the importance of having the jury know that a party before it is the plaintiff's UM/UIM carrier. *Id*. at 301-02. The *King* Court concluded that the trial judge's failure to let the jury know the identity of the sole defendant in the case was a "significant deviation[] from a required procedure established to protect an important interest"; when such a deviation is shown to exist, prejudice is presumed. *Id*. at 303. The holding of the *King* Court was that "under the facts of the instant case, the court's ruling, concealing State Farm's identity and role as the party defendant, infringed on the role of the jury and created a significant procedural error that requires reversal." *Id*.

The principles enunciated by this Court in *King* were examined in *Davis v. Martinez*, 211 Md. App. 591 (2013). The facts in the *Davis* case were virtually identical to those in *King* except in *Davis* there were, at trial, two defendants, i.e., the driver alleged to be negligent, Tania Martinez, and State Farm Insurance Company which, as in *King*, provided underinsured motorist coverage to the plaintiff. In *Davis*, the trial judge granted a motion

in limine filed by Martinez that precluded any mention to the jury of State Farm's presence at trial as a defendant. *Id*. at 594. As a result, State Farm's attorney participated at trial but the identity of his client was not revealed to the jury. *Id*. When State Farm's counsel was introduced, he simply stated his name and that he was "'another lawyer in this case.'" *Id*. "During *voir dire*, the court described the case as a motor vehicle negligence action against Martinez alone." *Id*. The jury returned a verdict in favor of Martinez. The plaintiffs filed an appeal in which they contended, citing *King*, that they were entitled to a new trial on the grounds "that the trial court erred by hiding State Farm's presence from the jury." *Id*. at 595. In *Davis*, this Court concluded its opinion as follows:

> Here, the jury was led to speculate as to the true identity of State Farm's counsel. The jury was also unaware of the relationship between the defense's medical expert—who was State Farm's witness—and State Farm, which might have gone to the expert's credibility. The circuit court erred in granting Martinez's motion [*in limine*] as it violated the clearly established principle that the jury should be made aware of the precise identity of a UIM carrier if it is a party at trial. *See King*, 157 Md. App. at 300-01, 850 A.2d 428.
>
> The trial court abused its discretion in excluding evidence of UIM coverage from the jury. The trial court's decision was not an evidentiary one that constituted mere harmless error, but rather one of basic trial procedure that led to the jury not knowing which party State Farm's attorney represented at trial. We, therefore, reverse the trial court's judgment.

Id. at 600-01 (emphasis added).

In the subject case, the appellant does not mention *Davis* in his brief, but claims that the *King* case is completely apposite. The appellees, McCoy and Tokio Marine, contend that *King* is inapposite because it contains no discussion, whatsoever, about the propriety, *vel non*, of the grant of a severance; instead, as the appellees stress, *King* concerns a

situation where the UIM carrier was the only defendant at trial, making a severance impossible at that point.

We agree with the appellees, that *King* is inapposite. The sole error committed by the trial judge in the *King* case is that the judge, in a jury trial, hid from the jury the identity of the only defendant in the case that was being tried. The jury, as well as the public, have a right to know who the parties are to the case that is being tried. *See Davis*, 211 Md. App. at 595. But in both *King* and *Davis*, the jury was kept in the dark as to who were the real parties in interest that were litigating the case and, in both cases, the jury had no way of knowing what client or clients State Farm's lawyers were representing when the lawyers tried the cases. In contrast, at trial in the subject case, the defendant was correctly identified and there was no ambiguity as to the identity of the party whom defense counsel represented. Counsel for the underinsured motorist carrier, Tokio, did not in any way participate in the trial. More important, when the trial judge bifurcated the two counts in this case, he did not deviate from any established procedure. Instead, count two of the complaint was bifurcated from count one, for trial purposes, pursuant to Md. Rule 2-503(b) which provides:

> **Separate trials.** In furtherance of convenience or to avoid prejudice, the court, on motion or on its own initiative, may order a separate trial of any claim, counterclaim, cross-claim, or third-party claim, or of any separate issue, or of any number of claims, counterclaims, cross-claims, third-party claims, or issues.

"When considering whether to bifurcate a case pursuant to Rule 2-503(b), a trial court considers both convenience *and* prejudice as either factor can provide a basis to

bifurcate the issues in a trial." *Saint Joseph Medical Center, Inc. v. The Honorable John Grason Turnbull, II*, 432 Md. 259, 278 (2013).

In the subject case, the trial judge did not explicitly state why he was granting the motion to sever. But from reading the colloquy between the court and counsel, it is clear that he granted Tokio's motion because he believed that a severance would serve the convenience of the parties inasmuch as Tokio had stipulated that it would pay any judgment over $30,000 (McCoy's liability policy limits under her Farmer's Insurance Company policy) up to $500,000, which was the underinsured limit of the Tokio policy. With that stipulation, there was no possibility, whatsoever, that there would be a need for a second trial as to Count II. We say this because, if the jury verdict was under $30,000, Tokio would have no contractual liability to the plaintiff. On the other hand, based on Tokio's stipulation, if the verdict was between $30,000 and $500,000, Tokio would have to pay the entire judgment, less a $30,000 credit; if the verdict were more than $500,000, Tokio would have no contractual obligation to pay any part of the verdict that exceeded $500,000. Under such circumstances, there was no legitimate reason to deny the motion to sever and to go forward with the trial with two separate attorneys representing two separate defendants and two defense attorneys cross-examining witnesses, presenting evidence and making opening statements and closing arguments.

The case of *Myers v. Celotex Corp*., 88 Md. App. 442 (1991), dealt with the issue of whether a trial judge erred when she decided that three separate trials might be necessary to decide one case. We affirmed the trial judge's decision to sever. *Id*. at 450. Judge Bloom, speaking for this Court, said:

> In *Newell v. Richards*, 83 Md. App. 371, 387, 574 A2d 370, *cert. granted*, 321 Md. 449, 583 A.2d 249 (1990), we observed, "The decision to bifurcate a trial is within the discretion of a trial judge. Such a decision is subject to the abuse of discretion standard of review." *See also, McGarr v. Boy Scouts of America*, 74 Md. App. 127, 142, 536 A.2d. 728, *cert. denied*, 313 Md. 7, 542 A.2d 844 (1988). The decision to "trifurcate" a trial, of course, involves the same exercise of judicial discretion. Thus, in determining whether the trial court abused its discretion in trifurcating the case *sub judice*, we must first determine whether the court's decision served the purpose of Rule 2-503(b) and whether appellants suffered any unfair prejudice as a result of that decision.

Id. at 448-49.

In the case at hand, it is clear that the trial judge's ruling to sever did serve the purpose of Md. Rule 2-503(b). As we said in *Newell v. Richards*, 83 Md. App. 371, 387 (1990), "[t]here is no question that the bifurcation of the trial served the purpose of Rule 2-503 in that, if the answer to the first question [did the plaintiff comply with the statute of limitations] was in the negative, there need be no trial on the second issue [was the healthcare provider negligent]."

The appellant has not come close to meeting his heavy burden of demonstrating that the trial judge in this case abused his discretion by granting the motion to sever. That burden was described in the case of *In re Adoption/Guardianship* No. 3598, 347 Md. 295 (1997):

> There is an abuse of discretion "where no reasonable person would take the view adopted by the [trial] court[ ]" . . . or when the court acts "without reference to any guiding rules or principles." An abuse of discretion may also be found where the ruling under consideration is "clearly against the logic and effect of facts and inferences before the court," . . . or when the ruling is "violative of fact and logic[.]"
>
> Questions within the discretion of the trial court are "much better decided by the trial judges than by appellate courts, and the decisions of such

> judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred." In sum, to be reversed
>
> > [t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

Id. at 312-13 (citations omitted).

Appellant makes no meaningful argument in support of his contention that the trial judge abused his discretion in granting the motion to sever in this case. He simply argues, that this Court [in *King*] "determined that the trial judge had abused her discretion in precluding the plaintiff from mentioning the breach of contract claim for uninsured motorist benefits, or in even mentioning the name of the insurer." But, as previously explained, *King* is inapposite because that case did not deal with a motion to sever; instead, the *King* case dealt with a situation where the trial judge failed to follow established practice when she kept secret from the jury the name of a defendant who was defending a claim that the jury was called upon to decide. In sum, appellant has failed to demonstrate that the trial judge, in granting the severance, failed to follow established practice, i.e., the practice spelled out in Maryland Rule 2-503(b). Accordingly, we hold that the trial judge did not abuse his discretion when he granted the severance motion.

Moreover, even if appellant had been able to convince us that the trial judge did abuse his discretion in granting the severance, appellant failed to demonstrate that he was actually prejudiced by that "error." This is important because ordinarily in a civil case, an appellant must prove not only that the trial judge erred but must also prove that the error was prejudicial. *See Sumpter vs. Sumpter*, 436 Md. 74, 82 (2013) ("'appellate courts of

this State will not reverse a lower court judgment for harmless error: the complaining party must show *prejudice* as well as *error*.'" (*quoting Harris v. David S. Harris, P.A.*, 310 Md. 310, 319 (1987))). The lone exception to that rule is when prejudice is presumed, when, as in *King*, the trial judge significantly deviates "from a required procedure established to protect an important interest. . . ."[1] *King*, 157 Md. App. at 303.

For all the above-mentioned reasons, we affirm the judgment of the trial court.[2]

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[1] Other examples where prejudice was presumed were set forth in *King*, 157 Md. App. at 303, as follows:

> *Safeway Stores, Inc. v. Watson*, 317 Md. 178, 562 A.2d 1242 (1989) (erroneous exclusion of corporate defendant's representative from trial); *Harris v. David S. Harris, P.A.*, 310 Md. 310, 320, 529 A.2d 356, 361 (1987) (erroneous disqualification of counsel selected by party); *King v. State Roads Comm'n*, 284 Md. 368, 372, 396 A.2d 267, 270 (1979) (erroneous impairment of parties' exercise of peremptory challenges with result that trial judge "had more to say about who would not sit on the panel than either of the parties"); *Wyatt v. Johnson*, 103 Md. App. 250, 653 A.2d 496 (1995) (failure to use statutorily required itemized verdict sheet in personal injury case).

[2] Counsel for Tokio claims that appellant did not appeal from a final judgment. In support of that claim, counsel first points out that: "[t]he general rule as to appeals is that, subject to a few, limited exceptions, a party may appeal only from a final judgment." Tokio's counsel argues that because the only issue raised by appellant concerned the court's decision to sever, the final judgment rule was violated inasmuch as granting a severance is not a final judgment. The rule was not violated. Appellant filed his appeal only after a final order (the denial of his motion for new trial) was docketed. Because appellant filed a timely appeal after that denial, he could raise on appeal any issue decided by the trial judge that he contends was both erroneous and prejudicial to him. There was no requirement that he raise on appeal the issue decided in the order that made the judgment final. Tokio also contends that a new trial on the negligence claim is barred by the *res judicata* doctrine. We need not decide this issue because, for reasons explained above, we affirm the judgment entered below in favor of both defendants.