Circuit Court for Prince George's County
Case No. CAL15-16143

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1170

September Term, 2016

OCTAVIUS JONES

v.

STATE FARM INSURANCE COMPANY

Meredith,
Leahy,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: September 26, 2017

On April 2, 2015 Octavius Jones ("Mr. Jones") filed suit in the District Court of Maryland for Prince George's County against State Farm Insurance Company ("State Farm"). Mr. Jones alleged that he was injured in an automobile accident on February 21, 2014 when another motorist negligently collided with his vehicle and then fled on foot. Mr. Jones further alleged that the identity of the driver of the striking vehicle has never been discovered.

At the time of the accident, Mr. Jones was insured by State Farm under a policy that provided him with uninsured motorist coverage. In his statement of claims, Mr. Jones asked that a judgment be entered in his favor against State Farm in an amount "not exceeding" $30,000 plus interest from the date of the accident and costs.

State Farm demanded a jury trial and the case was transferred to the Circuit Court for Prince George's County. A one-day jury trial was held on June 28, 2016. At the conclusion of the case, the jury was asked to answer two questions that were set forth on a special verdict sheet. The first question was: "Do you find that the February 21st, 2014 car crash was the cause of Octavius Jones's injuries?" The jury answered that question in the affirmative. The second question was "What amount do you allow Octavius Jones for the following: Non[-]economic damages?" The jury responded to that question by awarding Mr. Jones $8,000.

After a judgment in favor of Mr. Jones in the amount of $8,000 was entered against State Farm, Mr. Jones filed a timely appeal to this Court in which he raises two questions phrased as follows:

1) Did the lower court err by disallowing proof and argument of the elements of an insurance contract in a breach of contract case?

2) Did the lower court err by refusing to give MPJI-Cv 14:1, insurance defined, in a breach of insurance contract case?

We shall answer both questions in the negative and affirm the judgment of the Circuit Court for Prince George's County.

I.

BACKGROUND FACTS

In her opening statement, counsel for Mr. Jones told the jury the following facts, none of which were ever disputed by counsel for State Farm:

- Mr. Jones, on February 21, 2014, was stopped at a stop sign on Opus Avenue in Prince George's County, near the intersection of Opus and Boundary Avenue. Mr. Jones looked to his right and saw a 1992 Ford Explorer coming "quickly" down Boundary Avenue; the Ford Explorer turned the corner onto Opus Avenue and crashed into the right passenger side of the 2004 Infiniti that Mr. Jones was driving.
- The impact caused Mr. Jones to be "jolted" to the left and his head hit the driver's side door.
- The driver of the Explorer and his passenger jumped out of the vehicle and ran from the scene of the accident.
- The police attempted to "track down" the driver and the passenger of the Ford Explorer, but were unsuccessful in their efforts.
- After the accident, Mr. Jones filed a claim against the insurer of the 1992 Ford Explorer. The company that insured the Explorer sent a letter to Mr. Jones notifying him that there was no insurance coverage available because the Explorer had been stolen prior to the accident and therefore the owner of that vehicle was not liable for damages.
- Mr. Jones, the driver of a 2004 Infiniti, then brought a claim against State Farm for the damages and injuries that he sustained in the crash.
- The reason why Mr. Jones was suing State Farm was because State Farm had "insured the Infiniti since 2010" for all damages caused by a hit and run driver.
- As part of the policy that was issued by State Farm, there was "an uninsured or underinsured provision." This means that if a driver is involved in a crash with someone who "doesn't have enough coverage, [or] is uninsured, or causes the

collision and is not able to be located, . . . [then] their insurance coverage will cover damages and injuries sustained[.]"

- "[W]hen I say damages, I am not talking about State Farm and their conduct in this matter. I'm talking about the injuries that Mr. Jones sustained as a result of the crash on February 21, 2014 and the changes that those injuries caused in his life, as a result of that uninsured motorist."

At trial, counsel for State Farm stipulated that at the time of the accident, a policy issued by State Farm insured Mr. Jones. Also, in closing argument, State Farm's counsel told the jury that his client had "nothing to refute" the fact that the subject accident was "a cause of Mr. Jones's injuries." Therefore, the only question that was disputed was the amount, if any, of non-economic damages sustained by Mr. Jones as a result of the February 21, 2014 accident.

During the trial, Mr. Jones was the only witness who testified live, but his counsel also played for the jury the videotaped deposition of Dr. Daryl Andrews, a chiropractor, who treated Mr. Jones for his injuries. Dr. Andrews's treatment started shortly after the February 21, 2014 accident and continued for about two-and one-half months, after which Mr. Jones needed no further treatment.

Mr. Jones testified as to how the accident occurred, the injuries he received, and the unsuccessful efforts that the police made to apprehend the driver of the vehicle that had struck his vehicle. Mr. Jones told the jury that although he felt no pain at the scene of the accident, "a couple days" later, he developed pain and spasms in his neck, back and shoulder. He did not claim to have any permanent injury as a result of the subject accident.

At the time of the accident, Mr. Jones was an unpaid volunteer fireman and also worked for a catering company and for Battle Entertainment Sound Systems, where he installed wiring for speaker systems. Those jobs required him to lift and carry items.

Mr. Jones testified that post accident he began feeling "numbness in the leg, almost like sciatic[a]." In regard to his neck, there was a "little tingling . . . on the top of the shoulder area." After the accident, Mr. Jones did not go back to work for Battle Entertainment until "probably about a week or two later." He testified that in regard to his job with the catering company, he missed "probably about a week-and-a-half" as a result of injuries suffered in the accident. He provided no information concerning his earnings from either job.

Mr. Jones further testified that during the period that he was under treatment with Dr. Andrews, he was not able to engage in his usual workout regimen nor was he able to enjoy recreational and other activities with his two children. Mr. Jones emphasized that he had, for about twelve years prior to the accident, trained his son to be a boxer. During the period that he was under treatment with Dr. Andrews, he was not able to fully perform his training duties.

At trial, Mr. Jones made no claim for lost wages or damage to his vehicle nor did he seek recompense for medical bills incurred as a result of the accident. In fact, counsel for Mr. Jones filed, and was granted, a motion *in limine*, which prohibited State Farm from introducing into evidence any of the medical bills or lost wages that Mr. Jones had incurred.

At the conclusion of the case, the trial judge gave the following instructions to the jury:

> You do not have to decide the question of whether or not the Defendant is responsible to the Plaintiff. You only decide the amount of damages the Plaintiff should be awarded.

In closing argument, Mr. Jones's counsel asked the jury to award her client $30,000 for non-economic damages.

II.

DISCUSSION

A. General necessity to prove that judge's error resulted in prejudice to appellant.

Before discussing, in detail, the two arguments raised by Mr. Jones in this appeal, it is useful to discuss, briefly, a fundamental principle of appellate litigation. That principle is that in a civil case, in order for an appellant to establish that he or she is entitled to a reversal, the appellant must prove not only error on the part of the trial judge but must prove, as well, that the "error" was prejudicial. *See Flores v. Bell*, 398 Md. 27, 33 (2007); *Crane v. Dunn*, 382 Md. 83, 91 (2004); *see also In Re: Ashley E.*, 158 Md. App. 144, 164 (2004). "It is not the possibility, but the probability, of prejudice which is the object of the appellate inquiry." *Flores*, 398 Md. at 34 (quoting *Crane*, 382 Md. at 91).

B. First question presented.

In regard to the first question presented, Mr. Jones contends that the trial judge erred in disallowing proof (and argument about) the elements of a breach of contract claim. Mr. Jones also contends that the "truth" about the dispute between the parties was "kept from the jury." He asserts:

> The dispute in this case was between Mr. Jones and his insurance company as to the value of his contract claim for uninsured motorist benefits. Mr. Jones can think of no logical reason how telling the jury the exact nature of

> the dispute would prejudice State Farm. Not allowing Mr. Jones to explain the exact nature of the dispute forced the jury to speculate about the most basic facts of the litigation: Who are the parties and what is the dispute.

This argument is puzzling. As already mentioned, appellant's counsel, without objection, told the jury in opening statement why State Farm was being sued and the nature of the controversy. In closing argument, Mr. Jones's lawyer, without objection, explained once more why State Farm was being sued, *viz*.:

> So here's the law. Maryland pattern Jury instruction 19:10. For Mr. Jones to recover damages, the accident must be a cause of the Plaintiff's injury. The car was stolen, the driver fled the scene, the driver was never found. Mr. Jones sustained neck, back and shoulder strains, as well as spasms. He had a policy in place on the car at the time of the crash, he made a claim to his insurance company like he is required to do. He did what he was supposed to do under this policy.
>
> If the injuries that Mr. Jones sustained were caused by this crash, then State Farm is accountable for all the harm that came to Mr. Jones as a result. Mr. Jones told you how the crash happened. He was sitting at a stop sign and he actually saw the truck coming down towards him before it hit him.
>
> Now, as you know, Mr. Jones is suing State Farm for not taking responsibility for all of the damage caused by the uninsured driver. But why is this important in the first place? Well, the very reason that we have insurance is to be there when things go badly. To help people out when something happens that you don't expect.

As is obvious in this case, there was no mystery as to the "nature of the dispute" that the jury was being asked to decide. In fact, appellant's counsel admitted this, at least tacitly, when she agreed to the verdict sheet which did not ask the jury to decide any question having to do with the contract between State Farm and Mr. Jones. In other words, there was no possibility that the jury had to speculate about who the parties were or the nature of the dispute that needed to be resolved.

It should be noted that when appellant presents his first argument in his brief, he states, *inter alia*, that the trial judge "erred in disallowing proof . . . about the elements of a breach of contract claim." But appellant's brief fails to say exactly what "proof" he wanted to present in this regard or point out to us where, in the record, the trial judge disallowed any such proof. This failure on appellant's part is fatal to his argument. *See Evans v. Shore Communications*, 112 Md. App. 284, 310 (1996) (citing *von Lusch v. State*, 31 Md. App. 271, 281-82 (1976), *rev'd* on other grounds, 279 Md. 255 (1977) (appellate courts are not required to "delve through the record to unearth factual support favorable to appellant and then seek out law to sustain appellant's position").

Appellant also complains that the trial judge "erred in disallowing argument on key elements of the uninsured motorist claim." The "arguments" that the trial judge disallowed were those that appellant's counsel attempted to make during her opening statement. For starters, "arguments" should not be made in an opening statement. But even if it were appropriate to make arguments at that stage, the trial judge did not err when he made any of his rulings while counsel for Mr. Jones was making her opening statement. We explain.

During Mr. Jones's counsel's opening statement, State Farm's counsel made several objections. The first objection was lodged when Mr. Jones's counsel said:

> What brings us to the Prince George's County Courthouse today is the safety net that protects all of us. Now, this safety net is made up of things called automobile insurance contracts. And this safety net, like all safety nets, will only protect us if Jurors choose to preserve them.
>
> Safety net rule number one, insurance companies must pay their insured for all damages caused[.]

At that point, counsel for State Farm objected but the trial judge overruled this objection. The court, however, instructed plaintiff's counsel to just "[tell the jury] what the evidence will show[.]" This admonition was entirely appropriate and, in his brief, appellant does not argue otherwise.

The next objection was made when Mr. Jones's counsel said that her client had paid his insurance premiums on time to State Farm and that the policy never lapsed. Counsel for State Farm objected on relevancy grounds. When the judge said (at the bench) that Jones's counsel's statement was, in fact, irrelevant, Jones's counsel asked "Am I required to prove the contract or just the negligence of the [d]efendant?" The following exchange then occurred:

> THE COURT: There's a stipulation to the contract, okay. So you're not required to prove the existence of the contract or, technically, any breach of the contract. You're not required. That's not going to come in.
>
> [Counsel for Jones]: Okay.
>
> THE COURT: Because there's a stipulation there's a contract in effect and arguably whatever damages for this are going to flow *ex contractu*, but the damages are going to be waived [sic] by a personal injury analysis.
>
> [Counsel for Jones]: Right. Okay.
>
> THE COURT: So essentially you're relieved of that. So it's not really a factual show type argument. But again, you know, I don't want to cut you off too short, but you've just got to move on from some of that. You can't just highlight it, because it's not - - the contract is not going to be an issue in the case.
>
> [Counsel for Jones]: Okay.
>
> [Counsel for State Farm]: Thank you, Your Honor.

THE COURT: Thank you.

At another point in counsel's opening statement, the judge told Mr. Jones's counsel that she could explain "what uninsured motorist coverage" is but observed that she kept "getting into argument[.]" After counsel for Mr. Jones then proceeded to explain what uninsured motorist coverage meant and stated, *inter alia*, that the insurer who issues an uninsured motorist policy covers "damages and injuries sustained as a result of" the uninsured driver's negligence. Counsel next outlined, in considerable detail, the injuries [allegedly] sustained by Mr. Jones as a result of the February 21, 2014 accident.

According to appellant, the core "error" on the part of the trial judge occurred when the judge said at a bench conference that interrupted his counsel's opening statement, that uninsured motorist coverage was stipulated and therefore it was not necessary to prove such coverage. Appellant now says there was no such stipulation, but when the trial judge said there was such a stipulation, neither State Farm's counsel nor counsel for appellant took issue with the court's statement. Instead, Mr. Jones's counsel said "okay" and State Farm's counsel thanked the court for its ruling.

It is true that no formal stipulation was placed on the record, but a reading of the trial transcript makes it crystal clear that there was such a stipulation. We say this for two reasons. First, it is inconceivable that any attorney would approve of the verdict sheet, as Mr. Jones's counsel did, if there had not been a stipulation as to uninsured motorist coverage. After all, the two questions the jury was asked to answer had nothing to do with whether State Farm breached its contract. Second, and equally important, the trial judge instructed the jury, without exception, that the jury did not have to decide the question of

whether State Farm was responsible to Mr. Jones, the jury only had to decide "the amount of damages the [p]laintiff should be awarded."

Appellant also argues that the trial judge's rulings during his counsel's opening statement:

> prevented Mr. Jones from clarifying to the jury the basic relationship between Mr. Jones, the Defendant and the injuries in this case. This created confusion and substantial prejudice. In repeatedly sustaining objections to argument on such simple, basic elements of a contracts case as the facts of Mr. Jones's compliance with his contract and the nature and type of agreement, the trial judge prevented Mr. Jones from arguing critical elements of his case, thereby committing reversible error.

The short and complete answer to this argument is that during her opening statement, counsel for Mr. Jones gave a complete and very clear explanation of uninsured motorist coverage and the relationship between the parties. See pages 2-3, *supra*.

But, even if we were to assume, *arguendo*, that the trial judge should have allowed counsel for Mr. Jones to make additional "argument[s] on key elements of the uninsured motorist claim," appellant has failed to demonstrate that he was in any way prejudiced by that "error." No matter what counsel argued in regard to those "key elements" it could not have possibly changed the jury's answer to the only question about which State Farm and Mr. Jones were at odds, i.e., what damages were caused to Mr. Jones as a result of the tortuous action of the uninsured motorist.

Appellant also makes the bold assertion that the trial judge's action in disallowing arguments "created confusion and substantial prejudice." It is impossible to see, however, what "confusion" appellant is talking about because counsel for the appellant explained to the jury, without objection, in both opening and closing arguments why State Farm was

being sued. There was no prejudice, even slight prejudice, because no matter what was proven in regard to State Farm's alleged breach of contract or what was argued in that regard, it would not change by one penny the amount of the non-economic damages Mr. Jones was entitled to recover as a result of the subject accident.

III.

Appellant also argues that the trial judge erred in not giving "some form of MPJI-Cv 14:1." That pattern jury instruction at issue reads:

> Insurance is an agreement whereby an insurance company, in exchange for a premium, agrees to pay a party, called the insured, or a party designated by the insured, an agreed amount [an amount up to an agreed limit] for a specific loss as a result of the happening of a specified event.

The trial judge declined to give the above instruction because, based on the fact that both parties had agreed as to what questions should be on the verdict sheet, the instruction would not be helpful in answering those questions. The trial judge was clearly correct in this regard. Insurance coverage was not an issue due to the stipulation and due to the jury instruction that informed the jury that State Farm was responsible to plaintiff for his injuries. In any event, even assuming, *arguendo*, that the trial judge somehow erred in not giving that instruction, plaintiff was not prejudiced because giving the instruction could not conceivably have persuaded the jury to find that Mr. Jones's non-economic damages were more than $8,000. Put another way, appellant failed to prove that he suffered any prejudice by the court's failure to give that instruction. *Crane*, *supra*, 382 Md. at 91.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.