IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MARY ANN KOVACS, Administratrix of the Estate of SANDOR KOVACS, JR., a/k/a SEAN KOVACS, Plaintiff	:	NO. 02-00,666
vs.	:	CIVIL ACTION - LAW
RAFAL LISTOPAD, SPORTS CAR CLUB OF AMERICA, INC. and SIMPSON PERFORMANCE PRODUCTS, INC., Defendants	:	

OPINION IN SUPPORT OF ORDERS OF DECEMBER 13, 2005, AND JANUARY 26, 2005, IN COMPLIANCE WITH RULE 1925(A) OF THE RULES OF APPELLATE PROCEDURE

Plaintiff appeals from this Court's Order of December 13, 2005, which denied her Motion for Post-trial Relief and entered judgment in favor of Defendant Sports Car Club of America (SCCA), and also from the Order of January 26, 2005, which granted Defendant Rafal Listopad's Motion for Summary Judgment. In her Concise Statement of Matters Complained of on Appeal, Plaintiff contends this Court erred with respect to several evidentiary rulings at trial, as well as certain pre-trial determinations. These contentions will be addressed seriatim.

First, Plaintiff contends the Court erred in concluding that a release, found by a jury to have been signed by Mr. Kovacs with respect to the event in question,[1] was effective to relieve Defendant SCCA from liability. By way of background, Plaintiff's decedent, Sean Kovacs, was killed in a vehicle accident that occurred during a Club Rally race sponsored by SCCA on May 6, 2000. As explained in an Opinion and Order dated May 19, 2005, inasmuch as the evidence indicates a pro rally is the highest (most dangerous) level of rally event and a road rally is the lowest (least dangerous) level, with rally crosses and club rallies falling in between, reference to pro rally and road rally is sufficient to apply the release to a rally cross or club rally. The release itself is quite specific and the Court found Plaintiff's argument that the release should not apply simply because the words "club rally" do not appear thereon, specious.

1 By Order dated May 19, 2005, this Court denied SCCA's motion for summary judgment, finding an issue of fact with respect to the release; that is, whether the particular release offered by Defendant SCCA had been signed by the decedent for the race in question (such was undated). A jury trial was therefore held on that limited issue, on October 20, 2005, and the jury concluded the release was indeed signed for that particular event. Accordingly, judgment in favor of SCCA was entered based on the Court's previous determination that if the release were for

Upon further review, the Court does not believe this ruling to have been in error.

Next, Plaintiff contends the Court erred in charging the jury that Defendant SCCA must prove its defense (the release) by a preponderance of the evidence, arguing the proper burden is "clear and convincing" evidence. Typically, however, the burden of proof in a civil case is proof by a preponderance of the evidence. See Sutliff v. Sutliff, 543 A.2d 534 (Pa. 1988). Plaintiff offered no authority in support of her position the higher burden should apply, and the Court has been unable to find anything to indicate such would be appropriate. While clear and convincing evidence is necessary in certain instances,[2] there is nothing about those situations which could be analogized to the instant case, proof that a particular document was signed at a particular time. The Court can thus find no error in having charged the jury to make its determination based upon a preponderance of the evidence.

Next, Plaintiff contends the Court erred in allowing the testimony of one Mary Schulze at trial, as well as allowing the introduction into evidence of a letter dated May 11, 2000, from one Ken Beard to SCCA Risk Management. Plaintiff argues both should have been excluded inasmuch as neither was specifically disclosed in pre-trial filings, Mary Schulze having been identified as a witness only the day before trial and the letter not having been provided to Plaintiff's counsel prior to its introduction into evidence at trial. Both the testimony of Ms. Schulze and the letter, however, were introduced merely to establish the chain of custody of the release at issue in this case, and the release itself had been provided to counsel well in advance of trial. Further, it appears Plaintiff did not make known to Defendant SCCA that chain of custody would be an issue until approximately one week prior to trial. Upon further review, the Court does not find error in allowing the disputed evidence.

Finally, Plaintiff contends the Court erred in granting summary judgment in favor of Defendant Rafal Listopad. The reasons for such ruling may be found in the opinion issued in connection with the Order of January 26, 2005, and the Court will not address this issue further, believing its rationale to be set forth adequately in that opinion.

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the race in question, such was effective to relieve SCCA from liability.

2 Those instances where clear and convincing evidence is required are set out in the Subcommittee note to Pennsylvania Standard Civil Jury Instruction 5.50A.

Accordingly, as none of Plaintiff's contentions of error appear to this Court to have merit, it is respectfully suggested that the Orders of December 13, 2005, and January 26, 2005, be affirmed.

Dated: January 26, 2006

Respectfully Submitted,

Dudley N. Anderson, Judge

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