NOT DESIGNATED FOR PUBLICATION

DIVISION IV

CA06-1309

7 November 2007

DEANA PRESLEY, Individually and as the Special Administratrix of the Estate of GERALDINE COOK, Deceased, and WILLIAM COOK,
APPELLANTS

v.

LEONARD BROWN, CECIL FULLER and CLARKSVILLE REFRIGERATED LINES I, LTD,
APPELLEES

AN APPEAL FROM THE CONWAY COUNTY CIRCUIT COURT
[CV-04-194]

THE HONORABLE DAVID H. MCCORMICK, CIRCUIT JUDGE

AFFIRMED

This case arose from an accident between Geraldine and William Cook's car and the tractor-trailer rig that Leonard Brown was driving for Clarksville Refrigerated Lines I. William Cook and Deana Presley, individually and as the special administratrix of her mother's estate, appeal the jury's verdict against their claims and seek a new trial based on several alleged errors in the circuit court. For simplicity, we will refer to all the appellants as "the Cooks" and all the appellees as "Clarksville Refrigerated." Clarksville Refrigerated argues that the Cooks' points on appeal are moot, but that no reversible error occurred in any event. We affirm on the merits.

I.

When his tractor-trailer lost power and the engine started knocking, Brown pulled onto the side of I-40 near the Carlisle exit. A rescue tractor came to pull away Brown's trailer, and it parked in front of Brown on the right shoulder of I-40. Brown disconnected his tractor from his trailer, drove onto the interstate briefly to pass ahead of the rescue truck, and then started to return to the right shoulder of the interstate. Meanwhile, the Cooks' vehicle was headed toward the scene. When Mr. Cook saw the trailer on the side of the interstate ahead of him, he straddled the center line with his car to give the trailer some clearance. But he ran into the back of Brown's tractor, which was finishing its pass of the rescue tractor. Both of the Cooks were injured in the accident, and Mrs. Cook later died from her injuries.

Mr. Cook filed a negligence action against Brown, Cecil Fuller (who owned Brown's tractor), and Clarksville Refrigerated Lines I, Ltd. After Mrs. Cook died, the special administratrix of her estate joined the complaint. Clarksville Refrigerated filed a counterclaim for damage to the tractor that it leased from Fuller. A jury rendered a special verdict and answered several interrogatories. It assigned 100% of the responsibility for the accident to Mr. Cook. The jury also found that there was a joint enterprise between Mr. and Mrs. Cook, and that neither of them suffered any damages.

II.

Clarksville Refrigerated tries to block the Cooks' appeal at the threshold with a mootness argument from the jury's answers to some of the special interrogatories. Among other things, the jury found:

> INTERROGATORY NO. 6: State the amount of any damages which you find from a preponderance of the evidence were sustained by William Cook as a result of the occurrence.
>
> ANSWER: $0
>
> * * *
>
> INTERROGATORY NO. 7: State the amount of any damages which you find from a preponderance of the evidence were sustained by Deanna [sic] Presley, Individually, and as a Special Administratrix of the Estate of Geraldine Cook, deceased, as a result of the occurrence.
>
> ANSWER:
> Estate: $0
> William Cook: $0
> Michelle Presley: $0
> Viola Scroggins: $0
> Shirlene Young: $0

These answers were not justified by the evidence about damages—Mrs. Cook died from the injuries she sustained in the wreck and Mr. Cook was severely injured. But the Cooks do not challenge directly the jury's findings about damages on appeal. Clarksville Refrigerated argues that these no-damages findings are conclusive, and the Cooks have therefore shown no prejudice from the alleged trial errors that they do

press on appeal.

We reject Clarksville Refrigerated's mootness argument. The jury's answers to interrogatories 6 and 7 have given us some pause because the Cooks' damages are as obvious as the jury's answers are unequivocal. The explanation lies in the jury's instructions: the circuit court's instructions conditioned any finding about the amount of the Cooks' damages on a threshold finding that Clarksville Refrigerated was liable. We see the jury doing what it was told to do. Because it decided for Clarksville Refrigerated on liability in its answers to interrogatories 1-4, the jury never reached the amount of the Cooks' damages. We conclude that the jury put in all those "0"s to make plain that the Cooks should not recover any money, not to find that they sustained no damages.

The Cooks allege errors during voir dire, in the jury instructions, and in the circuit court's decision to send the issue of their alleged negligence to the jury. The Cooks assert prejudice from all these rulings in the jury's eventual findings against them on liability. Because those findings, pursuant to the circuit court's instructions, stopped the jury from deciding the amount of damages, the jury's "0" answers to interrogatories 6 and 7 do not moot this case. The Cooks are entitled to a decision on the merits.

III.

The Cooks first argue that the circuit judge erred by allowing a particular line of

questions during jury selection. The lawyer for Clarksville Refrigerated asked the members of the venire whether they had previously served on a jury in a personal-injury or wrongful-death case, whether that jury had returned a plaintiff's verdict or a defense verdict, and whether they had agreed with the verdict. The circuit court overruled the Cooks' objections to those questions, but told Clarksville Refrigerated that it could probe no deeper. The Cooks contend that the circuit court's ruling violated Arkansas Rule of Evidence 606(b).

Rule 606 does not apply here. Clarksville Refrigerated was not inquiring into the validity of the verdicts in past cases. *Cf. New Prospect Drilling Co. v. First Commercial Trust, N.A.*, 332 Ark. 466, 478, 966 S.W.2d 233, 239–40 (1998). During jury selection, the parties may explore any possible bias or prejudice that might influence a prospective juror's vote. *Hill v. Billups*, 85 Ark. App. 166, 173, 148 S.W.3d 288, 293 (2004). At some point, digging into a prospective juror's deliberations as part of the jury in another case could invade the sanctity of the jury room, but no fixed rule applies. Ark. R. Civ. P. 47(a) and Reporter's Notes; *Missouri Pacific Transp. Co. v. Johnson*, 197 Ark. 1129, 1133–35, 126 S.W.2d 931, 933–34 (1939). Our law leaves the scope of questioning during voir dire to the circuit court's sound discretion. *Hill*, *supra*. No abuse of that discretion occurred here.

IV.

The Cooks take issue with two of the circuit court's rulings about jury

instructions—one related to the safety of Brown's tractor and the other about the doctrine of joint enterprise. The parties were entitled to any jury instruction that was a correct statement of law if the instruction had some basis in the evidence. *Williams v. First Unum Life Ins. Co.*, 358 Ark. 224, 229, 188 S.W.3d 908, 911 (2004). Under Arkansas Rule of Civil Procedure 51, the Cooks' objections to the circuit court's refusal to give a jury instruction had to be specific and accompanied by a proffer of an accurate instruction.

First, the Cooks assert that the circuit court erred by refusing to give their proffered jury instruction about driving unsafe vehicles. Their proposed instruction was AMI 910: "No person shall drive on any highway a vehicle which is in such an unsafe condition as to endanger any person." Brown's tractor, they argue, was unsafe because it had a "defect"—it did not have proper lighting and was incapable of normal acceleration—which contributed to the accident.

The Cooks, however, waived part of this argument. At trial they based their request for the instruction simply on the tractor's "defect" without mentioning the lights. *Barnes v. Everett*, 351 Ark. 479, 494, 95 S.W.3d 740, 750 (2003). The circuit court's ruling makes clear that it understood that the "defect" everyone was talking about was the tractor's engine trouble, not its lighting.

> Unsafe, on that [jury instruction], I think what we're talking about unsafe vehicle, . . . at the point this accident occurred, the vehicles – the motor trouble it was having was not what the cause of the accident, . . .

> The vehicle, all the testimony showed, had enough speed left, even in the condition it was in, to perform the . . . maneuver that was attempted. I think the un – the unsafe conditions set in the total chain of events, but . . . how far back up the chain do we go, but for the engine being broke down to start with we wouldn't be here, but I think that's too remote in time, and is not a direct cause of the action.

Moreover, the Cooks did not proffer a proper instruction about the tractor's lights. The use of lights on motor vehicles is the subject of various statutes, one of which applied here, Ark. Code Ann. § 27-36-204 (Repl. 2004). On the lights, the Cooks should have proffered that provision as an AMI 903 instruction—the violation of a statute as evidence of negligence. They did not do so.

The deeper issue is whether the circuit court abused its discretion by making an error of law in ruling that the tractor's engine trouble was too remote to be a proximate cause of the accident. The Cooks were entitled to AMI 910 if the record contained proof that the tractor's engine problem was a proximate cause. *Thomas v. Kellett*, 260 Ark. 548, 550, 542 S.W.2d 501, 502 (1976). We discern no error. Brown testified that the tractor accelerated fine when he pulled around the rescue tractor. While the Cooks' expert noted that the tractor could only reach twenty miles an hour, he agreed on cross-examination that it appeared to have plenty of acceleration to complete the passing maneuver. We agree with the circuit court that the tractor's initial engine trouble is too far back along the chain of causation to be a proximate cause of the accident. *Lovell v. Brock*, 330 Ark. 206, 215–16, 952 S.W.2d 161, 166 (1997). And absent proof that

the engine defect caused the tractor to operate poorly during the later passing maneuver, the circuit court did not abuse its discretion by rejecting an AMI 910 instruction based on the engine problem.

Second, the Cooks argue that the circuit court erred by instructing the jury on the doctrine of joint enterprise. They contend that the doctrine is an unfair fiction, and was extraordinarily confusing in this case when coupled with the comparative-fault analysis. We see no basis for reversal on this issue either.

The joint-enterprise doctrine has fallen into disfavor in Arkansas. Our supreme court has expressed a willingness to reconsider the doctrine in a proper case. *Yant v. Woods*, 353 Ark. 786, 794–95, 120 S.W.3d 574, 579–80 (2003). The Cooks do not ask us to overrule the doctrine, and we may not do so. *Box v. State*, 348 Ark. 116, 124, 71 S.W.3d 552, 557 (2002). And the supreme court denied the Cooks' motion to certify this case on that issue to that court.

The proof made a jury question on whether a joint enterprise existed between the Cooks. They were on a short vacation in their jointly owned Buick; Mr. Cook said that he usually drove and Mrs. Cook did not make suggestions about the route or when to stop; he also testified, however, that he would have respected any such recommendation from her. *Yant*, 353 Ark. at 789–92, 120 S.W.3d at 576–78. The jury was entitled to decide whether she had an equal, if unused, voice about their travels in their car. We see no particular difficulty in the jury having to impute the Cooks'

alleged negligence to each other before comparing the Cooks' fault with Clarksville Refrigerated's fault. The circuit court did not abuse its discretion by giving a joint-enterprise instruction in this case. *Williams*, *supra.* The doctrine, though disfavored, remains the law in Arkansas.

V.

For their fourth point, the Cooks argue that the trial court erred in denying their motions for a directed verdict on the issue of Mr. and Mrs. Cook's negligence. The Cooks, however, did not preserve their sufficiency argument for appeal because their motion for a directed verdict was not specific. Ark. R. Civ. P. 50(a); *Thomas v. Olson*, 364 Ark. 444, 447–48, 220 S.W.3d 627, 630–31 (2005). Even if they had preserved this point, substantial evidence supports the jury's verdict. *J.E. Merit Constructors, Inc. v. Cooper*, 345 Ark. 136, 140–41, 44 S.W.3d 336, 340 (2001).

Clarksville Refrigerated's expert testified that Mr. and Mrs. Cook could see Brown's tractor on I-40 between four and six seconds before the impact. The expert said that Mr. Cook had enough time to avoid the collision by moving the car entirely into the left lane or by applying his brakes. The expert also opined that there was enough time for Mrs. Cook to warn her husband of the danger ahead. Mr. Cook testified that he was not using his cruise-control and that he saw Brown's trailer parked on the shoulder. He said that he only made a partial lane-change, and in hindsight wished he would have moved all the way into the left-hand lane. He said he probably

had enough time to have gotten over there, but didn't. Mr. Cook neither braked nor slowed down. On cross-examination, he confirmed that he hit Brown's tractor before he saw it. This evidence establishes that the question of Mr. and Mrs. Cook's negligence was for the jury to answer. *J.E. Merit Constructors, Inc.*, *supra.*

Affirmed.

BAKER and MILLER, JJ., agree.