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Case Law Update: Groen v. Harris

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Civil Trial Jury Trial Mistrial Deference to Trial Judge

A jury had been convened, on the respondent/defendant's request, to assess the damages suffered by the appellant/plaintiff as a result of a motor vehicle accident for which fault was admitted. After several weeks of evidence, the appellant's counsel made impassioned pleas to the jury during the closing arguments, including asking the jury to rely on pure emotional considerations. On this basis, the respondent's counsel successfully obtained a mistrial.

There were two issues for consideration before the Court of Appeal. First, the appellant argued that the trial judge erred in finding that the closing comments compromised trial fairness and that they could not be corrected with appropriate jury instruction. Second, the appellants argued that the trial judge erred in refusing to decide on the question of damages herself.

On the first issue, the Court of Appeal emphasized prior jurisprudence on appropriate language to be used by counsel in closing statements. While the Court acknowledged that some of the errors made by counsel in closing could have been addressed by instruction to the jury, the Court also relied upon recognized deference to the trial judge to determine when fairness in the trial had been compromised. In particular, the Court held that the trial judge was able to order a mistrial on the cumulative effect of the closing statements based on emotional pleas. The Court specifically refused to address the effect of individual statements by counsel from the trial record.

On the second issue, the Court held that the trial judge had made an appropriate decision by declining to decide the issue of damages alone. Absent consent from both parties, the Court held that the respondents should not be deprived of their right to have the case decided by a jury because of the appellant's trial counsel. The appeal was dismissed.