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Lora v. Escaffi
Fla.App. 3 Dist.,2005.

District Court of Appeal of Florida,Third District.
Eva de Jesus LORA and Jose Federico Lora, Appel-
lants,

v.

Gina ESCAFFI, Appellee.

No. 3D04-1716.

March 9, 2005.

An Appeal from the Circuit Court for Miami-Dade
County, [Norman S. Gerstein](#), Judge.

Haas, Dutton, Blackburn, Lewis & Longley and Re-
becca O'Dell Townsend (Tampa), for appellants.
[Lauri Waldman Ross](#), Miami; Friedman & Friedman
and [John S. Seligman](#), Coral Gables, for appellee.

Before GREEN, [WELLS](#), and [ROTHENBERG](#), JJ.
[WELLS](#), Judge.

Defendants in this personal injury action appeal the
trial court's denial of their motion for new trial. They
maintain that prejudicial comments by opposing
counsel "resulted in a miscarriage of justice" requir-
ing that the judgment be reversed and that a new trial
as to comparative fault and damages be conducted.
Having carefully considered the statements com-
plained of in light of the evidence and verdict, we
find no abuse of discretion in the court's ruling. As
we observed in [Rohrback v. Dauer](#), 528 So.2d 1362,
1363 (Fla. 3d DCA 1988), "even improper argument
will not require a new trial if the remarks are not so
egregious as to interfere with the essential justice of
the result." See [§ 59.041, Fla. Stat. \(2003\)](#) ^{FN1}; [Mak-
sad v. Kaskel](#), 832 So.2d 788, 793 (Fla. 4th DCA
2002)(concluding that "[g]enerally, a mistrial or new
trial should be granted only when counsel's argu-
ments are so inflammatory and prejudicial that they
deny the opposing party a fair trial").

[FN1. Section 59.041](#) provides:

No judgment shall be set aside or reversed,
or new trial granted by any court of the state
in any cause, civil or criminal, on the ground

of misdirection of the jury or the improper
admission or rejection of evidence or for er-
ror as to any matter of pleading or proced-
ure, unless in the opinion of the court to
which application is made, after an examina-
tion of the entire case it shall appear that the
error complained of has resulted in a miscar-
riage of justice. This section shall be liber-
ally construed.

Accordingly, the order under review is affirmed.

GREEN, J., concurs.[ROTHENBERG](#), Judge
(concurring).

While I agree with the majority's opinion in its en-
tirety, I write this concurring opinion in order to note
with disapproval and disappointment the impropriety
of plaintiff's counsel's comments and the frequency in
which they occurred. While counsel's frustration was
understandable, it does not excuse the opinions, per-
sonal assurances, and personal attacks which per-
meated his opening, closing, and rebuttal arguments.
Each of us shares a common duty to The Florida Bar
and our profession to conduct ourselves profession-
ally and honorably. The judiciary, as guardians of the
court and our profession, have the added responsibil-
ity to ensure that the process is not only fair, but is
one which instills confidence in our system of justice
and respect for the members of our profession.

Under most circumstances, plaintiff's counsel's re-
marks would have required the granting of a new trial
and it would have *614 been an abuse of discretion to
refuse to do so. After a careful review of the entire
trial transcript, I agree with my colleagues that the
court did not abuse its discretion in this case where
the trial court directed a verdict on the issues of liab-
ility, causation, permanent injury, and the seatbelt de-
fense, and while ruling that there was no comparative
negligence as a matter of law, simply submitted that
issue to the jury "in the abundance of caution." The
jury's sole determination in this case therefore, was
the extent of the plaintiff's damages. Both sides' ex-
perts agreed that the plaintiff suffered permanent in-
jury, that she continued to suffer pain, and that she
was not a malingerer. The only real disagreement was

whether or not the plaintiff needed rotator cuff surgery. As the jury awarded less than the amounts requested by plaintiff's counsel for future medical treatment, pain and suffering, and future pain and suffering, I agree that counsel's improper arguments constitute harmless error.

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913 So.2d 613, 30 Fla. L. Weekly D677

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