2011 IL App (5th) 100443-U

NO. 5-10-0443

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

ROCHELLE A. DENT, Plaintiff-Appellant, v. MENARD, INC., d/b/a MENARDS, Defendant-Appellee.	)))))))))	Appeal from the Circuit Court of Effingham County. No. 07-L-33 Honorable Kimberly G. Koester, Judge, presiding.

PRESIDING JUSTICE DONOVAN delivered the judgment of the court.
Justices Chapman and Wexstten concurred in the judgment.

O R D E R

¶ 1 *Held*: Trial court properly allowed in evidence of plaintiff's prior injuries and complaints of ill-being to negate causation and damages and committed no error in not admitting into evidence impartial medical examiner's supplemental discovery deposition.

¶ 2 Rochelle A. Dent, plaintiff, sought damages for injuries allegedly suffered while shopping at a business (Menards) owned by defendant Menard, Inc. After a jury trial in the circuit court of Effingham County, judgment was entered in favor of defendant. Plaintiff appeals the judgment and the denial of her posttrial motion requesting a new trial. We affirm.

¶ 3 On October 22, 2005, plaintiff was looking at dishwashers at Menards in Effingham, Illinois. Menards is a home-improvement franchise with stores throughout the Midwest and includes appliances as part of its product/merchandise line. Dishwashers at this store were displayed in two levels of wooden cabinets. The top row of the display cabinet placed the

tops of the dishwashers 72 inches from the floor with the bottoms being 42 inches from the floor. Plaintiff decided she wanted to get a closer look at one of the dishwashers displayed on the top row. She opened the door and pulled out the racks to view them. As she pulled out the top rack, the dishwasher tilted forward. Believing that the dishwasher was going to fall out of the display rack and hit her, plaintiff reached up her right hand and arm to catch the dishwasher and push it back into the display. Plaintiff claimed that she was injured as a result of that maneuver. Specifically, plaintiff claimed that the incident caused her to experience pain and problems in her sciatic nerve, ulnar nerve, both arms and hands, neck, bilateral shoulders, left wrist, and her fourth and fifth fingers of her left hand, plus at the base of her skull, along with bilateral hand numbness. Plaintiff also testified that she suffered permanent disability, disfigurement, and emotional upset as a result of the incident. She did not sustain any lacerations, cuts, or bruising, however, nor did she seek medical treatment immediately after the incident. Rather, after the dishwasher tilted out, plaintiff pushed her cart to the cabinet designing area to advise an employee about the dishwasher. The employee asked if she was okay and she responded that she was fine. According to this employee, she did not appear to be in any pain or discomfort. Plaintiff was then observed to walk back to the appliance aisle to check other dishwashers to see if they were missing screws as well. When another employee arrived at the dishwasher display, plaintiff pointed out the specific washer that was missing the screws on the top of the display. She did not say anything about being in pain or injured to him. Plaintiff then proceeded to the front desk to tell the manager about the incident and to fill out an accident report. The manager asked her if she was hurt or injured, to which she replied "no." After spending approximately 15 minutes at the front desk, plaintiff bent over her shopping cart to pick up her son and purse and walked out of the store without any apparent difficulty. Plaintiff then got in her car and drove to her grandmother's house. Later the same day, plaintiff decided to drive herself to the hospital.

¶ 4 After the incident, an employee from Menards verified that the screws which were normally used to secure a dishwasher to the top of the display racks were missing. The missing screws were not visible unless the door to the dishwasher was open. Defendant established, however, that the dishwasher could not have fallen out of the display even with the missing screws given that the dishwashers are lodged against the top of the display.

¶ 5 Plaintiff was treated by a family practitioner, two orthopedic surgeons, a chiropractor, and a rehabilitation doctor. Plaintiff also underwent an impartial medical examination by an orthopedic surgeon. The majority of the doctors did not find that plaintiff sustained any injury as a result of the October 22 incident at Menards, and they testified that the problems complained of preexisted the incident. An MRI conducted on October 31, 2005, revealed a minimal posterior disc bulge at C6-C7 and degenerative disc disease and arthritis in plaintiff's back which preexisted the October 22 incident. Two of the treating doctors did testify in favor of plaintiff. They testified that, based on the history provided by plaintiff, her complaints of pain in her shoulder and arm were related to the October 22 incident. Neither doctor reviewed her prior medical records, nor did plaintiff inform them that she had suffered pain and discomfort in her neck, back, and shoulder areas prior to the incident. The jury found in favor of defendant that plaintiff suffered no injuries as a result of the dishwasher tilting out of the display.

¶ 6 Plaintiff first argues on appeal that the trial court erred in admitting evidence of her prior injuries and/or complaints of pain without any testimony connecting such injuries to her current complaints. She also contends the court erred in allowing the testimony of the independent medical examiner to go to the jury. We disagree with plaintiff.

¶ 7 Generally speaking, evidence is deemed relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. *Fronabarger v. Burns*, 385 Ill. App. 3d 560,

564, 895 N.E.2d 1125, 1129 (2008). Evidence pertaining to plaintiff's prior injuries and complaints of pain was relevant because it tended to negate causation and negated or reduced plaintiff's claimed damages. It was also relevant for purposes of impeachment of plaintiff with respect to her medical history. See *Voykin v. Estate of DeBoer*, 192 Ill. 2d 49, 57-58, 733 N.E.2d 1275, 1279-80 (2000). See also *Felber v. London*, 346 Ill. App. 3d 188, 193, 803 N.E.2d 1103, 1107 (2004). Plaintiff's claims of injury were not credible. The actions and statements of plaintiff immediately after the incident contradicted her subsequent claims of extensive injury, disability, and disfigurement. The medical evidence did not support her claims of injury, and plaintiff's own testimony revealed multiple conflicting and contradictory statements regarding her medical condition before and after the incident. Defense counsel's questioning, along with the use of her prior medical records, pointed out to the jury that plaintiff suffered the same types of pain to the same parts of her body prior to October 22, 2005, that she now was attributing to the Menards accident. There was ample medical evidence from plaintiff's own treating physicians that she had suffered prior injury and pain in her neck, shoulders, arms, and back as well as degenerative disc disease in her spine. In fact, plaintiff's chiropractor testified he had treated her on 125 separate occasions over the years for such symptoms and for the same areas of the body which plaintiff continued to complain about and seek treatment for after the Menards incident. We also note that plaintiff opened the door herself by introducing evidence of her prior injuries and medical treatment into the record. See *Janky v. Perry*, 343 Ill. App. 3d 230, 234-35, 797 N.E.2d 1066, 1069-70 (2003). Accordingly, under the circumstances presented, we find no abuse of the court's discretion with respect to the admission of evidence pertaining to plaintiff's prior injuries and complaints of pain.

¶ 8 Plaintiff also argues on appeal that the testimony of the impartial medical examiner should not have been presented to the jury because it was based on "junk science." Again,

we must disagree. The trial court, pursuant to Supreme Court Rule 215(d) (eff. July 1, 2002), entered an agreed order for an impartial medical examination to be conducted by an orthopedic surgeon from St. Louis, Missouri, on May 8, 2008. Supreme Court Rule 215(d) provides that the court may on its own motion, or that of any party, order an impartial medical examination of a party whose physical condition is an issue, when in the court's discretion, it appears that such an examination will materially aid in the just determination of the case. Ill. S. Ct. R. 215(d) (eff. July 1, 2002). The agreed-upon physician conducted a comprehensive examination of plaintiff on June 26, 2008, after reviewing her complete medical history and records. He concluded that plaintiff did not suffer an injury which could be attributed to the October 22 incident at Menards. He further opined that she suffered degenerative disc disease and a condition of ill-being which preexisted the October 22 incident. He also concluded that after the initial workup, the expenses she incurred were neither reasonable nor necessary to treat any injury purportedly caused by the Menards incident, nor would she require any future medical expense to treat her alleged injury. Plaintiff believes the impartial medical examiner's report was based upon "junk science" because the doctor opined that all soft-tissue injuries heal within six weeks. Since she believes such an opinion in not within the mainstream of medical science, his testimony should have been barred. The doctor, however, made it clear that he relied upon his skill, knowledge, experience, and observations as an orthopedic surgeon, as opposed to any new scientific methodology, in reaching his conclusions. He also stated that six weeks is a reasonable time frame in which a soft-tissue injury should heal, and if the injury does not heal in that time frame, then one needs to go back and regroup, try to understand why there is still a problem, and come up with a reasonable diagnosis. This is not the same as saying, as plaintiff suggests, that all soft-tissue injuries heal within six weeks, and if the injury does not heal by that time, the person must be faking the injury. Accordingly, contrary to

plaintiff's assertions, there was no need to conduct a separate hearing to determine whether the doctor's methodology fell within the realm of mainstream science. *People v. Shinohara*, 375 Ill. App. 3d 85, 111, 872 N.E.2d 498, 522 (2007). See also *In re Marriage of Alexander*, 368 Ill. App. 3d 192, 857 N.E.2d 766 (2006). Nor was there any reason to bar his testimony altogether. A trial court's determination as to whether evidence is relevant and admissible will not be disturbed on review absent an abuse of the court's discretion. *Jackson v. Seib*, 372 Ill. App. 3d 1061, 1070, 866 N.E.2d 663, 673 (2007).

¶ 9 Plaintiff counters that the supplemental deposition taken to clarify the examiner's opinions should also have been presented to the jury. The court, interpreting a prior order and after reading the supplemental deposition, determined it was, in fact, a discovery deposition to explore specifically whether the doctor's opinion was based on any new or novel scientific principle. Given that his opinion in the first deposition was not based on any new or novel scientific technique or testing, and that the supplemental deposition was, in fact, a discovery deposition, the court concluded it was not admissible. We find no error in the court's ruling in this instance.

¶ 10 Finally, with respect to the denial of plaintiff's motion for a new trial, we note that such a motion should only be granted when a verdict is contrary to the manifest weight of the evidence. *Maple v. Gustafson*, 151 Ill. 2d 445, 454, 603 N.E.2d 508, 512 (1992). Here, the evidence overwhelmingly supported the jury's verdict. Given that it is the province of the jury to resolve conflicts in the evidence and to judge the credibility of witnesses (see *Maple*, 151 Ill. 2d at 452, 603 N.E.2d at 511-12), we find no error with respect to the court's denial of plaintiff's motion for a new trial.

¶ 11 For the aforementioned reasons, we affirm the judgment of the circuit court of Effingham County.

¶ 12 Affirmed.