

No. 1-12-1042

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SHANNON BADAL and CARRALINE BADAL,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellees,)	Cook County.
)	
v.)	No. 10 M1 301832
)	
JAIME AVITIA,)	Honorable
)	Thomas More Donnelly,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where jury was presented with conflicting evidence of car's mileage, losing party did not establish that the monetary award to plaintiffs was contrary to the manifest weight of the evidence; the judgment of the trial court was affirmed.
- ¶ 2 Defendant Jaime Avitia appeals a jury's award of damages to plaintiffs Shannon Badal and Carraline Badal arising from a car accident in 2006. On appeal, Avitia contends he should receive a new trial because the jury's determinations were contrary to the manifest weight of the evidence. Although plaintiffs have not filed a brief in this proceeding, we may consider the merits of this appeal on Avitia's brief alone. See *First Capitol Mortgage Corp. v. Talandis*

Construction Corp., 63 Ill. 2d 138, 133 (1976) (such review allowable if record is simple and errors can be considered without additional briefing). We affirm.

¶ 3 The record reveals that an arbitration hearing was held in 2009 and was decided in favor of Avitia; however, no money was awarded. Plaintiffs also filed a complaint against Avitia that was voluntarily non-suited in February 2010.

¶ 4 On July 12, 2010, plaintiffs refiled their complaint, which alleged that on May 2, 2006, Avitia's car struck plaintiffs' 1992 BMW 325i when he proceeded through a red light at an intersection near Des Plaines Avenue and Roosevelt Road in Chicago. The complaint sought damages for personal injuries to Shannon Badal in an amount "not in excess of \$30,000" and an additional amount of \$11,593.85 to Carraline Badal for the damages and lost use of the vehicle.

¶ 5 On November 30, 2011, a jury trial was held, and the jury returned a verdict against Avitia and ordered him to pay damages of \$2,653.74 to Shannon and \$5,920 to Carraline, for a total damage award of \$8,573.74. The record does not contain a report of proceedings.

¶ 6 On January 19, 2012, counsel for Avitia filed a motion for a new trial on damages, or in the alternative, a motion for sanctions. The motion alleged that Shannon falsely testified that the 1992 BMW 325i had 98,000 miles on it when the accident took place. Attached to the motion was a CARFAX report stating that a car with the same vehicle identification number (VIN) as the Badal vehicle had accrued 148,164 miles in April 2005.

¶ 7 Also attached to the motion was a purported "bystander's report", which is not certified, from Avitia's trial counsel, Christopher R. Bruneau. In the report, Bruneau stated that: (1) Shannon testified the vehicle had no more than 98,000 miles on it when the collision occurred; (2) Javier Quinones, an expert witness presented by plaintiffs, "used [Shannon's] mileage as a partial basis for his valuation of his opinion" that the BMW was worth up to \$6,500; and (3) Shannon and Carraline both "testified that the mileage of 148,000 on the Defendant's estimate

was incorrect." On March 15, 2012, after a hearing, the trial court denied Avitia's post-trial motion. Avitia filed a timely notice of appeal from that ruling.

¶ 8 In this appeal, Avitia asks this court to reverse the trial court's order and grant him a new trial on damages. Avitia argues he is entitled to a new trial because the Badals' testimony was "factually untruthful on a key point in the case." Pointing to the purported bystander's report submitted by his counsel, Avitia contends the jury heard disparate evidence of the mileage of the Badals' vehicle.

¶ 9 After a jury has returned a verdict, the court should only set aside the verdict and order a new trial if the verdict is contrary to the manifest weight of the evidence. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 100-01 (2010). A verdict is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the findings of the jury are unreasonable, arbitrary and not based upon any other evidence. *Id.* at 101. An appellate court will not disturb a jury verdict unless there is no evidence that fairly tends to support the verdict. *Gehrett v. Chrysler Corp.*, 379 Ill. App. 3d 162, 172 (2008).

¶ 10 Avitia concedes that a jury verdict cannot be disturbed without some indication that the jury failed to follow the law or considered evidence that was erroneous or if the jury based its decision on something other than the facts of the case. Avitia is plainly attempting to obtain a different factual ruling than that issued by the jury because he disagrees with the jury's verdict. He contends Shannon's testimony that there were 98,000 miles on the car was untruthful.

¶ 11 By the account of Bruneau, Avitia's trial counsel, as set out in his bystander's report, the jury was presented with conflicting evidence on that point. Along with Shannon's testimony that the car had 98,000 miles on it when the accident occurred, the jury heard evidence of the CARFAX report, as demonstrated by Bruneau's report, because the Badals both refuted it, testifying that it was "incorrect." Therefore, the jury was presented with conflicting evidence on

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the issue of the car's mileage. A jury's verdict is not contrary to the manifest weight of the evidence when the evidence was conflicting and the jury resolved the conflict. *Sheth v. SAB Tool Supply Co.*, 2013 IL App (1st) 110156, ¶ 41.

¶ 12 We cannot conclude on this record that the jury's verdict was against the manifest weight of the evidence. Accordingly, the judgment of the trial court is affirmed.

¶ 13 Affirmed.