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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THOMAS J. GALASSI,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-AR-519
	)	
CHARECE M. HAYNIE,	)	Honorable
	)	Lisa R. Fabiano,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Justices Hutchinson and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* The jury's verdict that defendant's negligence and the resulting auto accident did not proximately cause plaintiff's injuries was not against the manifest weight of the evidence: although the expert witnesses agreed that the accident caused the injuries, they acknowledged that it might not have, and, in light of the nature of the accident and the delay in plaintiff's seeking treatment, the jury was entitled to find that it did not.

¶ 2 Plaintiff, Thomas J. Galassi, appeals the jury verdict that found that his injuries were not caused when defendant, Charece M. Haynie, rear-ended his vehicle. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 18, 2010, plaintiff filed a complaint against defendant, alleging that defendant rear-ended plaintiff's vehicle on December 16, 2009, causing possibly permanent injuries to plaintiff. Defendant answered the complaint, admitting that she was negligent, but she denied that plaintiff sustained any injuries as a result of her negligent driving. Plaintiff sought \$15,000 in medical bills. The matter proceeded to trial on February 7, 2012.

¶ 5 Plaintiff testified that on December 16, 2009, he stopped his Ford Explorer abruptly in traffic and was struck from behind by defendant's Dodge Ram pickup truck. He described the impact as "medium to heavy." Plaintiff's body was thrown forward and then backward, and at some point he hit his knee on the dashboard. He also hit the steering wheel. Plaintiff was wearing his seatbelt so it caught him before he hit any other part of the vehicle. Before the collision, plaintiff was in good physical condition. After the collision, he felt tension in his neck and back. He felt sore and "not normal." He did not require an ambulance, because he just felt "a little sore." He continued to feel sore and took ibuprofen. His condition worsened, and he started getting headaches. He was unable to work out and perform his usual activities around the house, such as shoveling snow. Plaintiff sought relief from a chiropractor on January 6, 2010. He waited three weeks after the collision before seeking treatment, because of Christmas and because he hoped his symptoms would improve over time.

¶ 6 Plaintiff was treated at Hulsebus Chiropractic Clinic by Dr. Scott Stear. He received traction treatments, adjustments, heat and ice packs, and an exercise regimen. Plaintiff improved and over the course of four months he returned to normal. He was last treated at the clinic on May 5, 2010.

¶ 7 Plaintiff admitted that he had injured his neck and back 10 to 15 years earlier in another rear-end collision. He sought medical treatment at that time, and the issue was resolved. He denied having neck or back pain since that time.

¶ 8 Dr. Stear testified that plaintiff's complaints were sore neck, headaches, sore body, knee pain, and back pain. Dr. Stear took X-rays and examined plaintiff. He determined that plaintiff had a limited range of motion in the cervical and lumbar spine areas, indicating muscle spasm. Plaintiff's X-rays showed misalignments throughout his spine and narrowing in the spaces between the discs. Dr. Stear found the X-rays to be consistent with plaintiff's complaints. He believed that plaintiff's auto collision caused his injuries, based on plaintiff's report that symptoms began after the collision.

¶ 9 On cross-examination, Dr. Stear admitted that it was possible that plaintiff's symptoms could be unrelated to the collision. He admitted that plaintiff's X-rays showed signs of degenerative arthritic changes, which develop over a long period of time. He admitted that such a condition was not caused by the collision and would have been present before the collision. However, Dr. Stear denied that the arthritic changes would cause pain. Dr. Stear also admitted that Hulsebus Chiropractic Clinic had filed a lien on plaintiff's case, meaning that, should plaintiff win or settle, the clinic would be paid out of those funds.

¶ 10 Defendant testified that she was traveling approximately 25 miles per hour when she struck plaintiff's vehicle. The impact did not cause the airbags to deploy. She identified photographs of the vehicles involved in the collision, which were admitted into evidence. The photos are not part of the record on appeal. Defendant testified that plaintiff denied that he was injured, and defendant and her daughter were not injured. Both vehicles were able to be driven from the scene.

¶ 11 Dr. Lawrence Humberstone, defendant's chiropractic witness, testified that degenerative disc disease, or arthritis, is wear and tear on the disc that happens over time and may result in episodic pain as early as one's 20's or as late as one's 70's. Dr. Humberstone reviewed plaintiff's medical bills and treatment records. Plaintiff received about 54 treatments of passive modalities and manipulation over the course of four months. Dr. Humberstone opined that plaintiff sustained soft-tissue injury, or whiplash in layman's terms, which would not require the duration of treatment provided to him. He believed that treatment four to five times per week and X-rays taken four or five times was excessive for plaintiff's soft-tissue injury. The treatment also did not vary over the course of the four months, even if plaintiff reported improvements. According to Dr. Humberstone, the treatment plaintiff received was inappropriate and unnecessary under the general chiropractic guidelines.

¶ 12 Dr. Humberstone believed that the initial X-rays were reasonable to perform, but the subsequent X-rays were unnecessary. He opined that the first six treatments were a reasonable trial of chiropractic care. Any subsequent treatment would be appropriate only if the patient was showing improvement. Dr. Humberstone testified that the records provided to him did not document plaintiff's improvement or lack thereof. He admitted that some notes indicated that plaintiff reported improving, but Dr. Humberstone stated that was subjective and these were objective evidence of the patient's improvement.

¶ 13 The X-rays showed arthritic changes, and Dr. Humberstone testified that it was possible that plaintiff's pain was caused by the arthritis and not the collision. Regarding the delay between the collision and plaintiff's treatment, Dr. Humberstone excused the delay because it was near Christmas, and he still believed that plaintiff's pain was causally related to the collision. When

asked whether, based upon a reasonable degree of chiropractic certainty, plaintiff sustained injuries resulting from the collision, Dr. Humberstone stated, “This is a tough one, but, yes, I gave him the benefit of the doubt on this, yes.” He noted that there was a three-week period after the collision but before treatment started, and he did not know of any intervening event that might have caused plaintiff’s complaints.

¶ 14 The jury was properly instructed that defendant had admitted negligence and that it was to determine whether defendant’s negligence proximately caused plaintiff’s injuries, and, if so, the extent of damages. The jury returned a verdict in favor of defendant. Plaintiff filed a motion for a new trial, arguing that the jury’s verdict was against the manifest weight of the evidence. On June 8, 2012, the trial court issued a written order denying plaintiff’s motion, stating that the jury was free to decide whether plaintiff’s delay in seeking treatment was reasonable or whether the delay cast doubt on his testimony regarding his injuries. Plaintiff timely appealed.

¶ 15

## II. ANALYSIS

¶ 16 Plaintiff argues that the verdict was against the manifest weight of the evidence because both chiropractors testified that his injuries were caused by the collision and that his delay in seeking treatment was not unreasonable given that it was over the Christmas holiday. Plaintiff relies on *Anderson v. Zamir*, 402 Ill. App. 3d 362, 367 (2010), for his position that the jury could not disregard undisputed expert testimony. Defendant argues that the jury was free to accept the chiropractors’ testimony that it was possible that the symptoms that plaintiff sought treatment for were not proximately caused by the collision. Defendant argues that the jury was not bound to believe a witness when other evidence discredited the testimony, such as in this case where plaintiff

delayed seeking treatment and denied the need for treatment at the scene of the collision. We agree with defendant.

¶ 17 When reviewing a jury verdict, it is not the function of this court to reweigh the evidence and substitute our opinion for that of the jury. *Reed v. Ault*, 2012 IL App (2d) 110744, ¶ 51. In this case, the jury had to decide whether the collision proximately caused plaintiff's injuries. Proximate cause exists where an injury is the natural and probable result of a negligent act and is of such character that a reasonably prudent person would foresee such a result. *Kindernay v. Hillsboro Area Hospital*, 366 Ill. App. 3d 559, 570 (2006). "The plaintiff bears the burden of proving proximate cause by a preponderance of the evidence." *Id.* Proximate cause is usually a matter to be determined by the jury. *Filipetto v. Village of Wilmette*, 254 Ill. App. 3d 461, 471 (1993). A jury's determination of proximate cause will be reversed only where its verdict is against the manifest weight of the evidence. *Id.* A verdict is against the manifest weight of the evidence only where, upon reviewing the evidence in the light most favorable to the prevailing party, an opposite conclusion is apparent, or the jury's findings are palpably erroneous and wholly unwarranted, clearly the result of passion or prejudice, or arbitrary and unsubstantiated by the evidence. *Id.* In rendering its verdict, it is the jury's duty to resolve conflicts in the evidence, determine the credibility of the witnesses, and decide the weight that should be given to the witnesses' testimony. *Seldin v. Babendir*, 325 Ill. App. 3d 1058, 1063 (2001).

¶ 18 Expert testimony is admissible where the expert is qualified and where the testimony will assist the trier of fact in understanding the evidence. *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 799 (1999). The weight to be assigned to an expert opinion is for the jury to determine in light of the expert's credentials and the factual basis for the opinion. *Id.* "Because the

jury is not required to accept an expert's opinion, allowing him to testify as to the ultimate issue in a case, such as negligence, does not usurp the jury's function." *Id.* In *Moran v. Erickson*, 297 Ill. App. 3d 342, 345 (1998), the plaintiff sought damages for injuries she alleged she sustained in an auto collision in November 1989. After initial knee X-rays showed no major injury, the plaintiff was treated for soft-tissue pain and whiplash. *Id.* The plaintiff underwent physical therapy for her neck until December 1990 or January 1991. *Id.* After that, she began seeing orthopedic doctors and neurologists, had arthroscopic surgery on her left knee, received more physical therapy treatments, and was diagnosed with fibromyalgia. *Id.* at 345-48. The plaintiff's treating physicians testified that they believed her health issues were related to the auto collision, and the bases for their opinions rested on the plaintiff's reports of when symptoms began in relation to the collision. *Id.* The jury, however, found in favor of the defendant. *Id.* at 352. The appellate court affirmed, noting that the experts all testified that their opinions were based on the information they received from the plaintiff as to when her symptoms developed and her reports of pain. *Id.* at 353. "[T]he medical professional's determination of the patient's credibility and acceptance of the patient's history and subjective expressions of pain, for purposes of making a medical diagnosis and rendering medical treatment, is not binding on the jury." *Id.* at 354. The appellate court stated that it was the jury's duty to make its own determinations of the plaintiff's veracity and credibility, and if the jury found the plaintiff incredible it could also disregard the medical opinions that were based upon information received from her. *Id.* While the defendant did not present contrary medical experts, she extensively contradicted the plaintiff's credibility, including presenting evidence that the plaintiff traveled to Disney World, rode horses, and played tennis during time periods that she claimed she was unable to perform such activities because of pain. *Id.* at 354-55. The defendant also presented witnesses

who knew the plaintiff and testified that she wore neck braces and used crutches in public, but moved around freely in her home. *Id.* at 355. The appellate court held that the trial court did not abuse its discretion in denying the plaintiff's motion for a new trial because, while the plaintiff presented evidence to support her claims, the jury's verdict was not unreasonable, arbitrary, or unsupported by the evidence. *Id.* at 356; see also *Pecaro v. Baer*, 406 Ill. App. 3d 915, 922-23 (2010) (similarly upholding a jury verdict for the defendant despite medical testimony favoring the plaintiff where there was evidence presented to question that the plaintiff's injury was caused by the auto collision with the defendant).

¶ 19 Likewise, in this case, both Dr. Stear and Dr. Humberstone testified that they based their opinions on information received from plaintiff, including the nature of the auto collision, when his symptoms developed, and the intensity and duration of his pain. Defendant presented evidence that the auto collision was relatively minor by submitting photographs of the cars, and she testified that she was traveling only 25 miles per hour at the time of impact. Further, defendant testified that plaintiff denied injury and medical treatment at the time of the accident, and plaintiff testified to the same. Both chiropractors testified that it was possible that plaintiff's symptoms could have had other causes besides the auto collision. Both chiropractors testified that plaintiff had arthritic changes in his spine, and Dr. Humberstone testified that such changes could cause pain at various times. Dr. Stear also admitted that the clinic had a financial interest in the outcome of plaintiff's case. While plaintiff explained the three-week delay in treatment, the jury was not required to believe him. The jury had the duty to determine plaintiff's credibility regarding his injuries, and if it determined that he was not credible, it would accordingly disregard the medical testimony that was based upon plaintiff's information. Here, the jury obviously found plaintiff not credible and believed that his

symptoms were not caused by the auto collision with defendant. It is not this court's function to substitute our opinion for that of the jury or to reweigh the evidence. Under the facts and circumstances of this case, we cannot say that the jury's verdict was unreasonable, arbitrary, or unsupported by the evidence. Therefore, we will not reverse the judgment entered on the jury verdict.

¶ 20 In so holding, we reject plaintiff's reliance on *Anderson* for his position that the jury could not disregard undisputed expert testimony. In *Anderson*, the plaintiff sought damages for cervical spine and shoulder injuries that she sustained in an auto collision with the defendants. *Anderson*, 402 Ill. App. 3d at 364. The defendants admitted liability, and the trial proceeded only on damages. *Id.* At trial, the defendants argued that the plaintiff's shoulder injury was not causally connected to the collision because of the delay in the development of symptoms and treatment and argued that damages only for her cervical injuries should be awarded. *Id.* at 367-68. The jury awarded damages only for the cervical injuries. *Id.* The appellate court reversed because the uncontroverted evidence presented supported the plaintiff's claim that the shoulder injury was caused by the collision and her medical bills were reasonable. *Id.* The physicians who testified did not waver in their conclusions that the shoulder injury was caused by the collision, that the delay in symptoms was explained by the fact that the plaintiff did not resume shoulder movement until her cervical injuries were resolved, and that there was no other explanation for the shoulder injury other than the collision. *Id.* Further, the defendant did not refute the reasonableness of the medical bills that the plaintiff submitted. *Id.* The appellate court acknowledged that a jury is not required to believe a witness if the jury believes that the testimony is false based on other evidence or the inherent improbability or contradictions in the testimony. *Id.* at 367. "However, the jury is also not allowed to arbitrarily reject unimpeached

testimony.” *Id.* The court explained that, if the testimony is not contradicted or impeached, the testimony cannot be disregarded by the jury. *Id.* In its case, the medical testimony and medical bills were not contradicted where the physicians denied the possibility that the shoulder injury had a cause other than the collision and where the reasonableness of the medical bills was not attacked at all. *Id.* at 367-68.

¶ 21 Unlike in *Anderson*, we cannot say that there was no contrary evidence presented such that the jury was forbidden to discredit the medical opinions of the chiropractors. The chiropractors in this case based their opinions on information told to them by plaintiff and acknowledged the possibility that something other than the collision caused his symptoms. There was evidence that plaintiff stated that he was fine and did not need treatment at the scene of the accident and there was a three-week delay before he sought treatment. Defendant testified that the collision was low-impact, contradicting plaintiff’s testimony, and photos were submitted to show the vehicles after the collision. Further, plaintiff’s treating chiropractor admitted that his clinic had a lien on any award plaintiff might win. The jury in this case, unlike the jury in *Anderson*, had evidence contrary to the evidence that plaintiff relied on to support his claim. *Anderson* therefore does not affect our conclusion that the jury could discredit or disregard the medical testimony if it determined that plaintiff was not a credible witness.

¶ 22 For the same reasons, we reject plaintiff’s second argument that the trial court erred in denying his motion for a new trial. A motion for a new trial is subject to the same standard of review as an attack on a jury verdict and should be granted only where the jury verdict is contrary to the manifest weight of the evidence. *Moran*, 297 Ill. App. 3d at 352. As we have concluded that the

jury verdict was not contrary to the manifest weight of the evidence, the trial court did not err in denying plaintiff's motion for a new trial.

¶ 23

### III. CONCLUSION

¶ 24 Based on the foregoing reasons, we affirm the judgment of the circuit court of Winnebago County.

¶ 25 Affirmed.