

No. 1-14-2624

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 DISTRICT

JULIE SHERIDAN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 11 L 5271
)	
ALAN J. PRINCE,)	
)	
Defendant-Appellant.)	Honorable
)	Thomas E. Flanagan,
(David P. Defina, Defendant).)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

- ¶ 1 *Held:* The jury's assessment of damages for pain and suffering and loss of a normal life is not against the manifest weight of the evidence, and the circuit court abused its discretion in awarding the plaintiff a new trial on the issue of damages.
- ¶ 2 The defendant, Alan J. Prince, appeals from an order of the circuit court granting the plaintiff, Julie Sheridan, a new trial on the issue of damages following a jury verdict in this negligence action. For the reasons which follow, we reverse the order granting Sheridan a new trial on the issue of damages and reinstate the judgment on the jury's verdict.

¶ 3 The following factual recitation is taken from the evidence adduced during trial.

¶ 4 On February 20, 2010, a motor vehicle driven by Prince struck the rear of a vehicle driven by David P. Defina. Defina's vehicle then struck the rear of the vehicle driven by Sheridan which was stopped, damaging the vehicle's rear bumper. Sheridan filed the instant negligence action against both Prince and Defina, seeking damages for injuries she suffered and the medical expenses she incurred as a result of the collision. Prior to trial, Defina entered into a settlement with Sheridan and is not a party to this appeal. The action continued on Sheridan's complaint against Prince. Prince admitted liability, and the case proceeded to trial before a jury on the issue of damages only.

¶ 5 Sheridan testified that, prior to the collision giving rise to this action, she had no problems with her neck, left arm, or shoulders. As a result of the collision, her vehicle was pushed three feet forward, and her arm "jammed" into the steering wheel. She stated that, immediately following the collision, she felt pain in the back of her neck, her right shoulder, her right knee, and her left arm.

¶ 6 Sheridan declined an offer by the investigating police officer to call for an ambulance, and she did not otherwise seek immediate medical treatment. On the day following the accident, Sheridan drove 300 miles to her home in Union, Missouri. She testified that she experienced "a lot of pain" in her neck, shoulder, and arm. On February 22, 2010, Sheridan attempted to make an appointment with her primary care physician, Dr. Patrick Smith. However, as Dr. Smith had no available appointment time, he referred her to Dr. Gina Mohart at Patients First Healthcare.

¶ 7 On February 22, 2010, Sheridan presented to Dr. Mohart, complaining of pain in her left arm, left shoulder, and the back of her neck. Dr. Mohart was the first medical provider to examine Sheridan following the accident. Dr. Mohart prescribed pain and anti-inflammatory

medication, which Sheridan testified that she took for two or three weeks. She was seen by Dr. Mohart for a follow-up examination at which time her medication was changed.

¶ 8 Sheridan testified that the medication prescribed by Dr. Mohart failed to alleviate her pain, and as a consequence, she made an appointment to see Dr. Smith. Dr. Smith referred her to Dr. Christian Linz, an orthopedic surgeon, also associated with Patients First Healthcare.

¶ 9 Sheridan was first examined by Dr. Linz on May 5, 2010. She complained of neck pain, shoulder pain, and pain radiating down her left arm. Dr. Linz testified that, when he examined Sheridan on that date, she had full range of motion in her neck and left shoulder, no tenderness of the "AC joint" at the top of her left shoulder, normal grip strength in her left hand and fingers, intact sensation in all four surfaces of her left hand, and normal reflexes in her left arm. According to Dr. Linz, he attempted to "provoke symptoms" in Sheridan's neck and left arm, but was unable to reproduce any of her complaints of decreased strength, numbness, or tingling. Dr. Linz stated that Sheridan's radicular complaints were consistent with a C5-6 disc herniation. Sheridan testified that Dr. Linz prescribed physical therapy, which she underwent for three weeks.

¶ 10 Dr. Linz next saw Sheridan on June 11, 2010. The doctor testified that she again complained of left shoulder, neck and arm pain. According to Dr. Linz, Sheridan's complaints were consistent with a C5-6 disc herniation. His examination of Sheridan on that date produced essentially the same findings as his examination on May 5. Dr. Linz ordered electromyography (EMG) testing to assess the muscles and nerves in her left arm, as conservative treatment had failed to reduce her hand and finger complaints.

¶ 11 Sheridan's EMG testing was performed by Dr. Naseem Shekhani. Dr. Linz testified that he reviewed the results of the EMG which revealed a drop in the nerve conduction velocity

across the elbow area that was consistent with cubital tunnel syndrome. When Dr. Linz saw Sheridan on June 29, 2010, he discussed the results of the EMG with her. He admitted that he did not know the cause of the entrapment of the cubital tunnel. On that same date, x-rays of Sheridan's spine were taken. According to Dr. Linz, those x-rays demonstrated degenerative joint and disc disease at the C5-6 level. He opined that an individual with those conditions can be asymptomatic and, with an injury, can suddenly become symptomatic. Dr. Linz ordered a magnetic resonance imaging (MRI) of Sheridan's cervical spine.

¶ 12 Sheridan underwent an MRI on July 21, 2010, the findings of which Dr. Linz testified "demonstrated a large disc spur complex at the C5-6 level, mainly to the left side consistent with her clinical complaints of left side upper extremity radicular complaints." He stated that the radiologist also noted a large diffuse disc protrusion at the C5-6 level with midline and foraminal stenosis. Dr. Linz testified that the results of the MRI were consistent with a disc herniation at the C5-6 level. Dr. Linz opined that the degenerative spur formations and loss of disc height seen on the x-rays and MRI were not caused by Sheridan's motor vehicle accident, but there was, however, a "very high likelihood" that the motor vehicle collision could have caused an aggravation of the condition.

¶ 13 Sheridan last saw Dr. Linz on July 28, 2010, at which time she reported no improvement in her symptoms. Dr. Linz recommended that she receive epidural steroid injections to decrease the swelling surrounding the herniated disc. Sheridan testified that she had three injections, but that they did not help alleviate the pain that she was experiencing. She admitted that she was sedated when she received the injections. Following her last epidural injection in November of 2010, Sheridan saw Dr. Smith, who referred her to Dr. Michael Boland, a neurosurgeon.

¶ 14 When Sheridan first saw Dr. Boland on January 12, 2011, she complained of pain in the left side of her neck going into her left shoulder and upper extremity. Dr. Boland testified that Sheridan's complaints were consistent with a disc herniation. He stated that he reviewed the July 21, 2010, MRI which showed a disc herniation at C5-6 that extended back into the spinal canal. Following his examination of Sheridan on that date, Dr. Boland recommended surgery.

¶ 15 To treat Sheridan's C5-6 disc herniation, Dr. Boland performed an anterior cervical discectomy and fusion on January 27, 2011. He described the surgery in detail, explaining that portions of the ruptured disc were removed and a bone graft was inserted into the space, and he affixed a titanium plate to Sheridan's cervical vertebrae with screws in order to fuse the bone. Dr. Boland testified that the screws placed in Sheridan's neck are permanent. In his report of the operation, Dr. Boland noted a tear in the posterior annulus and the existence of disc fragments that he testified were consistent with a disc herniation at C5-6.

¶ 16 Sheridan was hospitalized for two days as a result of the surgery, and Dr. Boland continued to treat her following her discharge. Dr. Boland testified that, when he saw Sheridan on February 28, 2011, she reported that she had no shoulder or hand pain. He authorized her to resume working as of that date. Sheridan testified that, about three weeks after her surgery, she again began experiencing pain in her left shoulder that radiated up the side of her neck and down her left arm which she reported to Dr. Boland. She stated that the pain got progressively worse. She also reported a reduced range of motion in her neck. Dr. Boland testified that Sheridan's ability to look up and from side to side "can be" affected by the screws and plate inserted in her neck and that the condition is permanent. He admitted, however, that he made no measurements of any post-operation limitation on Sheridan's range of neck motion. According to Dr. Boland, any loss of flexion, extension or rotation is usually minor, 5 to 10 degrees at most.

¶ 17 Sheridan also reported some post-operative hoarseness in her voice and difficulty swallowing which Dr. Boland explained was a temporary condition related to the stretching of the nerves that control her vocal cords during surgery. He stated that the condition is not painful. According to Sheridan, her voice and throat conditions resolved in four to five weeks following surgery.

¶ 18 Dr. Boland testified that he did not document any complaints of neck pain in his notes of Sheridan's visit on April 20, 2011. He stated that, as of June 16, 2011, Sheridan's fusion had healed. Sheridan sought no follow-up treatment from Dr. Boland during the period from November 1, 2011, through September 11, 2013. Dr. Boland saw Sheridan on September 11, 2013, at which time she complained of left-sided neck pain, shoulder pain, and upper left arm pain. Dr. Boland opined that the neck pain of which Sheridan complained is permanent in nature and that it is more likely than not that she will continue to experience shoulder pain.

¶ 19 Dr. Boland also opined that, based upon the MRI scan and his findings during surgery, Sheridan's ruptured disc was causally related to her motor vehicle accident on February 20, 2010. He admitted, however, that the numbness and pain which Sheridan experienced in the fourth and fifth fingers of her left hand were related to an ulnar nerve problem in her left elbow which was not caused by the accident.

¶ 20 Dr. Boone Brackett, an orthopedic surgeon, testified as an expert witness on behalf of Prince. Dr. Brackett never examined Sheridan. He did, however, review a portion of her post-accident medical records. Dr. Brackett opined that Sheridan did not have an extruded disc and that there was no compromise of her C5-6 nerve root. Relying upon the EMG testing performed by Dr. Shekhani, he concluded, as did Dr. Boland, that the numbness and pain which Sheridan experienced in the fourth and fifth fingers of her left hand was consistent with abnormal nerve

conduction in her elbow and was not caused by a C5-6 disc herniation. According to Dr. Brackett, the EMG also supports his conclusion that Sheridan did not have a true radiculopathy in her upper left arm. Based upon his review of the radiologist's report of Sheridan's cervical MRI, Dr. Brackett testified that she suffered from degenerative disc disease at several levels, with more degenerative changes at the C5-6 level.

¶ 21 On direct examination, Dr. Brackett testified that, in his opinion, Sheridan did not suffer a herniated disc as a result of the motor vehicle collision. He based his opinion in this regard on Dr. Boland's operative report which he believed indicated a C6 nerve lesion. Additionally, Dr. Brackett testified that, if Sheridan had suffered a herniated disc as a result of the collision, she would have experienced immediate, significant pain, and he would be "very surprised" if she would have been able to drive 300 miles on the following day. On cross examination, Dr. Brackett admitted that he never reviewed the actual film of Sheridan's cervical spine MRI; he only reviewed the radiologist's report. When questioned concerning Dr. Boland's operative report, Dr. Brackett conceded it was noted in the report that the herniation was effacing the subarachnoid space, meaning that there was something pressing against the spinal cord. The operative report also noted a hole in the posterior annulus, which Dr. Brackett admitted is consistent with a disc herniation as are the disc fragments which Dr. Boland noted in his report. Dr. Brackett admitted that a herniated disc is painful. He also conceded that, as a result of her surgery, Sheridan's cervical range of motion is permanently restricted, but he stated that the restriction is "*de minimus*."

¶ 22 Sheridan testified that, as of the date of trial, she was no longer experiencing pain in the back of her neck, but that she continued to suffer from pain in her left shoulder which radiates up her neck and down her left arm. When asked to describe the severity of her pain on a scale of 0

to 10, Sheridan stated that her pain is a constant 10. According to Sheridan, she takes Tylenol "every once in a while" for pain, "but it doesn't do anything." She also testified to restricted range of neck motion. She stated that she has difficulty looking straight up and from right to left, affecting her ability to drive for long periods and her ability to see items located on a store's top shelf when she is shopping. As a result of her pain and decreased arm strength, Sheridan stated that she drives less, is restricted in her ability to perform housework, that she does not garden as much as she did before her accident, and that she is afraid to play with her grandchildren as much as she would like for fear that she might drop them. Additionally, Sheridan displayed her surgical scar for the jury. Dr. Boland described the scar as 1½ inches in length and located in a crease in her neck.

¶ 23 Following the trial, the jury returned a \$33,500 verdict in favor of Sheridan, itemized as follows: \$1,500 for loss of a normal life; \$1,500 for pain and suffering; \$30,000 for medical care expenses; and, \$500 for disfigurement. The jury also answered a special interrogatory, finding that Prince's negligence was "a proximate cause of any injury suffered" by Sheridan.

¶ 24 After the circuit court entered judgment on the verdict, Sheridan filed a motion for a new trial on the issue of damages only, contending that the jury disregarded substantial evidence of pain and suffering and ignored unrebutted evidence of disability. On June 30, 2014, the circuit court entered an order which states, in relevant part, as follows: "New trial on damages is ordered on basis of facial contradiction in verdict. Special interrogatory prevails." However, on July 30, 2014, the circuit court entered a subsequent order stating that the matter was heard "on the court's own motion to vacate its order of June 30, 2014." That order then goes on to provide that:

"1) the jury verdict and judgment entered in this cause is hereby vacated;

2) plaintiff's motion for a new trial on damages is hereby granted and the new trial will include the question of causation."

Prince filed a petition for leave to appeal from the July 30, 2014 order pursuant to Illinois Supreme Court Rule 306(a)(1) (eff. July 1, 2014). This court granted the petition on September 24, 2014.

¶ 25 A trial court's ruling on a motion for a new trial on the issue of damages will not be reversed on appeal unless the trial court abused its discretion. *Snover v. McGraw*, 172 Ill. 2d 438, 449 (1996). In urging reversal, Prince argues that the circuit court abused its discretion when it granted Sheridan's motion for a new trial on damages: (1) by failing to make specific findings in its order as required by the supreme court in *Snover*; (2) by giving improper and undue weight to the jury's answer to the special interrogatory; and (3) because the jury's verdict bore a reasonable relationship to Sheridan's injuries and damages. We reject the first two arguments almost summarily.

¶ 26 Prince contends that, in ruling on a motion for a new trial on the issue of damages after judgment has been entered on a jury verdict, the supreme court's holding in *Snover* requires that the circuit court's order specifically include one of three findings, namely: (1) that the jury ignored a proven element of damages; (2) that the verdict resulted from passion or prejudice; or (3) that the award bears no reasonable relationship to the loss suffered. We disagree. There is no question that the trial court's decision to grant the motion for a new trial on the issue of damages in this case must have been based upon one of the three findings articulated in *Snover*, but there is simply no requirement contained within the supreme court's decision in that case which requires that such a finding be specifically set forth in the order granting the motion.

¶ 27 Prince next argues that the circuit court gave improper and undue weight to the jury's answer to the special interrogatory. He asserts that the trial court should not have given the answer any weight in determining whether to grant the motion for a new trial on the issue of damages. We reject the argument for two reasons. First, in determining whether a jury's award of damages is supported by the manifest weight of the evidence, the trial court must consider the record as a whole. See *Ford v. Baker*, 61 Ill. App. 3d 45, 47 (1978). We believe that the inquiry includes consideration of the jury's answer to a special interrogatory. Second, Prince's argument in this regard rests upon the language contained within the order of June 30, 2014, which states that the new trial was granted "on basis of facial contradiction in verdict. Special interrogatory prevails." However, the circuit court's order of July 30, 2014, from which this permissive interlocutory appeal has been taken, states that the matter was heard on that date on the court's own motion to vacate its order of June 30, 2014. The question, therefore, is whether the circuit court abused its discretion in entering its order of July 30, 2014, not whether it abused its discretion in the entry of its order of June 30, 2014.

¶ 28 Prince's third argument is addressed to the adequacy of the damages awarded by the jury. The parties have restricted their arguments to the reasonableness of the damages that the jury awarded Sheridan for pain and suffering and for loss of a normal life. Neither party has addressed the reasonableness of the jury's award of \$30,000 for the medical expenses incurred by Sheridan or the \$500 that she was awarded for disfigurement. As to the award of medical expenses, we note that the jury's award is slightly in excess of 100% of the amount which Sheridan claimed to have incurred and included all expenses related to the surgery performed by Dr. Boland. We therefore restrict our analysis to the damages which the jury awarded for pain and suffering and loss of a normal life.

¶ 29 A jury's award of damages will not be upset unless: (1) the jury ignored a proven element of damages; (2) the verdict resulted from passion or prejudice; or (3) the award bears no reasonable relationship to the loss suffered. *Snover*, 172 Ill. 2d at 447. In this case, the jury did not ignore any element of damages as it assessed damages on each category of loss claimed by Sheridan (see *Kumorek v. Moyers*, 203 Ill. App. 3d 908, 909 (1990); *Lee v. Chastang*, 79 Ill. App. 3d 622, 625 (1979)), and no argument has been made that the verdict was influenced by either passion or prejudice. We are left then with the issue of whether the jury's damage assessments for pain and suffering and for loss of a normal life bear a reasonable relationship to the losses Sheridan sustained.

¶ 30 Prince defended this case on the theory that Sheridan did not suffer a disc herniation as a result of the February 20, 2010, accident; rather, she only suffered soft tissue injuries to her neck and shoulder. Dr. Brackett was of the opinion that Sheridan did not have a herniated disc, only degenerative disc disease which was not caused by the accident. The jury obviously rejected the theory and Dr. Brackett's supporting opinion as it awarded Sheridan all of her medical expenses, including the total cost of the surgery performed by Dr. Boland. It logically follows that, to award Sheridan the medical expenses associated with her surgery, the jury must first have concluded that the condition necessitating the surgery was causally related to the collision. And, it was Dr. Boland's testimony that Sheridan suffered a herniated disc as a result of the collision that provided the evidentiary support for the jury's conclusion in this regard.

¶ 31 Prince argues that, even if the jury concluded that the collision caused the condition which necessitated the fusion surgery, the jury could have determined that, based upon the evidence, minimal damage awards for pain and suffering and loss of a normal life were appropriate. He asserts that it was the jury's function to assess the credibility of Sheridan's

testimony relating to the pain that she suffered and how her life has been impacted by her injuries.

¶ 32 A jury's award of damages is entitled to substantial deference as the determination of adequate damages is a question of fact to be resolved by the jury. *Snover*, 172 Ill. 2d at 447. Damage awards for pain and suffering and awards for loss of a normal life are especially difficult to quantify since, unlike economic damages, they are not readily calculable. *Snover*, 172 Ill. 2d at 448 (discussing pain and suffering); *Poliszczuk v. Winkler*, 387 Ill. App. 3d 474, 480 (2008) (discussing loss of normal life). In determining whether a trial court abused its discretion in granting a new trial on the issue of damages, we consider whether the jury's verdict is supported by the manifest weight of the evidence. *Maple v. Gustafson*, 151 Ill. 2d 445, 455-56 (1992).

¶ 33 Sheridan argues before this court, as she did in the circuit court, that the jury's "*de minimus* award[s] for pain and suffering and loss of normal life is inherently inconsistent with its award of all of *** [her] medical bills." However in *Snover*, the supreme court rejected the notion that a jury's award of pain-related medical expenses without a corresponding award of damages for pain and suffering is irreconcilably inconsistent. *Snover*, 172 Ill. 2d at 444-46. Under proper circumstances, there is no inherent inconsistency between a jury's award of medical expenses and its award of only minimal damages for pain and suffering or loss of a normal life. See *Snover*, 172 Ill. 2d at 445-448. However, if the evidence clearly indicates that the plaintiff suffered a serious injury, a jury's award of medical expenses and only a minimal award for pain and suffering could be inconsistent. See *Snover*, 172 Ill. 2d at 449; *Burnham v. Lewis*, 217 Ill. App. 3d 752, 756-57 (1991).

¶ 34 In making a determination of whether a jury's award of damages bears a reasonable relationship to the losses sustained by a plaintiff, the distinction between subjective complaints

and objective symptoms must be considered. When a plaintiff's complaints are primarily subjective in nature and not accompanied by objective symptoms, the jury may choose to disbelieve the plaintiff's testimony. *Snover*, 172 Ill. 2d at 449.

¶ 35 In this case, the testimony of Drs. Boland and Linz, along with the results of x-rays taken on June 29, 2010, and the MRI scan of July 21, 2010, provide objective evidence that Sheridan suffered from a herniated disc at the C5-6 level. And, as noted earlier, the jury implicitly arrived at that conclusion when it awarded her all of the medical expenses incurred as a result of the surgery performed by Dr. Boland to treat the condition. However, the evidence of the intensity of Sheridan's pain and suffering and the evidence of the extent of her loss of a normal life was purely subjective.

¶ 36 There is no disputing the fact that Sheridan experienced pain at some level as a result of the February 20, 2010 collision. Even Dr. Brackett conceded that a herniated disc is painful. Sheridan testified that she continuously experienced pain in her neck, shoulder and arm from the date of her accident through the date of trial. She described the pain as constant and severe. Nevertheless, she was able to drive 300 miles in 7 hours on the day following her accident. Her post-accident medical records note continuing complaints of pain. However, when Dr. Linz examined Sheridan in May and June of 2010, he found that she had full range of motion in her neck and left shoulder, no tenderness at the top of her left shoulder, normal grip strength in her left hand and fingers, and normal reflexes in her left arm, and when he attempted to "provoke symptoms" in her neck and left arm, he was unable to reproduce any of her complaints of decreased strength. Dr. Boland's testimony regarding the level of pain which Sheridan experienced was admittedly based entirely upon the complaints which she made. At trial, Sheridan testified that, on a scale of 0 to 10, her pain level was 10. She characterized the pain as

constant and severe. Yet, she testified that she takes Tylenol "every once in a while" for her pain. Dr. Boland testified that Sheridan sought no follow-up treatment from him during the period from November 1, 2011, through September 13, 2013, and the record fails to disclose any other medical treatment during that period.

¶ 37 Damages for loss of normal life are a component of disability which compensates for a change in a plaintiff's life style. *Jones v. Chicago Osteopathic Hospital*, 316 Ill. App. 3d 1121, 1135 (2000). Sheridan testified to a variety of activities that she can no longer perform to the extent that she was able before the collision of February 20, 2010. Again, however, her testimony was subjective. As noted in the preceding paragraph, Dr. Linz testified that his examinations of Sheridan prior to her fusion surgery revealed that she had full range of motion in her neck and left shoulder, normal grip strength, and normal reflexes in her left arm. As for Sheridan's physical limitations post-surgery, both Dr. Boland and Dr. Brackett acknowledged that she has some limitation on her range of neck motion as a result of the fusion and the screws that were inserted in her neck, and they both acknowledged that the condition is permanent. Dr. Boland admitted, however, that he made no measurements of the extent of the limitation on Sheridan's range of neck motion and testified that, in the usual case, any loss of flexion, extension or rotation is usually minor, 5 to 10 degrees at most. Dr. Brackett testified that the restriction is "*de minimus*."

¶ 38 It was the jury's function to determine the credibility of the witnesses and the weight to be accorded to their testimony. *Maple*, 151 Ill. 2d at 452. Although the record demonstrates that Sheridan suffered from a herniated disc that was causally related to the February 20, 2010 collision, necessitating the surgery performed by Dr. Boland, Sheridan relied upon her own testimony to establish the level of pain which she experienced and the affect that her injuries

have on her daily life. The jury had the opportunity to observe Sheridan during several days of trial and judge for itself if she was experiencing signs of the severe pain that she claimed and the extent of the limitation on her range of neck motion. We believe that there is sufficient evidence in the record from which the jury could, and evidently did, conclude that Sheridan's claims of pain and disability were magnified. The fact that a jury's damage awards for both pain and suffering and loss of a normal life were "less than generous" does not mean that the awards are inadequate. *Brown v. St. John's Hospital of the Hospital of the Sisters of the Third Order of St. Francis*, 51 Ill. App. 3d 1044, 1046 (1977).

¶ 39 The foregoing analysis leads us to conclude that the jury's assessment of damages in this case is not against the manifest weight of the evidence as a contrary conclusion is not clearly evident, nor is the verdict unreasonable, arbitrary, and not based upon any evidence. *Maple*, 151 Ill. 2d at 454. We conclude, therefore, that the circuit court abused its discretion when it granted Sheridan's motion for a new trial on the issue of damages. Consequently, we reverse the order granting Sheridan a new trial on the issue of damages and, pursuant to Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we reinstate the judgment on the jury's verdict.

¶ 40 Reversed; judgment reinstated.