2015 IL App (2d) 140815-U
No. 2-14-0815
Order filed July 22, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PAUL PALKA,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11-L-508
	)	
DIANA PRODZENSKI,	)	Honorable
	)	Ronald D. Sutter,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hudson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The jury's verdict was legally inconsistent, as it found that defendant's negligence was 50% of the proximate cause of plaintiff's injuries yet it awarded plaintiff no damages, and the inconsistency was not subject to any reasonable hypothesis (other than that it represented a compromise on the issues of liability and damages); thus, we reversed the judgment and remanded for a new trial on both issues.

¶ 2 Plaintiff, Paul Palka, appeals from a jury verdict finding defendant, Diana Prodzenski, 50 % liable, but awarding him no damages, for injuries he suffered when he slid his motorcycle to avoid colliding with defendant's vehicle. Because the jury verdict was internally inconsistent, there was no reasonable hypothesis explaining the inconsistency, and the record suggests that the

jury verdict was a compromise, we reverse and remand for a new trial on both liability and damages.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff filed a single-count complaint in the circuit court of Du Page County, alleging that defendant negligently stopped her vehicle in an intersection, which resulted in him being injured when he was forced to slide his motorcycle to avoid colliding with defendant's vehicle. The case was tried by a jury.

¶ 5 The following evidence was established at trial. On September 27, 2010, defendant was driving east on 75th Street in Naperville. Plaintiff was following immediately behind her on his motorcycle.

¶ 6 As defendant's vehicle approached the intersection with Washington Street, it stopped in the intersection. According to plaintiff, the light was green when defendant stopped. A witness in the left-turn lane testified that the light was green when plaintiff's motorcycle slid. On the other hand, defendant testified that, as she approached the intersection, the light changed from green to yellow. According to her daughter, who was a passenger in her vehicle, as they neared the intersection the light changed from yellow to red.

¶ 7 Plaintiff testified that, because he did not believe that he had enough time to brake his motorcycle to avoid colliding with defendant's vehicle, he opted to slide it on the pavement. After doing so, the motorcycle stopped six or seven car lengths behind defendant's vehicle.

¶ 8 David Stobbe, defendant's expert, testified that a motorcycle will stop quicker by applying its brakes than by sliding on its side. He opined that plaintiff would have stopped his motorcycle at least 20 to 30 feet short of defendant's vehicle had he applied the brakes.

¶ 9 The undisputed evidence showed that plaintiff suffered a severe shoulder injury requiring several surgeries and that he experienced extensive pain and suffering. His medical bills were approximately $114,000.

¶ 10 The trial court provided the jury with three verdict forms. Verdict form A was for a verdict in favor of plaintiff, without any damages reduction for plaintiff's contributory negligence. Verdict form B was for a verdict in favor of plaintiff but provided for a damages reduction based on his percentage of contributory negligence. Verdict form C was for a verdict in favor of defendant.

¶ 11 More specifically, verdict form B provided: "[f]irst: [w]ithout taking into consideration the question of reduction of damages due to the negligence of [p]laintiff, we find that the total amount of damages suffered by the [p]laintiff as a proximate result of the occurrence in question is $ _____." It further provided: "[s]econd: [a]ssuming that 100% represents the total combined negligence of all persons whose negligence proximately contributed to the [p]laintiff's injuries and damages, including the [p]laintiff and the [d]efendant, we find that the percentage of such negligence attributable solely to the [p]laintiff is _____ percent (%)." Finally, verdict form B provided: "[t]hird: [a]fter reducing the total damages sustained by [p]laintiff by the percentage of negligence solely attributable to the [p]laintiff, we assess the [p]laintiff's recoverable damages in the sum of $ _____."

¶ 12 During closing arguments, plaintiff asked the jury to use verdict form A and to return a verdict in his favor with no reduction based on his contributory negligence. Defendant asked the jury to use verdict form C and return a verdict in her favor. Neither party referred to verdict form B during closing arguments.

¶ 13 During jury deliberations, the jury sent the trial court a note that asked, "if we vote 'verdict form B' do we have to award monetary damages at all?" The note also asked whether the jury's decision on any monetary award would be final. After discussing the note with the attorneys, the court directed the jury in writing to "please reread and review the jury instructions and continue to deliberate." Neither attorney objected, or offered any alternative, to the court's response.

¶ 14 Later that day, the jury returned its verdict on verdict form B. In the first section it found the total damages to be zero. In the second section, it found plaintiff to have been 50% contributorily negligent. In the third section, it assessed plaintiff's recoverable damages as zero.

¶ 15 Plaintiff filed a motion for a new trial in which he contended that the verdict was legally inconsistent or that it was a compromise verdict. In denying the motion for a new trial, the trial court found that the verdict was not against the manifest weight of the evidence. In the court's opinion, there was sufficient evidence for the jury to have found that defendant's negligence was not the proximate cause of plaintiff's injuries. The court added that, based on Stobbe's opinion, plaintiff could have safely stopped his motorcycle by staying upright and applying the brakes, and the jury could have reasonably inferred that plaintiff's decision to slide the motorcycle was the sole proximate cause of his injuries. According to the court, the jury's note reflected its intent to award zero damages, and the evidence was sufficient to support such a verdict.

¶ 16 II. ANALYSIS

¶ 17 On appeal, plaintiff contends that the verdict was legally inconsistent and that it was a compromise verdict. Defendant initially requests that we strike plaintiff's brief because it violates Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). Alternatively, defendant

asserts that the verdict was supported by the evidence, was subject to a reasonable hypothesis, and was not a compromise.

¶ 18 We begin by addressing defendant's request to strike plaintiff's brief. In that regard, defendant argues that the brief should be stricken because it lacks record citations in the argument. Rule 341(h)(7) requires, in pertinent part, that the argument include citations to those portions of the record relied on. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Although compliance with Rule 341 is mandatory, we have wide discretion as to whether to strike an appellant's brief and dismiss an appeal for a violation of the rule. See *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77. We typically will not do so where a lack of compliance does not hinder our review. See *In re Marriage of Levinson*, 2013 IL App (1st) 121696, ¶ 26. Because the failure to provide record citations does not hinder our review, we deny defendant's request to strike plaintiff's brief.

¶ 19 We turn next to plaintiff's challenge to the jury verdict. A verdict in a civil case may be considered legally inconsistent if it is internally inconsistent or inherently self-contradictory. *Redmond v. Socha*, 216 Ill. 2d 622, 643 (2005). However, a court must exercise all reasonable presumptions in favor of the verdict. *Redmond*, 216 Ill. 2d at 643. In doing so, a court must not find a verdict legally inconsistent unless it is absolutely irreconcilable. *Redmond*, 216 Ill. 2d at 643. A verdict is not irreconcilably inconsistent if it is supported by any reasonable hypothesis. *Redmond*, 216 Ill. 2d at 644. Such a determination is best made via a posttrial motion, and the trial court's ruling will not be reversed unless the court abused its discretion. *Balough v. Northeast Illinois Regional Commuter Railroad Corp.*, 409 Ill. App. 3d 750, 775 (2011).

¶ 20 In this case, we begin with verdict form B. It stated that plaintiff's negligence represented 50% of the negligence that "proximately contributed to the [p]laintiff's injuries and

damages." It also stated that the total damages suffered by plaintiff "as a proximate result" of the occurrence was zero. Those two findings were internally inconsistent and inherently self-contradictory. The first finding, that plaintiff's negligence was 50% of the negligence that proximately contributed to his injuries and damages, necessarily implied that defendant's negligence proximately contributed the other 50%. However, in setting plaintiff's reasonable damages at zero, the jury also found that plaintiff's injuries were not proximately caused by defendant at all. Therefore, the verdict is legally inconsistent, provided that it is absolutely irreconcilable.

¶ 21 To determine if the verdict is absolutely irreconcilable, we must assess whether, applying all reasonable presumptions in favor of the verdict, it can be supported by some reasonable hypothesis. To that end, we begin with the note that the jury sent to the trial court. The note asked whether, if the jury opted to use verdict form B, it was required to award any money damages. The note evinces the jury's intent to award plaintiff no damages, notwithstanding defendant's negligence. The jury certainly would have been justified in doing so had it found either that plaintiff had not proved any damages, that plaintiff's own negligence was more than 50 % of the proximate cause of his damages, or that defendant (whether negligent or not) did not proximately cause his damages at all. As to the first possibility, a finding that plaintiff did not establish damages would have been against the manifest weight of the evidence, as plaintiff's evidence that he suffered injuries as a result of the incident was undisputed.

¶ 22 That leaves the other possible explanations, that plaintiff's own negligence was more than 50% or that defendant did not proximately cause plaintiff's damages. Under the evidence, it was possible for the jury to have made either finding. That is so because defendant's expert, Stobbe, testified that plaintiff could have safely stopped his motorcycle without injury had he

simply applied the brakes. Therefore, the jury could have found either that plaintiff's own actions were the sole cause of his injuries, as opposed to any negligence by defendant, or that plaintiff's negligence was more than 50 % of the cause of his injuries.

¶ 23 However, had the jury so found, it would have used verdict form C, as argued by defendant's counsel, and returned a verdict in favor of defendant. Instead, for unexplained reasons, the jury opted to use verdict form B. In doing so, it necessarily found that defendant's negligence proximately contributed 50% to plaintiff's injuries. That, of course, was entirely inconsistent with any finding that plaintiff was not entitled to any damages. That inconsistency is not explainable by any reasonable hypothesis.

¶ 24 Defendant's reliance on *Kleiss v. Cassida*, 297 Ill. App. 3d 165 (1998), is misplaced. In *Kleiss*, the jury returned a verdict in favor of the plaintiffs and against the defendant, but awarded zero damages. *Kleiss*, 297 Ill. App. 3d at 175. The appellate court concluded that the verdict was not legally inconsistent, because the evidence supported the apparent finding that the defendant, although negligent, did not proximately cause the plaintiffs' injuries. *Kleiss*, 297 Ill. App. 3d at 176. Therefore, the court concluded that the jury simply used the wrong verdict form. *Kleiss*, 297 Ill. App. 3d at 176.

¶ 25 Here, unlike in *Kleiss*, there is no reasonable explanation as to how the jury found that defendant's negligence was 50% of the proximate cause of plaintiff's injuries yet, in the face of the undisputed evidence of damages, that plaintiff was not entitled to any damages. See *Cimino v. Sublette*, 2015 IL App (1st) 133373, ¶ 109 (distinguishing *Kleiss* because there was no indication in the record that the jury knew how to assess damages or had been instructed that it could find the defendant liable but award zero damages).

¶ 26 Because the verdict was legally inconsistent, plaintiff is entitled to a new trial. However, we must decide whether a new trial will be on the issue of damages alone or on both the issues of liability and damages. A new trial on damages alone may be granted where: (1) the jury's verdict on the question of liability is amply supported by the verdict; (2) the questions of liability and damages are so separate and distinct that a trial limited to damages would not be unfair to the defendant; and (3) the record suggests neither that the jury reached a compromise verdict nor that the error that resulted in the jury awarding inadequate damages also affected the jury's finding as to liability. *Cimino*, 2015 IL App (1st) 133373, ¶ 111.

¶ 27 Applying those considerations to our case, we conclude that there must be a new trial on both liability and damages. The record strongly suggests that the jury reached a compromise verdict. The jury's note reflected its intent not to award any damages to plaintiff, irrespective of defendant's negligence or proximate cause. That being the case, the jury should have used verdict form C. Instead, it used verdict form B. In doing so, it split liability equally between the parties. Therefore, it appears that the jury compromised on the issue of liability in an effort to reach a consensus on the issue of damages. Because we cannot say that the jury's liability assessment was anything other than a compromise, we remand for a new trial on both liability and damages. See *Cimino*, 2015 IL App (1st) 133373, ¶ 113 (citing *Tindell v. McCurley*, 272 Ill. App. 3d 826, 830-31 (1995)).

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we reverse the judgment of the circuit court of Du Page County and remand for a new trial on both liability and damages.

¶ 30 Reversed and remanded.