

2016 IL App (2d) 151027-U
No. 2-15-1027
Order filed April 22, 2016

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

STANLEY E. KONRICK, JR.,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellant,)	
)	
v.)	No. 12-L-145
)	
MICHAEL R. LACROIX,)	Honorable
)	Patrick J. O'Shea,
Defendant-Appellee.)	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in denying the plaintiff's posttrial motions for judgment notwithstanding the verdict and for a new trial.
- ¶ 2 This appeal concerns a personal injury lawsuit arising from a traffic collision. The jury found the defendant liable, but found the plaintiff to have been 50% contributorily negligent. For damages, the jury awarded the plaintiff essentially all of the economic damages he claimed, and noneconomic damages of \$20,000 (\$5,000 for each of four aspects: past pain and suffering, future pain and suffering, past loss of a normal life, and future loss of a normal life). The damages were reduced by 50% due for the plaintiff's contributory negligence. The plaintiff filed

a posttrial motion seeking to have the determination of contributory negligence vacated through the entry of judgment notwithstanding the verdict (judgment *non obstante veredicto*, or JNOV), and a new trial on damages (or, in the alternative, a new trial on all matters). The trial court denied the posttrial motions, and the plaintiff appealed. We affirm.

¶ 3

I. BACKGROUND

¶ 4 The case was tried to a jury in May 2015. The defendant, Michael LaCroix, testified as follows. On March 10, 2010, he was driving his Ford Explorer eastbound on 75th Street in Naperville. It was dusk and his car headlights were on. At the intersection of 75th Street and Naper Boulevard, LaCroix pulled into the left turn lane, intending to make a left turn. There was a car ahead of him in the left turn lane and he came to a complete stop behind that car. After it turned, LaCroix pulled forward and stopped, waiting for an opportunity to make his turn. The traffic light was green. After checking for oncoming traffic and not seeing any oncoming cars or headlights, LaCroix began his left turn onto northbound Naper Boulevard. He was traveling no more than 15 miles per hour. Just before he cleared the intersection, the right rear side of his car was struck by the car being driven by the plaintiff, Stanley Konrick. He had no warning of the collision except for the sound of tires screeching on the pavement. The collision caused LaCroix's car to spin 180 degrees and slide northwest, striking another car stopped in the innermost southbound lane of Naper Boulevard. After the collision, the police issued LaCroix a ticket for failing to yield the right of way when turning left. He later pled guilty to the offense.

¶ 5 Konrick testified that, on March 20, 2010, his daughter Laura asked him to drive her to a friend's house. Konrick and Laura got into his father's 1985 Mercury Marquis, which Konrick's father was no longer using. The brakes on the Marquis were in good shape, because his father had only driven the car 40,000 miles. The tires were new. The radio did not work. Laura was in

the back seat. Before Konrick left home, he turned his headlights on. Part of his route took him northbound on Wehrli Road. When he reached 75th Street, he turned left. He did not have to stop before turning onto 75th Street. As he traveled west on 75th Street in the left lane, he was going between 40 and 45 miles per hour and never exceeded that speed. The speed limit on 75th Street was 45 miles per hour. As Konrick approached the intersection with Naper Boulevard, the traffic light was green. He saw a car in the oncoming left turn lane. The car suddenly turned left in front of him. Konrick slammed on his brakes and swerved to the left to try to avoid a collision, but could not avoid the car. His right front fender hit the car. The impact of the collision spun his vehicle around.

¶ 6 After the collision, he got out of the car. He opened the back door and asked his daughter how she was. She said her knee hurt a little, but she was okay. He felt generally okay, although the collision had made his left hand feel numb and tingly. He was transported to Edward Hospital in an ambulance. He was placed in a neck brace (cervical collar). He had a cut on his hand and a swollen forehead. A police officer later came to the hospital to interview him.

¶ 7 Melissa Stein was deposed before trial, and by agreement of the parties her deposition was read to the jury at trial. She was heading south on Naper Boulevard that evening and was stopped at a red light at the intersection with 75th Street when she saw the accident. It was the evening rush hour and traffic was busy. She saw an SUV that was headed east on 75th Street turn left in front of a cream-colored older sedan that was heading west on 75th Street. The light was green for traffic on 75th Street at the time of the collision. She did not know how fast the two cars were going and whether either car had its headlights on. Neither car sounded its horn before the collision. The impact of the collision spun both cars around, and the SUV ended up hitting a car stopped in the lane to her left. She called 911 and then turned her engine off and got

out of her car. She spoke with the man who had been driving the cream-colored car and asked if he was hurt. He said that his daughter's knee was hurt, but he was okay. The police arrived and she spoke with them.

¶ 8 Renee O'Flynn testified at trial. She had been driving behind Konrick for several minutes before the collision. She first saw Konrick's car near her home, as she was waiting to turn right onto northbound Wehrli Road. As she checked the traffic coming from the left, she saw an older, cream-colored car (which she later learned to have been Konrick's car) "traveling at an excessive rate of speed." She waited until the car passed and then turned right. When she got to the intersection of Wehrli Road and 75th Street, she entered the left-turn lane there. Konrick's car was stopped in front of her in the same lane. She saw an older man driving, and a younger girl in the back seat, apparently dancing to music. Konrick's car turned left onto 75th Street, and she turned left after it. Konrick's car accelerated rapidly and he quickly drew far ahead of her. According to O'Flynn, Konrick was "flying," by which she meant "speeding quite fast." She estimated that she herself was traveling close to the 45-mile-per-hour speed limit.

¶ 9 O'Flynn believed that the intersection of 75th Street and Naper Boulevard was less than a mile from Wehrli Road, where she first turned onto 75th Street. There were no stop signs or traffic lights on 75th Street in that stretch of road. She believed that she was near a day care center on 75th Street at the time of the collision. O'Flynn testified that she "was sure" that the traffic light at Naper Boulevard was red at the time of the collision. After observing the collision, she proceeded to the intersection of 75th Street and Naper Boulevard and pulled into a nearby parking lot to wait for the police to arrive, because "they needed to know how fast the gentleman [Konrick] was driving." She told a police officer that she thought Konrick had been traveling 60 to 65 miles per hour.

¶ 10 On cross-examination, O’Flynn confirmed that she had been in front of the Peter Pan school at the time of the collision. She had previously estimated the distance between her car and Konrick’s car at the time of the collision as “several hundred yards,” and she had no reason to doubt the plaintiff’s attorney’s representation that he had measured the distance at 700 yards, or seven football-field-lengths. O’Flynn conceded that, from 700 yards away, at dusk, she could not say with certainty what speed Konrick was traveling at the time of the collision. However, she could see the traffic light at the intersection, and it was red when Konrick entered the intersection.

¶ 11 Kevin Kendrick, a traffic officer with the Naperville Police Department, testified that he arrived at the scene of the collision after receiving a call about it at 7:43 p.m. on March 10, 2010. He had previous training in traffic accident reconstruction and was very familiar with the intersection where the collision occurred. When he arrived, he spoke with two other police officers who were already there, securing the area. He did not recall whether he saw any debris at the intersection when he arrived.

¶ 12 Officer Kendrick then interviewed witnesses, including Melissa Stein, Ray Fang (the driver of the car struck by LaCroix’s car after it spun out), Renee O’Flynn, and both drivers. LaCroix told Officer Kendrick that his traffic light had been full green when he started his left turn, and he never saw Konrick’s vehicle before the collision. During his interview of O’Flynn, Officer Kendrick asked her what color the traffic light was when the collision occurred, and she was unsure. She did tell him that she had observed Konrick’s car before the accident “flying” along 75th Street at 60 to 65 miles per hour. However, none of the other witnesses mentioned anything about Konrick having been speeding. Based upon his education, training, and experience, his opinion to a reasonable degree of professional certainty was that LaCroix failed

to yield the right of way when making a left turn. He issued LaCroix a citation for failure to yield; he did not issue any citation to Konrick.

¶ 13 On cross-examination, Officer Kendrick confirmed that he did not perform a “full accident reconstruction,” which would involve taking photographs of the scene and making notes of any skid marks and debris. There was no investigation of Konrick’s headlights to determine whether they had been on at the time of the collision, or of the condition of the tires or brakes in Konrick’s car.

¶ 14 Regarding the effect of the collision, Konrick testified that, when he was first seen in the emergency room of the hospital, he did not really feel the cut on his hand or his swollen forehead, he just felt the pain in his fingers. He told a doctor that he had a minor neck ache. He was told that he had a broken neck (a cervical fracture), and they put him in a neck brace and told him not to move or he could become paralyzed. X-rays were taken. The next day, he saw the general trauma surgeon and an orthopedic surgeon. He was told that his fracture was stable and that he did not need surgery. He was discharged. During his hospital stay, he reported his pain to be “mild.”

¶ 15 During the first week after the accident, he had pain and numbness in three fingers, but after that, only his left thumb and index finger were affected. He was not given any medication. Konrick was in a cervical collar for several weeks, during which he could not drive. For about two months, his wife drove him to work and he took the bus home. He was also unable to be physically intimate with his wife for about six months. He ended up having to miss at least 36 days of work, although he was able to use paid sick leave and did not lose any pay. Konrick worked for Metra at the time of the accident, and he still does.

¶ 16 Konrick eventually had surgery to fuse two of his cervical vertebrae. It was undisputed that his medical bills totaled \$147,435.74.

¶ 17 Currently, Konrick rated the numbness and tingling in his fingers as always at least a 3 (on a scale of 1 to 10). This constant pain and numbness affected his grasp as well. Right after the accident, he could not hold a cup. More recently, he has had difficulty tightening his grandson's bicycle seat and picking up Legos when they are playing. He has always enjoyed doing projects around the home, including woodworking projects. He could still do some of this, but now he could not go into small spaces such as under a sink, look up for long periods of time, or hold a nail well with his left hand. It was "a little difficult" to tie a shoe.

¶ 18 His neck usually bothered him when he was sleeping, often waking him up because of the pain. He usually took an Excedrin PM and went back to sleep. His neck also hurt when he first woke up in the morning. However, once he became active, he usually did not have any neck pain for the rest of the day. Occasionally, if he moved the wrong way, his neck would hurt during the day. His sexual desire had decreased partly because he was tired from not sleeping well, and partly because he was afraid of moving the wrong way. When driving, he could not turn his head to look behind him, and so he tried to avoid having to back up.

¶ 19 Konrick's wife, Donna Konrick, testified about Konrick's condition after the accident. She and Konrick had been married for over 30 years and had three children. She and her husband regularly cared for their nine-year old grandson, Zach. Before the accident, Konrick never had any trouble sleeping, neck pain, numbness in his left hand, or dexterity problems with his left hand. Before the accident, Konrick would do home repairs, and liked to play with his grandson. Since the accident, Konrick could no longer assemble Legos with his grandson, and he could not do as much of the home repair. Their son had to take over some of the home repair.

Konrick had also become a very restless sleeper since the accident—he had to have four pillows, and he could not get comfortable and woke up during the night. Before the accident, he did not take Excedrin PM in order to sleep; after the accident, he did. The accident also affected her physical relationship with Konrick: Konrick was now less interested in physical intimacy with her and they were physically intimate less often. In addition, for about a month after his neck surgery, Donna had to do almost everything for him—dress him, put his socks on, fasten buttons. Konrick was also bedridden for “quite a long time,” and she brought him meals and his mail. Donna also had to drive Konrick for at least three months, as he was uncomfortable driving. Even as a passenger, every bump bothered him. That spring, he was unable to go on the annual family car trip to Ohio to see their son at college on parents’ weekend. Konrick was not really a complainer, but during the time he had to stay home from work, he was uncomfortable and his mood was somber. Once Konrick began driving again, he drove differently because he could not turn his head to look back. On cross-examination, Donna testified that, since 2011, Konrick was not absent from work for any extended period of time. In the past year, he was able to drive two hours to Bradley University to see their daughter there, although longer car rides made his neck hurt.

¶ 20 It appears that, during the trial, the video deposition of several doctors was played for the jury: Ralph Hoover, Nicholas Mataragas, Paul Manganelli, Anthony Rinella, Avi Bernstein, and William Minore. (We say “appears” because no transcript of the first day of trial is contained in the record. The report of the proceedings at trial commences on May 19, 2015, apparently after these depositions were played for the jury, with the trial court’s words, “Call your next witness.” Nor have the parties directed us to any record identifying whose witnesses the various doctors were.) The videotaped testimony of these doctors is summarized below.

¶ 21 Dr. Ralph Hoover saw Konrick on the date of the collision. Konrick reported his pain as “mild” and refused pain medication in the emergency room. Although Konrick complained of numbness and tingling in his fingers, his strength, motor function, sensation, and reflexes were all normal in his left hand and arm. An x-ray of his left hand was normal.

¶ 22 A CT scan of Konrick’s neck showed a “mildly separated oblique fracture” at the C7 level involving the left neural foramen. The scan also showed some degenerative disk disease with mild to moderate foraminal narrowing at C5-C6. In Dr. Hoover’s experience, patients with this condition at C5-C6 can experience pain radiating down their extremities, and foraminal narrowing and nerve pinching could cause tingling in the hand and fingers. Konrick was admitted to the hospital for observation and evaluation.

¶ 23 While Konrick was in the hospital, Dr. Hoover asked Dr. Dalip Pelinkovic, an orthopedic spine surgeon, and Dr. Beatrice Klade, a trauma surgeon, to evaluate him. This was normal practice for patients admitted after a car accident. Dr. Pelinkovic examined Konrick and diagnosed him as having a stable C7 lateral mass fracture on the left. He recommended treatment by wearing a hard cervical collar. The doctors at Edward Hospital agreed that Konrick could be discharged without surgical intervention.

¶ 24 After he was discharged, Konrick was referred to a spine surgeon, Dr. Nicholas Mataragas. When Konrick first saw Dr. Mataragas one week after the accident, he reported pain in his shoulder and numbness in his hand. Dr. Mataragas believed that Konrick’s C7 fracture was displaced “just enough to push on that nerve root and cause him some dysfunction.” Konrick had significant weakness in his left triceps as a result of this compression. Dr. Mataragas initially treated Konrick with a neck brace. An MRI of Konrick showed pre-existing degenerative changes at C5-6 as well as at C6-7. After viewing the MRI, Dr. Mataragas

recommended an anterior cervical fusion of both spaces. Dr. Mataragas testified that, although fusing the C5-C6 joint was not absolutely medically required at that point, it was recommended because the combined effect of the pre-existing degeneration together with the fusion of the joint below would make it likely that Konrick would need such fusion in the near future. The surgery was performed on April 19, 2010, at Good Samaritan Hospital. As a result of the surgery, Konrick lost about 20 to 30 percent of the range of motion in his neck.

¶ 25 Dr. Paul Manganelli was an anesthesiologist and pain specialist in practice with Dr. Mataragas. Beginning in October 2011, Konrick began seeing him for complaints of neck pain and pain radiating into the left index finger and thumb. Konrick reported that he had not had this pain before the car accident. Konrick took Excedrin PM and Motrin for the pain. He could perform all his normal daily activities and did not have muscle cramps, joint pain, a limited range of motion, or any other musculoskeletal problems. His physical exam showed abnormalities of the left cervical flexion, normal upper arm strength on both sides, and a soft, supple neck, indicating no muscle spasms. Dr. Manganelli reviewed the MRI of Konrick's neck from April 2010. He saw moderate to severe left-side stenosis (foraminal narrowing) at C5-6 and C7, which could cause pain and numbness radiating down the left arm. Based on the fact that the MRI was taken one month after a traffic accident, it was his understanding that the stenosis was likely caused by the pre-existing degenerative disease visible on the MRI, not the accident, although he would prefer that a radiologist make that determination. On cross-examination, however, Dr. Manganelli conceded that notes on the MRI indicated that the pain and numbness could be caused by nerve impingement from the fracture, which arose from the car accident. Dr. Manganelli ordered a new MRI and prescribed a nerve pain medication for Konrick. He did not recommend any restriction on Konrick's activities.

¶ 26 Dr. Manganelli next saw Konrick in December 2011. At that point, Konrick said that his hand pain was worse throughout the day and he had constant numbness and tingling. He had become less active. One of the normal intake questions in Dr. Manganelli's practice was whether a patient has hired an attorney recently: on this visit, Konrick said he had. Konrick reported a similar condition as in October, mentioning some pain during the tests of his cervical range of motion. His left upper arm motion was unable to be assessed because of "cogwheeling," in which the patient's arm does not move smoothly. Cogwheeling may be an indicator that a patient is exaggerating weakness in that area. This could occur for several reasons: it may not be intentional exaggeration of the pain, but fear that the movement will hurt. This did not occur in any of Konrick's other exams, either before or after this date. Dr. Manganelli never believed that Konrick was malingering.

¶ 27 Dr. Manganelli reviewed the recent MRI with Konrick. It showed good healing with no significant narrowing of the central spinal canal and only mild foraminal narrowing at a few levels due to the normal degenerative process of aging. Dr. Manganelli diagnosed Konrick with cervical radiculitis, which is pain caused by inflammation of the nerve root when there is no visible compression of the nerve. Dr. Manganelli recommended steroidal injections. Konrick had two injections, in late December 2011 and early January 2012. The first one provided some but not complete relief of his hand pain, but the second provided no relief. Konrick also reported that the nerve pain medication had not worked.

¶ 28 Dr. Manganelli next saw Konrick six months later, in July 2012. (Konrick explained that he had been taking care of his mother during this time.) He complained of neck pain and pain radiating into his left thumb and index finger, and reported that he was having trouble with fine motor control in his left hand (for instance, buttoning shirts). His pain worsened when driving

and turning his head. During the physical examination, Konrick complained of pain throughout all of the tests for cervical range of motion. However, his upper body neurological exam and muscle assessment were normal, although he had some fine motor difficulty. Because Konrick had not gotten much relief from the injections, Dr. Manganelli suggested that he see a spine surgeon again. If no further surgery was warranted, Konrick could be assessed for the implantation of a spinal cord stimulator.

¶ 29 In August 2012, Konrick saw his spine surgeon, Dr. Mataragas. A CT scan and MRI were done. They showed no failure of the fusion or the hardware that had been placed in Konrick's cervical spine. An EMG showed that Konrick had no compression of the nerve root from the surgery that could be causing arm or neck symptoms. From his observation of Konrick over time, Dr. Mataragas never believed that Konrick was exaggerating his symptoms or malingering, although he could not find an organic cause for Konrick's complaints of neck pain in 2012. It was possible that the car accident could have aggravated Konrick's pre-existing degenerative changes in the spine, causing them to become symptomatic.

¶ 30 Konrick returned to Dr. Manganelli in April 2013. He reported constant throbbing and burning in his left index finger as well as neck pain, which woke him up during the night and was painful when he awoke in the morning. He believed that the neck pain was giving him migraines. Konrick's muscle strength was normal. However, Dr. Manganelli stated that a patient can have pain without having weakness, and that pain will still affect the function of the arm. As Dr. Mataragas had not recommended any further surgery, Dr. Manganelli had a further discussion with Konrick about the possibility of implanting a spinal cord stimulator. The procedure would involve implanting leads that would send small electrical stimulation to the brain to blunt the sensation of pain. Dr. Manganelli saw Konrick for the last time a few weeks

later. Konrick said that he had reviewed the information provided to him about spinal cord stimulation, but he was concerned that it would affect his personal injury lawsuit and the cost of it might not be covered, and that the battery used for the implant could catch fire. Konrick was told that the latter concern was not a realistic possibility. However, Konrick chose not to proceed with the implantation.

¶ 31 Reviewing all of the records for Konrick's visits to Dr. Manganelli, there was never a point when Konrick was pain free. As for whether this pain was due to pre-existing degeneration of Konrick's spine, given that there were no reports of pain prior to the car accident, it was reasonable to conclude that the car accident worsened Konrick's previous degenerative condition to the point where it became painful. However, normal aging could also cause a previous degenerative condition to become painful in some people.

¶ 32 Dr. Anthony Rinella, an orthopedic spine surgeon, examined Konrick in December 2012. Konrick was referred to Dr. Rinella by his attorney. Konrick complained of pain in his neck and his left thumb and index finger. He said that over time his neck pain had improved somewhat, but his left hand pain did not improve. Konrick rated his pain between 3 and 5 on a scale of 1 to 10. Dr. Rinella also reviewed all of Konrick's medical records, including the imaging. Dr. Rinella had no criticism of the spinal fusion surgery and noted that Konrick had healed well from it. He noted that, following the surgery, Konrick's C4-5 level had become fused on its own as the result of surrounding pressure. He diagnosed Konrick as suffering from residual cervical radiculopathy. Dr. Rinella did not review the results of the EMG, but it would not have affected his opinion, as a normal result on an EMG did not mean that there was not pain along the nerve. He was "100 percent sure" that, as a result of the C7 fracture caused by the car accident, the nearby C6 nerve had become permanently symptomatic.

¶ 33 Konrick came in to see Dr. Rinella again in February 2014, March 2014, and January 2015. At each of these visits, Dr. Rinella tested Konrick's range of motion in his neck. Each time, Dr. Rinella described the result as "full range of motion," but by this he meant the full range that one would expect from a patient in Konrick's condition, with a fused cervical spine at three levels. On the first visit, Konrick rated the pain down his left arm and in his fingers as 4 out of 10 during the night and 1 out of 10 during the day. In March 2014, his overall pain was a 2 and his hand pain was a 3, but both of these were better during the day (1 out of 10). He had similar pain on the most recent visit. Dr. Rinella believed that, as a result of the accident, Konrick had chronic hand pain. In his professional opinion, Konrick's hand pain was not related to wear and tear caused by the normal aging process.

¶ 34 In June 2014, Konrick was examined by orthopedic spine surgeon Dr. Avi Bernstein, an expert retained by LaCroix. Konrick told Dr. Bernstein that, immediately after the accident, he did not have any pain in his neck or hand. However, at the time of the evaluation, Konrick complained of pain in his left thumb and index finger, and neck pain on and off that would awaken him from sleep. He rated his pain as a 3 out of 10. For pain relief, Konrick took Excedrin. In Dr. Bernstein's physical examination, Konrick could bend his neck forward but could not tilt his head to look up without pain; his side-to-side rotation was reduced by about 30 percent; and his lateral bending was reduced by 10 percent. Although patients with chronic nerve pain often have a burning pain and hypersensitivity of the skin in that area, Konrick's left hand did not show such hypersensitivity. Konrick's strength was good and he had normal reflexes.

¶ 35 Dr. Bernstein reviewed Konrick's medical records and imaging. The April 2010 MRI showed the C7 fracture as well as pre-existing degenerative changes at the C5-6 level. Dr.

Bernstein opined that, even if Konrick had not been in the car accident, he would likely have developed some reduced range of motion in his cervical spine based on the normal degenerative changes. However, he also believed that Konrick's permanent, chronic hand pain resulted from the trauma of the car accident. Dr. Bernstein also was struck by the reduction in the cervical range of motion that his physical exam of Konrick showed. After reviewing the records of Dr. Rinella's examination of Konrick in January 2015, in which Dr. Rinella reported a "full range of motion," Dr. Bernstein believed that Konrick may have been "self-limiting" his own range of motion in June 2014 when Dr. Bernstein examined him. However, Konrick readily complied with everything Dr. Bernstein asked him to do, and Dr. Bernstein did not believe that Konrick was malingering.

¶ 36 Dr. Bernstein also opined that, because the C7 fracture was nondisplaced, it could have been treated conservatively with a cervical collar and the spinal fusion surgery was not necessary. As to future treatment, Dr. Bernstein did not believe that there was any further medical treatment that would be beneficial to Konrick. Konrick's pain, although chronic, allowed him to engage in the normal activities of daily life. (However, Dr. Bernstein recommended that Konrick not lift items over his head.) Dr. Bernstein did not believe that surgery to implant a spinal stimulator would have been helpful, and it was reasonable for Konrick to decline that treatment option.

¶ 37 Finally, Konrick's medical records, including the reports from his imaging but not the images themselves, were reviewed by an expert witness he retained, Dr. William Minore. Dr. Minore was a pain management specialist. Dr. Minore opined that Konrick's current nerve pain was the result of the C7 fracture he sustained in the car accident. Regarding the EMG that was performed on Konrick, the negative finding on that test was consistent with Konrick's

complaints, because the EMG measures the functioning of motor nerves, not sensory nerves. In his opinion, Konrick's ongoing hand pain was permanent.

¶ 38 After hearing the above evidence, the jury found LaCroix liable for Konrick's injuries. However, they also found that Konrick had been 50% contributorily negligent in causing those injuries. As to damages, they awarded Konrick \$178,935.34, which was then reduced by 50% for his contributory negligence to yield a total damage award of \$89,467.67. The breakdown of the final (reduced) damage award was: \$73,717.67 for past medical expenses; \$5,750 for lost earnings; and \$2,500 for each of four categories of noneconomic damages—past pain and suffering, future pain and suffering, past loss of a normal life, and future loss of a normal life—a total of \$10,000 for noneconomic damages. Konrick had submitted evidence of \$147,435.74 in past medical expenses and \$11,500 in lost earnings. Thus, the jury awarded substantially all of the damages Konrick sought in these categories (except for 40 cents of medical expenses, apparently an oversight or typographical error). The record does not reflect what amounts, if any, Konrick had requested in noneconomic damages.

¶ 39 Konrick filed a posttrial motion seeking (1) a JNOV on the issue of contributory negligence (essentially vacating that finding) and a new trial on damages only (arguing that the jury's noneconomic damages award was inconsistent with the medical evidence); or (2) a new trial on all issues. The trial court denied the motion, and Konrick appealed.

¶ 40 II. ANALYSIS

¶ 41 In this appeal, Konrick repeats the arguments he raised in his posttrial motion. Like the trial court, we find those arguments unpersuasive.

¶ 42 A. JNOV

¶ 43 We begin with Konrick’s request for a JNOV on the issue of contributory negligence. A JNOV should be entered only when “all of the evidence, when viewed *** most favorabl[y] to the opponent, so overwhelmingly favors [the] movant that no contrary verdict based on the evidence could ever stand.” *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967). However, the reviewing court cannot “usurp the function of the jury and substitute its judgment on questions of fact [that were] fairly submitted, tried, and determined from the evidence which did not greatly preponderate either way.” *Maple v. Gustafson*, 151 Ill. 2d 445, 452-53 (1992). “An adverse ruling on a motion for a *** judgment *n.o.v.* is reviewed *de novo*.” *Harris v. Thompson*, 2012 IL 112525, ¶ 15. “In other words, the reviewing court applies the same *Pedrick* standard as did the circuit court.” *Id.* “The court has no right to enter a judgment *n.o.v.* if there is any evidence, together with reasonable inferences to be drawn therefrom, demonstrating a substantial factual dispute, or where the assessment of credibility of the witnesses or the determination regarding conflicting evidence is decisive to the outcome.” *Maple*, 151 Ill. 2d at 454.

¶ 44 Konrick argues that he was entitled to a JNOV on the issue of contributory negligence because there was no competent evidence that he was speeding at the time of the accident. However, this argument misstates the record. O’Flynn testified that Konrick was “flying” along 75th Street immediately before the accident, going an estimated 15-20 miles per hour above the 45 mile-per-hour posted speed limit. While O’Flynn conceded that, from 700 yards away, she could not tell whether Konrick was speeding at the time he entered the intersection and collided with LaCroix’s car, Konrick’s speed just before that moment was relevant to the question of whether he was speeding at the time of the collision. This relevancy is greater given Konrick’s testimony suggesting that he did not brake until immediately before the collision, when he saw

LaCroix's car turn in front of him. During the cross-examination of O'Flynn and the examination of other witnesses, Konrick's attorney ably raised doubts about O'Flynn's testimony, showing that O'Flynn could not accurately gauge Konrick's speed at the time of the collision, and no other witnesses reported that Konrick was speeding. Nevertheless, the resolution of the conflict between O'Flynn's testimony and the testimony of other witnesses required a credibility determination that was uniquely within the province of the jury. Where, as here, conflicting testimony is not inherently improbable, we must defer to the jury's weighing of all of the evidence. *Maple*, 151 Ill. 2d at 454. Accordingly, we reject Konrick's argument that he was entitled to a JNOV on the issue of his contributory negligence.

¶ 45 Before moving on, we note that Konrick's brief on appeal asserts that the jury received the "wrong" jury form. However, he does not clarify what he means by this, and does not raise the matter again in the argument section of his brief. "A reviewing court is entitled to have the issues before it clearly defined and is not simply a repository in which appellants may dump the burden of argument and research; an appellant's failure to properly present his own arguments can amount to waiver [forfeiture] of those claims on appeal." *People v. Chatman*, 357 Ill. App. 3d 695, 703 (2005). Accordingly, we do not address this assertion further.

¶ 46 B. New Trial

¶ 47 We turn to the question of whether the trial court should have granted Konrick's request for a new trial on damages.¹ A new trial should be granted only where the jury's verdict is

¹ Konrick also seeks, in the alternative, a new trial on all issues (if we were to find that a new trial was warranted but that the new trial should encompass the issue of liability as well as damages). As we find that no new trial on any issue is warranted, we do not address this distinction further.

against the manifest weight of the evidence. *Lisowski v. MacNeal Memorial Hospital Ass’n*, 381 Ill. App. 3d 275, 282 (2008). Whether to grant a new trial is a matter within the trial court’s discretion, and thus we will not reverse its decision unless there was an abuse of that discretion. *Orava v. Plunkett Furniture Co.*, 297 Ill. App. 3d 635, 637 (1998).

¶ 48 Further, “a jury’s award of damages is entitled to substantial deference,” and thus a court “will not upset a jury’s award of damages ‘unless a proven element of damages was ignored, the verdict resulted from passion or prejudice, or the award bears no reasonable relationship to the loss suffered.’ ” *Snover v. McGraw*, 172 Ill. 2d 438, 447 (1996) (quoting *Gill v. Foster*, 157 Ill. 2d 304, 315 (1993)). “The jury’s computations when determining a dollar amount for damages are not precise and are subject to compromise.” *Id.* at 448. In particular, jurors must draw on their own life experiences when making an award of noneconomic damages such as pain and suffering, which are inherently difficult to quantify. *Id.* Thus, for instance, a jury verdict awarding medical expenses for the treatment of injuries and yet no damages for pain and suffering is not *per se* inconsistent: this disparity may be justified where the evidence that the plaintiff experienced pain is minimal and primarily subjective. See *id.* However, where there is clear evidence of a serious injury and the jury awarded medical expenses, the jury’s failure to award *any* damages for pain and suffering may support the grant of a new trial on damages. *Orava*, 297 Ill. App. 3d at 637 (citing *Snover*, 172 Ill. 2d at 449).

¶ 49 Konrick argues that he is entitled to a new trial on damages because the jury’s award of a total of \$20,000 in noneconomic damages was internally inconsistent and bore “no reasonable relationship to the loss suffered.” *Snover*, 172 Ill. 2d at 447. However, Konrick has not provided us with any case law that supports his argument. In *all* of the cases cited by Konrick in which a plaintiff was granted a new trial on damages, the juries had awarded *zero* noneconomic damages

despite awarding substantial medical expenses for serious injuries. See, e.g., *Stamp v. Sylvan*, 391 Ill. App. 3d 117, 126 (2009) (jury award of medical expenses for six months of treatment for neck and back injury but nothing for pain and suffering during that time was inconsistent and warranted new trial on damages); *Murray v. Philpot*, 305 Ill. App. 3d 513, 516 (1999) (objective evidence showed injury to plaintiff's neck and corresponding pain and suffering, and thus jury's award of medical expenses but nothing for pain and suffering was inconsistent and warranted a new trial on damages); *Torres v. Irving Press, Inc.*, 303 Ill App. 3d 151, 159 (1999) (where plaintiff presented substantial evidence that ankle was fractured in accident and she was unable to run or do other activities of daily life, jury's award of zero damages for disability required new trial on damages). Thus, it was clear in these cases that either the jury ignored a proven element of damages, or that the verdict was internally inconsistent.

¶ 50 We note that, even where a jury awards no damages at all for pain and suffering, such an award is not necessarily inconsistent with an award of medical expenses. In *Snover*, the Illinois Supreme Court held that “a jury may award pain-related medical expenses and may also determine that the evidence of pain and suffering was insufficient to support a monetary award.” *Snover*, 172 Ill. 2d at 448.

¶ 51 In this case, the jury did not award Konrick zero noneconomic damages. To the contrary, it awarded Konrick \$5,000 on each of four separate aspects of noneconomic damages. Konrick has not cited any law suggesting that a \$20,000 award of noneconomic damages should be vacated simply because it might have been higher. To the contrary, courts must accord substantial deference to a jury's determination of damages, especially noneconomic damages. *Snover*, 172 Ill. 2d at 447-48. Similarly, we reject Konrick's attempt to brand the jury's award of noneconomic damages as “nominal.” “Nominal” means “in name only” (Black's Law

Dictionary at 1071 (7th ed. 1999)), and nominal damages are damages such as \$1 that, while not technically zero, are for all practical purposes the same as zero. That is not the case here. While Konrick may feel that the jury's \$20,000 award was too low, it was not the same as zero. Thus, the case law he cites is inapplicable.

¶ 52 Konrick also argues that the fact that the jury awarded the same amount for each of the four aspects of the noneconomic damages shows that its award was arbitrary and capricious, and thus he should receive a new trial on damages. However, as the supreme court has commented, noneconomic damages are inherently difficult to quantify. *Snover*, 172 Ill. 2d at 448. We decline to set aside the jury's determination of such damages here merely because it chose to divide its award into four equal sums for each of the four elements of noneconomic damages.

¶ 53 We have some sympathy for Konrick: the evidence suggested that the pain in his neck and fingers was both chronic and permanent, and none of the doctors whose testimony was read into the record believed that he was malingering, and yet the jury's award of noneconomic damages was not generous. We may not, however, vacate a jury's determination of the proper amount of damages simply because we might have chosen some other amount had we been the ones making the decision. *In re K.B.*, 2012 IL App (3d) 110655, ¶ 23. Konrick has not shown that the jury's award of noneconomic damages was arbitrary or irreconcilably inconsistent with its award of medical expenses. Accordingly, there is no legal basis for awarding a new trial.

¶ 54

III. CONCLUSION

¶ 55 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 56 Affirmed.