

NOTICE
Decision filed 08/29/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 130184-U

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).

NO. 5-13-0184

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

RUFUS BELL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	St. Clair County.
)	
v.)	No. 07-L-541
)	
ANDREW HORSTMAYER and OTIS EANES, JR.,)	Honorable
)	Vincent J. Lopinot,
Defendants-Appellees.)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Justices Stewart and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* Order denying posttrial motions after jury verdict for defendants on plaintiff's complaint alleging personal injuries after an automobile accident affirmed where the evidence provided different accounts of the circumstances surrounding the accident and the plaintiff presented no evidence from treating physicians or medical bills and the plaintiff's retained expert testified that he could not be certain as to whether the plaintiff's injuries and limitations were caused by the accident or a preexisting condition.

¶ 2 The plaintiff, Rufus Bell, appeals from the order of the circuit court of St. Clair County that entered a judgment for the defendants, Andrew Horstmeyer and Otis Eanes, Jr., pursuant to a jury verdict. The only issue on appeal is whether the circuit court erred in denying the plaintiff's request for a judgment notwithstanding the verdict (*n.o.v*) or, in

the alternative, a new trial. For the reasons that follow, we affirm.

¶ 3

FACTS

¶ 4 The facts necessary for our disposition of this appeal are as follows. On November 26, 2007, the plaintiff, Rufus Bell, filed a complaint in the circuit court of St. Clair County, alleging that the defendant Andrew Horstmeyer was negligent when he collided with the rear end of the plaintiff's vehicle, and the defendant Otis Eanes was negligent in causing an accident in front of the plaintiff, causing the plaintiff to suddenly stop, and causing the plaintiff various personal injuries, lost wages, and ongoing medical bills. The case was tried to a jury of 12, beginning on May 7, 2012, in which the following relevant evidence was adduced.

¶ 5 The plaintiff testified that while traveling home from work as an overnight postal worker, he saw the defendant Otis Eanes, who was driving a red Pontiac Bonneville, run into the lane of another vehicle, driven by Ronald Davidson, who is not a party to this lawsuit, and cause an accident in front of the plaintiff. The plaintiff further testified that he was unable to go around the accident and was forced to come to a complete stop on I-64. He was then struck in the rear by defendant Horstmeyer's vehicle with enough force to propel him up the highway the distance of a football field, striking Ronald Davidson's vehicle in the process. In addition, the plaintiff testified that he was knocked unconscious and his knee struck the steering wheel, causing a large knot. However, the plaintiff testified that he did not go with the ambulances that were on the scene, but instead waited for his brother to pick him up and drive him to the emergency room.

¶ 6 The defendants gave varying accounts as to the circumstances surrounding the

accident. Defendant Horstmeyer testified that while traveling on I-64, behind the plaintiff, defendant Eanes struck him on the back quarter panel of his vehicle, causing him to crash into the plaintiff's vehicle. Defendant Horstmeyer contradicted the plaintiff's testimony, testifying that there was not a vehicle beside the plaintiff. He further stated that the plaintiff was not stopped for several seconds because of an accident in front of him.

¶ 7 Defendant Eanes testified that he was traveling on I-64 when he attempted to change lanes and hit a gray car, eventually ending up in the left lane of the highway. He was able to stop his car and get out, and there were cars going around him on the highway. The police were called and arrived 10 minutes later with an ambulance that took him to the hospital. While waiting at the scene, he did not see an accident behind him as the plaintiff had testified.

¶ 8 According to the plaintiff's testimony, after the accident, while at the emergency room, the plaintiff received either a CT scan or X-ray of his head. The plaintiff further testified that there was a golf ball-sized knot sticking out the side of his left knee, which had not been there before the accident. The plaintiff testified that he was released from the hospital that night and returned home, where over the following weeks he experienced pain in his left knee, increased back pain, sensitivity to light, and forgetfulness. The plaintiff took the next two weeks off from work. When the plaintiff returned to work, he was not able to perform his normal job, which caused him to switch to light duty, and eventually bid on and obtain a different job altogether. The plaintiff testified that due to his not being able to perform his normal job, and switching to light

duty, he lost income in the form of overtime by not being able to work over 40 hours per week after the accident. In support of his lost wage claim, the plaintiff's tax returns, showing a decrease of income, were admitted into evidence.

¶ 9 The plaintiff testified that he underwent a short period of physical therapy after the accident, and was referred by his family physician to two other physicians: an orthopedic surgeon who examined his knee, and a neurologist who checked him for a concussion. Neither physician testified at trial. The plaintiff testified that one of these physicians gave him a leg brace, which he still wears every day to work. The plaintiff also testified that he could not do certain activities that he used to, such as play basketball with his son, or take care of his parents. The plaintiff testified that he now needs his wife's assistance when using the bathroom. The plaintiff's sister also testified at length that the plaintiff was not the same after the accident.

¶ 10 On cross-examination, the plaintiff admitted to having a preexisting back condition from years of handling mail. The defendants introduced evidence to show that four months before the accident, the plaintiff's doctor, Peggy Boyd-Taylor, had restricted him to only working 40 hours per week with two consecutive days off due to the preexisting back condition. The plaintiff also testified that although he is now able to work overtime, his annual full-time wages with overtime are \$6,000 less than his preaccident wages. The plaintiff did not testify to or submit any medicals bills that resulted from the accident.

¶ 11 Dr. Jerry Meyers, a retired general trauma surgeon, was retained by the plaintiff to conduct a medical evaluation of the plaintiff and testify regarding his injuries and

damages. Dr. Meyers testified at trial that the plaintiff told him he was having pain in his left knee and back stemming from a motor vehicle accident. Dr. Meyers testified that he performed various physical tests and concluded that the plaintiff had an injury to his left knee, back, and a temporary closed head injury at the time of the accident. Dr. Meyers testified that he determined there was a knee injury from the original MRI report, which indicated the condition of the plaintiff's knee was possibly degenerative. Dr. Meyers further testified that the plaintiff had preexisting degenerative back disease and that the plaintiff told him he had certain limitations because of it. Dr. Meyers also testified that a crash like the one the plaintiff experienced could cause such a condition to worsen but that he could not say with certainty that this was this case. Dr. Meyers, who saw the plaintiff five years after the accident, testified that he could not determine which symptoms were related to the preexisting condition as opposed to the accident. Dr. Meyers testified that he based his evaluation on medical records from the plaintiff's treating physician and he was not able to read all of them. In addition, Dr. Meyers did not discuss with the plaintiff any physical activities the plaintiff partook in, but according to Dr. Meyer's testimony, the type of activity that the plaintiff testified to performing would likely cause a substantial amount of pain.

¶ 12 On May 9, 2012, the jury returned a verdict in favor of both defendants on all counts of the complaint. On July 20, 2012, after a motion for an extension of time was granted, the plaintiff filed a motion for a judgment *n.o.v.* against both defendants, or in the alternative, a motion for a new trial against Eanes, or in the alternative, a new trial as to both defendants. On March 19, 2013, the circuit court denied the plaintiff's posttrial

motions. The plaintiff filed a timely notice of appeal.

¶ 13

ANALYSIS

¶ 14 There are established standards to be used in determining whether a judgment *n.o.v.* or a new trial should be granted. *Maple v. Gustafson*, 151 Ill. 2d 445, 453 (1992).

A judgment *n.o.v.* is properly entered in those limited cases where all the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand. *Id.* In ruling on a motion for a directed verdict or a judgment *n.o.v.*, a court does not weigh the evidence, nor is it concerned with the credibility of witnesses; rather, it may only consider the evidence, and any inferences therefrom, in the light most favorable to the party resisting the motion. *Id.* Also, a judgment *n.o.v.* may not be granted merely because a verdict is against the manifest weight of the evidence. *Id.* We apply the *de novo* standard of review to the trial court's denial of a motion for a directed verdict, as well as its denial of a judgment *n.o.v.* *Moss v. Amira*, 356 Ill. App. 3d 701, 705 (2005).

¶ 15 In contrast, on a motion for a new trial, a court will weigh the evidence and set aside the verdict and order a new trial if the verdict is contrary to the manifest weight of the evidence. *Maple*, 151 Ill. 2d at 454. A verdict is against the manifest weight of the evidence where the opposite result is clearly evident or where the findings of the jury are unreasonable, arbitrary, and not based on the evidence. *Id.* A court's ruling on a motion for a new trial will not be reversed except in those instances where it is affirmatively shown that it clearly abused its discretion. *Id.* at 455. In determining whether the trial court abused its discretion, the reviewing court should consider whether the jury's verdict

was supported by the evidence and whether the losing party was denied a fair trial. *Id.*

¶ 16 After carefully reviewing the evidence adduced at the trial as set forth above, we cannot find that the findings of the jury were unreasonable, arbitrary, and not based on the evidence or that the plaintiff was denied a fair trial. In this case, the jury heard conflicting testimony regarding what, if any, injuries the plaintiff had sustained as a result of the accident in question. The credibility of the testimony at the trial was significant in light of the extremely different accounts of the circumstances surrounding the accident, as testified to by the plaintiff and the defendants. The amount of damages, if any, also came into question. The question of the credibility of the witnesses was a decision for the jury as trier of fact. Evidence was introduced that the plaintiff had a preexisting condition, and the plaintiff's own expert, the only doctor to testify, stated that he could not be certain whether the injuries were caused by the accident or the preexisting condition. It was certainly reasonable for the jury to decide, given the evidence adduced at trial, that the plaintiff suffered no injuries from the accident in question and that any problems the plaintiff may be experiencing came from a preexisting condition.

¶ 17 Even assuming that the plaintiff was in fact injured from the accident, the plaintiff did not offer any evidence of medical bills or any expenses arising from the accident. The only evidence of damages the plaintiff presented at trial was a difference in his tax returns in the year following the accident. The plaintiff claimed he was no longer able to work overtime which caused him a loss in wages. However, the defendants rebutted this by offering evidence of the plaintiff's doctor restricting him from working overtime before the accident occurred as well as showing that the plaintiff, who is now working

overtime, makes considerably less now than he did the year before the accident. In light of the evidence in the record and the lack of medical testimony, the verdict reached by the jury is not contrary to the manifest weight of the evidence nor is the finding of the jury unreasonable, arbitrary, and not based on the evidence.

¶ 18

CONCLUSION

¶ 19 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 20 Affirmed.