

2012 IL App (2d) 120800-U
No. 2-12-0800
Order filed February 15, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

MELINDA WALTER,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff-Appellee,)	
)	
v.)	
)	
VIGNESH SOMASUNDARAM,)	No. 10-L-750
)	
Defendant-Appellant,)	Honorable
)	Margaret J. Mullen,
(Laurence K. Nakrin, Defendant).)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

Held: Judgment of the circuit court granting the posttrial motion of plaintiff for a new trial on the issue of damages affirmed in part, reversed in part, and the cause is remanded for a new trial solely on the element of damages for past medical expenses.

¶ 1 Plaintiff, Melinda Walter, brought an action for personal injuries resulting from an automobile accident. The jury entered a unanimous verdict, finding against both defendants, Vignesh Somasundaram and Laurence K. Nakrin, in the amount of \$6,800, and apportioning 85% liability against Somasundaram and 15% against Nakrin. Plaintiff filed a posttrial motion requesting

a new trial on damages. Specifically, plaintiff argued that the jury's award of \$0 for disfigurement and \$1,800 for past medical expenses was against the manifest weight of the evidence. The trial court agreed, granting plaintiff's motion and ordering a new trial on damages. Somasundaram (hereinafter referred to as defendant) filed this interlocutory appeal, contending that the trial court abused its discretion in granting a new trial on damages. He contends that the jury's award for disfigurement and for past medical expenses was not against the manifest weight of the evidence. We affirm in part and reverse in part, and remand the cause with directions.

¶ 2

FACTS

¶ 3 On August 17, 2008, plaintiff was involved in a two-vehicle collision. At the time, plaintiff was a passenger in a vehicle driven by her husband, co-defendant Nakrin. Defendant, who was driving the other vehicle, turned left into the path of Nakrin, and the collision ensued between the two vehicles. Plaintiff was injured as a result.

¶ 4 Trial began on March 12, 2012. During plaintiff's case-in-chief, plaintiff, her husband, and Officer Relinski testified. The video evidence deposition of Dr. Mark Neault, plaintiff's treating physician for the collision, was played to the jury. The video evidence deposition of Dr. Inna Podoksik, plaintiff's primary physician, was read to the jury.¹ Photographs of the vehicles involved in the collision and a photograph of plaintiff's abdomen taken in 2010 were entered into evidence and published to the jury. Plaintiff asserted that the medical bills incurred were in excess of \$35,000, and a summary of the itemized treatment, entitled "Medical Specials Summary" was admitted into evidence and given to the jury as part of its deliberations.

¹

The record on appeal does not include the evidence deposition of Dr. Podoksik, and therefore, we cannot consider it on appeal.

¶ 5 Plaintiff testified that she had a “puckered streak of internal scarring that goes from [her] navel to the top of [her] right thigh,” *** “[i]nside that internal scarring are calcified hematomas that range in size from a pebble to a walnut” *** “a black circle about the size of a tennis ball about four inches below [her] navel,” *** “and other discoloration that has never resolved itself around [her] abdomen.” Her husband also testified about the nature of the injuries on plaintiff’s abdomen.

¶ 6 Defendant contested the extent of damages claimed by plaintiff. Defendant argued that the injury to plaintiff’s knee and its associated treatment, including the arthroscopic knee surgery performed on July 22, 2011, should not be considered as damages. In support, defendant presented the video evidence deposition of Dr. Gary Klaud Miller, an orthopedic surgeon. While Dr. Miller acknowledged that plaintiff was injured in the collision and that the damages sustained required treatment, he believed that the arthroscopic surgery and the associated treatment resulted from a degenerative arthritic condition and was not due to the collision of August 17, 2008.

¶ 7 At the instruction conference after the close of the parties’ cases, plaintiff submitted, among others, the following pattern jury instruction:

“If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate the plaintiff for any of the following elements of damages proved by the evidence to have resulted from the negligence of the defendants taking into consideration the nature, extent and duration of the injuries and the aggravation of any pre-existing ailment or condition.

The reasonable expense of necessary medical care, treatment, and services received.

The past pain and suffering.

The disfigurement resulting from the injury.

The past loss of normal life experienced.

Whether any of these elements of damages has been proved by the evidence is for you to determine.” Illinois Pattern Jury Instructions, Civil, Nos. 30.01, 30.04, 30.04.01, 30.05, 30.06 (Supp. 2011).

¶ 8 The jury also was given Verdict Form A with an itemization of the damages that could be awarded, which included the reasonable expense of necessary medical care, treatment, and services received, the disfigurement resulting from the injury, the pain and suffering experienced, and the loss of normal life experienced. The jury returned the verdict form, finding both defendants negligent and apportioning the legal responsibility between defendant and Nakrin at 85% and 15%, respectively, and awarding plaintiff \$1,800 for medical expenses; \$2,500 for pain and suffering experienced; \$0 for disfigurement; and, \$2,500 for the past loss of normal life.

¶ 9 Plaintiff filed a posttrial motion, contending that the jury’s award of damages was manifestly inadequate. Specifically, she contended that the separate damages awarded by the jury for past medical expenses and for disfigurement did not fall within the confines of the evidence. She argued that the award for these elements of damages was inconsistent, as it bore no reasonable relationship to the loss suffered by her, which was established by the evidence at trial and uncontested by defendant. Although plaintiff mentioned the elements of pain and suffering and loss of normal life in her posttrial motion, she did not develop an argument in her posttrial motion that the jury’s award for these two elements was against the manifest weight of the evidence.

¶ 10 Defendant responded that the evidence supported the jury’s award of \$0 for disfigurement. As to plaintiff’s claim that she suffered bruising and hematomas from the collision, defendant argued that based on the clear medical testimony of her own doctors that the bruising and hematomas had

resolved or were resolving and the absence of recent photographs or a visual inspection of the alleged disfigurement, the jury clearly had ample and convincing evidence to determine that plaintiff had failed to prove by a preponderance of the evidence that she was disfigured as a result of the accident. As to the scarring on plaintiff's knee, defendant argued that the jury reasonably could find that it was the result of the degenerative arthritic condition and was unrelated to the collision. Defendant also argued that the jury's award of \$1,800 for the reasonable expense of past medical costs was not against the manifest weight of the evidence.

¶ 11 Following a hearing on the posttrial motion, the trial court found that the entire damages verdict was against the manifest weight of the evidence, and it entered an order granting plaintiff "a new trial as to damages only." Defendant timely filed this interlocutory appeal.

¶ 12 ANALYSIS

¶ 13 The standard of review applicable to whether the trial court erred by granting a motion for a new trial on the issue of damages was discussed by the supreme court in *Maple v. Gustafson*, 151 Ill. 2d 445 (1992):

"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. [Citations.] 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. [Citation.] Furthermore, it is important to keep in mind that ' "[t]he presiding judge in passing upon the motion for a new trial has the benefit of his previous observation of the appearance of the witnesses, their manner in testifying, and of the circumstances aiding in the determination of credibility." ' [Citation.] If the trial judge,

in the exercise of his discretion, finds that the verdict is against the manifest weight of the evidence, he should grant a new trial ***.” *Maple*, 151 Ill. 2d at 455-56.

¶ 14 “A verdict is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the findings of the jury are unreasonable, arbitrary and not based upon any evidence.” [Citations.]” *Maple*, 151 Ill. 2d at 454.

¶ 15 Moreover, the determination of damages is a question of fact for the jury which will not be upset by a reviewing court “ ‘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)).

¶ 16 Past Medical Expenses

¶ 17 The jury specifically awarded plaintiff \$1,800 for past medical expenses. Defendant asserts that, with the nature and extent of injury being primary issues in the trial of this case, the jury’s award for past medical expenses was adequately supported by the evidence. Defendant maintains that the only medical treatment related to the collision was plaintiff’s emergency room visit totaling \$1,230, which was less than the amount awarded by the jury for past medical expense. Plaintiff responds that the award did not cover the costs for the ambulance and emergency room, which clearly were related to the collision and therefore, the jury must have completely ignored the evidence.

¶ 18 During the trial, evidence established that plaintiff was injured at the scene of the accident and required medical attention. Plaintiff testified that the seat belt contracted and slapped her right knee, causing tremendous pain to her chest, abdomen, and knee. Plaintiff also testified that she was in tremendous pain and was unable to breathe. Paramedics arrived and took her by ambulance to the

hospital where plaintiff's lungs and knee were x-rayed. Shortly after, plaintiff sought treatment from Dr. Neault for her chest and knee pain due to the accident. Plaintiff testified that she saw Dr. Podoksik also. Plaintiff submitted the following medical bills, which she alleged were causally related to the injuries resulting from the collision:

Ambulance	\$ 784.00
Emergency Room	1,230.00
X-rays	102.00
Physical Therapy	4,811.88
Dr. Neault visit	276.00
Dr. Poloksik visit	<u>273.00</u>
	\$7,476.88

¶ 19 During closing argument, defense counsel stated:

“There is no question and we have never questioned the fact that the Lake Zurich Fire and Rescue bill, her going to the emergency room to be treated, obviously that's all perfectly appropriate. Here is the \$15,000 for Advocate Condell Medical Center for the surgery. Clearly we think that's not related.

Frankly, with the testimony of Dr. Miller, you can see that we basically agree with everything; short of her coming in for more treatment, including the surgery starting July of 2011. That leads to medical bills of approximately \$9500. Everything else after that—everything after, other than the [\$]9[,]500, is related to her coming in 2011 having surgery, having a little bit of follow-up, and that's it. So in the event that you're going to find against one of the defendants. I certainly think that the medical bills that are appropriate and are actually causally related—and you will be able to look through those yourself—is approximately \$9[,]500.”

¶ 20 We agree that the \$1,800 in past medical bills awarded by the jury bears no relationship to the uncontested medical treatment and bills related to the injuries resulting from the collision. The amount did not cover the cost of the ambulance and the emergency room treatment, which clearly were related to the injuries resulting from the accident. Therefore, the trial court did not abuse its discretion when it found that the jury award for past medical expenses was against the manifest weight of the evidence.

¶ 21 Disfigurement

¶ 22 Defendant contends that the jury's finding that plaintiff was entitled to no compensation for disfigurement was not unreasonable. Plaintiff points to trial testimony to bolster her argument that the following evidence at trial supports the disfigurement element of damages that the jury ignored in arriving at its decision.

¶ 23 Plaintiff's husband, co-defendant Nakrin, testified to the following:

“Q: Sir, I'm going to hand you what's been marked as Plaintiff's Exhibit 13. Take a look at that picture for us. What is that a picture of?

A: That is a picture of my wife's abdomen. Most of it—I mean some of it is a little hidden just because of the area we're talking about. And it shows discoloration and the hematomas that are still present.

Q: Now, when was that picture taken?

A: That was taken October of 2010.

Q: So the accident here is—excuse me—August 17, 2008?

A: Right.

Q: And the injuries that are depicted in the photo from October of 2010 still show

bruising and scarring from the accident?

A: Right. Right.

* * *

Q: When is the last time that you saw those injuries on your wife?

A: On Sunday. Yesterday.

Q: Are they still present?

A: Yes.”

¶ 24 Plaintiff testified that her left breast had abrasions and bruising, as well as her abdomen. She testified that the abdominal abrasions, bruises, and hematomas were still present. Plaintiff testified that she had a puckered streak of internal scarring from her naval to the top of her right thigh, that inside the internal scarring were calcified hematomas that ranged from the size of a pebble to a walnut, that she had a black circle about the size of a tennis ball and four inches below her navel, and that she had other discoloration around her abdomen that had never resolved itself. Plaintiff further testified that she had scarring from her right knee surgery. With regard to the injury to her abdomen, plaintiff testified that the calcifications and the hematoma feel “foreign and gross,” that it feels uncomfortable when her husband touches them, and that she feels “ashamed.”

¶ 25 Dr. Neault, plaintiff’s treating physician, testified in the evidence deposition that, as of February 12, 2009, the contusions and hematomas were resolving or some were resolved completely. When asked whether to a reasonable degree of medical certainty the injuries sustained by plaintiff were permanent in nature, Dr. Neault responded that “[t]he bruises and everything all resolved and the sprain resolved—the strain, neck strain, resolved.” He further testified that by February 12, 2009, the right knee contusion had resolved. Dr. Neault stated that, according to his records, it was fair

to say that, at the very least, other complaints unrelated to the right knee had all resolved well prior to the knee surgery performed in July 2011.

¶ 26 Disfigurement has been defined as that “ ‘which impairs or injures the beauty, symmetry, or appearance.’ ” *Rapp v. Kennedy*, 101 Ill. App. 2d 82, 84 (1968) (quoting *Superior Mining Co. v. Industrial Commission*, 309 Ill. 339, 340 (1923)). Although plaintiff testified that she had internal scarring in her abdomen, this was related to calcifications and hematomas that Dr. Neault testified were resolved or resolving. Additionally, although the jury was shown a photograph of plaintiff’s abdomen taken in 2010 and heard testimony from plaintiff and her husband that contusions and hematomas remained, the jury was not shown the claimed disfigurement. A jury may find that some disfigurement exists, and also determine that the disfigurement was negligible and award zero for that element of damages. See *Stift v. Lizzadro*, 362 Ill. App. 3d 1019, 1031 (2005). Furthermore, the evidence also supports the jury’s award of zero for disfigurement of plaintiff’s surgical scars on her knee based on the evidence presented by Dr. Miller, who testified that plaintiff’s arthroscopic knee surgery was unrelated to the accident. We find that the jury’s determination that these non-permanent injuries did not result in disfigurement or that it was so slight as to not warrant recovery was not against the manifest weight of the evidence, and the trial court abused its discretion in finding that it was.

¶ 27

CONCLUSION

¶ 28 The jury was asked to itemize damages that could be awarded for (1) the reasonable expense of necessary medical care, treatment, and services received; (2) the disfigurement resulting from the injury; (3) the pain and suffering experienced; and (4) the loss of normal life experienced. Neither party disputes the jury’s award for pain and suffering and loss of normal life. The parties only

dispute the jury's award for the elements of necessary medical care and disfigurement. Thus, because neither party disputes the award for pain and suffering and loss of normal life, and because we conclude that the zero award for disfigurement is not against the manifest weight of the evidence, we hold that the trial court abused its discretion in ordering a new trial on these damages. However, we agree with the trial court that the amount awarded for necessary medical expenses is against the manifest weight of the evidence, and therefore, we remand for a new trial solely on that element of damages. See *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 508 (2002) (two elements of damages affirmed but award for risk of future injuries reversed and remanded for new trial solely on that element).

¶ 29 Accordingly, we affirm the damages award for pain and suffering, loss of normal life, and disfigurement, but reverse the damages award for necessary medical expenses, and we remand the cause for a new trial only on the element of damages for necessary medical expenses. Based on the preceding, the order of the circuit court of Lake County granting plaintiff's posttrial motion for a new trial on damages is affirmed in part and reversed in part, and the cause is remanded with directions.

¶ 30 Affirmed in part, reversed in part. Cause remanded with directions.