2014 IL App (2d) 130949-U
No. 2-13-0949
Order filed March 19, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BARBARA L. PETERSON,	)	Appeal from the Circuit Court
	)	of Ogle County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 08-L-4
	)	
AMBER N. SCHNEIDER,	)	Honorable
	)	John B. Roe,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Notwithstanding plaintiff's forfeiture for failing to move for a new trial, the jury's verdict for defendant on plaintiff's personal-injury claim was not against the manifest weight of the evidence: in light of the evidently mild motor-vehicle accident, the jury was entitled to reject an expert opinion, based on plaintiff's self-report of neck pain, that plaintiff suffered a neck injury from the accident.

¶ 2 Plaintiff, Barbara L. Peterson, filed a lawsuit in the circuit court of Ogle County against defendant, Amber N. Schneider, seeking recovery for personal injuries allegedly sustained in a motor vehicle accident. The matter proceeded to a jury trial and the trial court entered judgment on the jury's verdict in favor of defendant. On appeal, plaintiff contends that the verdict was against the manifest weight of the evidence. We affirm.

¶ 3 There is no dispute that, on the afternoon of October 2, 2006, a motor vehicle driven by defendant struck, from behind, a vehicle driven by plaintiff as plaintiff waited to make a right turn from westbound Route 64 onto Route 26. There was evidence that defendant had initially come to a full stop behind plaintiff's vehicle and was also planning to turn right onto Route 26. Plaintiff's vehicle pulled forward. Defendant also started to pull forward, but she was watching for oncoming traffic on Route 26 and did not see that plaintiff's vehicle had again come to a stop. Plaintiff testified that the impact was "hard," that she was thrown forward, and that her left hand struck the steering wheel. Defendant testified that her vehicle merely tapped plaintiff's. The only visible damage to plaintiff's vehicle was scuff marks.

¶ 4 At the scene of the accident, plaintiff noticed that she had a headache. Evidently, however, she did not report the headache or any injury to the Ogle County sheriff's deputy who investigated the accident. Plaintiff testified that the headache became more severe that evening and that she woke up in the middle of the night with pain in her left hand. She testified that she had a sensation of pins and needles in her left palm. At the time of the accident, plaintiff was employed by Quebecor World in Mt. Morris, where she worked as a "book trayer." She had worked for that company since 1994. Her job required her to lift packs of books and mail sacks weighing up to 70 pounds. She had not previously experienced the sort of hand pain that developed the night after the accident.

¶ 5 The day after the accident, plaintiff suffered from a headache, pain in her left hand, and a sore back and neck. She contacted her family physician and, on his advice, she visited the emergency room. Plaintiff testified that she spoke to a physician's assistant at the emergency room and complained of tingling in the thumb and the index and middle fingers of her left hand. However, the records from plaintiff's emergency room visit indicated that her complaint

pertained to the middle finger, the ring finger, and the little finger. According to plaintiff, the emergency room was "swamped" and "[t]hey just weren't listening that night." The emergency room personnel who attended to plaintiff thought that the abnormal sensation in her fingers might be related to a neck injury.

¶ 6 Plaintiff was examined by her family physician on October 13, 2006. A follow-up examination took place on October 31, 2006. Plaintiff's family physician thought that the problems with plaintiff's left hand were related to a neck injury. He referred her to Christopher Sliva, an orthopedic spine specialist, who examined her on November 22, 2006. Dr. Sliva's impression was that plaintiff had degenerative disk disease that was not the cause of plaintiff's hand problems. Suspecting that plaintiff suffered from carpal tunnel syndrome, Sliva referred plaintiff to Marie Walker, a physical medicine and rehabilitation physician.

¶ 7 Dr. Walker testified at an evidence deposition that she first examined plaintiff on December 28, 2006. Plaintiff complained of numbness in the thumb and the index and middle fingers of her left hand. Plaintiff indicated that the numbness began after the October 2, 2006, accident. Dr. Walker did not recall whether plaintiff related the details of the accident. Dr. Walker performed an electromyography study (EMG), which showed an injury to the median nerve at the wrist. According to Dr. Walker, the EMG indicated active denervation, *i.e.* the loss of nerve axons, as opposed to damage to the myelin sheath around the nerve. The loss of nerve axons was more consistent with a traumatic injury than a repetitive motion injury. Dr. Walker opined that plaintiff suffered from posttraumatic carpal tunnel syndrome. Based on the history provided by plaintiff, Dr. Walker concluded that plaintiff's condition was likely the result of the automobile accident.

¶ 8 Dr. Walker referred plaintiff to Brian Bear, an orthopedic surgeon specializing in shoulder, elbow, and hand surgery. Dr. Bear testified at an evidence deposition that he saw plaintiff on January 23, 2007. In describing the October 2, 2006, accident to Dr. Bear, plaintiff indicated that she was holding the steering wheel with both hands at the time of impact and that the force of the impact was transmitted through the steering wheel into the palm of her left hand. Dr. Bear testified that, under such circumstances, the median nerve could have been damaged if plaintiff's vehicle was struck "forcefully." Dr. Bear diagnosed plaintiff with posttraumatic carpal tunnel syndrome. He added, however, that the diagnosis was based on the history plaintiff provided. He explained that there were no objective findings to distinguish posttraumatic carpal tunnel syndrome from carpal tunnel syndrome that develops gradually with no trauma. Dr. Bear also testified that he did not think that the impact from a vehicle going only five miles per hour would be a sufficient trauma. Dr. Bear performed carpal tunnel release surgery on plaintiff on April 4, 2007.

¶ 9 John LaCart, an orthopedic surgeon, testified as an expert witness for the defense. He testified that he reviewed the traffic crash report prepared in connection with the October 2, 2006, collision and photographs of the vehicles involved. He also reviewed emergency room records and medical records from Drs. Sliva, Walker, and Bear. Dr. LaCart found it noteworthy that the crash report indicated that there were no injuries and that damage to the vehicles did not exceed $500. He noted that the photographs suggested that the collision did not involve a great deal of force. The emergency room records recounted the history of the accident as plaintiff described it. She was restrained at the time of the accident and the airbag did not deploy. She developed neck and low back pain in the middle of the night. She also complained of tingling in

the middle finger, the ring finger, and the little finger of her left hand. According to Dr. LaCart, tingling in those fingers could indicate irritation of the ulnar nerve.

¶ 10 The emergency room records showed no complaint of numbness or tingling that would indicate median nerve irritation. The records showed that plaintiff was in no distress; that her neck was "supple" (*i.e.* flexible); that there was no midline tenderness of the cervical spine, or midline or paraspinal tenderness of the thoracic and lumbar spine; that she moved all extremities freely; that the findings from her neurological examination were symmetrical for sensation and strength in the upper and lower extremities; that her deep tendon reflexes were normal for the upper and lower extremities; and that there was no visible or palpable trauma to the extremities. Dr. LaCart testified that, had the median nerve been acutely injured, he would expect there to have been complaints of pain and visible signs of trauma such as swelling or bruising. X-rays showed degenerative changes to the spine that were chronic and not related to the accident. Plaintiff's diagnosis on discharge from the emergency room was cervical strain, post motor vehicle accident, and cervical degenerative disk disease. There was no diagnosis with regard to plaintiff's left hand or wrist.

¶ 11 Dr. LaCart noted that there was no indication that, when plaintiff visited her personal physician, she either reported or showed signs of trauma to her hand. There also was no indication that plaintiff reported to either Dr. Sliva or Dr. Walker that her wrist had struck the steering wheel during the collision. Dr. LaCart also noted that, at certain points after plaintiff's carpal tunnel release surgery, she complained of numbness in her thumb and her index and middle fingers. According to Dr. LaCart, there was no medical basis for the complaints, which were inconsistent with an EMG and other objective testing of nerve function and sensation.

¶ 12 Dr. LaCart testified that it was his opinion, to a reasonable degree of medical and orthopedic certainty, that plaintiff sustained a mild cervical strain as a result of the motor vehicle accident on October 2, 2006. The opinion was based on the records from plaintiff's emergency room visit. It was also Dr. LaCart's opinion, to a reasonable degree of medical and orthopedic certainty, that there was no proximate relationship between the accident and the finding of a median nerve injury. Dr. LaCart explained the basis for that opinion as follows:

> "The basis is basically a clinical picture, among other things, but the clinical picture of a nerve contusion is an immediate onset of pain in the distribution of the nerve that's contused or injured whereby it's an electrical lacinating sharp pain in that distribution. There was no complaint of immediate pain at the scene. There was no complaint of pain in the emergency department. There was, frankly, no complaint of pain to subsequent treaters, and that would be inconsistent with a relationship of the accident to a median nerve pathology. Additionally, there was no wrist pathology. In other words, when you contuse something you don't contuse a nerve in isolation. You contuse the skin and other tissues superficial to it. There was no evidence of any wrist or hand injury, swelling, restricted range of motion, local tenderness. No visible, no palpable tenderness of the wrist in the emergency department or subsequently by any of the other treaters. Secondly, there was no contemporaneous documentation in the medical records of an injury to the left wrist. And this was over a period of four months by four independent treaters who all took their own histories. It's documented at the time the patient sees you. It's not documented or found at a later date. So there's no contemporaneous record. And had there been an injury to the median nerve at the time of the accident, in order to see findings of severe carpal tunnel syndrome after that, it

> doesn't correlate. There would have to be some evidence of injury at that time that would make a severe neuropathy occur. And the last thing is the mechanism of the accident itself. The vehicular impact. It was a very low speed indicated by no damage or no significant damage. This would result in little force transmitted. If there had been force transmitted to the rear of the vehicle, with a restrained driver, the motion of the driver is to move backwards as the vehicle is accelerated forward which would relieve—which would take your hands off the steering wheel or if, alternatively, if your hand was on the armrest, to move it backwards, not jam it into the steering wheel."

¶ 13 As noted, plaintiff argues on appeal that the verdict in defendant's favor was against the manifest weight of the evidence. She contends that "[t]he evidence showing defendant's negligence and that plaintiff was injured was uncontradicted and unimpeached." According to plaintiff, the jury was not entitled to arbitrarily reject this evidence. Plaintiff seeks a new trial limited to the question of damages.

¶ 14 As defendant correctly points out, plaintiff did not file a motion for a new trial pursuant to section 2-1202(c) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1202(c) (West 2012)). Section 2-1202(e) of the Code provides that "[a]ny party who fails to seek a new trial in his or her post-trial motion *** waives the right to apply for a new trial, except in cases where the jury has failed to reach a verdict" (735 ILCS 5/2-1202(e) (West 2012)); see also Ill. S. Ct. R. 366(b)(2)(iii) (eff. Feb. 1, 1994) ("A party may not urge as error on review of the ruling on the party's post-trial motion any point, ground, or relief not specified in the motion."). A party who fails to file a motion for a new trial therefore forfeits review of the argument that the jury's verdict was against the manifest weight of the evidence. *Leslie H. Allott Plumbing & Heating, Inc. v. Owens-Corning Fiberglas*, 112 Ill. App. 3d 136, 137 (1983). Here, by plaintiff's failure

to file a posttrial motion, she indeed forfeited her right to have us review the jury's finding relative to negligence. Plaintiff apparently concedes the forfeiture as her reply brief makes no response to defendant's contention. Accordingly, we must affirm the judgment. *In re Parentage of Kimble*, 204 Ill. App. 3d 914, 916-17 (1990). However, even if the issue raised had been preserved for review, we disagree with plaintiff's argument that the verdict was against the manifest weight of the evidence.

¶ 15 It is well established that "[a] verdict is against the manifest weight of the evidence where the opposite conclusion is clearly evident or the jury's findings are unreasonable, arbitrary, and not based upon the evidence." *Pecaro v. Baer*, 406 Ill. App. 3d 915, 919 (2010). In this vein, "it is the province of the jury to resolve conflicts in the evidence, to pass upon the credibility of the witnesses and to decide what weight should be given to the witnesses' testimony." *Id.*

¶ 16 In her reply brief, plaintiff concedes that there was conflicting evidence as to whether she developed carpal tunnel syndrome as a result of the accident. She insists, however, that the jury was not free to reject the evidence that she sustained a neck injury. Plaintiff's argument is based on the testimony of defendant's expert witness, Dr. LaCart, who did indeed testify that it was his opinion that plaintiff sustained a "mild cervical strain" in the accident. However, a jury hearing a personal injury lawsuit is not invariably bound by medical expert testimony that a particular occurrence resulted in the plaintiff suffering an injury. See, *e.g.*, *Moran v. Erickson*, 297 Ill. App. 3d 342, 353-54 (1998). As the *Moran* court observed:

> "In forming their opinions, medical professionals can reasonably rely upon information made known to them by their patients, by medical records or by any other data where that information is of a type that is reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. [Citations.] It is

> reasonable for a medical professional to rely upon information supplied by the patient. However, the medical professional's determination of the patient's credibility and acceptance of the patient's history and subjective expressions of pain, for purposes of making a medical diagnosis and rendering medical treatment, is not binding on the jury. The jury, which is empowered to make credibility determinations [citation], must make its own assessment of the patient's veracity, not merely with respect to that person's in-court testimony but also with respect to that person's general credibility to the extent that person's credibility is relevant to the ultimate determination in the case. [Citations.] If the jury finds the patient to be incredible, it can correspondingly disregard the opinions of the medical professionals which are based upon information supplied to them by the patient." *Id.*

Notably, the *Moran* court upheld a jury verdict for the defendant even though one of the defendant's expert witnesses opined on cross-examination that a motor vehicle accident " 'triggered' " fibromyalgia in the plaintiff (who had no reported prior history of that ailment). *Id.* at 350, 362.

¶ 17 Dr. LaCart's opinion that plaintiff sustained a mild cervical strain was based on the records of plaintiff's emergency room visit. However, it appears that the diagnosis plaintiff received at the emergency room was based on self-reported neck pain, as well as numbness and tingling in plaintiff's middle finger, the ring finger, and little finger. There was no objective evidence of injury, only of degenerative changes that were not related to the accident.

¶ 18 The jury could reasonably conclude that plaintiff was not a credible witness. Her account of the amount of force involved in the collision was in conflict with defendant's account, and the jury could reasonably infer from the absence of major damage to plaintiff's vehicle that

defendant truthfully testified that her vehicle merely tapped plaintiff's. Additionally, plaintiff's claim that she struck her palm on the steering wheel was contrary to Dr. LaCart's testimony about the dynamics of a rear-end collision and to his testimony that an impact significant enough to damage the median nerve also would have resulted in some visible or palpable wrist pathology, such as bruising, swelling, restricted motion, or tenderness. Furthermore, there was evidence that there was no medical basis for plaintiff's postoperative complaints of numbness in her thumb and her index and middle fingers. The jury could reasonably infer that plaintiff's subjective reporting was unreliable and that her self-reported pain was either feigned or imagined but did not correspond to any actual physical injury. Accordingly, the verdict for defendant was not against the manifest weight of the evidence.

¶ 19 As previously articulated, the judgment of the circuit court of Ogle County is affirmed.

¶ 20 Affirmed.