2011 IL App (3d) 100516-U

Order filed September 26, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

DANIEL LADTKOW and SHELLEY LADTKOW,	)	Appeal from the Circuit Court of the 13th Judicial Circuit, La Salle County, Illinois,
Plaintiffs--Appellants,	)	
v.	)	Appeal No. 3-10-0516 Circuit No. 07-L-72
MEGAN MILLER,	)	Honorable Joseph P. Hettel,
Defendant–Appellee.	)	Judge Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* On the day of trial, after overruling objections, the trial court properly allowed defendant to amend her responses to two paragraphs of plaintiff's requests to admit. The trial court's denial of plaintiffs' motion for a new trial and judgment notwithstanding the verdict is affirmed.

¶ 2 Plaintiffs Daniel Ladtkow and Shelley Ladtkow filed a civil suit against defendant Megan Miller requesting an award of damages for injuries resulting from a motor vehicle accident. During pretrial proceedings, defendant filed timely responses, some in the form of objections, to plaintiffs' requests to admit facts. In response to defendant's objections, plaintiffs filed a motion asking the court to deem the paragraphs subject to the defense objections as admitted. After several continuances, plaintiffs did not request a ruling on plaintiffs' motion to deem certain facts admitted by the court until the day of the jury trial, when the court overruled the defendant's objections and allowed defendant to immediately amend her responses by denying paragraphs 23 and 25. Plaintiffs opted to proceed to trial on that date. The jury rendered verdicts for the plaintiffs in the amount of $18,654.68 for Daniel and $1,276.75 for Shelley.

¶ 3 Plaintiffs filed a motion for a new trial, or alternatively for a judgment notwithstanding the verdict, which the court denied. We affirm.

¶ 4 BACKGROUND

¶ 5 On January 27, 2006, an automobile accident occurred involving plaintiffs Daniel and Shelley Ladtkow and defendant Megan Miller. On May 11, 2007, plaintiffs filed a civil suit against defendant requesting damages for personal injuries and loss of normal life and consortium resulting from the accident.

¶ 6 Count I of the complaint alleged that defendant committed negligent acts or omissions which were the direct and proximate cause of personal injuries to Daniel Ladtkow. Count II alleged that, due to defendant's negligent acts or omissions which caused the injuries to Daniel Ladtkow, Shelley Ladtkow suffered loss of consortium of her husband, Daniel Ladtkow. Count III alleged that defendant committed negligent acts or omissions which were the direct and

proximate cause of personal injuries to Shelley Ladtkow. Count IV alleged that Daniel Ladtkow suffered the loss of normal life and consortium of his wife Shelley Ladtkow as a result of defendant's negligent acts or omissions proximately causing the injuries to Daniel.[1]

¶ 7 Prior to trial, on October 3, 2008, plaintiffs served defendant with a "Request to Admit Facts." Most of the paragraphs of the request to admit facts asked defendant to admit that the attached medical records were true and accurate copies of the original records and that the records were prepared in the ordinary course of business. In addition, paragraphs 23 and 25 of the request to admit facts asked defendant to admit that the medical care and treatment of Daniel, included in the attached medical records, were causally related to the accident.

¶ 8 Defendant filed the proof of service of her responses, which included objections, to plaintiffs' requests to admit facts on October 20, 2008. In response, plaintiffs filed a "Motion to Deem Request to Admit as Admitted." On December 18, 2008, the court entered a written order, regarding plaintiffs' requests to admit facts, which stated:

> "1. Without waiving defendant's objection and over objection defendant admits Requests 15, 17, 19, 24 and 27;
>
> 22. Hearing with respect to Paragraphs 23, 25, 26, 33, 35 and 36 is set for

[1] The record reflects that Daniel alleged that he suffered from penile pain, difficulty in urinating and erectile dysfunction after the accident, and he did not have these symptoms before the accident. The treating doctor's depositions and testimony did not medically link the physical injuries sustained by Daniel during the accident to his penile pain and dysfunction. Only one doctor, hired by plaintiffs to conduct an independent evaluation three years later, determined that, since the condition did not exist before the accident but existed after the accident, that condition must have a causal relationship to the accident.

January 15, 2009 @ 9:45 AM." [2]

The January 15 hearing was continued and, after the court held several status hearings without plaintiffs addressing their pending motion, the court set the case for a jury trial on March 15, 2010.

¶ 9 On March 15, 2010, the first day of the jury trial, the plaintiffs asked the court to address the pending motion regarding plaintiffs' request to admit facts and records. The court commented that he had previously set the hearing for January 15, 2009, and "apparently this issue faded off into oblivion at that point in time."

¶ 10 The requests to admit paragraphs 23 and 25 are worded, as follows:

> "23. The medical care reflected in each of the foregoing exhibits for Daniel Ladtkow is causally related to the accident complained of in Plaintiffs' Complaint.
>
> ***
>
> 25. That the attached bills marked as "Exhibit L" represent charges for services which are for reasonable and necessary treatment for the conditions occurring as a result of the occurrence which is the subject of the instant suit."

On the day of trial, plaintiff claimed that the objections to the requests in paragraphs 23, 25, 26, 33, 35 and 36 were improper and argued that, since defendant did not ask for a hearing within the mandatory 28 days to address her objections, defendant waived the right to be heard on the objections. Thus, plaintiffs' argued that their requests should be deemed admitted.

¶ 11 Defendant stated that she filed timely responses to the requests to admit by filing

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[2] The appellate record does not contain the transcript from the hearing held on December 18, 2008, or any of the status hearings held thereafter.

objections as allowed by Supreme Court Rule 216(c) (Ill. S. Ct. R. 216(c) (eff. May 30, 2008)), and had not waived a hearing on plaintiffs' motion regarding the objections. Defendant argued that she could not admit to the legal conclusion that the accident caused Daniel's condition regarding his penile pain and dysfunction because the treating doctors' opinions did not conclude that the accident caused Daniel's condition.[3]

¶ 12 The court found that Rule 216(c) allowed written objections to requests to admit on the grounds that some or all of the questions or admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. The court overruled defendant's objections, but found that the objections were made in good faith and granted defendant leave to amend her responses. The court found that it was plaintiffs' burden to obtain a timely ruling on their pending motion and plaintiffs opted to wait until the day of trial to request a ruling. Ultimately, defendant denied the requests to admit paragraphs 23 and 25, but admitted the other requests.

¶ 13 The court recessed to allow plaintiffs' counsel the opportunity to discuss this ruling with his clients and decide whether plaintiffs needed time to respond to the denials. Plaintiffs elected to continue with the jury trial at that time and challenge the court's pretrial ruling on appeal, if necessary. At the close of the trial, the jury returned verdicts for the plaintiffs; awarding $18,654.68 for Daniel Ladtkow and $$1,276.75 for Shelley Ladtkow.[4]

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[3] It should be noted that the record reflects that Dr. Fletcher testified via an evidence deposition and the remainder of the medical evidence was admitted and presented to the jury by way of medical records and billings rather than testimony.

[4] The jury verdicts did not award Daniel any damages for the medical bills or losses related to his claim of penile dysfunction or loss of society, companionship, and sexual relationship with his wife; nor did the jury award damages to Shelley for loss of consortium, companionship, and sexual relations with Daniel.

¶ 14 On April 13, 2010, plaintiffs filed a motion for a new trial on the damages issue or, alternatively, a motion for judgment notwithstanding the verdict (judgment *n.o.v.*), challenging the court's ruling allowing defendant to amend her responses to paragraphs 23 and 25, as well as the jury's verdicts in this case. Defendant claimed that her amended responses were consistent with the law and the evidence supported the jury verdict.

¶ 15 When deciding the plaintiff's motion for new trial, the court stated that it stood on its original ruling, issued the day of trial, regarding plaintiffs' motion to deem facts admitted. The trial judge noted that he previously found that Rule 216 allowed defendant to object to requests to admit. Additionally, the court noted that it was incumbent on plaintiffs to obtain a ruling on their motions and they made a calculated choice to wait until the morning of trial to argue their motion. Finally, the court found that the jury's verdict was not against the manifest weight of the evidence and "there was evidence in the record to support that decision in the light most facorable to the defendant." Consequently, the court denied plaintiffs' posttrial motion in its entirety.

¶ 16 Plaintiffs filed a timely notice of appeal.

¶ 17 ANALYSIS

¶ 18 On appeal, plaintiffs argue that the trial court erred by denying plaintiffs' "Motion to Deem the Request to Admit as Admitted." Plaintiffs also claim that the jury verdict would have been higher had the trial judge granted their motion and deemed those facts admitted. Finally, plaintiffs contend that the trial court erred by denying their motion for new trial or, alternately, their motion for judgment notwithstanding the verdict (judgment *n.o.v.*).

¶ 19 Defendant submits the trial judge correctly decided to allow defendant to amend her

responses following his ruling on the objections as authorized by Supreme Court Rule 216(c). Ill. S. Ct. R. 216(c) (eff. May 30, 2008). Additionally, defendant argues that the jury's verdict was supported by the evidence.

¶ 20 I. Motion to Deem Requests to Admit as Admitted

¶ 21 We review *de novo* the trial court's denial of plaintiff's motion to deem admitted certain requests. *Troyan v. Reyes,* 367 Ill. App. 3d 729, 739 (2006) (citing *Robertson v. Sky Chefs, Inc.,* 344 Ill. App. 3d 196, 199 (2003)). Plaintiffs argue, based on the *Troyan* decision, since the trial court concluded defendant's objections were improper, the trial court should have deemed that all facts subject to objection should be deemed admitted once the objections were overuled by the trial court (citing to *Troyan*, 367 Ill. App. 3d at 736-39).

¶ 22 In contrast, defendant argues that *Troyan* supports the trial court's decision to allow her to amend her respond after overruling her objections. Defendant points out that the *Troyan* court expressly instructed that, on remand, the trial court should allow the defendant to amend her responses.

¶ 23 In *Troyan*, the trial court sustained the defendant's objections to plaintiff's requests to admit medical records solely on the basis that they included opinion evidence by the medical providers. *Troyan*, 367 Ill. App. 3d 729. On review, this court reversed the trial court's ruling and remanded the case to the trial court. However, the *Troyan* court held that it "does not give parties free rein to introduce medical records as a substitute for expert medical testimony. Like all business records, medical records may be excluded if they are not relevant or are too complex for the jury to understand on its own." *Troyan*, 367 Ill. App. 3d at 736.

¶ 24 In the instant case, unlike the facts in *Troyan*, defendant was not objecting to plaintiffs'

request to admit on the basis that the medical records contained expert opinions. Rather, defendant objected to the request to admit on the grounds that, in those records, the treating medical experts and specialists who prepared the reports did not form an opinion that Daniel's penile pain and dysfunction were causally connected to the accident.

¶ 25 Here, the origin and cause of Daniel's penile symptoms created a disputed question of fact regarding whether Daniel's medical condition was directly attributable to the accident or was relevant to the issue of determining the proper amount of damages.[5] Based on these circumstances, the trial court found defendant did not act in bad faith by objecting to the requests to admit causation, because the medical records plaintiffs sought to admit did not include causation opinions. We conclude the trial court's finding of defendant's good faith is supported by this record.

¶ 26 Finally, plaintiffs argue that, even if the court's determination that defendant's objections were made in good faith, plaintiffs contend that the trial court should have then deemed the facts in the request as admitted because the court overruled those objections months after the initial 28-day period for filing responses elapsed. Plaintiffs submit that, had the court deemed the facts admitted and not allowed defendant to deny paragraphs 23 and 25 on the day of trial, the jury would have been required to find a causal connection between Daniel's penile symptoms and the accident. Consequently, plaintiffs assert the jury's verdict would have had to include no less than $27,495 for those medical bills attached to paragraphs 23 and 25.

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[5] The doctors' reports, included as exhibits pursuant to plaintiffs' request to admit, show that Daniel had spinal surgery in 2005 to fuse his L3-5 vertebrea and the "fusion mass was intact" upon their examinations after the accident. One doctor's report also stated that "[Daniel] has had a number of neurologic symptoms that have been attributed to potentially some changes in scar tissue, etc, after his fusion."

¶ 27 In the case at bar, the trial court stressed that it was incumbent on plaintiffs to notice up their unresolved motion regarding their requests to admit prior to the jury trial date. Since plaintiffs waited until the day of the trial to request the court to rule on their pending motion to deem certain facts admitted, neither the defense nor the court is to blame for the late ruling. Moreover, plaintiffs opted to proceed to trial after the court's decision.

¶ 28 Since the court found that defendant did not raise objections to those requests to admit in bad faith, and those objections were timely filed, we conclude that the trial court did not err by allowing defendant to amend her responses once the court overruled her objections.

¶ 29 II. Jury award

¶ 30 Plaintiffs also requested the trial court to grant them a new trial or judgment *n.o.v.* based upon the "overwhelming evidence supporting a higher award." According to plaintiffs in their posttrial motion, the jury's failure to accept Dr. Fletcher's testimony that the timing of Daniel's symptoms connected his medical difficulties to this accident warranted this relief. In response, defendant contends the posttrial motion was correctly denied because the jury's failure to award those additional damages was not against the manifest weight of the evidence. Defendant submits that the jury weighed all of the evidence, including the conflicting expert opinion evidence regarding causation, and the resulting verdict was not against the manifest weight of the evidence.

¶ 31 A motion for a new trial should be allowed only when the verdict is contrary to the manifest weight of the evidence. *York v. Rush-Presbyterian-St. Luke's Medical* Center, 222 Ill. 2d 147, 178-79 (2006); *Maple v. Gustafson,* 151 Ill. 2d 445, 454 (1992). "A verdict is contrary to the manifest weight of the evidence when the opposite conclusion is clearly evident or when

the jury's findings prove to be unreasonable, arbitrary and not based upon any of the evidence." *York*, 222 Ill. 2d at 179. On review, a circuit court's decision with respect to a motion for a new trial will not be reversed unless it finds that the circuit court abused its discretion. *York*, 222 Ill. 2d at 179 (citing *Maple,* 151 Ill. 2d at 455).

¶ 32 It is solely within the province of the jury to resolve conflicts in the evidence, to pass upon the credibility of the witnesses in light of the evidence, and to decide what weight should be given to the witnesses' testimony. *York*, 222 Ill. 2d at 179; *Maple,* 151 Ill. 2d at 452. The experts in the instant case were divided regarding whether the penile dysfuntion resulted from injuries caused by the accident or some other occurrence. Plaintiffs' own treating physicians were unable to connect Daniel's condition to any injuries he received in the accident and acknowledged Daniel's medical history also included back surgery in 2005, fusing three of Daniel's lumbar vertebrae, prior to the accident. Only Dr. Fletcher opined that, since the condition did not exist before the accident and developed after the accident, it must have been caused by the accident.

¶ 33 In this case, the jury chose to reject Dr. Fletcher's opinion that Daniel's penile issues were causally connected to the accident and, thus, did not award those damages to Daniel as requested. We conclude that the trial court did not abuse its discretion in denying the motion for new trial, based upon the record, because the jury's verdict was supported by the testimony of other experts and was not against the manifest weight of the evidence.

¶ 34 "[A] motion for judgment *n.o.v.* presents a question of law as to whether, when all of the evidence is considered, together with all reasonable inferences from it in its aspect most favorable to the plaintiffs, there is a total failure or lack of evidence to prove any necessary

element of the [plaintiff's] case," and is inappropriate if "reasonable minds might differ as to inferences or conclusions to be drawn from the facts presented." (internal quotation marks omitted) *York,* 222 Ill. 2d at 178. We apply a *de novo* standard of review when determining the circuit court's decision denying defendant's motion for judgment *n.o.v. York*, 222 Ill. 2d at 178. Based upon the record, we hold that the trial court did not err in denying plaintiffs' request for a judgment *n.o.v.*

¶ 35 CONCLUSION

¶ 36 Accordingly, for the reasons stated above, the judgment of the circuit court of La Salle County is affirmed.

¶ 37 Affirmed.