STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2310

Gary A. St. Germaine,
Appellant,

vs.

Dorothy Mae Girard,
Respondent.

Filed September 2, 2008
Affirmed
Schellhas, Judge

Carlton County District Court
File No. 09-CV-06-2171

Robert E. Mathias, Mathias Law Firm, 11 East Superior Street, Suite 504, Duluth, MN 55802 (for appellant)

David M. Johnson, Thibodeau, Johnson & Feriancek, P.L.L.P., 800 Lonsdale Building, 302 West Superior Street, Duluth, MN 55802 (for respondent)

Considered and decided by Schellhas, Presiding Judge; Toussaint, Chief Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges the jury's award in his personal injury suit on the grounds that the award was manifestly and palpably contrary to the evidence and influenced by

the jury's prejudice against him. We affirm on the basis that the jury's verdict was reasonably supported by the evidence.

FACTS

In March 2005, appellant Gary A. St. Germaine was involved in a head-on automobile accident with respondent Dorothy Mae Girard. Appellant claimed that as a result of the accident, he suffered injuries to his knee, neck, and back, and he was hospitalized for four days after the accident. Appellant subsequently received arthroscopic surgery to remove a loose piece of cartilage from his knee, which his orthopedic surgeon, Peter G. Goldschmidt, testified was caused by trauma to the knee. After the surgery, Dr. Goldschmidt examined appellant and found that he had a full range of motion in his knee. At that examination, appellant told Dr. Goldschmidt that he had no complaints, and Dr. Goldschmidt advised him to return to his regular activities as he could tolerate them. Dr. Goldschmidt acknowledged that the small size of the loose cartilage and the fact that it was found in a non-weight-bearing portion of the knee indicated that appellant was less likely to need future surgery. Dr. Goldschmidt also testified that appellant suffered from permanent post-traumatic arthritis in his knee, which could require further medical treatment.

Appellant also received medical care from two chiropractors and a physical therapist. Appellant's first chiropractor told him that he expected the neck problems to be resolved within approximately three months of the collision. Appellant's second chiropractor, John A. Benson, treated appellant for neck and lower back pain that appellant testified was the result of an altercation with a relative several months after the

accident. Dr. Benson testified that appellant had sustained permanent back and neck injuries as a result of the accident. Appellant was also prescribed physical therapy, but he missed several of his appointments. His physical therapist testified that patients often need to comply with the prescribed course of therapy in order to overcome symptoms.

Stephen Barron conducted an independent medical examination of appellant. Dr. Barron testified that as a result of the accident, appellant sustained sprains of the cervical and thoracic spine, as well as an osteochondral fracture in his right knee. Dr. Barron opined that the sprains in appellant's spine had healed, and that while appellant's knee was permanently injured, he could work without restrictions. Dr. Barron also opined that future treatment for appellant, as a result of the accident, would probably be unnecessary, and that there was a "low likelihood" of any future problems with appellant's knee.

Appellant acknowledged at trial that he had prior medical problems: he received treatment for neck and shoulder problems in 2002; and, at the time of the accident, he was receiving Social Security disability benefits as a result of a prior elbow injury and psychological problems. In an August 2004 work activity report, appellant reported a loss of employment because of a psychological condition and "unbearable" pain. Appellant acknowledged feeling unemployable for a period before the accident because of the elbow and psychological problems. He also acknowledged that he had misrepresented his ability to work on the Social Security documentation. At the time of the accident, appellant was employed delivering newspapers for the Duluth News Tribune, employment he had held for two years at which he earned approximately $1,000

per month. Appellant testified that because of his injuries resulting from the accident, he was no longer able to deliver newspapers.

Appellant sued respondent for damages as a result of the accident, and at the time of trial, claimed that he had incurred medical expenses in the amount of $37,240.87. Respondent disputed this amount and argued that some of the expenses were unrelated to the accident. Appellant and respondent stipulated to the fact that no-fault insurance benefits due appellant, including $20,000 for medical expenses and $885.61 in wage loss, should offset any jury award to appellant. The jury returned a verdict finding both parties negligent but finding that respondent's negligence was a direct cause of the accident. The jury awarded appellant $7,500 for pain and suffering, $25,500 for past medical expenses, and $1,725 for past wage loss. The jury awarded appellant nothing for future pain and suffering, future medical expenses, or future wage loss.

Appellant moved for a new trial and alternatively for additur, arguing that the jury award was inadequate and resulted from the jury's prejudice against him. The district court denied these motions, finding that "the jury's answers to the interrogatories contained in the special verdict form are reasonable, based upon the evidence presented, and not rendered out of prejudice." Pursuant to the parties' stipulation for offset of no-fault benefits, and after awarding costs and disbursements to each of the parties, the court ordered entry of judgment for appellant in the amount of $11,206.34.[1] This appeal follows.

[1] Before the award of costs and disbursements to the parties, the district court ordered entry of judgment for appellant in the amount of $13,839.39.

D E C I S I O N

Appellant argues that the jury award is unsupported by the evidence presented at trial and that he is entitled to either a new trial or additur. "Generally, a new trial on damages will be granted only where the verdict is so inadequate or excessive that it could only have been rendered on account of passion or prejudice." *Rosh v. Jostock*, 710 N.W.2d 570, 577 (Minn. App. 2006) (quotation omitted), *review denied* (Minn. May 24, 2006). "A trial court has the broadest possible discretion to determine whether a new trial should be granted based on an inadequate award of damages. Its decision will not be reversed absent a clear abuse of that discretion and the existence of the most unusual circumstances." *Id.* (quotation omitted). Whether to grant a new trial or additur because of inadequate damages rests within the district court's discretion. *Id*. "On appeal from a denial of a motion for a new trial, an appellate court should not set aside a jury verdict unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict." *Raze v. Mueller*, 587 N.W.2d 645, 648 (Minn. 1999) (quotation omitted). A jury's award should not be overturned by a reviewing court on the grounds that another jury might have awarded a larger amount. *Pomije v. Scheiber*, 371 N.W.2d 596, 600 (Minn. App. 1985). A reviewing court must reconcile the jury's special verdict answers "in a reasonable manner consistent with the evidence and its fair inferences." *Raze*, 587 N.W.2d at 648 (quotation omitted). A jury's verdict should stand if its special verdict answers "can be reconciled on any theory." *Id.*

In support of his argument that the jury's verdict is unreasonable, appellant asserts that the jury arbitrarily reduced his "agreed upon" medical expenses from $37,240.87 to

$25,500. But appellant's description of his medical expenses as "agreed upon" is erroneous. Although respondent stipulated at trial to the admission of appellant's list of medical expenses, respondent did not stipulate that the list accurately reflected appellant's damages regarding his past health care expenses incurred as a result of the accident. On the contrary, respondent provided evidence to support her argument at trial that some of appellant's claimed medical expenses were unrelated to his injuries suffered as a result of the accident. By appellant's own admission, some of the listed expenses were for treatment of problems unrelated to the accident. Moreover, medical experts disagreed at trial about the severity and permanence of appellant's injuries. Additionally, respondent argued that appellant failed to mitigate his damages by missing physical therapy appointments. An injured party has a duty to mitigate damages by acting reasonably in obtaining treatment. *Adee v. Evanson*, 281 N.W.2d 177, 180 (Minn. 1979). The record reflects that there were reasonable grounds for the jury to award appellant less than the total of his claimed medical expenses.

Appellant also argues that the jury's award of $7,500 for past pain and suffering is inadequate and demonstrates that the jury's verdict is unreasonable. While appellant argues that the district court abused its discretion in denying his motion for a new trial, he alternatively asks this court to award him judgment "as a matter of law" in the amount of $15,000 for past pain and suffering. But in addition to containing evidence about appellant's pain and suffering resulting from the collision, the record contains evidence about pain and suffering appellant may have experienced from problems unrelated to the accident. That evidence is adequate for the jury to have determined that the amount of

$7,500 is a reasonable award for past pain and suffering resulting from the collision. Appellant also argues that the jury's award of $1,725 for past lost wages, representing two months' lost income, is inadequate. Respondent argued at trial that the jury should award appellant only two months' lost wages, based on Dr. Goldschmidt's testimony that appellant had no complaints about his knee 13 days after his operation, and based on Dr. Barron's testimony that appellant's mid-back and neck sprains were temporary. Thus, despite the permanent nature of appellant's knee injury, the jury's award of approximately two months' lost income is not contrary to the evidence at trial. Viewing the evidence as a whole and in the light most favorable to the verdict, *Raze*, 587 N.W.2d at 648, we agree with the district court that the verdict is not contrary to the evidence and that the award was within the province of the jury.

Raze presents an analogous case in which the jury awarded significantly less in medical expenses and lost wages than the plaintiff sought. 587 N.W.2d at 647. In holding that the plaintiff was not entitled to a new trial, the supreme court determined that the jury reasonably could have concluded "that [the plaintiff] did not suffer from any permanent injury . . . [and] that some of the problems with her neck, back, and shoulders were the result of her pre-existing condition." *Id.* at 648-49. Even where the amount of medical expenses is not at issue, a jury award of a lesser amount is not inadequate as a matter of law. *Flanagan v. Lindberg*, 404 N.W.2d 799, 800 (Minn. 1987). Rather, "[t]he test to be applied by an appellate court is whether the jury award of damages is so inadequate or excessive that it could only have been rendered on account of passion or prejudice." *Id.* (quotation omitted). The jury award in this case, though less than

appellant sought, is not so inadequate that it was necessarily the result of passion or prejudice.

Appellant argues that the award was so inadequate that it had to have been influenced by the jury's prejudice against him on account of his Native American ancestry, which appellant's counsel mentioned at trial. The right to a jury trial implies the right to a fair and impartial jury. *Walser v. Vinge*, 275 Minn. 230, 235, 146 N.W.2d 537, 540 (1966). A new trial may be granted based on insufficient damages when the damages are so inadequate that they could only have been awarded under the influence of passion or prejudice. *Thompson v. Hughart*, 664 N.W.2d 372, 378 (Minn. App. 2003), *review denied* (Minn. Sept. 16, 2003); *see also Genzel v. Halvorson*, 248 Minn. 527, 534, 80 N.W.2d 854, 859 (1957) (recognizing additur as substitute for new trial on damages to avoid expense). But the verdict in this case is supported by the evidence. *See Thompson*, 664 N.W.2d at 378 (rejecting a claim of jury prejudice in part because evidence supported the verdict). A new trial should not be ordered if a court must speculate as to the possibility of the jury's prejudice. *Vadnais v. Amer. Family Mut. Ins. Co.*, 309 Minn. 97, 104, 243 N.W.2d 45, 49 (1976). Because appellant has failed to show that the jury's verdict is not so inadequate as to be unreasonable, he offers no proof of passion or prejudice on behalf of the jury, and we are left to speculate about the jury's prejudice. We will not set aside the jury's award based on speculation.

Affirmed.