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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1869**

Renae Kelly,  
Appellant,

vs.

Thomas Holt,  
Respondent.

**Filed August 3, 2010  
Affirmed  
Ross, Judge**

Todd County District Court  
File No. 77-CV-08-353

Michael A. Bryant, Nicole L. Bettendorf, Bradshaw & Bryant, PLLC, Waite Park,  
Minnesota (for appellant)

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Cloud, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and Ross,  
Judge.

**UNPUBLISHED OPINION**

**ROSS, Judge**

Injured motorist Renae Kelly appeals from the district court's denial of her posttrial motions for a new trial and additur in her personal injury action against Thomas Holt following an automobile accident. She argues that the district court abused its discretion by denying a new trial and additur because the jury awarded her inadequate

damages and that the district court also abused its discretion by not limiting its award of costs and disbursements under Minnesota Rule of Civil Procedure 68. Because the evidence supports the jury verdict, the district court properly denied Kelly's requests for a new trial or additur. And because the district court awarded costs and disbursements on a basis other than rule 68, the district court did not err by failing to limit the award under rule 68's undue-hardship provision. We affirm.

### **FACTS**

Renae Kelly commenced a personal injury action against Thomas Holt in November 2007 following an automobile accident. Holt stipulated that he was liable for the accident, and the district court conducted a trial to determine Kelly's damages. The jury awarded Kelly \$6,081 for medical expenses and wage losses, but it found that she did not sustain a permanent injury or a 60-day disability. The jury awarded her no damages for past or future pain and disability, future loss of earning capacity, or future medical expenses. The district court concluded that Holt was the prevailing party and granted him a judgment against Kelly in the amount of \$8,957 for his costs and disbursements. Kelly unsuccessfully moved the district court for a new trial or additur. Kelly appeals.

### **DECISION**

Kelly argues that because the damages determined by the jury were inadequate, the district court abused its discretion by denying her motion for a new trial. We review a district court's denial of a new-trial motion for abuse of discretion. *Stoebe v. Merastar Ins. Co.*, 554 N.W.2d 733, 735 (Minn. 1996). The district court has "the broadest

possible discretion” to determine whether a new trial is necessary on a claim of inadequate damages and its decision will not be reversed except in the “most unusual circumstances.” *Parr v. Cloutier*, 297 N.W.2d 138, 140 (Minn. 1980). We review the evidence in the light most favorable to the verdict, which we leave in place unless it is “manifestly and palpably contrary to the evidence viewed as a whole.” *Navarre v. S. Wash. County Sch.*, 652 N.W.2d 9, 21 (Minn. 2002).

Kelly argues that the jury inconsistently denied her any damages for pain and suffering while it awarded her damages for loss of income and medical expenses. She maintains that the damages awarded “were obviously caused by the pain from her injuries.” The district court could have ordered a new trial if the damages were insufficient, “appearing to have been given under the influence of passion or prejudice,” or if the verdict was not supported by the evidence. Minn. R. Civ. P. 59.01(e), (g). But it did not order a new trial because it found no insufficiency in the damages award and no improper influence of passion or prejudice. Just as the supreme court rejected a similar argument in *Raze v. Mueller*, 587 N.W.2d 645 (Minn. 1999), we reject Kelly’s argument today. In *Raze*, the supreme court reversed this court’s conclusion that the jury’s award for medical care was inconsistent with its failure to award damages for pain and suffering. *Id.* at 648. It emphasized that a verdict should stand if it can be reconciled with the evidence and its fair inferences on any theory. *Id.*

The jury’s decision not to award Kelly damages for pain and suffering is consistent with trial evidence. Dr. Gary Wyard, an orthopedic surgeon hired to examine Kelly, testified that he reviewed Kelly’s medical history and examined her. He found no

objective evidence that Kelly sustained any injury and testified that “at most” she sprained her neck. He added that Kelly did not sustain a permanent injury or a 60-day disability and that she requires no future medical care. He explained that although a doctor would reasonably respond to Kelly’s subjective complaints, the typical care for her type of complaints would last no longer than three months. The jury also viewed photographs of the involved vehicles depicting no property damage. And it received evidence that Kelly was treated for neck and back problems from 1999 to 2005.

The evidence supports the following reasonable inferences in favor of the verdict awarding Kelly damages for lost wages and past medical expenses but not for pain and suffering: Kelly had a brief neck sprain, received short-term medical treatment, and took time off from work, but she suffered no compensable pain. The jury verdict is even easier to reconcile with the trial evidence than the verdict in *Raze*. Here, the jury awarded only lost wages and past medical expenses. In *Raze*, the jury awarded lost wages, past medical expenses, *and* future medical expenses. *Id.* at 647. Despite acknowledging that the plaintiff required future medical care, including for “residual discomfort,” the supreme court upheld the jury’s decision not to also award damages for pain and suffering. The award of medical expenses and lost wages based on Kelly’s subjective, unverified complaints of pain does not require an award for pain and suffering.

Kelly’s argument for additur fails for the same reason. Whether to grant additur “rests almost wholly” within the district court’s discretion. *Pulkrabek v. Johnson*, 418 N.W.2d 514, 516 (Minn. App. 1988), *review denied* (Minn. May 4, 1988). The district

court “cannot grant additur unless grounds for a new trial on damages exist, since the court is, in effect, conditionally granting a new trial.” *Id.* Because there were no grounds for a new trial, the district court properly left the verdict undisturbed and did not err by denying Kelly’s motion for additur.

We next address Kelly’s challenge to her obligation to pay Holt’s costs and disbursements. The district court found that Holt was the prevailing party, as defined by *Bochert v. Moloney*, 581 N.W.2d 838 (Minn. 1998), and it awarded him costs and disbursements in the amount of \$8,957. Kelly argues that the district court’s failure to reduce the amount of her obligation for costs and disbursements resulted in an inequity and undue hardship. We review a district court’s award of costs and fees for an abuse of discretion. *Carlson v. Mut. Serv. Cas. Ins. Co.*, 527 N.W.2d 580, 584 (Minn. App. 1995), *review denied* (Minn. Apr. 27, 1995).

Holt moved the district court for an award of costs and disbursements pursuant to Minnesota Rule of Civil Procedure 54.04 and Minnesota Statutes chapter 549. The prevailing party in district court “shall be allowed reasonable disbursements paid or incurred.” Minn. Stat. § 549.04, subd. 1 (2008). Kelly opposed the motion, arguing that “[u]nder the new standard for Rule 68, the Court now has the authority to deny motion for costs” and that the motion for costs should be denied because the district court “heard the whole case, and could see what the Plaintiff has been through.”

On appeal, Kelly argues that under Minnesota Rule of Civil Procedure 68.03(b)(3), the district court could have reduced her costs obligation to eliminate an undue hardship or inequity and that the case should be remanded for a ruling on whether

a hardship is being imposed. Rule 68.03(b)(3) provides: “If the court determines that the obligations *imposed under this rule* as a result of a party’s failure to accept an offer would impose undue hardship or otherwise be inequitable, the court may reduce the amount of the obligations to eliminate the undue hardship or inequity.” (Emphasis added.)

The district court did not err by failing to exercise its discretion to reduce the award under rule 68.03(b)(3) because rule 68 simply does not apply. Rule 68 concerns settlement offers and directs how a rejected settlement offer affects the parties’ obligations to pay costs and disbursements. The award for costs here was not imposed under rule 68 but under rule 54. Kelly does not assert, nor does the record indicate, that there were any rejected settlement offers in this case and that costs and disbursements were awarded under rule 68. There is also no indication in the record that Kelly argued to the district court that the imposition of costs and disbursements would result in an undue hardship or inequity. We generally do not consider arguments raised for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Although Kelly’s counsel asserted at oral argument to this court that he made an undue-hardship argument at oral arguments before the district court, Kelly did not provide us with a transcript of those arguments. In a written memorandum to the district court, Kelly did make a general reference to rule 68 and argued that costs should be denied, but she did not argue that she would suffer an undue hardship or inequity or explain how rule 68’s limits have any bearing on a rule 54 order to pay costs.

**Affirmed.**