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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 8, 2022 Session

CIERA BESSES v. JAMES KILLIAN

Appeal from the Circuit Court for Davidson County
No. 18C2174 Joe Binkley, Jr., Judge

No. M2021-01121-COA-R3-CV

This case arises out of a vehicular accident between Ciera Besses (“Plaintiff”) and James Killian (“Defendant”). Plaintiff filed a complaint for damages, seeking compensation for past and future medical expenses, loss of earnings, pain and suffering, and loss of enjoyment of life. Defendant admitted fault but challenged the reasonableness and necessity of certain medical, hospital, and doctor bills itemized by Plaintiff. Defendant also contended that some of Plaintiff’s claimed injuries were not causally related to the accident. The jury awarded \$16,720 to Plaintiff in damages, which represented \$12,720 for medical expenses; \$3,000 for past physical pain and mental suffering; \$1,000 for past loss of enjoyment of life, and \$0.00 for future physical pain and suffering and future loss of enjoyment of life. Plaintiff filed a motion for additur and/or new trial, which the trial court denied. Plaintiff appeals, contending that the trial court erred by denying her motion for a new trial. We have determined it did not. Thus, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court in which W. NEAL MCBRAYER and JEFFREY USMAN, JJ., joined.

Shelley S. Breeding and Adam R. Duggan, Knoxville, Tennessee, for the appellant, Ciera Besses.

C. Michael Becker, Nashville, Tennessee, for the appellee, James Killian.

OPINION

FACTS AND PROCEDURAL HISTORY

On September 14, 2017, Plaintiff was driving her car on I-440 in Nashville, Tennessee, when she encountered early-morning traffic, causing her to slow significantly.

The driver behind her, Defendant, failed to notice that traffic had slowed and rear-ended Plaintiff's car. The two drivers were able to pull their cars to the side of the interstate. The police came to the scene and made a report. Neither party required medical attention, and both drivers drove their respective vehicles away from the accident.

Plaintiff subsequently filed a complaint in which she contends that she sustained numerous injuries as a result of the accident, including a bruised right knee, a neck strain, a lower back strain, a concussion, and chronic headaches, including migraines. The complaint stated that Plaintiff was treated by several doctors, including a primary care physician, an orthopedic physician, and a neurologist, and that she was treated with physical therapy and several different medications. The complaint also exhibited medical bills Plaintiff incurred.

Defendant filed an answer in which he admitted fault but denied that the accident was the cause of all of Plaintiff's alleged injuries. As one of his affirmative defenses, Defendant asserted that "the nature and extent of the alleged damages, if any, is specifically in dispute and thus a genuine issue to be determined by this Court." Defendant also filed a motion giving notice pursuant to Tennessee Code Annotated § 24-5-113(b) that he intended to "contest the reasonableness and/or necessity of all medical, hospital and doctor bills itemized by Plaintiff." The motion specifically challenged three charges by Plaintiff's primary care physician, Dr. Karin Moolman, that related to a preventative wellness visit that included her annual physical exam and bloodwork panels related to reported menstrual irregularity and weight gain. Defendant also asserted in the motion that "the mere fact a medical expense may be reasonable, or even necessary, to treat a particular malady, does not abrogate the requirement that Plaintiff must still prove the subject expenses are causally related to the action and/or the result of the claimed negligent conduct."¹

The case was tried before a jury over two days. Plaintiff and Defendant testified, and each presented evidence from medical experts. Plaintiff testified that she realized immediately following the accident that she suffered a bruised right knee with swelling, a neck strain, a lower back strain, and a concussion. She states she developed a headache immediately after the accident that worsened throughout the day; however, she declined medical attention immediately following the accident. After taking over-the-counter medicines for a few days, which did not abate the headaches, she began to suffer from light sensitivity and nausea. As a consequence, she went to the emergency department where she states she was diagnosed with a concussion, a lumbosacral (low back) strain, and a

¹ The parties subsequently entered into a stipulation concerning the description of the case, which reads:

This is a civil lawsuit arising out of a car accident. On September 14, 2017, Ciera Besses was driving her car in morning rush-hour traffic on 1-440 when she slowed down because of the traffic. Driving behind her was James Killian, who failed to see that Ms. Besses had slowed down and his vehicle struck the rear-end of the Besses' vehicle. Ms. Besses filed suit against Mr. Killian seeking compensation for the injuries she suffered.

cervical (neck) strain. Thereafter, she sought the medical care of Dr. Narendra Singh, an orthopedic physician, and Dr. Charles Clarke, a neurologist, both of whom testified on her behalf.

Defendant testified that he did not require medical attention, and he went directly to work after the police officer completed the accident report at the scene. He also stated that he drove his vehicle, a 1998 Mazda compact pickup truck, for a year after the accident during which time he did not get it fixed nor did he have any mechanical problems. When asked how he would describe the impact of the collision, Defendant stated: "To me it felt more like a bump. I did stop, and I lurched forward a bit, but I didn't think it was anything particularly severe." He also testified, "There's no way I was going 50 miles an hour."

Dr. Singh testified that he first saw Plaintiff on October 5, 2017, approximately three weeks after the accident. He stated that he treated Plaintiff for neck pain, knee pain, lower back pain, and headaches with physical therapy, muscle relaxants, and anti-inflammatory medication. He testified that the anti-inflammatory medications were prescribed to reduce pain and inflammation, and the muscle relaxant was to reduce muscle tightening and resulting pain and discomfort. He also explained that the physical therapy was to build strength, range of motion, and flexibility. Further, Dr. Singh testified that all of Plaintiff's injuries were caused by the accident within a reasonable degree of medical certainty.

Dr. Clarke, a neurologist, testified that he first saw Plaintiff more than a year after the accident. He explained that he treated Plaintiff for headaches, neck pain, and back pain. Dr. Clarke diagnosed Plaintiff with transformed or posttraumatic migraines and cervical and lumbar strain pain. Dr. Clarke also treated Plaintiff with preventative migraine medicine and physical therapy. It was Dr. Clarke's opinion that Plaintiff's injuries were caused by the car accident and that she would continue to experience symptoms and would likely need continued medical care.

Defendant presented expert testimony from Dr. Steven Graham, a neurologist.² Based upon a review of Plaintiff's medical records, Dr. Graham testified that there were no objective findings of any anatomical derangements and no description from any diagnostic tests of any acute abnormalities structurally. He also noted that none of Plaintiff's treating physicians placed any limitations or restrictions on any of her school, work, or daily living activities. Dr. Graham also stated that Plaintiff's annual physical exam and bloodwork panels were not reasonable or necessary with regard to the injuries Plaintiff claimed to sustain in the car accident.

² Dr. Graham reached these conclusions solely based on the review of Plaintiff's medical records. He did not examine her nor was he involved in her care.

At the conclusion of the trial, the jury awarded Plaintiff \$12,720 for medical expenses, \$3,000 for past physical and mental pain and suffering, \$1,000 for past loss of enjoyment of life, and \$0.00 for future physical pain and suffering and future loss of enjoyment of life. Combined, those categories represented a total damages award of \$16,720 to Plaintiff.

On July 6, 2021, the trial court entered the jury verdict as the judgment of the court. The same day, Plaintiff filed a motion for a new trial pursuant to Rules 59.06 and 59.07 of the Tennessee Rules of Civil Procedure.³ She argued that the jury's award of damages did not adequately compensate her for her injuries and was inconsistent with the evidence offered at trial. Defendant opposed Plaintiff's motion, arguing that the evidence supported the jury verdict and that there was no basis for disturbing the verdict. After hearing from both parties on the motion, the trial court denied Plaintiff's motion for a new trial and confirmed the jury verdict.

This appeal followed.

ISSUES

Appellant raises one issue for our consideration: "Did the trial court commit clear error when it denied Plaintiff's motion for a new trial?"

STANDARD OF REVIEW

"A trial court's decision regarding whether to grant or deny a motion for a new trial is discretionary in nature, and we accord such rulings great deference. We will only disturb such a decision if it amounts to an abuse of discretion." *Buckley v. Elephant Sanctuary in Tennessee, Inc.*, 639 S.W.3d 38, 46 (Tenn. Ct. App. 2021), *appeal denied* (Oct. 14, 2021) (quoting *Ali v. Fisher*, 145 S.W.3d 557, 564 (Tenn. 2004)).

"An abuse of discretion occurs when a court 'causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence.'" *Id.* (citing *Funk v. Scripps Media, Inc.*, 570 S.W.3d 205, 210 (Tenn. 2019) (quoting *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010))).

ANALYSIS

"Where a party invokes the right to a jury trial, our constitution requires 'that the jury be allowed to determine all disputed issues of fact.'" *Borne v. Celadon Trucking Servs., Inc.*, 532 S.W.3d 274, 308 (Tenn. 2017) (citations omitted). "The questions of

³ In the same motion, Plaintiff also sought an additur pursuant to Tennessee Code Annotated § 20-10-101, which was denied, and Plaintiff does not challenge the denial of the additur on appeal.

disputed fact to be resolved by the jury include the type and amount of any damages awarded to the plaintiff.” *Id.* (citing *Meals ex rel. Meals v. Ford Motor Co.*, 417 S.W.3d 414, 419-20 (Tenn. 2013)).

We entrust the responsibility of resolving questions of disputed fact, including the assessment of damages, to the jury. Tenn. Const. art. I, § 6; *Spence v. Allstate Ins. Co.*, 883 S.W.2d 586, 594 (Tenn. 1994); *Wolfe v. Vaughn*, 177 Tenn. 678, 688, 152 S.W.2d 631, 635 (1941). An award of damages, which is intended to make a plaintiff whole, compensates the plaintiff for damage or injury caused by a defendant’s wrongful conduct. *Inland Container Corp. v. March*, 529 S.W.2d 43, 44 (Tenn. 1975). A plaintiff may be compensated for any economic or pecuniary losses that naturally result from the defendant’s wrongful conduct. *Id.* Economic damages include out-of-pocket medical expenses, future medical expenses, lost wages, and lost earning potential. The plaintiff bears the burden of proving damages to such a degree that, while perhaps not mathematically precise, will allow the jury to make a reasoned assessment of the plaintiff’s injury and loss. *Provident Life & Accident Ins. Co. v. Globe Indem. Co.*, 156 Tenn. 571, 576-77, 3 S.W.2d 1057, 1058 (1928); *Overstreet*, 4 S.W.3d at 703.

Meals, 417 S.W.3d at 419–20 (footnotes omitted).

“However, ‘a verdict of a jury is subject to the supervision of the trial court.’” *Borne*, 532 S.W.3d at 308 (quoting *Foster v. Amcon Int’l, Inc.*, 621 S.W.2d 142, 144 (Tenn. 1981)). “‘No verdict is valid until it is approved by the trial court judge.’” *Id.* (quoting *Davidson v. Lindsey*, 104 S.W.3d 483, 488 (Tenn. 2003)). “In determining whether to approve the jury’s verdict, the trial judge acts as a ‘thirteenth juror.’” *Id.*

The reasons given for the rule are, in substance, that the circuit judge hears the testimony, just as the jury does, sees the witnesses, and observes their demeanor upon the witness stand; that, by his training and experience in the weighing of testimony, and the application of legal rules thereto, he is especially qualified for the correction of any errors into which the jury by inexperience may have fallen, whereby they have failed, in their verdict, to reach the justice and right of the case, under the testimony and the charge of the court; that, in our system, this is one of the functions the circuit judge possesses and should exercise—as it were, that of a thirteenth juror. So it is said that he must be satisfied, as well as the jury; that it is his duty to weigh the evidence; and, if he is dissatisfied with the verdict of the jury, he should set it aside.

Id. (quoting *Davidson*, 104 S.W.3d at 488). “The trial judge must be independently satisfied with the verdict; if the trial judge is dissatisfied with the verdict, the verdict must be set aside.” *Id.* (citing *Holden v. Rannick*, 682 S.W.2d 903, 905 (Tenn. 1984)).

In addressing a motion for a new trial, the trial court has such broad discretion that it is not bound to give reasons for its action in granting or denying a new trial based on the preponderance of the evidence. *James E. Strates Shows, Inc. v. Jakobik*, 554 S.W.2d 613, 615 (Tenn. 1977). Indeed, when a trial judge approves the verdict without comment, the appellate court will presume that the trial judge has adequately performed his function as the thirteenth juror. *Holden*, 682 S.W.2d at 905 (citing *Cent. Truckaway Sys. v. Waltner*, 36 Tenn. App. 202, 253 S.W.2d 985, 991 (1952)).

Id.

Here, the trial court did not give reasons for denying Plaintiff’s motion for a new trial; the trial court simply stated, “[T]he Court denies Plaintiff a new trial.” Accordingly, we are required to presume that the trial judge adequately performed his function as the thirteenth juror. *Id.* Nevertheless, we are also required to review the evidence heard by the jury and the trial court judge to decide whether the trial judge’s decision to deny the motion for a new trial constitutes an abuse of discretion. *See Buckley*, 639 S.W.3d at 46; *see also Ali*, 145 S.W.3d at 564 (citing *Henry v. Goins*, 104 S.W.3d 475, 479 (Tenn. 2003)).

Plaintiff testified that Defendant was traveling 50 miles per hour when he hit her car from the rear. As she describes it, immediately following the accident, she realized that she suffered a bruised right knee with swelling, a neck strain, a lower back strain, and a concussion. However, she declined medical attention immediately following the accident. Instead, she drove her car from the accident scene and did not independently seek medical attention of any kind until days later. She also acknowledged that Defendant was able to drive his car from the scene of the accident.

Defendant testified that after the police officer completed the accident report, he went to work immediately following the accident. He also explained that he drove his car for a year and did not get it fixed nor did he have any mechanical problems. When asked how he would describe the impact of the collision, Defendant stated, “To me it felt more like a bump. I did stop, and I lurched forward a bit, but I didn’t think it was anything particularly severe. I was obviously shaking and shook. I had never been in a vehicle accident before.”

Although Plaintiff and two of her doctors testified as to her injuries, medical care, and medical expenses that they claimed to result from the accident, Defendant cross-examined all three and additionally presented expert testimony from Dr. Graham, which

rebutted Plaintiff's proof. In pertinent part, Defendant presented testimony that refuted the extent of her injuries or the causal connection to the accident.

For example, on cross-examination, Dr. Singh stated that he relied heavily on the medical history Plaintiff provided, which he classified as being subjective. He also admitted that if the history she provided was "in any way inaccurate, it may affect [his] opinions." Upon review of the Vanderbilt Emergency Department report from September 24, which was ten days after the accident, he acknowledged under subject "the exams," there was a note that Plaintiff's neck had "full range of motion without restriction." He was further asked about his first visit with Plaintiff three weeks later when he found her range of motion to be limited but acknowledged that this was not uncommon with this type of a strain in the neck. Nevertheless, he stated that he did not assign any permanent restrictions for any work or other daily activities, and he did not restrict her from attending classes. He further testified in response to questions from Defendant's counsel:

Q. On her November 30th visit, six weeks after the first time you treated her, you found that her symptoms had improved with the physical therapy. Is that correct?

A. That's correct.

Q. You also found that her MRI was negative for any acute injury. Correct?

A. Correct.

Q. And that's a diagnostic test. Correct?

A. Yes.

Q. And those are objective findings. Correct?

A. Correct.

Q. So her diagnosis is based mainly on her reports of subjective complaints of pain. Correct?

A. Yes.

Q. And there's no way to verify those complaints with any type of diagnostic test, is there?

A. No, not really.

Q. As we sit here today, is there any indications in the medical records, and your records particularly, that the plaintiff could not resume any of her activities as she did prior to the accident?

A. No.

Q. And you haven't seen her in over two years. Is that correct?

A. Correct.

Dr. Clarke, Plaintiff's neurologist, stated, "I have to go based on what people tell me," explaining that if the patient's history is inaccurate, then his opinions may change. He noted that he did not see Plaintiff for the first time until more than a year after the accident. He also explained that classifying headaches is subjective and "[t]here is no objective test for a headache. You—there's no scan or anything you can do that's

commercially available for—for headache.” As for migraines, he explained that there are a number of causes and that young females are the segment of the population that are most likely to have migraines. He also stated there are a number of different causes for the onset of migraines and headaches including alcohol consumption, stress, and lack of sleep.

Defendant’s medical expert witness, Dr. Steven Graham, did not treat or examine Plaintiff; instead, he reviewed her medical records, including those of Dr. Singh and Dr. Clarke. Based on his review, he noted that Plaintiff had not been placed on any restrictions, temporary or permanent, concerning activities, work, or school. He also testified that there were no objective findings of any anatomical derangements and no description from any diagnostic tests of any acute abnormalities structurally.

Q. Doctor, from your review of the records, what was the diagnosis for Ms. Besses?

A. The diagnosis, musculoskeletal back and neck pain supported diagnoses. Episodic headaches were also noted.

Q. Doctor, in layman’s terms, what—what’s the episodic headaches? Could you explain that to the Court?

A. These are described as periodic headaches which happen without any particular pattern to them. They can be different frequencies sometimes, several times a year, maybe several times a month. It can be in different parts of the head, usually self-limited and—and patients then will return to normal.

A. Yeah, especially looking at the records from—from Dr. Clarke, one of the impressions was episodic tension-type headache.

Q. And are those—would that be causally related to the motor vehicle accident?

A. Not necessarily. That diagnosis is usually made in the absence of trauma. There’s a separate diagnosis if someone has post-traumatic headache.

Q. . . . Are there any other type of—what type of headaches? What are the factors that cause these type of headaches?

A. Yeah, the cause of tension-type headache is not exactly known. Lack of sleep, dietary causes, other factors. Hormonal changes can also influence headaches.

Q. Doctor, are women Ms. Besses’ age, are they more prone to get headaches or migraines?

A. Specifically migraines are—are three times more commonly occurring in women than in men. Tension-type headaches are generally fairly equal in the population.

Although Plaintiff presented competent and credible evidence to support her claims that her headaches and other injuries were caused by the accident, Defendant presented competent and credible evidence upon which the jury could conclude that some of the claimed injuries, including her migraines and headaches, and the attendant medical services and expenses were not the result of the accident or Defendant's conduct.

"An award of damages, which is intended to make a plaintiff whole, compensates the plaintiff for *damage or injury caused by a defendant's wrongful conduct.*" *Meals*, 417 S.W.3d at 419 (emphasis added). "A plaintiff may be compensated for any economic or pecuniary losses *that naturally result from the defendant's wrongful conduct.*" *Id.* (emphasis added). However here, the jury and the trial court heard competent and credible evidence indicating that some of Plaintiff's claimed injuries, specifically her migraines and headaches, were not caused by the accident.

As noted earlier, "[w]e entrust the responsibility of resolving questions of disputed fact, including the assessment of damages, to the jury." *Id.* (citations omitted). "However, 'a verdict of a jury is subject to the supervision of the trial court.'" *Borne*, 532 S.W.3d at 308 (quoting *Foster*, 621 S.W.2d at 144). "'No verdict is valid until it is approved by the trial court judge.'" *Id.* (quoting *Davidson*, 104 S.W.3d at 488). In determining whether to approve the jury's verdict, the trial judge acts as a "thirteenth juror." *Id.* (quoting *Davidson*, 104 S.W.3d at 488).

"In addressing a motion for a new trial, the trial court has such broad discretion that it is not bound to give reasons for its action in granting or denying a new trial based on the preponderance of the evidence." *Id.* (citing *Jakobik*, 554 S.W.2d at 615). Moreover, "when a trial judge approves the verdict without comment, the appellate court will presume that the trial judge has adequately performed his function as the thirteenth juror." *Id.* (citations omitted). Here, the trial court denied the motion for a new trial without comment. Thus, we presume the trial court adequately performed its function as the thirteenth juror.

For the foregoing reasons, we find no abuse of discretion with the trial court's decision to deny Plaintiff's motion for a new trial.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against the Appellant, Ciera Besses.

FRANK G. CLEMENT JR., P.J., M.S.