NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ABRAHAM ATTALIADIS AND LISA AMATUCCI, Appellants v. PATRICIA ALLRIDGE AND P&T, INCORPORATED, Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2458 EDA 2012

Appeal from the Judgment Entered October 4, 2012
In the Court of Common Pleas of Philadelphia Criminal Division
at No(s): No. 4137 Jan. Term 2011

BEFORE: BENDER, J., PANELLA, J., and FITZGERALD, J.*

MEMORANDUM BY BENDER, J. **FILED SEPTEMBER 09, 2013**

Appellants, Abraham Attaliadis and Lisa Amatucci ("Plaintiffs"), appeal from the judgment entered on October 4, 2012, in their favor and against Patricia Alldridge and P&T, Inc., ("Defendants") in the amount of $9,660.74.[1] Plaintiffs claim that the trial court should have awarded them a new trial on

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* Former Justice specially assigned to the Superior Court.

[1] Although Appellants filed their appeal on August 29, 2012, after the grant of their post-trial motion and pre-dating the entry of judgment, their appeal was perfected when the judgment was entered on October 4, 2012. ***See Johnston the Florist, Inc. v. TEDCO Const. Corp.***, 657 A.2d 511, 514-15 (Pa. Super. 1995) (stating that appellate courts may "regard as done that which ought to have been done"). ***See also Levitt v. Patrick***, 976 A.2d 581, 584 n.2 (Pa. Super. 2009) (stating that appeal properly lies from the entry of judgment, not from order denying post-trial motion).

the issue of damages because the verdict was inconsistent and against the weight of the evidence. After review, we affirm.

The trial court provided the following recitation of the factual and procedural history of this case:

> [Plaintiffs] initiated this action in Philadelphia County, Pennsylvania on January 31, 2011[,] as a result of a car accident that occurred on the evening of February 5, 2009. [Defendant], Patricia Alldridge, was operating a car owned by [Defendant], P & T, Inc., southbound on Interstate 95 in Ridley Park, Delaware County, Pennsylvania. [Plaintiff], Abraham Attaliadis, was also driving southbound with [Plaintiff] Lisa Amatucci as his front seat passenger. During stop-and-go traffic, [Defendant Alldridge] rear-ended [Plaintiff Attaliadis'] vehicle wherein injuries were allegedly sustained by the [Plaintiffs]. At the time, [Plaintiffs] denied being injured at the scene of the accident and drove the vehicle away, but [Plaintiff] Attaliadis presented to an emergency room later that night. After waiting two weeks, he sought additional medical attention for alleged injuries to his neck, back, and knees, which were disputed at trial. [Plaintiff] Amatucci did not present to the emergency room or seek medical attention until two weeks following the incident.
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> Trial by [j]ury commenced on April 23, 2012. At the close of evidence[,] the Court charged the jury and reviewed with them the proposed verdict sheets for each [Plaintiff]. After deliberations commenced, the jury returned with questions asking whether they were required to award any monetary amount if they were to find in favor of [Plaintiffs] and find that [Defendant] Alldridge's negligence was a factual cause of injury to [Plaintiffs]. The jury also inquired again as to the amount of medical bills for [Plaintiffs]. The Court re-instructed them on the jury instructions of damages and advised them on the amounts of medical bills.
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> On April 26, 2012[,] a Jury Verdict was returned in favor of [Plaintiffs]. [Plaintiff] Attaliadis was awarded $9,576.00, the amount of his outstanding medical bills, and [Plaintiff] Amatucci was awarded $0. The jury did not award either [Plaintiff] non-economic damages. [Plaintiffs] filed a Motion for Post Trial Relief

> on May 7, 2012 with oral argument on July 2, 2012. The Motion was denied on August 7, 2012. [Plaintiffs] also filed a Bill of Costs and a Motion for Delay Damages. The Motion for Delay Damages was granted on August 7, 2012, in the amount of $84.74. [Plaintiffs] then filed the timely instant Notice of Appeal on August 29, 2012.

Trial Court Opinion (T.C.O.), 12/11/12, at 1-2 (unnumbered).

On appeal, Plaintiffs pose the following question for our review:

> Whether the Trial Court erred when it failed to award a new trial on the issue of damages where the verdict was inconsistent and against the weight of evidence in that: (1) the [D]efendant conceded negligence, (2) the jury found that the Defendant's negligence was a factual cause in bringing about the Plaintiff[s'] injuries and (3) the jury awarded outstanding medical bills to the Plaintiffs but did not award monetary damages for pain and suffering?

Plaintiffs' brief at 5.

In reviewing this matter, we are guided by the following as stated in ***Davis v. Mullen***, 773 A.2d 764 (Pa. 2001):

> In reviewing an order denying a motion for a new trial, an appellate court should not set aside a trial court's decision unless the trial court's decision was an abuse of discretion. ***Catalano v. Bujak***, 537 Pa. 155, 642 A.2d 448, 450 (Pa. 1994). "A new trial should be granted only where the verdict is so contrary to the evidence as to shock one's sense of justice [and not] where the evidence is conflicting [or] where the trial judge would have reached a different conclusion on the same facts." ***Henery v. Shadle***, 443 Pa. Super. 331, 661 A.2d 439, 441 (Pa. Super.), *allocatur denied*, 668 A.2d 1133 (Pa. 1995).
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> We have held that it is the duty of the trial court "to control the amount of the verdict; it is in possession of all the facts as well as the atmosphere of the case, which will enable it to do more evenhanded justice between the parties than can an appellate court." ***Catalano***, 642 A.2d at 450 (quoting ***Bochar v. J.B. Martin Motors, Inc.***, 374 Pa. 240, 97 A.2d 813, 814 (Pa. 1953)). Thus, "a jury verdict is set aside for inadequacy

> when it appears to have been the product of passion, prejudice, partiality, or corruption, or where it clearly appears from uncontradicted evidence that the amount of the verdict bears no reasonable relation to the loss suffered by the plaintiff." ***Kiser v. Schulte***, 538 Pa. 219, 648 A.2d 1, 4 (Pa. 1994) (citing ***Elza v. Chovan***, 396 Pa. 112, 152 A.2d 238 (Pa. 1959)). Hence, a "reversal on grounds of inadequacy of the verdict is appropriate only where 'the injustice of the verdict [stands] forth like a beacon.'" ***Hawley v. Donahoo***, 416 Pa. Super. 469, 611 A.2d 311, 312 (Pa. Super. 1992) (quoting ***Elza***, 152 A.2d at 241).

Id. at 766.

Moreover, a motion that "a new trial should have been granted because the verdict was against the weight of the evidence [is] addressed to the discretion of the trial court." ***Samuel-Bassett v. Kia Motors America, Inc.***, 34 A.3d 1, 39 (Pa. 2011) (citing ***Commonwealth v. Cousar***, 928 A.2d 11025, 1035-36 (Pa. 2007)).

> "An appellate court, therefore, reviews the exercise of discretion, not the underlying question whether the verdict is against the weight of the evidence. The factfinder is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses." ***Id.*** The trial court awards … a new trial "only when the jury's verdict is so contrary to the evidence as to shock one's sense of justice. In determining whether this standard has been met, appellate review is limited to whether the trial judge's discretion was properly exercised, and relief will only be granted where the facts and inferences of record disclose a palpable abuse of discretion." ***Id.*** at 1036. Thus, the trial court's decision based on a weight of the evidence claim is among "the least assailable of its rulings." ***Id.***

Id. at 39 (quoting ***Cousar***, 928 A.2d at 1035-36).

Plaintiffs seek a new trial on the basis that "[o]ur appellate and trial [c]ourts have held that jury verdicts awarding economic damages without awarding pain and suffering are against the weight of evidence and warrant

a new trial on the issue of damages." Plaintiffs' brief at 10. Plaintiffs rely on ***Neison v. Hines***, 653 A.2d 634 (Pa. 1995), and ***Monschein v. Phifer***, 771 A.2d 18 (Pa. Super. 2001), to support this proposition. Although in both ***Neison*** and ***Monschein***, the trial court's granting of new trials on damages alone was upheld, Plaintiffs overlook the Supreme Court's statement in ***Neison*** that "a jury is entitled to reject any and all evidence up until the point at which the verdict is so disproportionate to the uncontested evidence as to defy common sense and logic." ***Neison***, 653 A.2d 637. Obviously, in both of these cases, it was determined that under the facts new trials were warranted.

In ***Davis***, our Supreme Court noted the existence of two lines of cases, stating:

> In the first line of cases, we have affirmed trial court decisions granting new trials where juries awarded medical expenses, but declined to award damages for pain and suffering. ***See, e.g., Todd v. Bercini***, 371 Pa. 605, 92 A.2d 538 (Pa. 1952)[,] and ***Yacabonis v. Gilvickas***, 376 Pa. 247, 101 A.2d 690 (Pa. 1954). In the second line of cases, we have upheld jury verdicts awarding medical expenses without corresponding awards for pain and suffering. ***See e.g., Catalano v. Bujak***, 537 Pa. 155, 642 A.2d 448 (Pa. 1994), and ***Boggavarapu v. Ponist***, 518 Pa. 162, 542 A.2d 516 (Pa. 1988). Our holding today synthesizes these seemingly inconsistent holdings.
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> Today, we hold that a jury's award of medical expenses without compensation for pain and suffering should not be disturbed where the trial court had a reasonable basis to believe that: (1) the jury did not believe the plaintiff suffered any pain and suffering, or (2) that a preexisting condition or injury was the sole cause of the alleged pain and suffering.

Davis, 773 A.2d at 766-67. The Supreme Court concluded that "the existence of compensable pain is an issue of credibility and juries must believe that plaintiffs suffered pain before they compensate for that pain." ***Id.*** at 769. Moreover, there is no *per se* rule "precluding a jury from awarding medical expenses without damages for pain and suffering." ***Id.***

The trial court here was aware of the dictates expressed in the ***Davis*** opinion, and explained the facts of record as provided by the testimony heard by the jury. The court noted that the verdict was "reasonable in light of the evidence presented" and determined that it did not "shock one's sense of justice…." T.C.O. at 6. Specifically, the court stated:

> The record reflects the following. Contrasting testimony was presented as to the cause of the injuries and speculation of [Plaintiffs'] injuries - unlike in ***Neison***, in which the plaintiff suffered a violent injury that the defense admitted was caused by the accident in question. To contrast, in the case at hand both the cause of the injuries and the extent of said injuries (even the existence of said injuries) were hotly disputed. The instant jury heard testimony that neither [Plaintiff] complained of injuries at the scene and that both waited two weeks to seek medical attention. The emergency room record categorized the condition of [Plaintiff] Attaliadis, once he did seek treatment, as aggravation of a preexisting degenerative spinal condition. Dr. Leonard Brody, the [d]efense expert, testified unequivocally as to his examination of [Plaintiff] Attaliadis that any issues "had resolved by the time I saw him." [Plaintiff] Amatucci admitted that she neither formally treated her injuries after the accident nor sought extensive treatment in the time following the accident — similar to the plaintiff in ***Davis***. Diagnostic studies of both [Plaintiffs'] injuries revealed only degenerative changes.

T.C.O. at 6-7. Accordingly, the trial court noted that both injury and causation were disputed and that the jury weighed the evidence put before

it. The court concluded that the evidence supported the jury's decision not to award damages for pain and suffering, a decision that did not "shock one's sense of justice." T.C.O. 7.

Pursuant to the law as set forth in the ***Davis*** decision discussed above, we determine that the trial court properly exercised its discretion to deny Plaintiffs' motion for a new trial, where it appears that the jury did not believe that Plaintiffs suffered pain and/or that their alleged injuries were not the result of preexisting conditions. Thus, we affirm the denial of Plaintiffs' request for a new trial on the issue of damages.

Judgment affirmed.

Judgment Entered.

Prothonotary

Date: 9/9/2013