REL: October 4, 2019

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2019

2180732

Shawn Odell Bell

v.

Erwin Deandre Moore

Appeal from Dallas Circuit Court
(CV-17-900148)

MOORE, Judge.

Shawn Odell Bell appeals from an order of the Dallas Circuit Court ("the trial court") granting a motion for a new trial filed by Erwin Deandre Moore. See § 12-22-10, Ala. Code 1975. We reverse the trial court's order.

Procedural History

On August 4, 2017, Moore filed a complaint against Bell, alleging that Bell's negligent and/or wanton conduct had caused an automobile collision between his automobile and an automobile being driven by Moore and seeking damages.[1] Bell answered the complaint on November 15, 2017. The parties ultimately stipulated that Bell was liable for causing the accident and that the case would proceed to a jury trial on the issue of damages based on only Bell's negligence. After a trial, the jury returned a verdict in favor of Moore and awarded him damages in the amount of $40,000. The trial court entered a judgment on the jury's verdict. Moore filed a motion for a new trial, asserting

> "that the judgment entered in favor of ... Moore is inadequate in that the jury, after liability was stipulated to between the parties, failed to award damages to [Moore] in the total amount of medical bills stipulated to as having been incurred by [Moore] as a result of the accident, and failed to

[1]Moore also included a claim for "Uninsured/Underinsured Motorists Benefits" against State Farm Mutual Automobile Insurance Company. On October 18, 2017, State Farm answered the complaint. State Farm subsequently elected to opt out of the case and agreed "to be bound by the trier of fact's determinations on the issues of liability and damages." See Lowe v. Nationwide Ins. Co., 521 So. 2d 1309 (Ala. 1988).

> award damages to [Moore] for pain and suffering as required by Alabama law."

On March 19, 2019, the trial court granted the motion for a new trial. On March 28, 2018, Bell filed his notice of appeal.

Facts

The facts adduced at the trial were largely undisputed. On May 11, 2016, an automobile being operated by Bell collided into the rear end of the automobile being operated by Moore. Moore testified that he had driven himself to the emergency room for treatment of neck and back pain the same date that the collision took place. Moore was subsequently treated by Dr. Park Chittom, an internal-medicine physician, and he eventually underwent an MRI, which indicated that he had suffered a T6-7 disk herniation. Dr. Chittom referred Moore to Dr. Timothy Holt, an orthopedic surgeon, for treatment. Dr. Holt recommended that Moore undergo conservative treatment consisting of physical therapy. By the time of the trial, Moore had completed two rounds of physical therapy and had been referred for an additional round. Dr. Holt testified that Moore's neck pain had subsided but that his back pain had persisted. Dr. Holt testified that Moore, more likely than

not, would need additional physical therapy in the future. Dr. Holt indicated that it was possible that Moore might need an epidural injection or surgery in the future but that he had not had to undergo that type of treatment thus far. Dr. Holt testified that surgery would be a last resort and that he had observed that Moore had improved with physical therapy.

It was undisputed that the total medical charges incurred by Moore related to the automobile collision were $40,227.14. However, Moore admitted that his medical-insurance company, Blue Cross and Blue Shield of Alabama ("BCBSAL"), had paid for most of his medical treatment. Specifically, Moore testified that he had had to pay a $300 deductible for the initial visit to the emergency room, as well as a $35 copay for each doctor's office visit. The exhibits introduced at trial indicate that Moore had had nine visits with Dr. Chittom and six visits with Dr. Holt. Additionally, Moore had had two rounds of physical therapy for which he had incurred charges of $2,274 and $2,817, respectively. With regard to his physical-therapy expenses, Moore testified that he had had to pay a $300 deductible and then 20% of the total charges

incurred. The exhibits also indicate that Moore was responsible for charges in the amount of $254.01 for an MRI.

Moore testified that his pain is a constant issue but that, other than a one-week absence immediately following the accident, he had been able to continue working as a firefighter. Moore represented that he was not claiming damages as a result of lost wages.

There was no evidence presented indicating whether Moore would have to reimburse BCBSAL for the amounts it had paid on behalf of Moore in the event that he recovered an award of damages in this case. However, Moore's attorney argued during closing arguments, without objection, that Moore would have to reimburse BCBSAL $5,314 if he recovered an award of damages.

Standard of Review

> "The decision whether to grant a motion for a new trial is within the discretion of the trial court; however, a trial court's order granting a motion for a new trial may be reversed where the jury's verdict is supported by the evidence and the trial court is plainly and palpably wrong in granting the new trial. Savoy v. Watson, [852 So. 2d 137 (Ala. Civ. App. 2002)].
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> > "'When reviewing a motion for new trial on the grounds of inadequate damages, the reviewing court must consider whether the verdict is so opposed to the clear and convincing weight of the evidence as to

> clearly fail to do substantial justice, and whether the verdict fails to give substantial compensation for substantial injuries. Orr v. Hammond, 460 So. 2d 1322 (Ala. Civ. App. 1984). In addition, the reviewing court must keep in mind that a jury verdict is presumed to be correct and will not be set aside for an inadequate award of damages unless the amount awarded is so inadequate as to indicate that the verdict is the result of passion, prejudice, or other improper motive. Orr v. Hammond, supra.'
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> "Helena Chem. Co. v. Ahern, 496 So. 2d [12] at 14 [(Ala. 1986)] (emphasis added).
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> "It is the job of the jury, and not the appellate courts, to evaluate the credibility of the witnesses. Scott v. Farnell, 775 So. 2d 789 (Ala. 2000). The function of the appellate courts is to determine whether the jury's verdict is supported by the evidence. Id. (citing Jawad v. Granade, 497 So. 2d 471 (Ala. 1986))."

Wells v. Mohammad, 879 So. 2d 1188, 1194 (Ala. Civ. App. 2003).

Discussion

On appeal, Bell argues that "the trial court erred in granting a new trial on [the] grounds that the damages award of $40,000 was inadequate [because, he says,] the jury heard testimony and evidence that the vast majority of [Moore's] medical expenses were paid by a third party."

> "As a general rule, in awarding damages when liability has been proven, the verdict must include an amount at least as high as uncontradicted special damages, as well as an amount sufficient to compensate for pain and suffering. Nemec v. Harris, 536 So. 2d 93 (Ala. Civ. App. 1988). But in the case where medical expenses are claimed, some of which have been paid by medical insurance, the amount of damages recoverable may be less than the total medical expenses incurred. Senn v. Alabama Gas Corp., 619 So. 2d 1320, 1325 (Ala. 1993)."

AMF Bowling Ctrs., Inc. v. Dearman, 683 So. 2d 436, 438 (Ala. Civ. App. 1995). The jury may also consider whether the plaintiff is required to reimburse his or her medical-insurance company from any damages he or she recovers. See, e.g., Dolgen Corp. v. Hanks, 706 So. 2d 1240 (Ala. Civ. App. 1997).

In the present case, although it was uncontradicted that Moore had incurred $40,227.14 in medical expenses, Moore admitted that BCBSAL had paid for most of those expenses. Considering the testimony and exhibits in the record, it appears that Moore had actually paid approximately $2,500 of the medical expenses himself. Even if Moore's attorney's representation during closing arguments that Moore would have to reimburse BCBSAL $5,314 if he was awarded damages in this case is considered, that still leaves over $30,000 of the

$40,000 award to compensate Moore for his future physical-therapy expenses and past and future pain and suffering. As noted previously, "'a jury verdict is presumed to be correct and will not be set aside for an inadequate award of damages unless the amount awarded is so inadequate as to indicate that the verdict is the result of passion, prejudice, or other improper motive.'" Wells, 879 So. 2d at 1194 (quoting Helena Chem. Co., 496 So. 2d at 14). Because the jury in this case was free to consider that the majority of Moore's medical expenses had been paid by BCBSAL, we conclude that the trial court exceeded its discretion in setting aside the jury's verdict as inadequate. Therefore, we reverse the trial court's order granting Moore's motion for a new trial.

REVERSED AND REMANDED.

Edwards and Hanson, JJ., concur.

Thompson, P.J., and Donaldson, J., recuse themselves.