

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

Gwen M.O'Connor and,	:	
Timothy O'Connor,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	C.A. No. 10C-08-027-JRJ
	:	
Dorothy Setting,	:	
	:	
Defendant.	:	

ORDER

AND NOW TO WIT, this 26th day of June, 2012, the Court having duly considered the parties' submissions regarding additur,

IT APPEARS THAT:

1. On April 17, 2012, the jury awarded zero damages to plaintiffs at the conclusion of the two-day day trial.
2. The parties agree that a zero damages verdict is and was inappropriate as a matter of law given the fact the defendant's medical expert conceded that plaintiff Gwen O'Connor sustained a strain or sprain to her mid and lower back as a result of the April 21, 2009 collision.¹
3. The parties agree that additur is required.

¹ Dr. Gelman agreed with the plaintiff's treating physician, Dr. Eileen Schmitt, on this point.

4. Plaintiff Gwen O'Connor testified that as a result of the collision she experienced "god awful" pain immediately in her middle lower back. She was taken to the hospital by ambulance. She was released after x-rays and instructed to follow up with her family doctor. When she saw her family doctor, Dr. Schmitt, a few days after the collision, she had pain in her mid to lower back. Dr. Schmitt prescribed pain medication and physical therapy. Mrs. O'Connor attended physical therapy from April 30 to June 11, 2009. She had some additional physical therapy in February-March 2010. According to Mrs. O'Connor, for a year following the collision, the pain was constant and severe, but Dr. Schmitt placed no restrictions on her and she missed no time from work as a result of the accident. Although Mrs. O'Connor testified at trial that she is "always having back pain," and "rarely" gets relief, she has not received any treatment for injuries related to the April 2009 collision for some time. She claims the pain makes it difficult for her to hold her grandchildren. She cannot throw Frisbees with her grandchildren. She has difficulty cleaning her house and carrying laundry up and down steps. She is unable to sit for 45 minutes during church services "without fidgeting and moving and having the back pain, which...hurts a lot." She "doctors" herself with ibuprofen, a heating pad, and rest.

5. The defendant's medical expert, Dr. Andrew Gelman, testified that according to his review of Mrs. O'Connor's medical records, Dr. Schmitt noted in a pre-accident September 16, 2008 record that Mrs. O'Connor had "lower back pain when standing long."² By mid-June, 2010 Dr. Schmitt's notes suggest Mrs. O'Connor's lumbar area "seemed to be a non-issue." A July 1, 2011 office note from Dr. Schmitt states, *inter alia*,

[Mrs. O'Connor]...has reached the maximum improvement that she would be expected to receive. She is left with a mild upper and lower back pain. I do not expect further medical expenses with this injury. I do not see any significant limitations on her ability to function.³

In October 25, 2011, when Dr. Gelman examined Mrs. O'Connor, her lower back mobility was good, there were no areas of lost muscle tone, and "from a functional perspective," she was doing "very well."⁴ According to Dr. Gelman, Mrs. O'Connor sustained a strain or sprain in the mid and lower back as a result of the collision, however, these injuries "probably have resolved,"⁵ and some of her complaints of pain are "consistent with a mild degenerative process."⁶ Dr. Gelman testified that Mrs. O'Connor needs no

² Gelman Trial Dep. At 8.

³ Plaintiffs' Exh. 8.

⁴ *Id.* at 22, 24.

⁵ *Id.* at 26.

⁶ *Id.*

further treatment for her mid to lower back sprain and has no significant limitations.⁷

WHEREFORE, viewing the evidence in the light most favorable to the defendant, the Court finds that additur in the amount of \$13,250.00 is appropriate.

IT IS SO ORDERED.

Jurden, J.

cc: Prothonotary

⁷ *Id.* at 29.