IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

MAGICAL CRUISE COMPANY LIMITED D/B/A DISNEY CRUISE LINE,

Appellant/Cross-Appellee,

v.

ANA MARIA REIS MARTINS,

Appellee/Cross-Appellant.
_____/

Case No. 5D20-0379
LT Case No. 05-2015-CA-051858

Opinion filed November 12, 2021

Appeal from the Circuit Court
for Brevard County,
A.B. Majeed, Judge.

Jack R. Reiter and Sydney Feldman, of GrayRobinson, P.A., Miami, for Appellant/Cross-Appellee, Magical Cruise Company Limited, d/b/a Disney Cruise Line.

Julio J. Ayala, of Crewmember & Maritime Advocacy Center, Miami, and Ralph O. Anderson, of Ralph O. Anderson, P.A., Fort Lauderdale, for Appellee/Cross-Appellant, Ana Maria Reis Martins,

ANA MARIA REIS MARTINS,

Appellant,

v. Case No. 5D20-1802
LT Case No. 05-2015-CA-051858

MAGICAL CRUISE COMPANY LIMITED, D/B/A DISNEY CRUISE LINE,

Appellee.
_____/

Appeal from the Circuit Court
for Brevard County,
Michelle L. Naberhaus, Judge.

Julio J. Ayala, of Crewmember & Maritime Advocacy Center, Miami, and Ralph O. Anderson, of Ralph O. Anderson, P.A., Fort Lauderdale, for Appellant Ana Maria Reis Martins.

Jack R. Reiter and Sydney Feldman, of GrayRobinson, P.A., Miami, for Appellee Magical Cruise Company Limited, d/b/a Disney Cruise Line.

WOZNIAK, J.

Magical Cruise Company Limited D/B/A Disney Cruise Line ("Disney") appeals the final judgment rendered after a jury trial in favor of Ana Maria Reis Martins ("Martins"), a former crew member on Disney's *Dream* cruise ship. Martins cross-appeals that final judgment and also appeals a separate order denying her post-judgment motion for attorneys' fees.[1] Of the issues raised by the parties on appeal, we find merit only in Disney's challenge to the awards of punitive and future economic damages to Martins. Accordingly, for the reasons explained below, we affirm the final judgment in part, strike the award of punitive damages, and reverse in part and remand solely for a new trial on economic damages. We affirm the separate order denying Martins' motion for attorneys' fees.

Martins, who was injured in an accident while in Disney's employ, filed suit alleging (1) negligence under the maritime Jones Act, 46 U.S.C. § 30104,[2] and (2) Disney's wrongful failure to reinstate maintenance and

[1] This Court sua sponte consolidates Disney's appeal, case number 5D20-0379, with Martins' appeal, case number 5D20-1802, for opinion purposes.

[2] The Jones Act states in pertinent part, "A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer." 46 U.S.C. § 30104.

cure benefits after she presented medical records showing that she suffered exacerbated and additional injuries related to the original accident. In a later-added punitive damages claim, Martins alleged that Disney's refusal to reinstate her maintenance and cure benefits was willful, arbitrary, or in callous disregard of her right to reinstatement of those benefits. Disney challenges the punitive and economic damages awarded. After placing this maritime action in its legal context, we address the punitive and economic damages issues, respectively, and thereafter discuss the cross-appeal and attorneys' fee issues raised by Martins.

I. Legal Context

This case arises under maritime law, pursuant to which a shipowner has the legal responsibility to provide food, lodging, and medical services, called "maintenance and cure," to a crew member injured in its service. *Grazette v. Magical Cruise Co.*, 280 So. 3d 1120, 1124 (Fla. 5th DCA 2019) (observing that under maritime law, "a seaman has the right to receive compensation for food, lodging, and medical services resulting from illnesses or injuries suffered while working aboard a ship" (quoting *Gabriel v. Disney Cruise Line*, 93 So. 3d 1121, 1123 (Fla. 5th DCA 2012))). The obligation to provide maintenance and cure is not without limitation, however; it concludes when the seaman reaches maximum medical improvement ("MMI").

Vaughan v. Atkinson, 369 U.S. 527, 531 (1962) ("Maintenance and cure . . . extends during the period when he is incapacitated to do a seaman's work and continues until he reaches maximum medical recovery."). Once the incapacity is declared to be permanent, the shipowner's obligation ends. *Messier v. Bouchard Transp.*, 688 F.3d 78, 81-82 (2d Cir. 2012) (quoting *Vella v. Ford Motor Co.*, 421 U.S. 1, 5 (1975)). Thus, maintenance and cure must only be provided until it appears that "future treatment will merely relieve pain and suffering but not otherwise improve the seaman's physical condition." *Barahona v. Kloster Cruise Ltd.*, 851 So. 2d 235, 238 (Fla. 3d DCA 2003) (quoting *Pelotto v. L & N Towing Co.*, 604 F.2d 396, 400 (5th Cir. 1979)). Herein lies the crux of Martins' maintenance and cure claim, on which the punitive damages claim was seated.

II. Punitive Damages

At trial, Martins successfully contended that punitive damages should be awarded based on Disney's allegedly arbitrary, willful, and callous disregard of her rights in refusing to reinstate her maintenance and cure benefits. Disney argues, as it did below, that it acted reasonably and in good faith when it repeatedly denied Martins' requests for reinstatement and that there is no evidence to the contrary; thus, it asserts, the punitive damages issue should not have gone to the jury. Our review of the propriety of the

punitive damages issue being placed before the jury requires a summary of the relevant factual background.

A. Background Facts.

Martins worked as an assistant dining room server aboard Disney's *Dream* cruise ship beginning in June 2013. Approximately three months into her employment, Martins was on shore leave in the Bahamas when she was hit by a car while attempting to cross a street. Her treatment on board the ship culminated with her debarkation and return to her home in Portugal for treatment for broken ribs. Martins kept Disney apprised of all her medical interactions in Portugal, and Disney paid her maintenance and cure without objection. In March 2014, Martins' doctor in Portugal determined she was at MMI as of March 1, 2014 ("First MMI"). She returned to work on the *Dream* in April 2014, but within weeks complained of intense chest pain. Soon after seeing the ship doctor, who suspected post-traumatic intercostal neuralgia, Martins disembarked the ship and returned home to Portugal for medical care.

Disney again advised Martins to select any physician she wished and send the medical reports and bills to Disney for reimbursement. At trial, Martins agreed that she could see any doctor—and as many doctors—as she wanted to see, and Disney did not restrict her or challenge any of her

medical bills during this time. The first doctor she saw in Portugal at this time diagnosed her with post-traumatic intercostal neuralgia and referred her to a neurologist, but Martins instead chose Dr. Martins Ribeiro, a neurosurgeon, based on a neighbor's recommendation. Dr. Ribeiro diagnosed Martins with broken ribs and a fractured sternum (the first time a sternum injury was diagnosed) and recommended Martins go to pain management appointments, which she did. On September 9, 2014, Dr. Ribeiro declared Martins at MMI as of July 10, 2014 ("Second MMI"); the Second MMI provided Dr. Ribeiro's diagnosis as "post-traumatic intercostal neuralgia" and stated that Martins was not fit to work as a server. Martins provided this Second MMI to Disney, and Disney terminated Martins' maintenance and cure benefits as of September 2014.

A year later, Martins hired counsel, who initiated contact with Disney in September 2015 and demanded immediate reinstatement of maintenance and cure benefits. Disney requested information so it could investigate this claim and proposed that, if Martins was seeking an "amicable resolution," Martins' counsel should send Disney a demand package for consideration. Martins did not send a demand package and instead filed her lawsuit on December 4, 2015.

A week after filing suit, Martins' counsel provided Disney with medical records[3] and receipts, all showing Martins was receiving treatment for chronic pain and was under the care of a psychologist and Dr. Fernando Pita, a neurologist. Disney's marine claims representative reviewed these records, determined that none of them negated either of the two MMIs previously received, and refused to reinstate maintenance and cure.

Eight months passed before Martins' counsel wrote Disney again, enclosing the medical records of an orthopedist who evaluated Martins in July 2016 and described Martins' "active problems" as "chronic neuropathic pain, depressive syndrome, insomnia, functional limitation, and chronic obstructive pulmonary disease." Martins' counsel also provided more medical reports including one from Dr. Pita reflecting a diagnosis of cervical radiculopathy and a thoracic vertebral collapse, for which he referred Martins to an orthopedic surgeon, a pain clinic, and physical and occupational therapy. In light of these additional medical records, Martins requested that Disney reinstate her maintenance and cure.

Disney's claims representative again determined the records did not mention, much less negate or refute, the prior findings that she had reached

[3] Disney translated all of Martins' records from Portuguese to English for review by its claim representative and counsel.

MMI, nor did they reflect a recommendation for any curative treatment. The claims representative advised Martins that the new records did not contradict the Second MMI. Counsel for Martins and Disney continued the "submit and reject" pattern several more times, and in February 2017, Disney hired a neurologist to review Martins' medical records. Disney's neurologist reached the same conclusion as Disney's claims representative and counsel—the documents did not reflect curative treatment being prescribed and did not contradict the Second MMI.

In July 2017, Martins' counsel furnished Disney with a statement from Dr. Ribeiro clarifying his Second MMI was made purely from a neurosurgical medical opinion and did not address Martins' MMI status from an orthopedic, neurologic, psychological, psychiatric, or pain medicine opinion. Dr. Ribeiro deferred to Martins' other treating physicians as to whether she was at MMI for each subspecialty of medicine.

Martins moved to amend her complaint to include a claim for punitive damages in December 2017, asserting that Disney's three-year refusal to reinstate maintenance and cure was willful and callous. While voicing its opinion that the basis for the motion was "a little bit thin," the trial court granted Martins' motion and later denied Disney's motion in limine seeking to preclude evidence of punitive damages and Disney's motion for summary

judgment on the maintenance and cure issue and punitive damages. The trial court also denied Disney's motion for directed verdict on the punitive damages claim at the conclusion of Martins' case during trial.

The jury found Disney was negligent and had failed to provide all of the maintenance and cure to which Martins was entitled. It found Disney 70% and Martins 30% comparatively negligent and awarded Martins $1 million for "pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect and loss of capacity for the enjoyment of life sustained in the past and to be sustained in the future," and $2 million for "lost earnings in the past, loss of earning capacity in the future, medical expenses incurred in the past and medical expenses to be incurred in the future." The jury also awarded $1 million in punitive damages. Post-trial, Disney moved for a new trial, directed verdict on the punitive damages claim, and/or remittitur, all of which the trial court denied.

B. Punitive Damages Analysis.

We review an order denying a motion for directed verdict de novo. *Greenshields v. Greenshields*, 312 So. 3d 161, 166 (Fla. 5th DCA 2021).

> The standard of review on appeal of a trial court's ruling on a motion for directed verdict is the same as the test used by the trial court in ruling on that motion. *Marriott Int'l, Inc. v. Perez–Melendez*, 855 So. 2d 624 (Fla. 5th DCA 2003); *Goolsby v. Qazi*,

> 847 So. 2d 1001 (Fla. 5th DCA 2003); *Scott v. TPI Rests., Inc.*, 798 So. 2d 907 (Fla. 5th DCA 2001). "A motion for directed verdict should be granted when there is no reasonable evidence upon which a jury could legally predicate a verdict in favor of the non-moving party." *St. Johns River Water Mgmt. Dist. v. Fernberg Geological Servs.*, 784 So. 2d 500, 504 (Fla. 5th DCA 2001) (quoting *Cecile Resort Ltd. v. Hokanson*, 729 So. 2d 446, 447 (Fla. 5th DCA 1999)). In other words, a motion for directed verdict shall be granted only if no view of the evidence could support a verdict for the non-moving party and that the trial court therefore determines that no reasonable jury could render a verdict for that party. *Scott*, 798 So. 2d at 908 (citing *Blake v. Hi Lu Corp.*, 781 So. 2d 1122 (Fla. 3d DCA 2001)).

Etheredge v. Walt Disney World Co., 999 So. 2d 669, 671 (Fla. 5th DCA 2008). Disney argues that it paid Martins her maintenance and cure benefits in their entirety and without objection following her first debarkation until it received Martins' First MMI and again following her second debarkation until it received Martins' Second MMI. It argues it was entitled to rely on Martins' MMIs to terminate maintenance and cure. We agree. *See, e.g., Lesco v. Power Offshore Servs., Inc.*, No. CIV. A. 94-0114, 1994 WL 506813, at *1 (E.D. La. Sept. 14, 1994) ("An employer may rely on the opinion of the plaintiff's treating physician in terminating maintenance and cure."); *Ward v. Inland Marine Servs., Inc.*, No. PCA 85-4444-RV, 0087 WL 882138, at *3 (N.D. Fla. Jan. 27, 1987) ("[A]n employer's reliance on the advice and opinion of a plaintiff's treating physician negates the conclusion that the employer was acting callously when terminating the plaintiff's maintenance benefits.").

To be clear, Martins was not entitled to pursue punitive damages simply because she prevailed on her maintenance and cure claim at trial. Much more than unreasonable denial of reinstatement is required—there must be evidence that the shipowner acted with a level of callousness, recalcitrance, and bad faith, which Martins did not present. In *Norwegian Cruise Lines, Ltd. v. Zareno*, 712 So. 2d 791 (Fla. 3d DCA 1998), the Third District Court of Appeal explained the level of fault a shipowner's conduct must reach to be considered worthy of punitive damages:

> If the shipowner, in failing to pay maintenance and cure, has not only been unreasonable but has been more egregiously at fault, he will be liable for punitive damages and attorney's fees. We have described this higher degree of fault in such terms as callous and recalcitrant, arbitrary and capricious, or willful, callous and persistent. Thus, there is an escalating scale of liability: [1] a shipowner who is in fact liable for maintenance and cure, but who has been reasonable in denying liability, may be held liable only for the amount of maintenance and cure. [2] If the shipowner has refused to pay without a reasonable defense, he becomes liable in addition for compensatory damages. [3] If the owner not only lacks a reasonable defense but has exhibited callousness and indifference to the seaman's plight, he becomes liable for punitive damages and attorney's fees as well.
>
> Thus in order to award punitive damages in a maintenance and cure case, the plaintiff must show substantive evidence of willful, callous, or egregious conduct on the part of the shipowner.

Zareno, 712 So. 2d at 794 (emphasis added); *see also Brown v. Parker Drilling Offshore Corp.*, 410 F.3d 166, 177 (5th Cir. 2005) (same). Martins did not produce evidence that showed Disney exhibited callousness and

indifference to Martins in refusing to reinstate her maintenance and cure. Thus, the question of punitive damages should not have gone to the jury. This holding is in line with other cases considering this issue. *See, e.g., McWilliams v. Texaco, Inc.*, 781 F.2d 514, 519-20 (5th Cir. 1986) (affirming directed verdict in favor of employer as to punitive damages where employer refused to pay maintenance until provided with reasonable documentation of same); *Langmead v. Admiral Cruises, Inc.*, 696 So. 2d 1189, 1194 (Fla. 3d DCA 1997) ("The case law is clear that an employer is guilty of misconduct and will be liable for punitive damages for its refusal to pay maintenance and cure only when its conduct is 'callous and recalcitrant,' 'arbitrary and capricious' or 'willful, callous and persistent.'" (footnotes omitted)).

The evidence introduced at trial did not create an issue for the jury to determine whether Disney acted with the requisite callousness or bad faith in refusing to reinstate maintenance and cure. Disney paid maintenance and cure through Martins' Second MMI, and when Martins initiated her request for reinstatement of maintenance and cure, Disney had the right to conduct a reasonable, good faith investigation and to request additional medical evidence before tendering any payments or subjecting itself to liability for compensatory or punitive damages. *See McWilliams*, 781 F.2d at 519 ("Where doubt exists . . . a vessel owner may request reasonable

documentation from a seaman before it commences payment of maintenance that may prove both lengthy and expensive."); *see also Morales v. Garijak, Inc.*, 829 F.2d 1355, 1358 (5th Cir. 1987) ("Upon receiving a claim for maintenance and cure, the shipowner need not immediately commence payments; he is entitled to investigate and require corroboration of the claim. . . . [A] shipowner who is in fact liable for maintenance and cure, but who has been reasonable in denying liability, may be held liable only for the amount of maintenance and cure."), *abrogated on other grounds by Guevara v. Mar. Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995), *abrogated on other grounds by Atl. Sounding Co., Inc. v. Townsend*, 557 U.S. 404, 424 (2009). The evidence at trial showed that Disney asked Martins to provide all medical records for its review; it continued to translate all provided Portuguese medical documents into English; and it reviewed Martins' submitted documents before refusing to reinstate her benefits while leaving the door open to receiving additional medical records and advising what aspects it found lacking. As such, Disney's responses to Martins' repeated requests for reinstatement were reasonable at best and unreasonable at worst; what they were not is evidence of a callous disregard of Martins' condition. We conclude that the trial court erred in denying Disney's motion for directed verdict and submitting the punitive damages

issue to the jury, and we therefore strike the punitive damages award. Next, we turn to Disney's argument regarding economic damages.

III. Economic Damages

Disney argues that the trial court erred in admitting testimony from Dr. Gary Anderson, a forensic economist who was Martins' sole expert on economic damages, on Martins' future medical expenses and loss of future earning capacity because his testimony was not based on sufficient facts or data. In essence, Disney contends, as it did below, that Dr. Anderson's opinion testimony was unreliable because it was based on information Dr. Anderson claimed he obtained from another witness who denied providing it to Dr. Anderson.[4]

A. Background Facts.

Martins disclosed Dr. Anderson before trial as an expert retained to author a report and provide testimony regarding Martins' past and future economic damages stemming from her injuries. During his deposition, Dr. Anderson indicated his economic damages calculations were based, in part, on a phone conversation he had with Susan McKenzie, a vocational

[4] Our discussion should in no manner be read as impugning Dr. Anderson's character or, for that matter, as choosing the credibility of one expert over another. It appears the disconnect between the experts' testimony may have been attributable to an honest misunderstanding of their telephone conversations.

rehabilitation expert whom Martins hired on a limited basis to provide only medical costs for future medical treatment. Ms. McKenzie had prepared a document showing her conclusions, upon which Dr. Anderson relied in his deposition. He stated that Ms. McKenzie provided him with information concerning how often Martins would need various future medical procedures, medications, and therapies, and that he had relied on her information and performed no independent research as he is not, himself, a vocational rehabilitation expert. He also stated that Ms. McKenzie told him about Martins' work life, noting Martins was then currently working two to three hours a day in a coffee shop, which was Martins' full capacity.

During her deposition, Ms. McKenzie described herself as a certified life care planner. She was clear that she had not performed a vocational assessment of Martins, nor had she been asked to do so. Martins' counsel requested that she cost out a specific course of treatment for Martins—essentially, she was given a list of medical treatments without any information as to how frequently Martins would need them, and she estimated each treatment's cost. She had not seen Dr. Anderson's report and denied discussing with Dr. Anderson how often Martins would need medical procedures or medications, explaining that she had not contacted Martins' treating doctors or reviewed any of Martins' medical records and,

thus, had no way of knowing how often Martins would require any procedures or medications. She simply gave Dr. Anderson the individual cost associated with each treatment. She explained that she "may" have given Dr. Anderson the "typical" frequencies for certain treatments, but she did not know Martins' actual needs for treatments or medications. Ms. McKenzie also denied discussing with Dr. Anderson how long Martins was able to work or that she had agreed with him as to Martins' work limit.

Armed with the conflict between Dr. Anderson's testimony that he had obtained the data on frequencies and Martins' future earnings prospects from Ms. McKenzie on the one hand, and Ms. McKenzie's denial of having provided any such information to Dr. Anderson on the other hand, Disney moved to strike Dr. Anderson as an expert, asserting that Dr. Anderson's opinions were unreliable because they were not based on any facts or data. The trial court denied Disney's motion and ruled that the matter was a credibility issue for the jury, subject to direct and cross examination. Dr. Anderson proceeded to testify at trial that Martins' future medical expenses totaled $1,664,969 and lost future wages totaled $1,373,682. The jury awarded a total of $2,000,000 to Martins for past and future lost earnings and past and future medical expenses, all of which were included in a single question in the verdict form.

B. Economic Damages Analysis.

"We review a trial court's determination on the admissibility of expert testimony for abuse of discretion." *Andrews v. State*, 181 So. 3d 526, 527 (Fla. 5th DCA 2015) (citing *Johnson v. State,* 393 So. 2d 1069, 1072 (Fla. 1980)). "However, a court's discretion is limited by the evidence code and applicable case law. A court's erroneous interpretation of these authorities is subject to *de novo* review." *Pantoja v. State*, 59 So. 3d 1092, 1095 (Fla. 2011) (quoting *McCray v. State*, 919 So. 2d 647, 649 (Fla. 1st DCA 2006).

Disney's argument that Dr. Anderson's testimony should have been precluded is premised on section 90.702, Florida Statutes (2019), which adopted the standards for expert testimony set out in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:
>
> (1) The testimony is based upon sufficient facts or data;
>
> (2) The testimony is the product of reliable principles and methods; and
>
> (3) The witness has applied the principles and methods reliably to the facts of the case.

§ 90.702, Fla. Stat. *Daubert* acknowledges the gatekeeping obligation of the trial court to "ensur[e] that an expert's testimony both rests on a reliable

foundation and is relevant to the task at hand." 509 U.S. at 597. Under this gatekeeping authority, "[a] trial judge must make 'a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.'" *Kemp v. State*, 280 So. 3d 81, 88 (Fla. 4th DCA 2019) (quoting *Daubert*, 509 U.S. at 592-93). Disney argues on appeal, as it did below, that the trial court erred in performing its gatekeeping function by allowing Dr. Anderson to testify as to future economic damages when his calculations were based on unreliable data that Ms. McKenzie denied providing. We agree.

Dr. Anderson's calculations as to future medical expenses were unreliable because Ms. McKenzie merely assigned costs to a list of procedures and medications with no nexus between them and what Martins might actually need or how frequently she might need them. Despite this, Dr. Anderson bootstrapped those costs into a calculation of future medical expenses. This foundational failure rendered Dr. Anderson's testimony unreliable. *See Sanchez v. Cinque*, 238 So. 3d 817 (Fla. 4th DCA 2018) (affirming trial court's exclusion of expert's testimony where expert made assumptions not based on any facts contained in medical records). Ms. McKenzie's denial that she discussed the frequencies of Martins' needed

medical procedures and medications or that she determined Martins' employment capacity further undermines Dr. Anderson's testimony. Thus, Dr. Anderson's opinions as to future economic damages should have been excluded.

As Martins was the beneficiary of this error, she has the burden to demonstrate that it was harmless, which requires her to establish that there is no reasonable possibility that Dr. Anderson's future economic damages testimony contributed to the verdict. *See Special v. W. Boca Med. Ctr.*, 160 So. 3d 1251, 1256-57 (Fla. 2014). Martins cannot demonstrate harmless error here.

Dr. Anderson's testimony was the only testimony regarding Martins' future economic damages, and the jury awarded $2,000,000 for "lost earnings in the past, loss of earning capacity in the future, medical expenses incurred in the past and medical expenses to be incurred in the future." Given the compound nature of this question (Question 6) on the verdict form, it is impossible for Martins to establish that Dr. Anderson's testimony as to future economic damages did not contribute to the verdict. It also requires us to remand for a new trial on all damages included in Question 6. *See Aircraft Serv. Int'l, Inc. v. Jackson*, 768 So. 2d 1094, 1096 (Fla. 3d DCA 1995) (remanding for new trial on past and future economic damages when

"[u]nfortunately, the verdict form provided for a total amount which combined future damages for medical expenses and lost earning ability"); *Eagle Atl. Corp. v. Maglio*, 704 So. 2d 1104, 1105 (Fla. 4th DCA 1997) ("Given that the verdict form combines future medical expenses with loss of future earning capacity, it is impossible to tell what portion of this award was attributable to each item of future damages."); *cf. ITT Hartford Ins. Co. of the Se. v. Owens*, 816 So. 2d 572, 577-78 (Fla. 2002) (remanding for new trial on future medical damages as a discrete category of damages because special verdict form reflected error in that category of damages alone). Accordingly, we reverse and remand for a new trial on past and future economic damages.

IV. Cross-Appeal/Comparative Negligence Reduction

Martins cross-appeals the final judgment, arguing that the trial court's reduction of Martins' damages by 30%, the amount the jury determined her to be comparatively negligent, was error because it is settled law that a maintenance and cure claim cannot be reduced by any negligence on the part of the seaman. *See, e.g.*, *Bloom v. Weeks*, 225 F. Supp. 2d 1334, 1335 (M.D. Fla. 2002). The jury was instructed it could award compensatory damages on both her claims—(1) her negligence claim and (2) her maintenance and cure claim—if she proved Disney's failure to reinstate her benefits was willful and arbitrary (level 2 of the *Zareno* scale of liability). She

asserts that because the jury necessarily made the "willful and arbitrary" determination on her maintenance and cure claim when it awarded punitive damages, and because the verdict form permitted the jury to award the same compensatory damages under either the negligence claim or the maintenance and cure claim, the full amount of compensatory damages awarded by the jury should not have been discounted.

A. Background Facts.

The verdict form asked the jury in separate questions to determine (1) whether Disney was negligent, (2) comparative negligence percentages if appropriate, and (3) whether Disney had failed to provide all of the maintenance and cure to which Martins was entitled. The jury affirmatively found both Disney and Martins negligent and assigned comparative negligence at 70% and 30%, respectively. It then found, in a separate question, that Disney had failed to provide the entire amount of maintenance and cure to which Martins was entitled. At that point, the verdict form instructed the jury that if it had found either that Disney was negligent or that Disney had failed to provide the entire amount of maintenance and cure to which Martins was entitled, it should answer Questions 5, 6, and 7 concerning damages. Unfortunately, Questions 5 and 6, which asked for the

amount of compensatory damages to be awarded, did not require the jury to attribute the damages to any particular claim:

> 5. What is the total amount of Maria Ana Reis Martins' damages for pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect and loss of capacity for the enjoyment of life sustained in the past and to be sustained in the future. [sic]
>
> $1,000,000
>
> 6. What is the total amount of Maria Ana Reis Martins' damages for lost earnings in the past, loss of earning capacity in the future, medical expenses incurred in the past and medical expenses to be incurred in the future?
>
> $2,000,000
>
> If you answered YES to Question No. 4, please also answer Question 7.
>
> 7. Are punitive damages warranted against Disney Cruise Line in this case?
>
> YES X NO ____

Post-trial, Martins sought to attribute the entire $3 million awarded in Questions 5 and 6 to her maintenance and cure claim, which would not be reduced by the percentage of comparative negligence attributed to her. Disney responded that the verdict form did not allow such attribution to a particular claim. This flaw was significant because, if the damages awarded in Question 5 and 6 were based on the Jones Act negligence claim, then Disney was entitled to a setoff of $900,000 based on the jury's assignment

of 30% comparative negligence to Martins.[5] The trial court agreed with Disney's position and the final judgment included $2,100,000 in compensatory damages, reflecting the 30% reduction for comparative negligence, along with punitive damages.

B. Analysis.

Disney argues that Martins waived her argument on cross-appeal because she agreed to the verdict form and did not object or propose a different form that separated the negligence award from the maintenance and cure award. We agree. The verdict form, although flawed, is susceptible of the interpretation given it by the trial court. The jury was told in its instructions that the court would reduce compensatory damages on the negligence claim if the jury awarded compensatory damages, but that an award under the maintenance and cure claim would not be reduced by Martins' negligence. Arguably consistent with that instruction, the verdict form asked for an assessment of damages, leaving to the court the adjustment of the award to accommodate the comparative negligence assigned to Martins. Because Martins cannot demonstrate that the trial court's interpretation of the verdict form is incorrect, Martins cannot prevail

[5] Disney brought this issue to the trial court's attention prior to the jury's deliberations, but Martins objected to any change in the verdict form.

in the cross-appeal. *Cf. Batlemento v. Dove Fountain, Inc.*, 593 So. 2d 234 (Fla. 5th DCA 1991) (refusing to review award of damages based upon verdict form used without objection which provided no method for jurors to apportion the amount of compensatory or punitive damages attributable to each defendant); *Howell v. Woods*, 489 So. 2d 154 (Fla. 4th DCA 1986) (holding any error in failing to instruct jury to reduce future damages to present value not reversible or fundamental error when general verdict form was used and appellate court was unable to determine whether any damages were awarded that were actually subject to reduction to present value). Finally, we turn to Martins' appeal of the trial court's order denying her attorneys' fees.

V. Attorneys' Fees

Martins appeals the trial court's order denying her posttrial motion for attorneys' fees against Disney. We affirm because Martins did not timely object to any errors in the jury instructions or the verdict form related to attorneys' fees and therefore waived the issue on appeal. The jury instructions given to the jury included Instruction No. 14 concerning damages under the maintenance and cure claim:

> When a defendant willfully and arbitrarily fails to pay maintenance or provide cure to a seaman . . . the seaman may recover punitive damages for prolonging or aggravating her injury, pain and suffering, additional medical expenses incurred

> because of the failure to pay, punitive damages, and reasonable attorney's fees and costs.
>
> . . . .
>
> Finally, it's important to remember that [Martins] can't recover attorney's fees for the prosecution of the Jones Act claim. She can recover attorney's fees only for the prosecution of the maintenance and cure claim.

(Emphasis added). Despite this jury instruction addressing attorneys' fees, no question on the verdict form expressly addressed attorneys' fees. And while the final judgment reserved jurisdiction to award attorneys' fees, the trial court then denied Martins' postjudgment motion for attorneys' fees based on her maintenance and cure claim, finding that it lacked jurisdiction to determine attorneys' fees because they were not collateral to the primary action and needed to be addressed before final judgment.

We review orders on motions for attorneys' fees for abuse of discretion. However, we review de novo the trial court's determinations based on issues of law. *Martin Daytona Corp. v. Strickland Const. Servs.*, 941 So. 2d 1220, 1223 (Fla. 5th DCA 2006); *Nader + Museu I, LLLP v. Miami-Dade Coll.*, 307 So. 3d 140 (Fla. 3d DCA 2020).

Attorneys' fees are available for maintenance and cure claims where the defendant was found to have willfully and arbitrarily withheld maintenance and cure. *Vaughan*, 369 U.S. at 530-31. Typically, in a

maintenance and cure case, the jury rather than the judge determines entitlement to attorneys' fees. If the jury finds entitlement, the judge then determines the amount of attorneys' fees postjudgment. Crucially, Martins did not object to any perceived errors in the verdict form or Instruction No. 14 that contradict this normal practice and, therefore, waived any error pertaining to this issue. *See Hill v. Dep't. of Corr.*, 513 So. 2d 129 (Fla. 1987); *Incandela v. Am. Dredging Co.*, 659 F.2d 11, 15 (2d Cir. 1981).

On remand for the new trial on economic damages, the jury is not to consider attorneys' fees as part of economic damages.

AFFIRMED in part; REVERSED in part; REMANDED for new trial on past and future economic damages.

EVANDER and EDWARDS, JJ., concur.