

Debra L. Walker (“Walker”) appeals the trial court’s grant of David M. Pullen’s (“Pullen”) motion to correct error after a jury verdict in a negligence action resulting from a rear-end automobile accident. Walker raises two issues, which we consolidate and restate as: whether the trial court abused its discretion when it granted Pullen’s motion to correct error and ordered a new trial on the issue of damages.

We affirm.

FACTS AND PRODECURAL HISTORY¹

On March 5, 2004, at approximately 8:20 a.m., Walker drove her car into the drive-thru lane of a Dunkin’ Donuts store in Valparaiso, Indiana. After she placed her order, she stopped her car approximately four feet behind a car operated by Pullen, who was at the drive-thru window waiting for the rest of his order. While waiting, Walker reached to get her purse, which was located on the floor of her car in front of the passenger seat. As she reached down, her foot slipped off of the brake pedal, and her car rolled forward into Pullen’s car. Both parties exchanged their information, and then each left to go to their jobs. As Pullen drove to work, he noticed pain in his neck, and when he got to work, he called Walker and suggested that they go to the police station to make a report of the accident, which they did.

Approximately eleven days after the accident, Pullen sought medical treatment from Dr. Lakhani, who diagnosed Pullen with cervical facet joint disease,² neck pain, and neck strain. Dr. Lakhani ordered x-rays, prescribed physical therapy, and administered to Pullen cervical injections, which included facet joint injections, trigger point injections, and an occipital nerve block. *Appellant's App.* at 226-27. Pullen received physical therapy at Porter Memorial Hospital from March 24 through May 6, 2004. On July 23, 2007, after having knee surgery, Pullen sought treatment from Dr. Renata Variakojis, who specializes in pain management. Dr. Variakojis diagnosed Pullen as having cervical facet joint pain, and her treatment plan consisted of cervical joint nerve blocks followed by radiofrequency ablation.³

Pullen filed a complaint against Walker, asserting a negligence claim resulting from the automobile accident of March 5, 2004. A jury trial was held on December 7, 10, and 11, 2009. During the trial, Dr. Variakojis testified that, in her opinion, Pullen suffered a cervical

¹ We note that Appellant's counsel included all of the citations in the appellant's brief in footnotes. Under Indiana Appellate Rule 22, "[u]nless otherwise provided, a current edition of a Uniform System of Citation (Bluebook) shall be followed." "In non-academic legal documents, citations appear within the text of the document as full sentences or as clauses within sentences directly after the propositions they support." The Bluebook: A Uniform System of Citation R. B2, at 4 (Columbia Law Review Ass'n et al. eds., 19th ed. 2010). *Contra id.* ("As opposed to academic legal documents, which cite to authority using footnotes should only be used in non-academic legal documents when permitted by local court rules."). We caution counsel that the appellate rules must be complied with, and this failure to follow the rules has impeded our review of the appellant's brief.

² This is a condition involving pain over the sides of the neck or the affected side of the neck, which causes a pain pattern that radiates over the top of the shoulder, and to variable degrees, over the posterior shoulder and arises from the irritation of the cervical facet joint nerve. *Appellant's App.* at 78-79. Facet joints occur in pairs at the back of each vertebra and link the vertebra directly above and below to form a working unit that permits movement of the spine. http://my.clevelandclinic.org/disorders/facet_joint_syndrome.aspx (last visited Sept. 8, 2010).

³ Radiofrequency ablation is the application of radiofrequency energy to the soft tissue surrounding the facet joint nerve. The energy is absorbed by the soft tissue and converted to heat, causing thermal denervation and rendering the nerve unable to conduct pain impulses for a period of time. *Appellant's App.* at 83.

strain caused by a flexion-extension type or whiplash-type injury due to the automobile accident. *Id.* at 69-70. She also stated that she believed that the treatment performed by Dr. Lakhani, including the prescribed physical therapy, was appropriate and necessary to treat Pullen's injuries. *Id.* at 70-71. Dr. Variakojis further testified that Pullen had acute pain due to the automobile accident and suffered from a chronic nerve pain syndrome in his neck, all of which was caused by the accident. *Id.* at 80-81. Pullen did not introduce any medical bills into evidence at trial; instead, he submitted a summary listing the amounts of his medical expenses, which included: (1) \$10,722.00 from Porter Memorial Hospital in 2004; (2) \$1,376.00 from Dr. Lakhani in 2004; (3) \$422.00 from Radiology Associates of Northwest Indiana in 2004; and (4) \$12,499.56 from the University of Chicago in 2007. *Pl.'s Ex. 1.* These expenses totaled \$25,019.56.

Dr. Robert Yount testified as a medical expert on behalf of Walker. Dr. Yount agreed that Pullen had suffered a cervical sprain as a result of the March 5, 2004 automobile accident. *Appellant's App.* at 225, 226. He further agreed that treatment given to Pullen by Dr. Lakhani in 2004 was reasonable, appropriate, and related to the accident. *Id.* at 225-27. However, Dr. Yount did not believe that some of Dr. Lakhani's treatment was necessary; specifically, the facet joint injections, which Dr. Yount thought were expensive and was not convinced were of "any consistent, reasonable, long-term benefit." *Id.* at 226-27. Dr. Yount further stated that he could not testify as to the day that Pullen became pain free after the accident, only that, in his opinion, Pullen had reached maximum medical improvement as of August 2004. *Id.* at 227-28.

At the conclusion of the trial, the jury returned a verdict in favor of Pullen and awarded him damages in the amount of \$10,070.00. On the verdict form, the jury added the following words: “for P.T. + initial medical assessment.” *Id.* at 8. Pullen filed a motion to correct error, asserting that the verdict was against the weight of the evidence, was clearly erroneous and contrary to the evidence, was influenced by some improper element, was inadequate, and did not render substantial justice. *Id.* at 11. The trial court granted Pullen’s motion on February 12, 2010 and ordered a new trial on damages only. *Id.* at 6-7. Walker now appeals.

DISCUSSION AND DECISION

I. Standard of Review

A trial court has wide discretion to correct errors and to grant new trials. *Newland Res., LLC v. Branham Corp.*, 918 N.E.2d 763, 772 (Ind. Ct. App. 2009). In determining whether to grant a new trial, the trial judge has an affirmative duty to weigh conflicting evidence. *Id.* (citing *Precision Screen Machs., Inc. v. Hixson*, 711 N.E.2d 68, 70 (Ind. Ct. App. 1999)). The trial judge sits as a thirteenth juror and must determine whether in the minds of reasonable men a contrary verdict should have been reached. *Id.* (citing *Pendleton v. Aguilar*, 827 N.E.2d 614, 624 (Ind. Ct. App. 2005), *trans. denied* (2006)). “‘The trial court, as the thirteenth juror, hears the case along with the jury, observes the witnesses for their credibility, intelligence and wisdom, and determines whether the verdict is against the weight of the evidence.’” *Id.* (quoting *Pendleton*, 827 N.E.2d at 624).

“When a trial court grants a new trial pursuant to [Indiana] Trial Rule 59(J), the granting of relief is given a strong presumption of correctness.” *Leroy v. Kucharski*, 878 N.E.2d 247, 250 (Ind. Ct. App. 2007), *trans. denied* (2008). We will reverse the grant of a new trial only for an abuse of discretion. *Id.* We neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* An abuse of discretion will be found when the trial court’s action is against the logic and effect of the facts and circumstances before it and the inferences which may be drawn therefrom. *Id.* An abuse of discretion also results from a trial court’s decision that is without reason or is based upon impermissible reasons or considerations. *Id.*

Under Indiana Trial Rule 59(J), “a trial court is required to take such action as will cure any ‘prejudicial or harmful error,’ to grant a new trial on a motion to correct error if the court determines that the jury verdict is ‘against the weight of the evidence,’ and to enter judgment if it determines that the jury verdict is ‘clearly erroneous as contrary to or not supported by the evidence.’” *Paragon Family Rest. v. Bartolini*, 799 N.E.2d 1048, 1055 (Ind. 2003) (quoting Ind. Trial Rule 59(J)). Trial Rule 59(J) provides the following regarding the granting of a new trial when the trial court determines that the verdict does not accord with the evidence:

In its order correcting error the court shall direct final judgment to be entered or shall correct the error without a new trial unless such relief is shown to be impracticable or unfair to any of the parties or is otherwise improper; and if a new trial is required it shall be limited only to those parties and issues affected by the error unless such relief is shown to be impracticable or unfair. If corrective relief is granted, the court shall specify the general reasons therefor. *When a new trial is granted because the verdict, findings or judgment do not accord with the evidence, the court shall make special findings of fact upon*

each material issue or element of the claim or defense upon which a new trial is granted. Such finding shall indicate whether the decision is against the weight of the evidence or whether it is clearly erroneous as contrary to or not supported by the evidence; *if the decision is found to be against the weight of the evidence, the findings shall relate the supporting and opposing evidence to each issue upon which a new trial is granted*; if the decision is found to be clearly erroneous as contrary to or not supported by the evidence, the findings shall show why judgment was not entered upon the evidence.

T.R. 59(J)(7) (emphasis added). Therefore, if the trial court, sitting in its role as a thirteenth juror in reviewing the evidence, orders a new trial because the verdict is against the weight of the evidence, it “shall relate the supporting and opposing evidence to each issue upon which the new trial is granted.” *Weida v. Kegarise*, 849 N.E.2d 1147, 1152 (Ind. 2006). When the trial court orders a new trial because the verdict is against the weight of the evidence, but fails to make the required special findings, the proper remedy is reinstatement of the jury verdict. *Id.*

The procedural requirements enumerated in Trial Rule 59(J) and the process of making the requisite special findings have been characterized as arduous and time-consuming. *Leroy*, 878 N.E.2d at 251. However, the purpose of those requirements is to provide the parties and the reviewing court with the theory of the trial court’s decision. *Id.* The findings may summarize the evidence provided that the summary is complete enough to facilitate appellate review. *Id.*

Walker argues that the trial court abused its discretion when it granted Pullen’s motion to correct error and ordered a new trial on the issue of damages. She specifically contends that the jury’s verdict was not against the evidence because there was “no ‘undisputed medical testimony’ that Pullen endured pain for the five months” after the accident as neither

of the doctors that testified at trial treated Pullen during those five months. *Appellant's Br.* at 16 (quoting *Appellant's App.* at 7). She also claims that the testimony was not undisputed that the medical treatment from 2004 was related to the accident and appropriate and necessary because Pullen's testimony was not credible and Dr. Yount testified that he did not agree that all of the medical treatment given to Pullen in 2004 was necessary. Walker further asserts that the trial court did not enter special findings relating the supporting and opposing evidence to each issue upon which the new trial is granted as required by Trial Rule 59(J).

Here, the trial court made the following findings in its order granting Pullen's motion to correct error:

1. The undisputed medical testimony in this case established that [Pullen's] medical bills from Porter Memorial Hospital, Dr. Lakhani, and Radiologic Associates of Northwest Indiana were for appropriate treatment of injuries suffered by [Pullen] as a result of the negligence of [Walker].
2. Those medical bills totaled \$12,520.00. The jury's verdict was less than those medical bills.
3. There was also undisputed medical testimony that [Pullen] endured pain and suffering for a minimum of five months. The jury's verdict obviously contained no award for that, however minimal.

Appellant's App. at 6-7. At the trial, evidence was introduced that Pullen had medical bills from 2004 totaling \$12,520.00 that were related to the accident. *Pl's Ex. 1*. Dr. Variakojis testified that Pullen had suffered a whiplash-type injury due to the accident, that Pullen suffered pain from this injury, and that the treatment performed by Dr. Lakhani in 2004 was appropriate and necessary. *Appellant's App.* at 69-71, 80-81. Pullen likewise testified throughout direct examination that he suffered neck pain and injury as a result of the accident

and that all of his medical bills were related to such injury. *Tr.* at 55-92. Dr. Yount, Walker's medical expert witness, testified that Pullen did suffer an injury as a result of the accident, that he had pain attributed to this injury, and that the treatment Pullen received from Dr. Lakhani in 2004 was reasonable, appropriate, and related to the accident. *Appellant's App.* at 225-27. However, he did not believe that all of the treatments were necessary and specifically took issue with the facet joint injections. *Id.* at 226-27. Dr. Yount further testified that, in his opinion, Pullen had reached maximum medical improvement as of August 2004 and the pain that Pullen experienced in 2007 was not related to the accident. *Id.* at 225, 227-28.

Therefore, the uncontroverted evidence established that Pullen suffered a neck injury as a result of the accident, that this neck injury caused him pain, and that the medical treatment that he received from Dr. Lakhani in 2004 was reasonable, appropriate, and related to the accident. Although Pullen's medical bills from 2004 totaled \$12,520.00, the jury's verdict only awarded him \$10,070.00 in damages. We conclude that the trial court did not abuse its discretion when it found that the verdict was against the weight of the evidence. Walker's arguments regarding the credibility of Pullen's testimony are of no moment as we do not judge the credibility of witnesses on review. *Leroy*, 878 N.E.2d at 250.

We also disagree that the trial court failed to make special findings of fact as required by Trial Rule 59(J). Pursuant to that rule, when a new trial is granted because the verdict is against the weight of the evidence, the trial court shall make special findings of fact upon each material issue of the claim upon which a new trial is granted, and the findings shall

relate the supporting and opposing evidence to each such issue. T.R. 59(J)(7). The purpose of these requirements is to provide the parties and the reviewing court with the theory of the trial court's decision. *Leroy*, 878 N.E.2d at 251. Further, the findings may summarize the evidence provided that the summary is complete enough to facilitate appellate review. *Id.*

Here, the trial court's findings, although sparse, were adequate to satisfy this purpose. It is clear from the findings that the trial court deemed the jury verdict on damages to be inadequate and contrary to the law and to the evidence on damages because the damages awarded by the jury were less than the uncontroverted medical expenses incurred as a result of the evidence when, in addition to the medical expenses, the uncontroverted evidence established that Pullen suffered pain and suffering from the accident. We conclude that Walker has failed to show that the trial court abused its discretion when it granted Pullen's motion to correct error and ordered a new trial on the issue of damages where, as shown by the trial court's findings, the uncontroverted evidence showed that the medical expenses arising from the accident were in excess of the jury verdict.

Affirmed.

RILEY, J., and BAILEY, J., concur.