



IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-CT-138

Sydney Renner

Appellant (Plaintiff below)

–v–

Trevor J. Shepard-Bazant

Appellee (Defendant below)

Argued: June 2, 2021 | Decided: August 31, 2021

Appeal from the Lake Superior Court,
No. 45D01-1801-CT-14
The Honorable John M. Sedia, Judge

On Petition to Transfer from the Indiana Court of Appeals,
No. 19A-CT-2745

Opinion by Justice Goff

Chief Justice Rush and Justices David, Massa, and Slaughter concur.

Goff, Justice.

In this case we consider an issue we resolved last year, but in a different context. In *Humphrey v. Tuck*, we held that a party arguing for a mitigation-of-damages jury instruction “need only point to some evidence in the record that when viewed most favorably [to the party] would suffice for a reasonable juror to decide the issue in the party’s favor.” 151 N.E.3d 1203, 1207 (Ind. 2020). In this case, we consider whether the same type of evidence is sufficient to uphold a trial court’s judgment when entered after a bench trial. We hold that it is and therefore affirm the trial court’s decision to reduce its damages award based on plaintiff’s failure to mitigate her damages and failure to show that the accident caused all of her damages. But because the trial court inadequately addressed the eggshell-skull rule, and treated plaintiff’s **prior** injuries as separate incidents, rather than as contributing to her injuries and damages arising from the auto accident at issue, we ultimately hold that the trial court abused its discretion in calculating damages. We, therefore, remand to the trial court to take the eggshell-skull rule into account and recalculate damages.

Facts and Procedural History

On April 20, 2016, eighteen-year-old Sydney Renner was stopped in traffic when Trevor Shepard-Bazant struck the back of her vehicle at a low speed, pushing her into the vehicle in front of her. Although shaken and upset by the accident, Sydney did not strike her head, lose consciousness, or lose her ability to recount the accident. And she told a police officer dispatched to the scene that she was fine.

Sydney drove her car home but soon noticed she had a severe headache. This concerned her mother because Sydney had a history of two significant concussions. Sydney suffered her first concussion in 2013, when she fell from a swing set and struck her head. Dr. Timothy Mullally diagnosed and treated Sydney for this injury and she made a full recovery. Then, in 2014, Sydney fell six to eight feet during a cheerleading routine, hitting her head on the floor. Dr. Mullally again diagnosed and

treated this injury and Sydney again made a full recovery. After her second concussion, Dr. Mullally instructed Sydney's parents to take her to the hospital if she suffered another head injury with a headache. So, when Sydney arrived home after the 2016 accident complaining of a severe headache, her mother took her to the emergency room right away.

At the emergency room, Sydney told the doctor she had a headache, but no neck or back pain. The treating doctor prescribed medication and advised her to follow up with her personal physician. Sydney visited Dr. Mullally the next day. Once again, he diagnosed Sydney with, among other things, a concussion. He referred her to a physical therapist for further evaluation and advised her to rest.

Sydney's injuries occurred at a particularly inconvenient time for her. Both her senior prom and a post-prom trip to an amusement park were scheduled just days after the accident. And despite the protests of her parents and Dr. Mullally's advice to rest, Sydney attended both events. Both events caused her to develop severe headaches and the roller coasters resulted in memory loss.

During the following months, Sydney was treated by several healthcare providers. Sometimes she followed their advice, other times she did not. Sydney's symptoms were much more prolonged than they had been in either 2013 or 2014. She also suffered two additional head injuries during the summer after her 2016 accident: the first when she lost her balance and struck her head on a doorknob, and the second when her brother accidentally kned her in the head while wrestling. However, aside from her headaches, her symptoms had dramatically improved by the time she began college classes at Indiana University Northwest in the Fall of 2016.

Still, Sydney did not perform well in her college classes. Sydney attributes her headaches and difficulty concentrating to the accident and claims that these problems, in turn, caused her to struggle in school. Her parents also noticed her becoming forgetful. However, testimony at trial revealed several other factors that potentially affected her performance, including her poor study habits, excessive TV viewing, irregular sleep patterns, and job obligations.

Attributing her problems to the 2016 car accident, Sydney sued Trevor for negligence. After Trevor failed to timely answer her complaint, the trial court granted a default judgment. The court then held a seven-day trial on damages. Sydney requested over \$600,000 in damages, while Trevor argued that she should not recover more than \$20,000. The trial court ultimately awarded Sydney \$132,000 in damages. In reaching this figure, the court factored in all five concussions that Sydney suffered from 2013 to 2016, along with her medical expenses and her failure to follow post-concussion protocols recommended by her treating physicians.

Sydney filed a motion to correct errors, asking the court to increase the damages awarded. After a hearing, the trial court denied her motion, stating again that Sydney's injuries arose from the cumulative effects of at least five documented concussions, and all of these traumas contributed to her present condition.

Sydney appealed and the Court of Appeals reversed. *Renner v. Shepard-Bazant*, 159 N.E.3d 1, 13 (Ind. Ct. App. 2020). The panel held the trial court erred in its calculation of damages because (1) the court failed to apply the eggshell-skull doctrine; and (2) Trevor did not meet his burden of showing that Sydney suffered separate harm, from either the head injuries sustained after the accident or from her failure to follow her healthcare providers' advice. *Id.* at 10, 12. The Court of Appeals remanded to the trial court for retrial on the amount of damages. *Id.* at 13.

Trevor petitioned this Court for transfer, which we granted, thus vacating the Court of Appeals opinion. *See* Ind. Appellate Rule 58(A).

Standards of Review

We review a trial court's denial of a motion to correct error for an abuse of discretion. *Allstate Ins. Co. v. Hammond*, 759 N.E.2d 1162, 1165 (Ind. Ct. App. 2001). An "appellate court employs a strict standard when reviewing a claim that an award of damages is inadequate" and will neither reweigh evidence nor judge witness credibility. *Manzo v. Estep*, 689 N.E.2d 474, 475 (Ind. Ct. App. 1997). An award of damages must not be reversed "so long as the damages fall within the scope of the evidence." *DeGood Dimensional*

Concepts, Inc. v. Wilder, 135 N.E.3d 625, 634 (Ind. Ct. App. 2019) (citing *Manzo*, 689 N.E.2d at 475).

Discussion and Decision

In resolving whether the trial court's award of damages was inadequate, we consider three issues. First, we consider whether the trial court improperly reduced Sydney's award for her post-accident failure to mitigate damages. *See infra* Section I.A. Second, we consider whether the trial court properly concluded Trevor's negligence was not the **sole** cause of all of Sydney's injuries. *See infra* Section I.B. Finally, we consider whether the trial court improperly reduced Sydney's award for the two concussions she sustained before the accident. *See infra* Section II.

I. The trial court properly reduced Sydney's damages because she failed to mitigate her damages and failed to show the accident caused all of her injuries.

A plaintiff in a negligence case must show "a reasonable connection between a defendant's conduct and the damages which a plaintiff has suffered." *Daub v. Daub*, 629 N.E.2d 873, 877 (Ind. Ct. App. 1994). Even when the plaintiff makes such a showing, the defendant's liability can be reduced if he shows that the plaintiff failed to mitigate her damages. *Tuck*, 151 N.E.3d at 1208.

A. The trial court properly reduced Sydney's award for her failure to mitigate damages after the accident.

Trevor argues that sufficient evidence supported the trial court's determination that Sydney failed to mitigate her damages. In response, Sydney argues that additional expert testimony was required to show that she failed to mitigate her damages and to show that her failure to mitigate caused an identifiable, quantifiable harm not attributable to Trevor's

negligence. A plaintiff's failure to mitigate damages is not a defense to liability but is "an affirmative defense that may reduce the amount of damages a plaintiff is entitled to recover after liability has been found." *Willis v. Westerfield*, 839 N.E.2d 1179, 1187 (Ind. 2006). The defendant bears the burden to establish this affirmative defense. To prevail, the defendant must prove two elements by a preponderance of the evidence. *Tuck*, 151 N.E.3d at 1208. First, they must show "that the plaintiff did not exercise reasonable care in mitigating post-injury damages." *Id.* And second, they must demonstrate "that the failure to exercise reasonable care caused the plaintiff to suffer harm beyond that attributable to the defendant's negligence." *Id.*

When, as here, a defendant claims a plaintiff aggravated their own injuries by failing to follow medical advice, the defendant must prove that such neglect caused the plaintiff "to suffer a discrete, identifiable harm arising from that failure, and not arising from the defendant's acts alone." *Id.* (quoting *Willis*, 839 N.E.2d at 1188). But that requirement "does not mean the defendant must prescribe a specific numerical value to the plaintiff's increased or prolonged harm." *Id.* at 1209. And in *Tuck*, we clarified that a plaintiff's prolonged suffering or "continuing symptoms" may qualify as "an identifiable harm attributable not to [the defendant's] negligence but to the [plaintiff's] failure to follow [their] doctor's orders." *Id.* at 1208–09 (noting that the "issue, though, is not only whether Humphrey's failure to follow orders 'increased' his harm but also whether it prolonged the suffering of which he complains—and which he attributes to defendants' negligence—in any discreet, measurable way").

Here, we find that the evidence of Sydney's post-accident behavior was sufficient to support the trial court's conclusion that she failed to exercise reasonable care and that her failure caused harm.

First, Sydney decided to attend her senior prom just days after the accident. Her parents did not want her to go to the prom because they "didn't think it was a good idea with her condition." Tr. Vol. 4, p. 87. Dr. Larry Salberg, one of Sydney's treating physicians, agreed that concussed patients should avoid busy environments "if noisy environments bother them." Tr. Vol. 3, p. 135. And Dr. Michael Owens, a treating concussion

specialist, testified that he advises concussed patients that “stimulating environments” may “prolong their recovery time.” Tr. Vol. 6, pp. 3–4.

For her part, Sydney testified that she was unable to remember multiple events from her prom night, including whether she took pictures at her house, how she got to a friend’s house, how she got to the dance, when she left the dance, or how she returned to her friend’s house. At the dance, she attested, the “circling” lights made her “feel sick” and made her “head hurt.” Tr. Vol. 5, p. 113. And after the dance, Sydney “went to bed almost right away.” *Id.* at 115. Her “head hurt,” so she “laid down” and “fell asleep.” *Id.*

Second, despite protests from her family, Sydney and a group of her friends traveled to the Great America amusement park the day after prom. Sydney’s father was concerned about her continuing headache from the accident and didn’t think it was “a good idea” to go. Tr. Vol. 4, p. 178. Sydney, however, insisted on going. Dr. Mullally testified that, had Sydney or her parents called him to ask “whether it would be advisable for her to go ride roller coasters” after her concussion, he “would have told them not to do such a thing” because “it would possibly exacerbate her condition.” Tr. Vol. 5, p. 39. And while unable to say whether Sydney sustained an additional concussion from riding the roller coasters, he considered such activity four days after the accident to be a violation of her post-concussion protocols and agreed that such activity could exacerbate her symptoms and make the recovery “slower,” “longer,” and “[m]ore complex.” *Id.* at 48, 84–86.

The other medical experts made similar observations. Dr. Joseph Fink, a neuropsychologist who evaluated Sydney in June of 2017, testified that he would recommend against a concussed patient riding roller coasters while in the recovery stage. And Dr. Salberg stated that, while riding roller coasters “wouldn’t make [concussion symptoms] more permanent than [they otherwise] would have been,” such activity may exacerbate the

symptoms and “prolong her ability to get back to normal.”¹ Tr. Vol. 3, p. 74. During questioning, he acknowledged that “roller coasters may lead to brain displacements and strains comparable to mild soccer headers” and that a soccer header could cause a concussion. *Id.* at 143–45.

In addition to this medical testimony, Sydney testified that, while she could recall that her “head was hurting,” she was unable to remember some of the events from that day, including how she felt when she woke up, how she got to the amusement park, and how she got home. Tr. Vol. 5, p. 119. She also described at trial how riding roller coasters in the years after the accident made her feel “emotional,” “panicked,” and “foggy.” *Id.* at 120–21.

To be sure, no expert directly observed Sydney’s symptoms after her trip to Great America. But, while expert testimony is generally required to prove causation of a subjective injury, or an injury that “is not directly observable” by a doctor, *Topp v. Leffers*, 838 N.E.2d 1027, 1033 (Ind. Ct. App. 2005), *trans. denied*, such testimony is not required “on medical matters which are within the common experience, observation, or knowledge of laymen,” *Buhring v. Tavoletti*, 905 N.E.2d 1059, 1065 (Ind. Ct. App. 2009) (quoting *Willis*, 839 N.E.2d at 1189). “[W]hether a failure to mitigate defense based on a plaintiff’s failure to follow medical treatment advice requires expert medical testimony to establish causation must be resolved on a case-by-case basis.” *Willis*, 839 N.E.2d at 1189. In this case, no expert directly attributed any of the harm to Sydney’s failure to follow post-concussion protocol. However, many of her own experts testified that the failure to follow the protocols would extend the healing process and make healing more difficult. Since no expert was able to directly opine that Sydney’s conduct didn’t cause additional harm, and experts did testify Sydney may have extended or exacerbated her symptoms, the

¹ To be sure, two medical professionals testified that they would permit a patient to go to an amusement park if it was important to the patient. But these professionals also said that the patient should stop if it exacerbates her symptoms. And rather than stopping when her headaches escalated, Sydney chose to take breaks before returning to ride more roller coasters.

trial court permissibly weighed the evidence before it to determine that her conduct did cause her harm.

Finally, Sydney failed to follow various other recommendations of her healthcare providers after the accident. Dr. Mullally instructed her to avoid “physical education class” and “sports participation,” along with “busy environments” and bright computer screens. Tr. Vol. 5, p. 47. And Dr. Fink testified that Dr. Mullally’s recommendations “seemed really good” and that failure to follow those recommendations might prolong her recovery. Tr. Vol. 2, p. 106. In May of 2016, Dr. Owens likewise recommended that Sydney limit her “physical activity in gym class and athletics” to reduce physical stressors and that she limit “the amount of time spent on computer, video games, iPad, TV, and cell phones” to reduce mental stressors. Tr. Vol. 6, pp. 16–17. And yet despite these recommendations, Sydney continued to engage in physical activity, including the wrestling incident in which she was kned in the head and experienced an escalation in symptoms.

Beyond Dr. Owens’ advice, Dr. Neil Margolis prescribed a special pair of glasses, which he believed could help with Sydney’s headaches. Sydney, however, never filled the prescription because she considered the eyeglasses “pretty expensive.” Tr. Vol. 5, p. 213.

Sydney’s post-accident conduct was analogous to the plaintiff in *Tuck*. Although *Tuck* dealt with the level of evidence necessary to give a mitigation-of-damages defense instruction, its analysis is relevant here. In that case, we concluded that the finder of fact could reasonably determine the plaintiff’s continuing symptoms met the harm requirement where the plaintiff failed to consistently take a drug prescribed to treat his symptoms and failed to fill an eyeglass prescription despite ongoing vision problems after the accident. 151 N.E.3d at 1209. While the defendant produced no expert testimony showing a specific level of increased harm caused by the plaintiff’s negligence, he did show the plaintiff’s failure to follow his doctors’ orders “prolonged the suffering of which he complain[ed]” after the plaintiff testified that his symptoms improved when he began following those orders. *Id.* at 1208–1209.

Overall, viewing the evidence most favorably to the trial court's judgment, the trial court properly concluded that Trevor carried his burden to show both elements of his mitigation-of-damages defense. The evidence presented shows that Sydney negligently disregarded her doctors' recommendations to avoid physical activity and busy environments and to fill her eyeglass prescription to help with her headaches. Based on this evidence, it was reasonable for the trial court to infer that Sydney's failure to follow her doctors' instructions exacerbated her symptoms and prolonged her recovery. Although Trevor could not quantify how much harm Sydney suffered from her decisions to disregard her doctors' orders, this evidence, as in *Tuck*, was sufficient for the finder of fact to reasonably conclude that Sydney's failure to follow her doctors' orders caused "a discreet, identifiable harm." See *Tuck*, 151 N.E.3d at 1208 (quoting *Willis*, 839 N.E.2d at 1188).

B. Sydney failed to show that Trevor's negligence caused all of her injuries, symptoms, and poor academic performance.

Trevor next argues that Sydney failed to demonstrate that all of her suffering resulted from the accident. He further contends that the trial court properly concluded that Sydney "failed to prove that her poor grades were a result of anything other than her poor school/work/life balance." Pet. to Trans. at 13 (emphases omitted).

While Trevor presented no expert witnesses to rebut Sydney's claims for damages, and while a failure to present such evidence will often prove fatal to a defense, the record provides ample support for his claims.

Dr. Fink testified that concussions could occur that are "undocumented" or where an individual does not get medical attention. Tr. Vol. 2, p. 143. He also testified that concussions are generally not detectable on CT or MRI scans or on any other sort of diagnostic testing. For his part, Dr. Owens testified that a person need not lose consciousness or experience amnesia to have suffered a concussion. He further explained that a "diagnosis of a concussion is mostly driven by [the] symptoms,"

which doctors divide into four categories when diagnosing a patient: physical symptoms (e.g., headaches, dizziness, trouble balancing, sensitivity to light and sound, nausea, vomiting); emotional symptoms (e.g., nervousness); cognitive symptoms (e.g., difficulty concentrating or remembering, fogginess or lack of mental acuity); and sleep symptoms (e.g., drowsiness or alteration in sleep patterns). *Id.* at 166–67.

Based on this testimony, the trial court found that the two head injuries Sydney sustained during the summer following the accident were concussions. And this finding supported, in part, the court’s reduction of Sydney’s damages. Sydney, however, contests this finding as unsupported by sufficient expert testimony. We disagree. While the medical testimony failed to show that Sydney experienced new concussions because of her two post-accident head injuries, the evidence is sufficient to infer that both incidents at least caused a continuation or temporary aggravation of Sydney’s existing concussion symptoms.

Sydney received physical therapy as part of her post-concussion treatment. And she saw her physical therapist shortly after both of her post-accident head injuries. Though the therapist noted that she “saw nothing to indicate that [Sydney] had re-injured herself” after the doorknob incident, she did note an escalation of “headaches and imbalance” after the kneeling incident. Tr. Vol. 2, pp. 211, 219.

For her part, Sydney denied experiencing a new head injury after wrestling with her brother. She admitted, however, to having “an escalation of symptomology.” Tr. Vol. 5, p. 185. And she also acknowledged that she developed a stutter after hitting her head on the doorknob. This escalation in symptoms, along with the stutter she developed, support a finding that her additional head injuries increased her symptoms and prolonged her recovery.

We now turn to Trevor’s claim related to Sydney’s academic performance. During college, Sydney certainly didn’t perform to a level that would allow her to become a neonatal nurse. And Dr. Fink testified that Sydney’s college grades were not in line with the level of performance she showed in high school. Sydney also indicated to Dr. Fink that “she had difficulty with her school, her classes, and learning.” Tr. Vol. 2, p. 137.

Dr. Salberg described how Sydney had indicated to him that she had abandoned her goal of becoming a nurse and he opined that she had lost her ability to succeed academically.

Although Sydney attributes these difficulties to the accident, we find ample evidence to support the trial court's determination that Trevor's negligence was not the proximate cause of her poor grades in school and her abandonment of career aspirations as a neonatal nurse. For example, Sydney's father testified that college was "tougher" than Sydney expected. Tr. Vol. 4, p. 182. And while Sydney said she studied a "lot more in college" than she did in high school, she admitted to spending hours watching Netflix on school nights. Tr. Vol. 5, p. 102. She also worked at an antique store after starting college and began working a second job at a law firm. She continued both of these jobs even after she reduced her college coursework in an effort to improve her grades.

Sydney's performance in high school wasn't notable, either. While she maintained straight As in her art and fitness classes, she struggled in her science classes (the most relevant to her dream of becoming a neonatal nurse), maintaining an average GPA of 2.6 (or a B-) for ten course credits. And she received these grades in the supportive environment of high school, where she knew what would be tested based on her study guides. But college, as Sydney acknowledged, was more rigorous in that it required you to "know your information, like everything" from the class lecture. Tr. Vol. 5, p. 100.

Based on this evidence, we conclude that it was within the trial court's discretion to find that Sydney failed to meet her burden to prove her claimed damages.

II. The trial court should not have reduced Sydney's damages for her two pre-accident concussions.

Finally, Sydney argues that the trial court should not have reduced her damages for her two pre-accident concussions. We agree.

Under the “eggshell skull” rule, a defendant “takes his victim as he finds him.” *Bailey v. State*, 979 N.E.2d 133, 142 (Ind. 2012). This longstanding rule recognizes that “if one throws a piece of chalk” at a “victim with an eggshell skull, and the chalk strikes the victim and fractures his skull, the perpetrator would be guilty . . . even though he did not intend to do great bodily harm.” *Defries v. State*, 264 Ind. 233, 244–45, 342 N.E.2d 622, 630 (1976). A defendant is thus liable to the extent that their conduct aggravates a pre-existing condition but is not liable for damages stemming from a pre-existing injury that independently causes harm. *Dunn v. Cadiente*, 516 N.E.2d 52, 56 (Ind. 1987).

In its order denying Sydney’s motion to correct error, the trial court noted that Trevor “is not excused from liability just because Renner had suffered previous concussions.” Appellant’s App. Vol. 2, p. 28. However, the following paragraph shows that, at a minimum, the court did not properly apply the eggshell-skull rule. “The extent of [Trevor]’s liability,” the order states, “is determined by causation. Renner’s injuries arose from the cumulative effects of at least five documented instances of mild traumatic brain injury.” *Id.* at 29. The court concluded that “[a]ll of these traumas contributed to her present condition” and, therefore, denied Sydney’s motion to correct error. *Id.*

Expert testimony established that concussions are cumulative, meaning that the “more concussions you have, the more likely you are going to have permanent . . . brain damage.” Tr. Vol. 3, p. 48 (testimony of Dr. Salberg). Expert testimony likewise established that Sydney’s prior concussions made her more vulnerable to concussions in the future. But this testimony did not show that her two pre-accident concussions proximately caused her injuries after the accident, or that she failed to recover from the concussions. No one testified that Sydney continued to experience any effects of her two earlier concussions prior to the accident. To the contrary, Dr. Salberg stated that Sydney “had made a hundred percent recovery” from the two concussions. *Id.* at 52. And according to Dr. Fink, Sydney’s current cognitive inefficiencies “seem[ed] to start following . . . the car accident.” Tr. Vol. 2, p. 74.

To be sure, while Dr. Salberg opined that Sydney had fully recovered from her concussions, he acknowledged that Sydney likely wouldn't have shown the same symptoms following the accident had she not experienced the two prior concussions. And Dr. Mullally testified that it was "possible" for "a person that sustains her third concussion to experience a prolonged recovery [from the third concussion] more so than someone who would sustain a first or a second." Tr. Vol. 5, p. 69. But this testimony merely suggests that the accident **aggravated** her pre-existing condition, not that she failed to recover from her two earlier concussions. This situation is nearly identical to the scenario of a victim with an eggshell skull. In the moments before the accident, Sydney had no injuries resulting from her two previous concussions. But, like the man with an eggshell skull, her prior concussions meant that small impacts that wouldn't ordinarily have detrimental effects could cause severe symptoms. Because a defendant must take the plaintiff as he finds her, *Bailey*, 979 N.E.2d at 142, Trevor is liable to "the extent to which his conduct has resulted in an aggravation of the pre-existing condition," *see Dunn*, 516 N.E.2d at 56.

In arguing that the trial court permissibly considered Sydney's prior concussions, Trevor relies on the Court of Appeals decision in *Spaulding v. Cook*, 89 N.E.3d 413 (Ind. Ct. App. 2017), *trans. denied*. But this case is distinguishable from *Spaulding*. The plaintiff there, who suffered from pre-existing conditions, failed to inform his doctor of an earlier accident that could have also caused his symptoms, and his doctor "could not state with absolute certainty that the accident" had caused the plaintiff's injuries. *Id.* at 423. Here, Sydney's doctors were aware of her previous concussions. And while Sydney's prior concussions may have made her more vulnerable to future injury, none of the testimony presented at trial showed that she failed to recover from her two earlier concussions. Instead, it shows that the accident aggravated her pre-existing condition, which made her more susceptible to future concussions. And the trial court recognized as much when it observed that "the effects of multiple concussions upon an individual are cumulative." Judgment Order at 1.

Because the evidence, taken favorably to the trial court's judgment, did not show that Sydney's prior concussions independently caused the harm

she suffered after the accident, the trial court should have applied the eggshell-skull rule and should not have reduced Sydney's damages on account of her two prior concussions.

Conclusion

For the reasons above, we affirm the trial court's reduction of its award due to Sydney's failure to mitigate her damages. We further affirm the trial court's determination that Sydney failed to prove Trevor's negligence proximately caused all her damages. But we find the trial court erred in failing to apply the eggshell-skull rule. We therefore remand this matter to the trial court to recalculate its award of damages considering the eggshell-skull to determine the extent to which Trevor's conduct resulted in an aggravation of Sydney's pre-existing condition.

Rush, C.J., and David, Massa, and Slaughter, JJ., concur.

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