

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 CA 1379

JULIE BOUDREAUX, Individually and on Behalf of her
Minor Children, BYRON P. GAUTREAUX AND
KAYLA MARIE GAUTREAUX, ET AL.

VERSUS

MID-CONTINENT CASUALTY, ET AL.

Judgment Rendered: May 7, 2010.

On Appeal from the
17th Judicial District Court,
In and for the Parish of Lafourche,
State of Louisiana
Trial Court No. 87,823

Honorable John E. LeBlanc, Judge Presiding

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BEFORE: CARTER, C.J., GUIDRY AND PETTIGREW, JJ.

Guidry, J. concurs in the result.

B.P. Gautreaux

CARTER, C. J.

In this personal injury suit, plaintiffs seek damages for injuries sustained in an automobile accident. The jury awarded plaintiffs “zero” damages after determining that the accident at issue did not cause their injuries. The trial court rendered judgment in favor of defendants in accordance with the jury’s verdict, dismissing all of plaintiffs’ claims with prejudice. Additionally, the trial court denied plaintiffs’ motion for a judgment notwithstanding the verdict (JNOV) and alternative motion for a new trial. Plaintiffs appeal from the denial of their motions, as well as the judgment rendered in accordance with the jury verdict. Plaintiffs urge twelve assignments of error, primarily revolving around the argument that the jury’s verdict was the result of numerous legal errors concerning inadmissible evidence that interdicted the jury’s fact-finding process. For the following reasons, we affirm the trial court’s judgments.

FACTS AND PROCEDURAL HISTORY

The accident at issue occurred over ten years ago, on November 28, 1998. Plaintiffs are Julie Boudreaux and her two minor children,¹ Byron P. Gautreaux and Kayla Marie Gautreaux, as well as Julie’s mother, Stella V. Boudreaux, and Julie’s sister, Karla Harrison. At the time of the accident, Karla was driving her parents’ 1995 Nissan Maxima, and Julie was seated in the front passenger seat. The children were seated in the back of the car with their grandmother. Each plaintiff was wearing a seatbelt. Plaintiffs’ vehicle was stopped at a red light at the intersection of Highway 1 and Highway 3185 heading into Thibodaux, Louisiana, in Lafourche Parish.

¹ The children reached the age of majority before trial and were substituted as party plaintiffs on their own behalf.

While sitting at the red light, Karla saw a 1998 Buick approaching in her rearview mirror. Seconds later, the Buick driven by defendant,² Carol G. Harris, struck the rear bumper of plaintiffs' vehicle. The testimony of the parties and one eyewitness, Kevin Legleu, differ on whether the traffic light was still red or had turned green, and whether plaintiffs' vehicle began to move and then suddenly stopped. But all witnesses agree that the damage to the bumper of plaintiffs' vehicle was extremely minor and there was no damage to defendant's vehicle. Each of the vehicles' occupants and the eyewitness, however, provided different descriptions of the severity of the impact, ranging from "an explosion" to a "jerk and a thud" to a "very" light bump or a "soft" tap where plaintiffs' vehicle "barely moved." In a recorded statement given to her insurer a few days after the accident, the defendant driver stated that she did not feel any impact at all. The eyewitness, who was following directly behind the defendant vehicle, estimated that his and the defendant's vehicles were traveling approximately five miles per hour at the time of impact. In contrast, the driver of plaintiffs' vehicle and her sister both testified that the defendant's car was "coming fast" and they heard tires screeching to a stop just prior to the impact. Plaintiffs' vehicle repair estimate for the back bumper of the Maxima was under \$600.00. There was no repair estimate for the defendant vehicle, because it did not sustain any damage.

After the accident, Julie, Kayla, and Karla were all transported to the hospital by ambulance, with neck braces, and placed on back boards. Stella drove herself and Byron to the hospital in the vehicle that had been involved

² Carol G. Harris died before trial for reasons unrelated to this accident, and her husband, Donald Joseph Harris, was substituted as a defendant in the proceedings.

in the accident. Julie, Kayla, Stella, and Karla were all examined in the emergency room for soft-tissue-type neck and/or back injuries, and all were released with prescriptions for pain medication, anti-inflammatory medication, and muscle relaxers, except for Kayla, who was told to take children's Advil for her pain. Byron went to his family physician once for back pain, two days after the accident. Karla, Stella, and Byron's alleged neck and back strains all resolved within a few days to two weeks after the accident. But Kayla sought treatment for neck pain and headaches allegedly associated with the accident approximately five years after the accident, and Julie received ongoing and continuous treatment for neck and arm pain up to the time of trial. Julie's treatment included two cervical surgeries two years after the accident to relieve her symptoms of neck and radiating arm/shoulder pain, as well as ongoing treatment for migraine headaches, all of which was allegedly caused by the accident.

On November 15, 1999, plaintiffs joined in filing a personal injury suit for damages against the defendant driver and her insurer, Mid-Continent Casualty Company (Mid-Continent). On August 27, 2002, the trial court granted partial summary judgment in favor of plaintiffs on the issue of liability, finding that the defendant driver was solely at fault for the 1998 rear-end collision. However, on December 30, 2002, the trial court denied plaintiffs' motion for partial summary judgment on the issue of causation of plaintiffs' injuries, leaving that issue for trial on the merits. In denying summary judgment on causation, the trial court focused primarily on Julie's injuries, and relied on the fact that she had previously been involved in four

automobile accidents, and another one after the accident at issue.³ The trial court also considered that Julie had actively sought and received extensive medical treatment for similar neck and radiating arm pain both before and after the 1998 accident.⁴

The trial court ruled on numerous pre-trial motions concerning multiple evidentiary issues, and ultimately allowed evidence of Julie's prior and subsequent accident and medical and lawsuit history, evidence about the force of the impact and property damage appraisals/assessments, and testimony of an eyewitness, as well as the deceased defendant driver's statement given shortly after the accident. After all pretrial motions were decided, a five-day jury trial was held on January 26-30, 2009. The jury deliberated and unanimously returned a verdict in favor of defendants, finding that the minor November 28, 1998 accident was not a cause-in-fact of any of plaintiffs' injuries, including aggravation of any pre-existing conditions, and therefore, plaintiffs were not entitled to any damage awards. The trial court rendered judgment in accordance with the jury's verdict on February 17, 2009, dismissing all of plaintiffs' claims against defendants with prejudice and at Julie's cost.

³ Julie testified at trial that she was involved in the following motor vehicle accidents: one in 1990, two in 1992, one in 1995, one in 1998 (the accident at issue in this case), and one in 2006.

⁴ Additionally, the trial court granted a motion for summary judgment in favor of Dr. Stefan G. Pribil, a neurosurgeon who performed the two cervical surgeries on Julie and who was added as a defendant when Julie's surgical results were not successful in alleviating her pain. In ruling in favor of Dr. Pribil, the trial court found that Julie had not provided any evidence that the doctor had breached the standard of care by performing unnecessary or unreasonable surgery. On November 3, 2006, this court affirmed the trial court's judgment dismissing all claims against Dr. Pribil and allowing evidence concerning the justification of the surgeries to be presented at the trial on the merits. *See Boudreaux v. Mid-Continent Cas. Co.*, 05-2453 (La. App. 1 Cir. 11/3/06), 950 So.2d 839, writ denied, 06-2775 (La. 1/26/07), 948 So.2d 171.

Plaintiffs moved for a JNOV, or in the alternative, a new trial, arguing that the jury verdict was erroneous, that it was not supported by the evidence, that it ignored uncontroverted medical evidence, and that it resulted in a miscarriage of justice. Defendants opposed the JNOV and new trial motions, maintaining that significant medical evidence presented through cross-examination of Julie's various treating physicians supported the jury's verdict that the accident in question did not cause plaintiffs' injuries. Defendants focused on the treating physicians' testimony regarding the incomplete medical and accident history provided by Julie, maintaining that the incomplete history rendered any causation opinion unreliable or questionable. Defendants also argued that evidence of the minimal damage to the vehicles involved in the collision allowed the jury to reasonably conclude that none of the plaintiffs were injured in the accident at issue. On April 6, 2009, the trial court denied the JNOV and the motion for new trial, finding that reasonable jurors could have reached a different conclusion than that asserted by plaintiffs, and that the jury made a reasonable decision based on the evidence presented at trial. Plaintiffs appealed from the judgment denying their motions, as well as the trial court judgment rendered in accordance with the jury's unanimous "zero" verdict.

ASSIGNMENTS OF ERROR

Plaintiffs raise twelve assignments of error. Most of the assigned errors revolve around the issue of causation, in that: (1) the trial court failed to initially find in favor of plaintiffs as to causation on summary judgment; (2) the trial court failed to apply the **Housely** presumption; (3) the trial court failed to grant a JNOV and award damages after the jury improperly found no causation; and (4) the trial court erred in denying plaintiffs' motion for a

new trial. Plaintiffs also contend that the jury's verdict was tainted by numerous legal errors on the part of the trial court in admitting specific evidence and/or allowing testimony as to: (1) liability, which was decided prior to trial by summary judgment; (2) the minimal impact of the vehicles involved in the collision; and (3) Julie's prior lawsuits.

PRETRIAL RULINGS

Plaintiffs raise numerous errors regarding the trial court's pretrial rulings, most of which were decided pursuant to multiple motions in limine to exclude evidence. Generally, all relevant evidence is admissible. LSA-C.E. art. 402. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. LSA-C.E. art. 401. Whether evidence is relevant is within the discretion of the trial court, and its ruling will not be disturbed on appeal in the absence of a clear abuse of discretion. **Boudreaux v. Mid-Continent Cas. Co.**, 05-2453 (La. App. 1 Cir. 11/3/06), 950 So.2d 839, 845, writ denied, 06-2775 (La. 1/26/07), 948 So.2d 171. However, relevant evidence may be excluded if, among other things, its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. LSA-C.E. art. 403. Moreover, an error may not be predicated upon a ruling that admits or excludes evidence unless a substantial right of the party is affected. LSA-C.E. art. 103A. The party alleging prejudice by the evidentiary ruling of the trial court bears the burden of so proving. **Mapp Const., LLC v. Southgate Penthouses, LLC**, 09-0850 (La. App. 1 Cir. 10/23/09), 29 So.3d 548, 561, writ denied, 09-2743 (La. 2/26/10), 28 So.3d 275.

Plaintiffs initially argue that the trial court erred in failing to find in their favor on the pretrial motion for summary judgment as to causation. Plaintiffs maintain that the trial court erred, especially in light of the **Housley** presumption of causation, since plaintiffs brought forth evidence that they were in good health prior to the 1998 accident and their disabling conditions manifested afterward.⁵ Defendants counter that the trial court correctly denied plaintiffs' motion for summary judgment on causation because there were numerous genuine issues of material fact brought forth through extensive medical evidence of Julie's significant and relevant medical history and treatment for the same condition, and the record is void of evidence showing that any plaintiffs had good health prior to the 1998 accident.⁶ Defendants also contend that the extent of each of the other plaintiffs' injuries in this low-impact collision was at issue, along with Julie's pre-existing health issues, eliminating any reasonable possibility of causation.

⁵ In **Housley v. Cerise**, 579 So.2d 973, 980 (La. 1991), the Louisiana Supreme Court established three factors that must be shown by a preponderance of the evidence before a plaintiff can benefit from a presumption of causation: (1) good health prior to the accident at issue; (2) symptoms of the alleged injury appeared and continuously manifested themselves subsequent to the accident at issue; and (3) medical evidence demonstrates a reasonable possibility of causation exists between the accident and the injury claimed. See **Poland v. State Farm Mut. Auto. Ins. Co.**, 03-1417 (La. App. 1 Cir. 6/25/03), 885 So.2d 1144, 1149.

⁶ In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **Samaha v. Rau**, 07-1726 (La. 2/26/08), 977 So.2d 880, 882-883. A motion for summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966B. The opposing party cannot rest on the mere allegations or denials of his pleadings, but must present evidence which will establish that material facts are still at issue. LSA-C.C.P. art. 967.

After a thorough *de novo* review of the evidence, we find no error in the trial court's denial of plaintiffs' motion for summary judgment on causation or in denying plaintiffs the aid of a **Housley** presumption of causation. Defendants properly raised genuine issues of material fact as to causation and issues surrounding the vast differences between the alleged injuries to each plaintiff and how the minor collision could have possibly caused or aggravated each of their alleged injuries. We agree with the trial court's assessment that plaintiffs failed to establish the **Housley** factors by a preponderance of the evidence.

Whether plaintiffs carry their burden of proof and whether testimony is credible are questions of fact to be determined by the trier of fact. **Allman v. Washington Parish Police Jury**, 04-0600 (La. App. 1 Cir. 3/24/05), 907 So.2d 86, 88. Likewise, whether an accident caused plaintiffs' injuries is also a factual question reviewed under the manifest error standard of review. **Rachal v. Gilchrist**, 08-342 (La. App. 3 Cir. 10/1/08), 995 So.2d 1226, 1227, writ denied, 08-2612 (La. 1/9/09), 998 So.2d 725. The trier of fact is in the best position to determine the extent of the accident and resultant injuries, if any. Therefore, it is also proper for the trier of fact to consider the minimal nature of an accident in order to determine whether injuries have been sustained. **Id.**, 995 So.2d at 1228.

Plaintiffs also argue that the trial court committed numerous legal errors that interdicted the jury's fact-finding process by allowing evidence and testimony related to liability rather than limiting the evidence to the relevant issues at trial: causation and damages. Plaintiffs contend that by allowing the eyewitness testimony of Kevin Legleu, the jury was exposed to completely irrelevant evidence that allowed defendants to re-litigate the

issue of liability, which had already been decided in favor of plaintiffs on summary judgment. However, a careful review of Kevin Legleu's testimony reveals that he offered relevant testimony on the minimal impact of the rear-end collision that he had witnessed. This evidence was relevant for the jury's credibility determinations regarding plaintiffs' versions of how severe the impact was, how they were allegedly hurt, and the extent of their alleged injuries. All parties were permitted to offer testimony regarding the force of the impact, and plaintiffs have not shown how they were unduly prejudiced by this eyewitness account. Courts are to resolve the admissibility of evidence, including the admissibility of a witness' testimony, in favor of receiving the evidence. **Color Stone Intern., Inc. v. Last Chance CDP, LLC**, 08-35 (La. App. 5 Cir. 5/27/08), 986 So.2d 707, 715. And force-of-impact evidence and testimony is a relevant factor in determining causation or the extent of injuries. **Merrells v. State Farm Mut. Auto. Ins. Co.**, 33,404 (La. App. 2 Cir. 6/21/00), 764 So.2d 1182, 1185. Thus, we find no error in the trial court's pretrial ruling that allowed Kevin Legleu's testimony.

For the same reasons, we find no error in the trial court's pretrial ruling allowing the recorded statement of the defendant driver given to her insurance company's adjuster a few days after the accident and long before plaintiffs filed their lawsuit. The defendant driver was unavailable to testify at trial, because she had died two years after the 1998 accident. But at the time that the defendant driver gave her statement to her insurance adjuster, she knew that it was being recorded, she acknowledged that she understood all of the questions, and she stated that she was being truthful in her answers. The trial court found that the recorded statement was trustworthy and

allowed it into evidence pursuant to LSA-C.E. art. 804B(6). We find no abuse of discretion in the trial court's ruling allowing this evidence, since it was clearly related to causation and was offered to counter the credibility of plaintiffs' versions of the severity of the impact and how it affected each plaintiff. Furthermore, the defendant driver's statement offered the only version of the accident suggesting that no contact was made between the vehicles. For this reason, the testimony was relevant to the issue of causation. See Ratcliff v. Normand, 01-1658 (La. App. 3 Cir. 6/5/02), 819 So.2d 434, 438-439. Moreover, hearsay may be admitted in some instances if the testimony appears to be reliable and there is a minimum of prejudice to the objecting party. In re Succession of Wagner, 08-0212 (La. App. 1 Cir. 8/8/08), 993 So.2d 709, 715.

As for plaintiffs' argument that the trial court improperly allowed photographs of the vehicles into evidence without expert testimony, we find no merit. The parties agreed that neither side would offer expert witness evidence on the force of impact issue. But it is proper for a trier of fact to consider the minimal nature of a motor vehicle accident to determine whether injuries have been suffered.⁷ The trial court allowed photographs of the vehicles to be introduced so that the jury could fully consider the facts of the case as it related to credibility and causation. Just as the parties described the accident in their own words for the jury's consideration of

⁷ See Rachal, 995 So.2d at 1228-1229, where the trial court allowed the jury to be presented photographs of minor damage to a vehicle's mirror and the jury found insufficient evidence of the alleged injuries. See also Brown v. Trask, 08-0006 (La. App. 4 Cir. 10/15/08), 998 So.2d 131, 136, writ denied, 08-2707 (La. 1/30/09), 999 So.2d 757, where the trial court allowed the jury to view photographs that showed no damage to the front of a defendant's car, and the appellate court concluded that the jury could have reasonably found that such a minor accident could not have caused the debilitating injuries alleged by the plaintiff.

causation, the photographs were offered to confirm or invalidate the testimony concerning the damage or lack of damage to the vehicles as it related to the severity of the impact and plaintiffs' alleged resulting injuries. Generally, photographs are admissible when they are shown to have been accurately taken and are a correct representation of the subject, and to shed light upon the matter to be decided. **Platt v. Interstate Dodge**, 37,059 (La. App. 2 Cir. 4/9/03), 843 So.2d 1178, 1182. We are satisfied that these general criteria were met in this case, and the photographs were helpful to the jury's understanding of their factual determination on causation. Thus, we do not find that the trial court abused its discretion in admitting the photographs of the vehicles.

Likewise, we find that the trial court did not err in allowing plaintiffs' emergency room records to be admitted without redacting some references to the severity of the impact. The medical records are reasonably related to causation, diagnosis, and treatment of plaintiffs' alleged injuries, and were admissible pursuant to the medical records exception to the hearsay rule found in LSA-R.S. 13:3714 and LSA-C.E. art. 803(4). The use of hearsay history of a case as told to a physician by a patient is admissible to show the basis of a physician's diagnosis and treatment. See Dardeau v. Ardoin, 97-144 (La. App. 3 Cir. 11/5/97), 703 So.2d 695, 697, writ denied, 98-0359 (La. 3/27/98), 716 So.2d 889. Any reference to the minimal impact of the collision could have been addressed by plaintiffs producing the person who made the statement in the medical record and cross-examining the person on that issue. See LSA-R.S. 13:3714A.

We also find that the trial court properly allowed evidence of Julie's prior lawsuits since that evidence was relevant to the jury's consideration of

the extent of Julie's pre-existing condition as it related to her alleged injuries to the same areas of her body in the 1998 accident. See Matthews v. Breaux, 04-958 (La. App. 5 Cir. 2/15/05), 896 So.2d 1146, 1151. All of this evidence was relevant to the jury's credibility determinations, and was therefore, admissible. The trial court did not abuse its vast discretion in allowing the evidence. Additionally, each plaintiff testified regarding the force of the impact, and there is nothing in the record to indicate that plaintiffs were so prejudiced by the admission of the evidence on impact severity or Julie's prior accidents and lawsuits as to jeopardize their position. Accordingly, we find no merit to plaintiffs' assignments of error regarding the trial court's pretrial rulings.

MOTION FOR JNOV

Next, we consider plaintiffs' argument that the trial court erred in refusing to grant their motion for a JNOV. A JNOV is proper only when the trial court determines that reasonable minds could not reach a contrary verdict, or when the facts and inferences point so strongly and overwhelmingly in favor of one party that the trial court believes that reasonable jurors could not find otherwise. **Cavalier v. State, Dept. of Transp. and Develop.**, 08-0561 (La. App. 1 Cir. 9/12/08), 994 So.2d 635, 644. The trial court is prohibited from weighing evidence, making credibility determinations, drawing inferences, or substituting its fact determinations for that of the jury. **Id.** The trial court must first determine whether the facts and inferences point so strongly and overwhelmingly in favor of plaintiffs that reasonable jurors could not arrive at a contrary verdict. Stated simply, if reasonable persons could have arrived at the same

verdict given the evidence presented to the jury, then a JNOV is improper.

Id.

Thus, we must inquire whether the evidence overwhelmingly supports plaintiffs' contention that the November 28, 1998 accident caused injury to each plaintiff. If so, then the trial court erred in not granting the JNOV and we must conduct a review of damage awards based on an independent assessment of damages. See Davis v. Wal-Mart Stores, Inc., 00-0445 (La. 11/28/00), 774 So.2d 84, 89; **Cavalier**, 994 So.2d at 645. If, however, reasonable jurors in the exercise of impartial judgment could reach the conclusion that plaintiffs were not injured, and that no plaintiff suffered an aggravation of any pre-existing injury in this minimal-impact collision, then the trial court did not err in refusing to grant the JNOV and maintaining the jury verdict. See Anderson v. New Orleans Public Service, Inc., 583 So.2d 829, 834 (La. 1991); **Cavalier**, 994 So.2d at 645. We perform our appellate review under the same rigorous standards that governed the trial court's determination of whether a JNOV was warranted, without evaluating the credibility of witnesses; and all reasonable inferences or factual questions should be resolved in favor of the non-moving party. See Smith v. State, Dept. of Transp. & Develop., 04-1317 (La. 3/11/05), 899 So.2d 516, 524-525; See also Martin v. Heritage Manor South, 00-1023 (La. 4/3/01), 784 So.2d 627, 631.

In this case, the jury heard testimony and reviewed medical records revealing that Julie, Karla, Stella, Byron, and Kayla all *allegedly* suffered from varying degrees of back, neck, and/or shoulder/arm strain in the 1998 accident at issue. However, there was also significant testimony and evidence presented by defendants through cross examination of plaintiffs

and their treating physicians that contradicted the allegations that any of the plaintiffs were injured in the November 28, 1998 accident.

The jury heard testimony from Karla, Stella, and Byron that their stiffness and soreness resolved quickly within a few days. No physician testified regarding the alleged injuries of Karla, Stella, or Byron. The jury also heard testimony that only Kayla and Julie sought additional medical treatment after the first few days following the accident. The evidence revealed a large gap in time for Kayla's treatment, because she did not seek further treatment until five years after the accident when she was experiencing debilitating migraine headaches. Julie testified that she took Kayla to a chiropractor after treatment with a neurologist did not help Kayla's migraine headaches. Kayla testified that after she received several months of chiropractic treatment for her neck, her migraine headaches and neck pain resolved. Julie also sought treatment from the same chiropractor, Dr. Jake Bordelon, but the treatment did not alleviate her pain. Dr. Bordelon testified at trial that the 1998 accident caused Kayla and Julie's conditions. However, Dr. Bordelon admitted that he was relying on the history provided by Kayla and Julie in order to link their neck, arm, and headache pain to the 1998 accident, because both of them had informed him that their pain began after the 1998 accident.

Many years of medical records for Julie were introduced into evidence. Through Julie's medical records, her testimony, and that of her treating physicians, it was established that Julie had a long and consistent eight-year history of chronic and at times severe complaints of pain in her back and neck that radiated into her left shoulder, arm, and hand, as well as treatment for migraine headaches, all of which predated the 1998 accident.

Neurosurgeon, Dr. Carson McKowen, treated Julie for neck and back pain from 1992 through 1998, a few months prior to the accident in question. Dr. McKowen did not treat Julie again until after her October 2006 accident. Despite the gap in his treatment during the pertinent time frame immediately after the 1998 accident, Dr. McKowen opined at trial that the 1998 accident caused or exacerbated Julie's neck/arm pain and migraines. He stated that while Julie's pain level was less prior to 1998, it increased after the 1998 accident and again after the 2006 accident. But Dr. McKowen acknowledged on cross examination that he was primarily relying on Julie's account and the reports of other doctors when he related Julie's injury to the 1998 accident, since he was not her treating physician at the time. Additionally, Dr. McKowen admitted that his opinion would certainly change if Julie had misreported her pain or injury or history to him or the other doctors.

Dr. McKowen also testified that the two MRI's of Julie's cervical spine taken before the 1998 accident revealed various degenerative changes that were not different from the MRI taken shortly after the 1998 accident. Moreover, Dr. Stefan Pribil, the neurosurgeon who treated Julie during the pertinent time period after the 1998 accident, and who ultimately performed her two cervical surgeries in 2000, confirmed that the objective findings on Julie's cervical MRI and myelogram taken after the 1998 accident were no different than the objective findings on her previous MRIs, and that the findings could have predated the 1998 accident. Again, Julie only informed Dr. Pribil of her 1995 and 1998 accidents and the resulting pain, and she omitted information regarding her 1990 and 1992 accidents with her history of medical treatment for similar neck and radiating arm pain. Dr. Pribil

acknowledged that it would be helpful in rendering his opinion on medical causation if he had a complete history of Julie's condition prior to the 1998 accident. He testified that if Julie had complaints of similar pain and symptoms before the 1998 accident, he would certainly want to know about it in order to render an accurate opinion as to whether the 1998 accident caused the injuries for which he treated her. And while Dr. Pribil indicated that he believed the 1998 accident exacerbated Julie's pre-existing cervical condition that eventually led to her surgeries, he stated on cross examination that his opinion was definitely contingent upon Julie telling him the truth as to her history.

Julie testified that her pain increased drastically after the 1998 accident. Her family physician, Dr. Francis Robichaux, also testified that Julie's pain was worse after the 1998 accident. However, Dr. Robichaux readily admitted upon cross examination that he was not aware of Julie's prior accident history, or that she had undergone previous cervical MRI's, or that she had cervical pain with radiating arm pain before the 1998 accident. Dr. Robichaux acknowledged that his opinion as to the cause of a patient's pain would be incomplete if the patient did not provide him with a complete accident and medical history.

In 2001, Julie was referred to a neurologist, Dr. Kenneth Gaddis, for frequent migraine headaches. Julie reported that she had a family history of migraines, and she did not tell him about any other doctors that were providing her medication for headaches. Julie informed him that she had been experiencing continuous, daily headaches since the 1998 accident and sometimes the headaches became migraines. Dr. Gaddis testified that Julie's migraine headaches were not related to trauma caused by an automobile

accident. He stated that migraine headaches are usually inherited, and that "they run in families." Dr. Gaddis believed that Julie's "classic" migraines were vascular in nature, and her constant headaches were probably caused by medication overuse. Dr. Gaddis also stated upon cross-examination that he could not provide an accurate or complete medical opinion as to causation without an accurate and complete medical history.

In 2002, after Julie's two cervical surgeries failed to alleviate her pain, Dr. Robichaux referred her to a third neurosurgeon, Dr. Rand Voorhies. Dr. Voorhies testified that Julie informed him of two automobile accidents in which she suffered neck and back injuries, one in 1992 and one in 1998. Julie told Dr. Voorhies that she had recovered from her 1992 injuries, but she was still having pain related to the 1998 accident. Dr. Voorhies conducted several tests with no objective findings of abnormalities. He then recommended a third cervical surgery designed to further stabilize Julie's neck, in the hopes that it would alleviate Julie's chronic pain. As of the date of trial, the third surgery had not been performed. Dr. Voorhies stated that he relies on his patients to be truthful about their history, and without a complete and accurate medical history, it is impossible for any expert to give an accurate opinion concerning causation.

The jury heard evidence that Julie was involved in another automobile accident in October 2006 that resulted in an increase in her neck, arm, and headache pain. Additionally, Dr. Robichaux testified that after the 2006 accident, Julie's condition worsened, and she eventually went on disability in 2007, a condition that he believed was permanent. In April 2007, Julie stopped driving and working, but up until that point, the evidence reflects that she worked full time at a job that required her to drive frequently.

Our review of the record reveals that the few times where Julie actually indicated to a physician that she had sustained an injury or was involved in some accidents prior to 1998, she did not accurately or completely reflect the full extent of her accident history, her injuries, or her ongoing medical treatment. Thus, the jury was presented with evidence that rendered any medical opinion on causation questionable and unreliable. All three of Julie's treating neurosurgeons and her treating family physician acknowledged that Julie's prior and incomplete accident and medical history, and the inaccuracy of that history, could affect their opinions on causation. Additionally, the jury heard evidence of Julie's prior lawsuits following two previous accidents (in 1992 and 1995) where Julie claimed to have been permanently and totally disabled, yet her treating physicians did not confirm her disability until after the 2006 accident.

Considering all of the contradictory medical evidence presented through extensive cross-examination testimony, in addition to the direct evidence of minimal damage to both vehicles, the credibility of all of the plaintiffs was seriously questioned. Plaintiffs failed to convince even one juror that there was any causal relationship between the minor 1998 collision and any of plaintiffs' alleged injuries. Construing the evidence and making inferences in favor of defendants, who opposed the JNOV, we conclude that there was substantial evidence that reasonable jurors in the exercise of impartial judgment could have arrived at the verdict finding that the 1998 accident at issue was not a cause-in-fact of any of plaintiffs' injuries. We cannot say that the jury's verdict is one that reasonable people could not have rendered. Therefore, we find that the trial court did not err in denying plaintiffs' motion for a JNOV.

MOTION FOR NEW TRIAL

Alternatively, plaintiffs moved for a new trial. The motion for a new trial requires a less stringent test than a motion for a JNOV in that such a determination involves only a new trial and does not deprive the parties of their right to have all disputed issues resolved by a jury. **Broussard v. Stack**, 95-2508 (La. App. 1 Cir. 9/27/96), 680 So.2d 771, 781. In considering a motion for a new trial, the trial court is free to evaluate the evidence without favoring either party, drawing its own conclusions and inferences and evaluating the credibility of the witnesses to determine if the jury has erred in giving too much credence to an unreliable witness. **Hunter v. State ex rel. LSU Medical School**, 05-0311 (La. App. 1 Cir. 3/29/06), 934 So.2d 760, 764, writ denied, 06-0937 (La. 11/3/06), 940 So.2d 653. A new trial shall be granted if the jury verdict appears to be clearly contrary to the law and the evidence. LSA-C.C.P. art. 1972(1). And a trial court may grant a new trial if there is some good ground therefor. LSA-C.C.P. art. 1973. When considering a motion for a new trial, the trial court has wide discretion. LSA-C.C.P. art. 1971. But the fact that it is a discretionary determination does not imply that the trial court can freely interfere with any verdict with which it disagrees. **Broussard**, 680 So.2d at 781. Moreover, the denial of a motion for a new trial should not be reversed on appeal unless there has been an abuse of the trial court's discretion. **Id.** New trials are not favored, especially when the jury verdict or judgment is supported by the record. **Id.** Thus, the jury's verdict should not be set aside if it is supportable by any fair interpretation of the evidence. **Hunter**, 934 So.2d at 765.

In their motion for a new trial, plaintiffs contend that the jury ignored medical evidence that was not contradicted and rendered a verdict that was “wholly unsupported by any evidence.” However, as outlined above, the jury was presented with extensive evidence of Julie’s significant prior medical treatment for the same injury, as well as evidence of a very minimal collision for the accident at issue. The jury made a determination that the accident did not cause plaintiffs any injury or aggravate any pre-existing injury. Causation is a question of fact. **Green v. K-Mart Corp.**, 03-2495 (La. 5/25/04), 874 So.2d 838, 841. It is clear that the jury simply did not believe plaintiffs, and the record contains sufficient evidence to indicate that this conclusion was reasonable.

The jury’s findings were largely based upon credibility determinations and weighing of conflicting evidence. Although the evidence as a whole was conflicting, there are two reasonable interpretations of the evidence. “[W]here two permissible views of the evidence exist, the factfinder’s choice between them cannot be manifestly erroneous or clearly wrong.” **Stobart v. State, through Dept. of Transp. and Development**, 617 So.2d 880, 883 (La. 1993). And we are reluctant to disturb such credibility determinations. Therefore, we hold that the evidence presented at trial reasonably supports the jury’s conclusion that the accident at issue did not cause or aggravate any of plaintiffs’ injuries. The record provides a reasonable factual basis for the jury’s findings. And because the jury’s verdict was not contrary to the law and evidence, and did not result in a miscarriage of justice, the trial court did not err or abuse its discretion in refusing to grant a new trial.

CONCLUSION

For the above reasons, the judgments of the trial court denying the motions for a JNOV and a new trial and rendered in accordance with the jury verdict are affirmed. Plaintiffs are cast for all appellate costs.

AFFIRMED.