NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 CA 1762

WFK
JGW
RNP by hfic

VICTORIA GRIMES

VERSUS

MAISON DES AMI OF LOUISIANA, INC.

Judgment Rendered: JUL 24 2013

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On Appeal from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Trial Court No. 537,787

The Honorable Wilson E. Fields, Judge Presiding

* * * * *

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Company

* * * * *

BEFORE: PARRO, WELCH, AND KLINE,[1] JJ.

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[1] Judge William F. Kline, Jr., retired, serving *ad hoc* by special appointment of the Louisiana Supreme Court.

KLINE, J.

This is an appeal by defendants, Maison Des Ami of Louisiana, Inc. (Maison) and Republic Vanguard Insurance Company, following a jury trial in which plaintiff, Victoria Grimes, was found to be entitled to damages for injuries she suffered while at work on the property owned by Maison. Defendants appeal the judgment rendered in accordance with the jury verdict. For the following reasons, we affirm the judgment.

FACTS AND PROCEDURAL HISTORY

This matter arose out of an incident in which plaintiff, a mental health worker who worked for Plantation Mental Health, slipped and fell while at the Maison facility located at 1050 Convention Street in Baton Rouge, Louisiana on November 9, 2004. Maison is a group home that houses forty-six mentally challenged individuals and homeless adults. Plaintiff had several Maison residents as her clients, and she visited the facility to discuss her clients' medication. The fall occurred shortly after 3:00 p.m. in the hallway outside two shower rooms used by the residents of the facility. Plaintiff did not see any water on the floor on her way into the bathroom, but fell on her return. After her fall, the plaintiff noticed water on the floor, and her clothes were wet. Plaintiff contended that the water on the floor was the cause of her fall. She denied that the cause of her fall was that her knee, on which she had had surgery, just gave out.

A jury trial was held on January 17, 2012, through January 20, 2012. After hearing all the evidence and arguments for both sides, the jury returned a verdict in favor of plaintiff, finding no fault on her part. The jury awarded her damages for past pain and suffering, past medical expenses, future medical expenses, past mental anguish, permanent disability, past lost wages, and future lost wages, for a

total of $1,100,068.00[2]. Following the jury verdict, the trial court signed a judgment. The defendants filed a timely motion for judgment notwithstanding the verdict and new trial, which were both denied.

Defendants appeal the judgment. Plaintiff answers the appeal and requests that the amounts awarded for past pain and suffering, past mental anguish, and permanent disability be increased and that damages for future pain and suffering, future mental anguish and loss of enjoyment of life, be awarded.

ASSIGNMENTS OF ERROR

Defendants assign numerous errors, which are summarized as follows:

(1) The trial court erred in allowing the admission of certain evidence;

(2) The trial court erred in excluding a portion of the deposition of a witness, even though the remainder of the deposition was admitted;

(3) The jury erred in finding that the plaintiff carried her burden of proof on fault;

(4) The jury erred in finding that the plaintiff carried her burden of proof regarding causation of her injuries;

(5) The jury improperly considered the amount of insurance limits available;

(6) The damages awarded to the plaintiff were excessive.

Plaintiff answered the appeal, claiming that the amount of damages for past pain and suffering, past mental anguish, and permanent disability are inadequate and requesting an increase in these amounts of damages. She also sought awards for future pain and suffering, future mental anguish, and loss of enjoyment of life.

STANDARD OF REVIEW

Defendants seek to reverse both evidentiary rulings of the trial court and the jury's verdict. Initially, the standard of review for evidentiary rulings of a trial

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[2] There is a discrepancy between the judgment signed by the trial court and the minutes and jury verdict form. The total amount of the signed judgment was $1,100,068, but the minutes and jury verdict form reflect the award to be $1,100,078. This was a miscalculation apparently due to a discrepancy or typo on the award for "future loss of wages, earnings or impairment of earning capacity" for which the signed judgment provided $128,552, but the minutes and jury verdict form depicted $128,562.

court is abuse of discretion. *Brandt v. Engle,* 00-3416 (La. 6/29/01), 791 So.2d 614, 620-21. If the trial court has abused its discretion in its evidentiary rulings, such that the jury verdict is tainted by prejudicial errors, the appellate court should conduct a *de novo* review. *See McLean v. Hunter,* 495 So.2d 1298, 1304 (La. 1986). Errors are prejudicial when they materially affect the outcome of the trial and deprive a party of substantial rights. *Evans v. Lungrin,* 97-0541, 97-0577 (La. 2/6/98), 708 So.2d 731, 735. Thus, a *de novo* review should not be undertaken for every evidentiary error, but should be limited to errors that interdict the fact-finding process. *Wingfield v. State, Department of Transportation and Development,* 01-2668, 01-2669 (La. App. 1 Cir. 11/8/02), 835 So.2d 785, 799, *writs denied,* 03-0313, 03-0339, 03-0349 (La. 5/30/03), 845 So.2d 1059-60, *cert. denied,* 540 U.S. 950, 124 S.Ct. 419, 157 L.Ed.2d 282 (2003).

Consequently, in reaching a decision on an alleged evidentiary error, the court must consider whether the challenged ruling was an abuse of the trial court's discretion and whether the error prejudiced the adverse party's cause; for unless it did, reversal is not warranted. *Wallace v. Upjohn Co.,* 535 So.2d 1110, 1118 (La. App. 1 Cir. 1988), *writ denied,* 539 So.2d 630 (La. 1989); *see* La. Code Evid. art. 103. Moreover, the party alleging error has the burden of showing the error was prejudicial and had "a substantial effect on the outcome of the case." *Brumfield v. Guilmino,* 93-0366 (La. App. 1 Cir. 3/11/94), 633 So.2d 903, 911, *writ denied,* 94-0806 (La. 5/6/94), 637 So.2d 1056. Ultimately, the determination is whether the error, when compared to the record in its totality, has a substantial effect on the outcome of the case. *Wallace,* 535 So.2d at 1118. To reiterate, absent a prejudicial error of law, this court is not required to review the appellate record *de novo. Brumfield,* 633 So.2d at 911 (*citing Rosell v. ESCO,* 549 So.2d 840 (La. 1989)).

Defendants seek to reverse the jury verdict in favor of plaintiff on the factual issues. An appellate court cannot set aside findings of fact by the trier of fact in the absence of manifest error or unless those findings are clearly wrong. *Rosell,* 549 So.2d at 844. If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse those findings even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. *Id.* In order to reverse a fact finder's determination of fact, an appellate court must review the record in its entirety and (1) find that a reasonable factual basis does not exist for the finding, and (2) further determine that the record establishes that the fact finder is clearly wrong or manifestly erroneous. *Stobart v. State, through Dep't of Transp. and Dev.,* 617 So.2d 880, 882 (La. 1993). Thus, when there are two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous. *Id.* at 883.

LAW AND ANALYSIS

Evidentiary Rulings

Other wrongs

In their first assignment of error, the defendants claim that the trial court erred in admitting the evidence of inspection findings by city and state agencies, by admitting hearsay testimony, and by permitting the testimony of an expert on the "reasonableness" of the conditions at Maison. Defendants maintain that numerous inspection reports, which the trial court admitted into evidence, were offered in violation of Louisiana Code of Evidence article 404(B), which provides:

> **Other crimes, wrongs, or acts.** (1) Except as provided in Article 412 [sexual crimes], evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for **other purposes**, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a

> criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding. (Emphasis added).

While defendants cite the first sentence of Article 404(B), they fail to acknowledge the **other reasons** for which other wrongs or acts are admissible. The defendants have the burden of showing the error was prejudicial and had "a substantial effect on the outcome of the case." *Brumfield,* 633 So.2d at 911. Defendants have made no showing as to prejudicial error or a "substantial effect on the outcome of the case." Absent this showing, this court is jurisprudentially limited to accepting the trial court's evidentiary ruling. *See Brumfield,* 633 So.2d at 911 (*citing Rosell,* 549 So.2d at 844.).

An appellate court must place great weight on the trial court's ruling of relevancy and admissibility of evidence and should not reverse that ruling absent a clear abuse of discretion. *Louivere v. Huey P. Long Medical Center,* 97-45 (La. App. 3 Cir. 6/11/97), 697 So.2d 1331, 1337, *writ denied*, 97-1859 (La. 11/7/97), 703 So.2d 1265. A trial court does not abuse its discretion by admitting evidence which is related to a pattern. *See Louivere,* 697 So.2d at 1338.

Pursuant to Article 404(B), evidence of other crimes or misconduct is inadmissible to prove the character of a person in order to show that he acted in conformity therewith. However, as previously noted, evidence may be admissible for other purposes. *See* La. Code Evid. art. 404(B); *State v. Silguero,* 608 So.2d 627, 629 (La. 1992). In the instant case, the evidence of other acts was offered to prove a pattern showing that Maison had knowledge of the water on the floor and that it lacked any kind of plan or procedure to remedy the problems associated with running a group home. Under these circumstances, the trial court did not err in admitting evidence of Maison's knowledge of other incidents and its disregard of

the danger in the face of that knowledge. *See Angeron v. Martin,* 93-2381 (La. App. 1 Cir. 12/22/94), 649 So.2d 40, 44.

Furthermore, the record contains ample evidence for the jury to have concluded that Maison was negligent in its practices and procedures with regard to the showers at the facility. Besides the reports of which defendants complain, four employees of Maison testified that the problem with water on the floor in front of the shower was a chronic, ongoing issue. Vada Elliott, a mental health professional who became interim Executive Director, testified that there were ongoing problems with the patients at the facility failing to dry off in the shower and dripping water onto the floor in the hallway outside the showers. Ms. Elliott also testified that the staff was aware of the problems with water on the floor by the showers. Vivian Jackson, a house manager at Maison, testified that every time one of the patients showered, water would get on the floor. Marvel Hawkins, who had worked at Maison as direct care staff, house manager, and interim executive director, testified that because the showers were not large enough for the patients to dry themselves off, many residents came out of the shower or ran to their rooms, tracking water onto the hallway. Carolyn Mosely, a mental health technician at Maison, testified that she saw water on the floor basically every day caused by residents tracking out of the showers. Ms. Grimes, the plaintiff, testified that the day of the accident, she fell because of water on the floor.

Thus, there is sufficient evidence in the record that Maison had a problem with the residents tracking water from the showers and that there was water on the floor on the day of the plaintiff's accident. Therefore, any error in admitting inspection reports that disclosed other problems at the facility was harmless error.

Hearsay

Defendants also claim that the trial court incorrectly admitted the hearsay testimony of Shante Webb, Executive Director of Maison. Ms. Webb was asked to refresh her memory with previous deposition testimony. Over defendants' objection, the trial judge allowed Ms. Webb to agree that she earlier had testified that "some of the residents mentioned that [plaintiff] fell because they were told that there was water on the floor." The statement by Ms. Webb is clearly hearsay in violation of Louisiana Code of Evidence article 801(C), which provides, "'[h]earsay' is a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted." Although plaintiff refreshed her memory with her deposition testimony, pursuant to Louisiana Code of Evidence article 612(A), the statements she made were still hearsay and inadmissible.

Even if the refreshed testimony was offered for an improper hearsay purpose, such as establishing that the plaintiff fell on water on the floor, any such error was harmless. The admission of hearsay testimony is subject to the harmless error analysis. *Clement v. Graves,* 04-1831 (La. App. 1 Cir. 9/28/05), 924 So.2d 196, 204-05. The admission of a hearsay statement that is merely **cumulative** or corrobative of other evidence is generally held to be harmless error. *Id.* at 205. The admission of Ms. Webb's testimony that some of the residents told her that plaintiff fell because they were told there was water on the floor is cumulative, and therefore, is harmless error.

Similarly, the defendants claim that Penny Blanchard, who employed Ms. Grimes as an evening caregiver for Ms. Blanchard's invalid husband, was impermissibly allowed to testify as to the plaintiff's statements regarding her own

inability to work following the November 9, 2004 accident. We agree with the trial court that the plaintiff's own statement that she could not work is admissible.

Expert Testimony

The defendants' final assignment of error relative to evidentiary rulings concerns the opinion of Dennis Howard, a safety expert, that the condition of the hallway at Maison was unreasonable. Louisiana Code of Evidence article 703 provides, "[t]he facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence." Mr. Howard was accepted as a safety expert at trial and permitted to testify as to whether there was an unreasonable risk of harm at Maison.

An expert is entitled to rely on his perceptions or facts known to him at or before trial. La. Code Evid. art. 703. Mr. Howard visited Maison in October, 2007. Based on his observations and testing done that day, he determined that the hallway at Maison in front of the showers presented an unreasonable risk of harm. Mr. Howard also testified that "[t]he term reasonableness is one that has to be applied with some sense of utility, cost, service, and value coming from those things. And certainly the concept of accident prevention is one that would be included in that."

It is well settled that the trier of fact is not bound by the testimony of an expert, but such testimony is to be weighed the same as any other evidence. The trier of fact may accept or reject, in whole or in part, the uncontradicted opinions expressed by an expert. *See Harris v. State ex rel. Department of Transportation and Development,* 07-1566 (La. App. 1 Cir. 11/10/08), 997 So.2d 849, 866, *writ*

denied, 08-2886 (La. 2/6/09), 999 So.2d 785. The opinions of Mr. Howard were uncontradicted, as defendants did not have an expert testify on their behalf. The jury was free to accept or reject the opinions of Mr. Howard under the facts of this case. The trial court committed no error by allowing Mr. Howard to testify as to the reasonableness or unreasonableness of the risk of harm at Maison.

Deposition Testimony

Defendants also claim that the trial court erred in excluding a portion of the deposition of Dr. Gray Barrow that was offered by defendants, when the rest of the deposition was admitted by plaintiff. The deposition testimony offered by the defendants is as follows:

> Q. [M]ore probably than not the back pain she was experiencing at the time Dr. Isaza operated on her was not coming from her disc?
>
> A. I—I can't say that with any certainty. I mean, you heard me explain one possible reason that she could still be hurting if that was the source of her pain, even though he corrected that. I mean, the distribution of the symptoms that she had when I saw her, I mean, was almost classic.
>
> I mean, the L4-5 level and the L5 nerve root comes out and goes down the side of your leg and into the big toe. I mean, that's like what we learned in our first anatomy class. I mean, I felt pretty confident that that's where her pain was coming from.

The trial court did not permit the above exchange into evidence, as the question was asked by defendants at a deposition after defendants had already cross-examined the witness. Reexamination is allowed under La. Code Evid. art. 611(D) when new matters are brought out on redirect. The matter of permitting recross-examination is in the sound discretion of the trial court, whose rulings will not be overturned in the absence of some showing of an abuse of discretion and resulting prejudice. *State v. King,* 355 So.2d 1305 (La. 1978); *Community Bank of Lafourche v. Motel Management Corp. of Louisiana, Inc.,* 558 So.2d 641, 645 (La. App. 1 Cir. 1990).

In the present case, no new matter was brought out on redirect entitling defendants to recross Dr. Barrow under La. C.E. art. 611. When no new issues are raised on redirect examination, recross-examination is generally not proper. *State v. Hidalgo,* 95-319 (La. App. 5 Cir. 1/17/96), 668 So.2d 1188, 1194. Under the facts of this case, we cannot conclude that the trial court abused its discretion in disallowing this evidence. We find no prejudice to the defendants in the present case, inasmuch as the trial court made a determination well within its discretion.

Defendants complain that the trial court violated La. C.C.P. art. 1450(A)(4) when it disallowed the additional deposition testimony. Article 1450(A)(4) provides:

> If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which, in fairness, should be considered with the part introduced, and any party may introduce any other parts.

Defendants, however, fail to cite the beginning of La. C.C.P. art. 1450(A), which states as follows:

> A. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, **so far as admissible under the Louisiana Code of Evidence applied as though the witnesses were then present and testifying,** may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions... . (Emphasis added).

The trial court did not err in determining that the testimony of Dr. Barrow on **recross-examination** was not admissible under the Code of Evidence because no new matter was brought out on redirect entitling recross of Dr. Barrow. Therefore, the trial judge could properly exclude the recross-examination of Dr. Barrow taken during a deposition.

Plaintiff's Burden of Proof as to Fault

Defendants contend that the jury erred in finding Maison at fault for the plaintiff's damages. They base their claim on the fact that water can be found in any house from a number of sources, such as dropped ice, splashed water, or dripping water in any kitchen. Therefore, defendants claim that water on terrazzo floors around drinking fountains in public buildings, on vinyl tile in a residential kitchen, or on vinyl tile in the hallway outside the shower in a non-profit residential building cannot be unreasonably dangerous.

A court of appeal may not set aside a jury's findings of fact absent manifest error or unless it is clearly wrong. *Rosell,* 549 So.2d at 844. In light of the degree of deference afforded to the fact finder, in this case the jury, we cannot say that the decision that Maison was at fault was clearly wrong.

The owner or custodian of a thing is answerable for damage occasioned by its ruin, vice, or defect, only upon a showing that he knew or, in the exercise of reasonable care, should have known of the ruin, vice, or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care. La. Civ. Code art. 2317.1; *see Vinccinelli v. Musso*, 01-0557 (La. App. 1 Cir. 2/27/02), 818 So.2d 163, 165, *writ denied*, 02-0961 (La. 6/7/02), 818 So.2d 767. The plaintiff has the burden of proving that: (1) the property which caused the damage was in the "custody" of the defendant; (2) the property had a condition that created an unreasonable risk of harm to persons on the premises; (3) the unreasonably dangerous condition was a cause in fact of the resulting injury; and (4) that defendant had actual or constructive knowledge of the risk. *Vinccinelli*, 818 So.2d at 165; *see also Farr v. Montgomery Ward and Co., Inc.*, 430 So.2d 1141, 1143 (La. App. 1 Cir.), *writ denied*, 435 So.2d 429 (La. 1983). Whether a thing contains

an unreasonably dangerous condition is a mixed question of fact and law or policy that is subject to the manifest error standard of review on appeal. *Reed v. Wal-Mart Stores, Inc.,* 97-1174 (La. 3/4/98), 708 So.2d 362, 364.

In the instant case, the parties stipulated that Maison is the owner and operator of a group home facility where plaintiff fell while walking down a hallway opposite the two showers at the facility. During the trial, the defendants also stipulated, after much testimony to the same, that the residents of the group home frequently got water on the floor when they took a shower. In support of that stipulation, the employees testified. Vada Elliott, the interim Executive Director at the time of the accident, arrived at the scene shortly after the plaintiff fell. The plaintiff informed Ms. Elliott that she had fallen in the hallway by the showers on water that was on the floor. Ms. Elliott observed that the area had been freshly mopped. Ms. Elliott testified that some of the residents did not dry off in the shower and would drip water onto the floor. The problem with the residents dripping water was described by Ms. Elliott as an "on-going problem," which was addressed at meetings with the residents. Ms. Elliott also testified that there was never any discussion by Maison as to putting mats or anything else in the hallway. Ms. Elliott further testified that she did not observe standing water in the area where the plaintiff fell, but that water had been freshly mopped.

Vivian Jackson, a house manager at Maison, testified that after hearing the plaintiff yell, she went to the scene, helped the plaintiff off the floor, and observed water on the floor that had come from the shower. Ms. Jackson was helped by Brent Fourrier, a resident of Maison, who was wet. She also observed that the plaintiff's clothes were wet.

The plaintiff testified that after leaving the bathroom, she fell right in front of the showers. Ms. Grimes also testified that the shower is pretty close to the

hallway at Maison. She noticed once she was on the ground that there was water on the floor and her clothes were wet. Ms. Grimes also testified that while she did not see any water before she fell, she did see water when she was on the floor.

It was reasonable from the evidence offered by the plaintiff, for the jury to find an unreasonably dangerous condition existed at the facility, which Maison did nothing to repair or cure. Maison had knowledge that water from the showers commonly got onto the floors in the hallway by the showers. Shante Webb, the Executive Director of Maison, testified that Maison had no documents to produce regarding the use of showers or problems with water on the floor.

The defendants presented no witnesses at the trial. There was no evidence of any policies and procedures to clean the water from the floor once the hallway got water on it. There was no testimony as to any warning signs used by Maison to warn visitors as to the water commonly found on the floor by the showers. While defendants may not have known that water was actually on the floor on November 9, 2004, there is ample evidence to show that Maison had constructive knowledge of water in front of the showers.

Defendants claim that there was not enough time for them to discover the water on the floor. While defendants do not cite LSA-R.S. 9:2800.6, they appear to argue that plaintiff's burden was not met because of the short time the water was on the floor. Louisiana Revised Statutes 9:2800.6 applies to a plaintiff's burden of proof against merchants. Maison is not a merchant. Once a plaintiff in a slip and fall case establishes that a fall occurred and injury resulted from a foreign substance on the premises, the burden shifts to the defendant to exculpate itself from negligence. *See Williams v. Finley, Inc.,* 04-1617 (La. App. 3 Cir. 4/6/05), 900 So.2d 1040, 1043, *writ denied*, 05-1621 (La. 1/9/06), 918 So.2d 1050. Despite defendants' argument that the hallway did not present an unreasonable risk of

harm, because there was no evidence that anyone else had ever slipped or fallen in the hallway, defendants presented no witnesses and no exculpatory evidence in this regard.

The trier of fact or jury's finding of whether a defect creates an unreasonable risk of harm is subject to a manifest error standard of review. *Reed*, 708 So.2d at 365. Because we find that the jury's verdict was reasonable and supported by the record, we agree with the judgment of trial court.

Medical Causation

Whether an accident caused a person's injuries is a question of fact and should not be reversed absent manifest error. *Housley v. Cerise*, 579 So.2d 973, 975 (La. 1991). Plaintiff must prove, by a preponderance of the evidence, the existence of the injuries and a causal connection between the injuries and the accident. *See Yohn v. Brandon,* 01-1896 (La. App. 1 Cir. 9/27/02), 835 So.2d 580, 584, *writ denied,* 02-2592 (La. 12/13/02), 831 So.2d 989. The test to determine if that burden has been met is whether the plaintiff proved through medical testimony that it is more probable than not that the injuries were caused by the accident. *Id.* Generally, the effect and weight to be given medical expert testimony is within the broad discretion of the fact finder. *Id.* The law is well settled that where the testimony of expert witnesses differs, the trier of fact has great, even vast, discretion in determining the credibility of the evidence, and a finding in this regard will not be overturned unless it is clearly wrong. *Cotton v. State Farm Mutual Automobile Insurance Company,* 10-1609 (La. App. 1 Cir. 5/6/11), 65 So.3d 213, 220, *writ denied,* 11-1084 (La. 9/2/11), 68 So.3d 522.

On review of the record, we conclude that the jury's finding of causation is supported by the record and is not manifestly erroneous. Clearly, the jury found that the plaintiff's injuries were caused by the November 9, 2004 fall at Maison.

Even though plaintiff had pre-existing conditions, the defendants had ample opportunity to cross-examine all of the medical providers of plaintiff. Dr. Larry Messina testified that the fall of November 9, 2004, strained plaintiff's knee and aggravated a pre-existing back condition. Dr. Barrow testified that the plaintiff's fall at Maison aggravated her pre-exisiting problems with her back. Dr. Barrow also testified that the MRI taken of the plaintiff after the November 9, 2004 fall showed a right L4-5 disc herniation, which was not present on a previous MRI, and that the disc herniation was a result of the 2004 fall. Dr. Jorge E. Isaza, who performed surgery on plaintiff's back in May 2005, also testified that the 2004 fall caused the plaintiff's L4-5 disc herniation. Dr. Barrow testified at trial that the fusion surgery performed by Dr. Isaza was necessitated by plaintiff's fall on November 9, 2004. The plaintiff continued to experience back and neck pain following her 2005 surgery until at least 2010. Defendants offered no medical testimony to negate the testimony of Drs. Messina, Barrow, and Isaza. We cannot conclude that the jury was clearly wrong in finding medical causation in the present case.

Excessive Damages

Defendants assign as error that the damages were excessive and that plaintiff is not entitled to the medical specials and lost income the jury awarded. An appeal court should rarely disturb an award of damages, since great discretion is vested in the trial court. *Youn v. Maritime Overseas Corp.,* 623 So.2d 1257, 1261 (La. 1993), *cert. denied,* 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994). It is well-settled that a judge or jury is given great discretion in its assessment of quantum of both general and special damages. *Guillory v. Lee,* 09-0075 (La. 6/26/09), 16 So.3d 1104, 1116-17. Furthermore, the assessment of quantum, or the appropriate amount of damages, by a trial judge or jury is a determination of fact

that is entitled to great deference **on review**. *Wainwright v. Fontenot*, 00-0492 (La. 10/17/00), 774 So.2d 70, 74.

The role of an appellate court in reviewing general damages is not to decide what it considers to be an appropriate award, but rather to review the exercise of discretion by the trier of fact. *Wainwright,* 774 So.2d at 74; *Youn,* 623 So.2d at 1261. The initial inquiry by the appellate court is whether the award is a clear abuse of that "much discretion" of the trier of fact. *Youn,* 623 So.2d at 1260. Reasonable persons frequently disagree about the measure of general damages in a particular case. *Youn,* 623 So.2d at 1261. Only after it is determined that there has been an abuse of discretion is a resort to prior awards appropriate, and then only to determine the highest or lowest point of an award within that discretion. *Coco v. Winston Indus., Inc.,* 341 So.2d 332, 335 (La. 1976).

Defendants specifically complain about the medical special damages and lack of causation. As stated above, this court will not overturn the factual finding of medical causation absent manifest error or the special damages absent an abuse of discretion. Defendants have pointed to no abuse of discretion on the part of the jury with regard to the medical special damages. A review of the medical testimony, especially of Dr. Isaza, reveals that the jury could reasonably find that plaintiff could not return to work after the 2004 fall at Maison. The record sufficiently supports the award of lost wages.

Insurance Limits Read to Jury

Louisiana Code of Evidence article 411 clearly provides that "the amount of coverage under [a] policy shall not be communicated to the jury unless the amount of coverage is a disputed issue which the jury will decide." The parties in the present case stipulated to the amount of the policy limits. During his opening statement, counsel for plaintiff read the entire stipulation, that included the amount

of the policy limits. Defendants objected, and the trial court overruled the objection.

We acknowledge that it is difficult to "unring the bell." However, the party alleging error has the burden of showing the error was prejudicial to its case. This requires proof that the error, when compared to the record in its totality, has a substantial effect on the outcome of the case. *L & A Contracting Co., Inc. v. Ram Indus. Coatings, Inc.*, 99-0354 (La. App. 1 Cir. 6/23/00), 762 So.2d 1223, 1234, *writ denied,* 00-2232 (La. 11/13/00), 775 So.2d 438. The defendants offer no showing that the error was prejudicial. The only argument offered by defendants on this issue is the following:

> It is not a coincidence that the verdict came in at the level it did. This to some extent accounts for the jury's excessive damage award.

The defendants have not carried their burden of showing prejudicial error. Furthermore, given that the jury found the plaintiff had no fault in causing her injuries and found her past and future medical special damages to be $456,870, we cannot agree that reading the policy limits to the jury, which awarded total damages of $1,100,068.00, resulted from prejudicial error.

Answer to Appeal

Plaintiff answers the appeal, claiming that the jury awards of $50,000 for past physical pain and suffering, $50,000 for past mental anguish, and $10,000 for permanent disability are inadequate and should be increased. Plaintiff also claims that an award for future physical pain and suffering, future mental anguish, and loss of enjoyment of life should have been made by the jury.

Much discretion is left to the judge or jury in the assessment of general damages. La. Civ. Code art. 2324.1. In reviewing an award of general damages,

the court of appeal must determine whether the trier of fact has abused its much discretion in making the award. *Youn,* 623 So.2d at 1260.

Reasonable persons frequently disagree about the measure of general damages in a particular case. It is only when the award is, in either direction, beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the particular plaintiff that the appellate court should increase or reduce the award. *Short v. Terminix Pest Control, Inc.,* 11-2293 (La. App. 1 Cir. 9/21/12), 104 So.3d 119, 123. This court does not find that the award is beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the plaintiff. Accordingly, the plaintiff's answer to the appeal is denied.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed, and the plaintiff's answer to the appeal is denied. Costs of the appeal are assessed to defendants, Maison Des Ami of Louisiana, Inc. and Republic Vanguard Insurance Company.

JUDGMENT AFFIRMED; ANSWER TO APPEAL DENIED.