STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2022 CA 0113

BRANDON TWILLIE

VERSUS

LIEUTENANT MATTHEWS; CAPTAIN ECKART; MEDICAL DIRECTOR AND STATE OF LOUISIANA THROUGH LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS DIXON CORRECTIONAL CENTER

Judgment Rendered: NOV 0 4 2022

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Appealed from the
Twentieth Judicial District Court
In and for the Parish of East Feliciana
State of Louisiana
Suit Number 45238

Honorable Kathryn E. Jones, Presiding

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BEFORE: WHIPPLE, C.J., GUIDRY, AND WOLFE, JJ.

GUIDRY, J.

Defendant/appellant, State of Louisiana through the Department of Public Safety and Corrections (DPSC), appeals from a judgment of the trial court rendered against it and in favor of plaintiff/appellee, Brandon Twillie, awarding Twillie twenty thousand dollars ($20,000.00), plus interest from the date of judicial demand, and costs. Twillie also filed an answer to the appeal. For the reasons that follow, we affirm the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

Twillie, an inmate in the custody of DPSC and housed at Dixon Correctional Institute (DCI), filed a petition for damages, naming as defendants DPSC and DPSC or DCI employees, Captain Linda Eckart, Lieutenant Eric Matthews, and the Medical Director of DCI, Travis Day. Twillie alleged that on July 28, 2017, he fell while exiting the bathroom and appeared unconscious. Twillie alleged that Eckart and Matthews responded and as he lay on the ground face down with his hands cuffed behind his back, Matthews jumped down on Twillie and slammed his knee into Twillie's neck with force. Twillie alleged that Matthews and Eckart then lifted him by his hands and feet, slammed him onto a stretcher, and wheeled him to the infirmary, at which point he felt numb.

Twillie alleged that after going to the infirmary, Matthews and Eckart took Twillie back to his cellblock in a wheelchair. While being lifted out of the wheelchair, Twillie complained of severe pain, but Matthews and Eckart did not respond to his complaints. Twillie alleged that while in the cellblock, he made a sick call, which was ignored, and upon his release from the cellblock he made an emergency sick call, advising the medical staff of his pain and lack of feeling. Twillie alleged that he was told his symptoms were from muscle spasms, with no physical exam or testing of his neck, and he was sent back to his dorm without being seen by a doctor or having any x-rays.

Twillie alleged that he waited two days to see if the pain improved, after which he returned to the infirmary where he fell and was unable to move. Twillie alleged that he pleaded for assistance but no one helped him; rather, Twillie alleged that he was ordered to get up and that he had to walk back to his dorm unassisted and without receiving any medical attention. Twillie alleged that he did not seek medical treatment again until October, when he went to the infirmary for a broken toe and told the doctor about his other medical issues. Two days later, Twillie had an x-ray performed and, immediately after returning to his dorm, was called back to the infirmary, placed in a wheelchair, and told not to move his head or neck. Twillie alleged he was then diagnosed with a broken neck and spinal damage and was taken to University Medical Center in New Orleans (UMC) for emergency spinal surgery.

Twillie alleged that as a result of defendants' actions, he sustained permanent injuries and asserted claims for negligence regarding the denial of medical treatment and failure of the medical staff to monitor or examine his neck and spine as well as claims for respondeat superior, *res ipsa loquitur*, and defective premises. Following a bench trial on July 8, 2021, the trial court ruled in favor of Twillie and against DPSC, awarding Twillie $20,000.00 in general damages and all costs of the proceeding. (R. 275)

Thereafter, Twillie filed a motion to tax costs and attached as an exhibit the expense sheet prepared by Twillie's counsel. The matter was heard on December 6, 2021. DPSC did not file an opposition to the motion but objected to the evidence offered by Twillie at the hearing. The trial court overruled DPSC's objection and allowed Twillie to file a supplement to his motion to tax costs. After Twillie supplemented his motion to tax costs, the trial court signed a judgment in conformity with its ruling, awarding Twillie $20,000.00, plus interest from date of judicial demand, and costs in the amount of $5,860.55 plus clerk's costs in the amount of

$6,084.94, for total costs in the amount of $11,945.49. The judgment also dismissed Twillie's claims against Matthews, Eckart, and Day.

DPSC now appeals from the trial court's judgment asserting that the trial court erred in finding that the medical care provided by DPSC to Twillie was unreasonable, that the award of $20,000.00 in general damages is excessive and abusively high, and that trial court erred in overruling its objection to Twillie's evidence offered in support of his motion to tax costs. Twillie answered the appeal seeking an increase in the general damage award and asserting that the trial court erred in dismissing his claims against Matthews and Day.

DISCUSSION

Reasonable Medical Care

The standard of care imposed upon the Department of Public Safety and Corrections in providing for the medical needs of inmates is that those services be reasonable. La. R.S. 15:760; La. R.S. 15:831; Robinson v. Stalder, 98-0558, p. 5 (La. App. 1st Cir. 4/1/99), 734 So. 2d 810, 812. Reasonable medical services have been recognized to include, among other things, the diagnosis and treatment of inmates by physicians and surgeons duly qualified and licensed in accordance with the laws of the State of Louisiana to practice medicine in the State of Louisiana. See Dancer v. State through Department of Corrections, 282 So. 2d 730, 734 (La. App. 1st Cir. 1973). Registered nurses, while authorized by statute to assess the health status of an individual and offer a nursing diagnosis, are not authorized to diagnose medical conditions. See La. R.S. 37:913(13).

In the instant case, on July 28, 2017, Twillie was transported by stretcher to the DCI infirmary. An incident report for that date lists the injury/complaint as "intoxication," however the parties dispute the events occurring prior to Twillie's arrival at the infirmary. Twillie testified that he slipped and fell on his way out of the bathroom and hit his head, resulting in him feeling "woozy." Twillie further

testified that when Matthews and Eckart arrived, they placed him on the floor and he felt a knee on his back and in his neck, after which he felt excruciating pain in his neck and numbness shoot down the right side of his body. However, Matthews testified that when he arrived, Twillie was laying on his stomach on the ground, was unable to move, could not stand on his own, had "slurry" speech, and his eyes were red like he was under the influence of an intoxicating substance. Matthews stated that he restrained Twillie, believing that Twillie was intoxicated, but he did not place any part of his body on Twillie's neck nor did he come down on any part of Twillie's body. Twillie admitted that when he arrived at the infirmary he told "Ms. May" that he was "all rights." No tests were performed at the infirmary to determine his intoxication, and Twillie was returned to the cellblock in a wheelchair.

Twillie testified that upon his arrival back in the cellblock, and while being lifted out of the wheelchair, he felt immediate pain, told the guards that he thought something was wrong with his neck and his spine, and requested that they bring him back to the infirmary. Because he had just returned from the infirmary, the guards refused to bring him back. Therefore, when Twillie returned to his dorm later that day he completed an emergency medical form complaining of neck pain, back pain, and numbness in two of his fingers on his right hand. The medical form entered into evidence indicates that Twillie was seen by a nurse, and after assessing his condition, she told him to take Motrin and use a warm compress.

Twillie testified that he returned to the infirmary the next day on July 29, 2017, complaining of back pain. The medical records indicate that Twillie had fallen and been "handled ... bad while on mojo."[1] After assessment by a nurse, Twillie was educated on stretches and the use of warm compresses was reinforced. Twillie stated that he again returned to the infirmary on August 1, 2017, complaining of back

[1] According to the testimony at trial, "mojo" is a form of synthetic marijuana.

and neck pain and numbness in his right hand for the past few days. The medical records indicate that Twillie complained of unbearable pain in his back at the top of his spine and pinching that shoots to his neck. After assessment, the nurse told Twillie to continue using analgesic balm and a note was made for an MD call out.

Twillie returned to the infirmary again on August 12, 2017, complaining that he had nerve damage because he could not feel his hands and fingers. The nurse's assessment states that Twillie's grasp was weaker on his right side and that he cried out that he needed to go to the hospital. The medical records indicate that an x-ray was scheduled for August 14, 2017; however, for reasons disputed by the parties, that x-ray was not performed.[2]

Twillie was not seen again until September 14, 2017, when he returned to the infirmary complaining of his toe, which he fractured in June 2017, and nerve irritation on his right side as well as numbness in his fingers. Twillie indicated that the toe injury had not improved since his injury three months prior, and that the nerve irritation and numbness had been ongoing for the past month and a half. The nurse's note in the medical records indicates that Twillie was already scheduled to see a health care practitioner, but there is no indication when that appointment was to occur.

Thereafter, on October 2, 2017, Twillie saw Dr. MacMurdo. The records indicate that Twillie complained of neck pain after diving on his head while on mojo in August 2017. Dr. MacMurdo ordered an x-ray, which was performed on October 4, 2017, and indicated a cervical fracture. Twillie was placed in a cervical collar and a wheelchair and was transported to UMC on October 4, 2017, where he was diagnosed with a closed displaced fracture of the sixth cervical vertebra. Twillie was placed in traction in the intensive care unit and underwent spinal surgery on

[2] Twillie contends that when he went to get the x-ray, he was told that they don't check for nerves. DPSC, however, contends that Twillie did not appear on the date scheduled for the x-ray.

October 6, 2017, to repair the fracture. Twillie was released back to DCI on October 8, 2017, in a cervical collar.

At trial, the parties introduced the deposition testimony of Dr. Gabriel Tender. Dr. Tender, the neurosurgeon at UMC who oversaw Twillie's treatment, stated that all of Twillie's complaints were neurological in nature and that a neurological exam would have been in order for a patient with Twillie's complaints of neck and back injury with numbness in his fingers and right hand. The deposition testimony of Dr. George Smith, an expert in correctional medicine, was also offered into evidence. Dr. Smith also stated Twillie's complaints were neurological in nature and that based on these complaints, and history of injury, the standard of care required that Twillie be examined by a physician and referred for a neurological and radiological workup and consultation. According to Dr. Smith, Twillie should have been seen by a specialist as early as August 1, 2017, and a nurse should not have made a diagnosis of muscle spasm. Finally, Dr. Charles Barkemeyer testified at trial as an expert neurologist for DPSC. Dr. Barkemeyer stated that from July to October 2017, there were no objective signs of injury and that the nurses appropriately treated Twillie's subjective complaints of neck pain and radicular-like symptoms into his arm conservatively.

From our review of the record, we find that it is clear that Twillie was not seen by any medical personnel other than a registered nurse until October 2, 2017, over two months following his initial complaints of neck and back pain with numbness in his right hand and fingers. The trial court was presented with conflicting expert testimony regarding the reasonableness of the medical care provided with regard to the delay in diagnosis and treatment of Twillie's cervical fracture. Accordingly, based on the record before us and the law as detailed above, we find no manifest error in the trial court's finding that a near three-month delay between the accident date and Twillie being examined by a medical doctor, rather than nurses who are not

permitted by law to diagnose medical conditions, was unreasonable considering the physical symptoms described by Twillie.

General Damages

It is well-settled that vast discretion is accorded to the trier of fact in fixing general damage awards. La. C.C. art. 2324.1; Boothe v. Department of Transportation and Development and Parish of East Baton Rouge, 18-1746, p. 9 (La. 6/26/19), 285 So. 3d 451, 457. This vast discretion is such that an appellate court should rarely disturb an award of general damages. 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). Thus, the role of the appellate court in reviewing general damage awards 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. Youn, 623 So. 2d at 1260.

The initial inquiry, in reviewing an award of general damages, is whether the trier of fact abused its discretion in assessing the amount of damages. Boothe, 18-1746 at p. 9, 285 So. 3d at 457. Only after a determination that the trier of fact has abused its "much discretion" is a resort to prior awards appropriate, and then only for the purpose of determining the highest or lowest point which is reasonably within that discretion. Coco v. Winston Industries, Inc., 341 So. 2d 332 (La. 1976). In reviewing the facts, the reviewing court should examine whether the present award is greatly disproportionate to past awards for similar injuries, though prior awards are only a guide. Bouquet v. Wal-Mart Stores, Inc., 08-0309, p. 5 (La. 4/4/08), 979 So. 2d 456, 459.

On appeal, both Twillie and DPSC assert that the trial court abused its discretion in its general damages award, with Twillie asserting the award is abusively low and DPSC asserting the award is abusively high. From our review of

the evidence in the record, we do not find that the trial court's award of $20,000.00 in general damages is an abuse of discretion.

In his deposition testimony, Dr. Smith stated that as of April 2018, Twillie still had complaints of neck pain and that he "absolutely" believed Twillie's negative outcome would have been better had Twillie been properly treated from the beginning with an x-ray and neck collar.

Dr. Tender, however, stated that he thought Twillie had a good outcome from his surgery, and that while Twillie had some residual numbness in his fingertips he only had mild neck pain. Dr. Tender stated that the delay in obtaining an x-ray probably did not affect Twillie's neurological outcome post-surgery, and that a similar result would have been achieved even if Twillie had been treated immediately after the fracture, because the nerve damage probably occurred at the time of fracture.

Additionally, Dr. Barkemeyer testified that he thought Twillie had a great outcome from surgery and there were no objective findings one year after surgery.

Accordingly, based upon the conflicting medical evidence regarding the effect the delay in treatment had on Twillie's post-surgery recovery, we find no error in the trial court's finding that Twillie had met his burden of establishing that he suffered a compensable injury in the form of inadequate medical treatment, and that the unreasonable three-month delay in treatment contributed to and prolonged his pain and suffering. Furthermore, we do not find that the award of $20,000.00 in general damages for the three-month delay in treatment was an abuse of discretion.

Claims against Matthews and Day

In his answer to the appeal, Twillie requests this court find that Matthews caused Twillie's injury and Day was responsible for the denial of medical care from his department.[3]

With regard to the cause of Twillie's injury, we note that Twillie and Matthews presented conflicting testimony as to what caused Twillie's injury. As previously noted, Twillie claimed that Matthews placed a knee on his back and in his neck while Twillie was on the ground, causing excruciating pain in Twillie's neck and numbness shooting down the right side of his body. Matthews, however, denied placing any part of his body on Twillie's neck and denied coming down hard on any part of Twillie's body. Rather, Matthews stated that Twillie's injury occurred as a result of Twillie's own actions in jumping and falling on the floor and hitting his head while on mojo. The medical records also make several references to Twillie telling medical personnel that he jumped from a bed and fell on the floor, hitting his head, while he was on mojo.

Additionally, the medical expert testimony offered at trial differed as to the cause of Twillie's injury. Dr. Smith stated that any kind of force or sudden blow to the back of the neck could cause the type of injury suffered by Twillie, and it was his opinion that Matthews caused the injury when he put his knee in the back of Twillie's neck. Dr. Barkemeyer, however, testified that the injuries of the type suffered by Twillie occur with hyperextension, hyperflexion, or repeated stress but most commonly occur with falls and motor vehicle accidents. Dr. Barkemeyer disagreed that this type of injury could have occurred as a result of a knee to the back of the neck. Finally, Dr. Tender stated that the type of injury suffered by Twillie

[3] We note that Twillie's brief does not specifically address or elaborate on these alleged errors within the section entitled "Liability of Lt. Matthews and Medical Director Travis Day." However, to the extent that the brief can otherwise be construed as addressing these two errors, we will consider these errors on appeal.

could have been caused by a blow to the back of the neck or by falling on his head. Specifically, Dr. Tender noted that people often get this type of injury/fracture after jumping into a pool and hitting their head. Dr. Tender stated that this type of injury is less likely to occur from a slip and fall because significant trauma is needed to create the fracture. Furthermore, Dr. Tender stated that trauma on the cervical spine is much more impactful if you fall on your head than if someone hits you.

From our review of the conflicting lay and expert medical evidence at trial, we find no manifest error in the trial court's determination that Twillie failed to prove by a preponderance of the evidence that his injury was caused by Matthews.

Furthermore, with regard to Day, we likewise find no error in the trial court's judgment dismissing Twillie's claims against him. In brief, Twillie asserts that the trial court erred by not casting Day with liability for failing to supervise the staff, enforce regulations, and taking a "hands-off" approach to the medical treatment at DCI and as such, erred in not finding Day liable in whole or in part for the denial of and/or delay in medical treatment.

At trial, Day testified that he was the Director of Nursing at the time of Twillie's injury and that Dr. Reed was the Medical Director of DCI. Day stated that standing orders are guidelines from physicians to nurses as to what the nurses can or cannot do based upon their assessment of a patient. Day stated that while there are standing orders at the facility which the nurses are to follow, it is the individual assessment by the nurse that dictates which standing order the nurse applies. With regard to this specific case, Day stated that whether a neurological assessment is a standing order or general practice for neck pain and numbness is dependent on the nurse's individual assessment of the patient. Day further stated that he does not train the nurses on assessments, because the nurses are trained in assessing patients in nursing school. Rather, the record of the nurse's assessment is evaluated by a

physician, such as Dr. Reed, and the record shows Dr. Reed's signature on Twillie's medical records.

Accordingly, from our review of the record, we find no error in the trial court's finding that Twillie failed to establish by a preponderance of the evidence that Day failed was liable for the denial of and/or delay in Twillie's medical treatment.

Motion for Costs

In the instant case, following the ruling of the trial court, Twillie filed a motion to tax costs, seeking that the trial court award costs pursuant to La. C.C.P. art. 1920, La. R.S. 33:3666, and La. R.S. 13:4513. DPSC, however, did not file any opposition to Twillie's motion. Rather, DPSC attended the hearing on the motion and objected to the form of evidence offered by Twillie, which consisted of a ledger prepared by Twillie's counsel itemizing costs, but its objection was overruled by the trial court.

Louisiana District Court Rule 9.9 provides, in part:

> (c) A party who opposes an exception or motion shall concurrently furnish the trial judge and serve on all other parties an opposition memorandum so it is received at least eight calendar days before the scheduled hearing, except for motions for summary judgment, which delays are established by La. [C.C.P.] art. 966.
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> * * *
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> (d) Parties who fail to comply with paragraphs (d) and (e) of this Rule may forfeit the privilege of oral argument. If a party fails to timely serve a memorandum, thus necessitating a continuance to give the opposing side a fair chance to respond, the court may order the late filing party to pay the opposing side's costs incurred on account of untimeliness.

It is undisputed that DPSC did not file an opposition to Twillie's motion as required by District Court Rule 9.9. As such, it was within the trial court's discretion to deny DPSC the opportunity to participate in argument or to object at the hearing due to its failure to file an opposition to Twillie's motion. However, it allowed DPSC to lodge an objection, albeit overruling the objection, and permitted Twillie, who had no notice of any opposition to his evidence, to supplement his evidence with supporting invoices. Given that DPSC's objection was limited to the form of

the evidence, and it did not otherwise dispute the amounts contained therein, we find no abuse of the trial court's discretion in overruling DPSC's objection and permitting Twillie to supplement his evidence. See Armstrong v. State Farm Fire and Casualty Company, 423 So. 2d 79, 82 (La. App. 1st Cir. 1982) (decision to hold open or reopen a case for the production of additional evidence is within the sound discretion of the trial court).

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court. All costs of this appeal, in the amount of $3,438.70, are assessed against the State of Louisiana through the Louisiana Department of Public Safety and Corrections.

JUDGMENT AFFIRMED.