

STATE OF MICHIGAN
COURT OF APPEALS

RAYMOND WAKEFIELD,

Plaintiff-Appellant,

v

ED JOHNSON & SONS CAR CARE CENTER, an
assumed name of ED JOHNSON & SONS, INC,

Defendant-Appellee.

UNPUBLISHED

March 9, 1999

No. 204405

Lenawee Circuit Court

LC No. 96-006906 NO

Before: Talbot, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment entered after a jury trial in this negligence action. On appeal, plaintiff challenges the trial court's order denying his motion for additur, or in the alternative, judgment notwithstanding the verdict or a new trial on the issue of damages. We affirm.

This case arises from plaintiff's slip and fall on defendant's business premises. In a special verdict, the jury found that defendant's negligence was a proximate cause of damages sustained by plaintiff. The jury found that plaintiff's past damages for "lost wages from work and medical bills" was \$6,200 for "medical expenses only." The jury also found that plaintiff suffered no damages for "physical pain and suffering, mental anguish, denial of social pleasure and enjoyment, disability, embarrassment, humiliation, and/or mortification." Finally, it awarded plaintiff no future damages.

On appeal, plaintiff first contends that the trial court erred in denying his motion for additur. We disagree. This Court accords due deference to a trial court's decision regarding the grant or denial of additur and will reverse a trial court's decision only if an abuse of discretion is shown. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 172; 568 NW2d 365 (1997). The proper consideration in granting or denying additur is whether the jury award is supported by the evidence. *Id.*

Here, plaintiff contends that additur should have been awarded for past non-economic damages, future non-economic damages, and for lost wages on the basis of the uncontroverted evidence that he suffered lower back pain and missed work as a result of a disc herniation. While it is true that evidence of plaintiff's disc herniation was uncontroverted, evidence regarding both the cause and effect of the disc herniation was in controversy. Defendant's expert testified that there was medical evidence to suggest that it was "certainly possible" plaintiff's disc herniation "pre-dated the slip and fall." Defendant's expert also opined that, with respect to plaintiff's complaints of back pain, the disc herniation did not appear to have "ongoing clinical significance." Moreover, the owner of the defendant company testified that immediately after plaintiff's fall, plaintiff climbed onto the back of a large truck and manually unloaded fifty-eight automobile tires. If the jury believed this testimony, it reasonably could have inferred that plaintiff's injury was not as serious as claimed. Further, despite the fact that plaintiff's expert restricted plaintiff's work activities until May 20, 1996, on a finding that plaintiff was "fully disabled," plaintiff testified that he began working at a new, higher-paying, job after April 20, 1996. Finally, plaintiff testified that, after his fall, the main reason he never went back to his old job was that he did not know what "repercussion" it would have with his employer, given the fact that defendant was a valued customer. This evidence could support a finding that plaintiff did not miss work because of the physical pain caused by his alleged injury. For these reasons, we conclude that the jury's verdict was supported by the evidence adduced at trial, and hold that the trial court did not abuse its discretion in denying plaintiff's motion for additur.

Plaintiff also contends that the trial court erred in denying his motion for judgment notwithstanding the verdict or a new trial on the issue of damages as an alternative to additur. We disagree.

As an initial matter we note that, in this context, a decision by the trial court to grant plaintiff's request for judgment notwithstanding the verdict on the issue of damages would be the equivalent to, rather than an alternative to, granting his motion for additur. Accordingly, that particular contention has already been addressed by this Court. As a true alternative to additur, it was within the trial court's discretion to grant a new trial on the issue of damages. *Joerger, supra* at 172. This Court will not interfere with a trial court's decision regarding a motion for new trial absent a palpable abuse of discretion. *Id.* An abuse of discretion exists when a decision is so grossly violative of fact and logic that it evidences perversity of will, defiance of judgment, and the exercise of passion or bias. *Marrs v Board of Medicine*, 422 Mich 688, 694; 375 NW2d 321 (1985), quoting *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959). Stated differently, an abuse of discretion may also be found if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling. See, e.g., *Cleary v The Turning Point*, 203 Mich App 208, 210; 512 NW2d 9 (1994).

Here, on the basis of the evidence outlined in our analysis of plaintiff's first issue, the trial court was justified in denying plaintiff's motion for new trial. Accordingly, we hold that its decision to allow the jury's verdict to stand did not constitute a palpable abuse of discretion.

Affirmed.

/s/ Janet T. Neff

/s/ Michael R. Smolenski

/s/ Michael J. Talbot