

STATE OF MICHIGAN  
COURT OF APPEALS

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MARCIA OLECHOWSKI,

Plaintiff-Appellee,

v

CAD ENTERPRISES, d/b/a CHARLIE'S TOO  
LOUNGE, a Michigan Corporation,

Defendant-Appellant.

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UNPUBLISHED

December 26, 2000

No. 218039

Wayne Circuit Court

LC No. 97-739926-NO

Before: Doctoroff, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from a trial court order denying her motion for partial new trial or additur. We affirm.

This premises liability case arose when plaintiff slipped and fell on icy pavement outside defendant's bar. The jury found that defendant was negligent and awarded plaintiff \$806 for medical expenses, but no noneconomic damages. The jury also attributed forty percent comparative negligence to plaintiff, and the court reduced her award accordingly. Plaintiff subsequently moved for partial new trial on the issue of damages or for additur, arguing that the jury's determination that plaintiff was not entitled to damages for pain and suffering was against the great weight of the evidence and that the award was grossly inadequate. After a hearing, the court denied plaintiff's motions.

Plaintiff now challenges the trial court's ruling on the ground that the verdict was grossly inadequate and against the great weight of the evidence. We review a trial court's decision on a motion for additur or a new trial for an abuse of discretion. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 172; 568 NW2d 368 (1997); *Settingington v Pontiac General Hospital*, 223 Mich App 594, 608; 568 NW2d 93 (1997).

The proper consideration when reviewing a denial of additur is whether the jury award is supported by the evidence. *Settingington, supra* at 608. The trial court's inquiry is limited to objective consideration regarding the evidence adduced and the conduct of the trial. *Id.* A jury is free to accept or reject a plaintiff's testimony regarding damages and is not obligated to award damages simply because liability was found. *Joerger, supra* at 172-173. Furthermore, a trial court's decision to deny additur is entitled to considerable deference on appeal. Having had the opportunity to evaluate the jury's reaction to the witnesses and proofs, the trial court stands in the

best position to consider the merits of a motion to adjust the jury's award of damages. *Palenkas v Beaumont Hospital*, 432 Mich 527, 533-534; 443 NW2d 354 (1989).

Here, the jury heard evidence that plaintiff suffered from osteoporosis before the accident, had surgery on her arm and knee before the accident, and did not follow the recommendations of her physician to visit a pain clinic. The jury could have reasonably concluded that plaintiff was not entitled to damages for pain and suffering because of her failure to mitigate her injuries or because her pain and suffering was the result of pre-existing conditions unrelated to her fall. The jury's award was not grossly inadequate or against the great weight of the evidence, and the trial court did not abuse its discretion in denying plaintiff's motion for additur.

Plaintiff's argument for a partial new trial is also without merit. The trial court may grant a new trial where irregularities materially affected a party's substantial rights. MCR 2.611(A)(1); *Poirier v Grand Blanc Twp (After Remand)*, 192 Mich App 539, 547; 423 NW2d 351 (1992). We will not reverse a court's decision on a motion for a new trial absent a palpable abuse of discretion. *Setterington, supra* at 608. After a review of the record, we conclude that a new trial was not warranted and find no abuse of discretion in the court's decision to deny plaintiff's motion for a partial new trial.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Patrick M. Meter