

STATE OF MICHIGAN
COURT OF APPEALS

ANNIE MORRIS and ROBERT MORRIS,

Plaintiffs-Appellees,

v

WILLIAM BEAUMONT HOSPITAL,

Defendant-Appellant.

UNPUBLISHED

July 9, 2002

No. 230450

Oakland Circuit Court

LC No. 99-013872-NO

Before: Markey, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendant appeals by right a judgment in favor of plaintiffs following a jury award of past, present, and future damages to plaintiff¹ Annie Morris and her husband, Robert Morris. We affirm.

Plaintiff was admitted to defendant hospital as an emergency room patient. After she was admitted to the hospital, plaintiff was injured while being transported to her hospital room. Specifically, the hospital transporter lost control of the stretcher on which plaintiff was lying, and it crashed into a wall and plaintiff's arm was injured as a result. Plaintiff suffered displaced fractures to the radius and ulna bones of her forearm and required surgery to repair her arm. During her hospitalization and sometime after her surgery, plaintiff suffered a right-sided stroke with left-sided weakness. Plaintiff brought a negligence action against defendant. The jury found in favor of plaintiff on the issue of plaintiff's fractured arm and awarded her past, present, and future damages and awarded plaintiff's husband loss of consortium damages.

Defendant first argues that it was entitled to a directed verdict on the issue of proximate cause because the jury was allowed to consider the issue, and thus, the jury allowed plaintiff's stroke to influence its verdict. We disagree. This Court reviews de novo the grant or denial of a directed verdict. *Cacevic v Simplimatic Engineering Co (On Remand)*, 248 Mich App 670, 679; ___ NW2d ___ (2001). In reviewing the trial court's decision, this Court views "the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, granting that party every reasonable inference, and resolving any conflict in the evidence in that party's favor to decide whether a question of fact existed." *Id.* Directed verdicts are viewed

¹ "Plaintiff" will refer to Annie Morris only.

with disfavor, particularly in negligence cases. *Berryman v K Mart Corp*, 193 Mich App 88, 91; 483 NW2d 642 (1992). “A directed verdict is appropriately granted only when no factual questions exist on which reasonable jurors could differ.” *Cacevic, supra* at 679-680. If reasonable jurors could reach conclusions different from this Court, then this Court’s judgment may not be substituted for the judgment of the jury. *Id.* at 680.

To establish proximate cause, plaintiff had to establish the existence of both cause in fact and legal cause. *Weymers v Khera*, 454 Mich 639, 647; 563 NW2d 647 (1997). To establish cause in fact, a plaintiff “must present substantial evidence from which a jury may conclude that more likely than not, but for defendant’s conduct, the plaintiff’s injuries would not have occurred.” *Id.* at 647-648. A mere possibility of such causation is not enough. *Id.* at 648. When the matter is one of pure speculation or conjecture, or the probabilities are at best evenly balanced, the trial court must direct a verdict for the defendant. *Id.* To establish legal cause, a plaintiff must prove that it was foreseeable that the conduct of defendant would create a risk of harm to the victim, and that the result of that conduct and intervening causes were foreseeable. *Id.*

Here, when the evidence is viewed in the light most favorable to plaintiff, the testimony and all legitimate inferences support a determination that a question of fact existed regarding a causal connection between plaintiff’s arm injury, surgery, and stroke. Specifically, plaintiff presented substantial evidence from plaintiff’s family that she exhibited signs of a stroke immediately after her surgery. By the neurologist’s own testimony, he indicated that the causal connection between plaintiff’s injury and subsequent stroke would be strong if the stroke symptoms appeared immediately after her surgery. Additionally, plaintiff’s treating neurologist acknowledged that plaintiff’s age increased her risk for a stroke, and in light of plaintiff’s surgery and the accompanying risks, it was foreseeable that plaintiff may have had complications from the surgery. Further, plaintiff’s son testified that the neurologist indicated that a causal connection could exist between plaintiff’s arm injury, stroke, and surgery. Therefore, plaintiff presented sufficient evidence beyond conjecture. Further, one could reasonably infer that a stroke was foreseeable in light of plaintiff’s age, her CAT scans, and the heightened risk from a surgical procedure requiring anesthesia, which plaintiff would not have had but for defendant’s negligence. *Weymers, supra* at 647-648; *Cacevic, supra* at 679. Accordingly, in light of the conflicting evidence, a factual dispute existed upon which reasonable minds could differ. *Cacevic, supra* at 679-680. It is for the jury to compare and weigh the evidence and decide the credibility of witnesses. See *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

Defendant next argues that the trial court erred when it denied defendant’s motion for a new trial, or alternatively, remittitur, on the basis that the jury verdict was excessive and not supported by the evidence because plaintiff suffered a “routine” injury without any complications. We disagree. Whether to grant a new trial is in the trial court’s discretion. *Kelly v Builder’s Square, Inc*, 465 Mich 29, 35; 632 NW2d 912 (2001). A new trial may be granted when excessive or inadequate damages were awarded as apparently influenced by passion or prejudice or when the verdict was clearly or grossly inadequate or excessive. MCR 2.611(A)(1)(c) and (d). The inquiry is limited to objective criteria relating to actual conduct of the trial or the evidence adduced to determine if an adjustment should be made. *Setterington v Pontiac Gen’l Hosp*, 223 Mich App 594, 608; 568 NW2d 93 (1997). A trial court’s decision

concerning remittitur is reviewed on appeal for an abuse of discretion. *Palenkas v Beaumont Hospital*, 432 Mich 527, 533; 443 NW2d 354 (1989). The adequacy of the amount of the damages is generally a matter for the jury. *Kelly, supra* at 35. If a damage award “falls reasonably within the range of evidence and within the limits of what reasonable minds would deem just compensation for the injury sustained, the award should not be disturbed.” *Frohman v Detroit*, 181 Mich App 400, 415; 450 NW2d 59 (1989). Similarly, if the verdict was within the range of the evidence, a new trial is unwarranted. *Means v Jowa Security Services*, 176 Mich App 466, 477; 440 NW2d 23 (1989). The trial court is in the best position to determine whether the jury’s verdict was motivated by impermissible considerations such as passion, bias, or anger. *Palenkas, supra* at 534.

Here, the evidence supported the jury’s damages award. The evidence established that plaintiff suffered a “displaced” fracture that required surgery. Plaintiff’s surgery required two incisions that were each four inches long and left permanent scars. Additionally, plaintiff required the placement of two metal plates and twelve screws, which cannot be removed because of an increased risk of refracture. Moreover, plaintiff was required to wear a cast for two months and had a minimum of four to six months of recovery time. Additionally, defendant’s negligence caused the right-handed plaintiff to lose the full use of her dominant arm. Further, plaintiff experienced severe pain when the hospital transporter injured plaintiff’s arm against the wall, as evidenced by her cry of pain. Lastly, plaintiff submitted comparable jury awards for similar injuries; the approximate range for similar injuries was between \$20,000 and \$420,000, and the most frequent award was approximately \$175,000. Here, the jury awarded plaintiff \$150,000 in past and present damages, and \$99,999 in future damages, which fell within the range of comparable jury awards. Similarly, Robert Morris’ loss of consortium damages, \$90,000, also fell within the range of awards.

Further, the reasons the trial court cited in denying defendant’s motion for remittitur were legally recognized and were supported by a reasonable interpretation of the record. See *Petraszewsky v Keeth (On Remand)*, 201 Mich App 535, 539; 506 NW2d 890 (1993). Specifically, the trial court noted that the severity of plaintiff’s injury affected plaintiff’s abilities on her right side, and the necessity for physical and occupational therapy for her right arm and wrist. Additionally, the court noted the substantial testimony from plaintiff’s family regarding plaintiff’s limitations as a result of her arm injury and the need for plaintiff to hire a caregiver for assistance at home. As a final matter, the jury was allowed to consider noneconomic losses, which included past and future disability, disfigurement, mental pain and anxiety, discomfiture, annoyance, humiliation, and denial of social pleasure and enjoyments. *Craig v Oakwood Hosp*, 249 Mich App 534, 568-569 (Cooper, P.J., concurring in part and dissenting in part); 643 NW2d 580 (2002); see, also, *May v William Beaumont Hosp*, 180 Mich App 728, 758 (Cynar, J., concurring in part and dissenting in part); 448 NW2d 497 (1989). Here, plaintiff presented substantial evidence of her physical limitations. Damages attributable to pain and suffering cannot be valued with a mathematical certainty. *Precopio v Detroit*, 415 Mich 457, 470-471; 330 NW2d 802 (1982).

Lastly, the trial court specifically instructed the jury that it could not take into consideration plaintiff’s stroke when it awarded damages for plaintiff’s arm injury. Jurors are presumed to be qualified and competent and follow the court’s instructions. *Craig, supra* at 561; *People v Mette*, 243 Mich App 318, 330-331; 621 NW2d 713 (2000); *Froede v Holland Ladder*

& Mfg Co, 207 Mich App 127, 130; 523 NW2d 849 (1994). Accordingly, defendant has failed to meet its burden to show that the verdict was excessive and warranted a new trial. *Belin v Jax Kar Wash No 5, Inc*, 95 Mich App 415, 423; 291 NW2d 61 (1980). Similarly, the jury award was within the range that reasonable minds would deem just compensation, and thus, the trial court did not abuse its discretion in denying defendant's motion for remittitur. *Frohman, supra* at 415.

We affirm.

/s/ Jane E. Markey
/s/ Michael J. Talbot
/s/ Brian K. Zahra