STATE OF MICHIGAN

COURT OF APPEALS

RAEF SAAD, ALLISSAR SAAD, and NASRENE SAAD, as Next Friend of KRISTINA SAAD, ALLIE SAAD and LORENE SAAD, Minors,

Plaintiffs-Appellants/Cross-Appellees,

v

DONALD ISAAC DAVIS and ANNIE M. DAVIS,

Defendants-Appellees/Cross-Appellants,

and

DAIMLERCHRYSLER CORPORATION, f/k/a/ CHRYSLER CORPORATION,

Defendant.

UNPUBLISHED
March 4, 2004

No. 241167
Wayne Circuit Court
LC No. 99-927056-NI

Before: Owens, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

This case arises from an automobile accident in which three of the plaintiffs were injured.[1] Following a trial, the jury returned a verdict in favor of plaintiffs as follows: (1) minor Allie Saad was awarded $55,000 in past noneconomic damages, and $187,000 in future noneconomic damages to be incurred in the year 2002 only; (2) minor Lorene Saad was awarded $22,000 in past noneconomic damages, and $105,000 in future noneconomic damages to be incurred in the year 2002 only; and (3) Raef Saad was awarded $14,000 in past noneconomic damages, and $21,000 in future noneconomic damages to be incurred in the year 2002 only. The jury found that plaintiff Raef Saad did not incur any future economic damages. Defendants

[1] Nasrene Saad is the older sister of Allie and Lorne Saad and was appointed their next friend. Two other plaintiffs, Kristina, then ten years old, and Allissar Saad, the wife of Raef Saad, were voluntarily dismissed before trial.

Donald and Annie Davis subsequently moved for case evaluation sanctions in the amount of $92,038.24. On October 17, 2001, the trial court entered an order of judgment on the jury verdict in favor of plaintiff Nasrene Saad, as next of friend of Allie and Lorene Saad, in the total amounts of $242,000 and $127,000, respectively, and in favor of plaintiff Raef Saad in the amount of $35,000, and awarded case evaluation sanctions to defendants in the amount of $83,472.10. Plaintiffs then moved for a new trial, which the trial court denied. Plaintiffs appeal, and defendants cross-appeal.

The automobile accident occurred on May 24, 1999, when defendant Donald Davis was driving an automobile that was leased to his wife, defendant Annie Davis, through an executive lease program with DaimlerChrysler Corporation.[2] Plaintiff Lorene Saad suffered a ruptured spleen and traumatic brain injury that left her with cognitive deficits, chronic severe headaches, and neck pain. Plaintiff Allie Saad suffered a broken pelvis and a broken femur, with several possible complications arising from both injuries. Plaintiff Raef Saad suffered psychological injuries, back problems, shoulder problems, weakness in the right side of his body, and radiating pain throughout his body.

Before trial, the parties stipulated to a variety of issues, the most important of which was the issue of threshold injury to plaintiffs. Defendants conceded that "all of the injuries and damages being claimed by Lorene Saad and Raef Saad in this litigation . . . [were] proximately caused by the negligence of Donald Davis."

Plaintiffs claim that the verdicts for Lorene and Allie were grossly inadequate and against the great weight of the evidence and that the trial court erred as a matter of law when it refused to permit the two children to recover future economic damages. Further, plaintiffs claim that Raef Saad was denied a fair trial when the trial court permitted defendants' expert to testify that the injuries were not caused by the accident and by allowing video surveillance to be admitted into evidence.

On cross-appeal, defendants contend that the trial court erred in awarding case evaluation sanctions that arbitrarily reduced the hourly professional fees incurred by Davis.

We affirm the jury verdict for Lorene and Allie Saad, reverse and remand for new trial on the jury verdict for Raef Saad, and affirm the trial court on the issue of case evaluation sanctions.

I.

Plaintiffs Lorene Saad and Allie Saad argue that the award of only one year of future noneconomic damages was grossly inadequate and against the great weight of the evidence. This Court reviews a trial court's decision whether to grant a new trial for an abuse of discretion. *Kelly v Builders Square*, 465 Mich 29, 34; 632 NW2d 912 (2001). An abuse of discretion occurs when the decision is so violative of fact and logic that it evidences a perversity of will, a defiance

[2] DaimlerChrysler was dismissed without prejudice before trial.

of judgment or an exercise of passion or bias. *Bean v Directions Unlimited, Inc*, 462 Mich 24, 34-35; 609 NW2d 567 (2000). If the trial court's reasons for granting or denying a new trial are legally recognized, and those reasons are supported by any reasonable interpretation of the record, the trial court acted within its discretion. *Petraszewsky v Keeth (On Remand)*, 201 Mich App 535, 539; 506 NW2d 890 (1993). But if the reasons given do not provide a legally recognized basis for relief, the trial court abused its discretion. *People v Jones*, 236 Mich App 396, 404; 600 NW2d 652 (1999).

Plaintiffs are correct in their assertion that the jury verdicts for the two minor children were low, especially relative to the issue of future damages. However, examination of the record reveals that the jurors were somewhat confused as to how to award future noneconomic damages. After deliberating for some time, the jurors sent a note in which they asked: "On the 'future damages' pages, can we just put on lump sum on the top line, or do we have to break it up over the course of dash-dash-years?" The jury was told that they could award a lump sum if they felt "there [was] only one year in future damages," but also that they had to follow the verdict form. We are left to speculate whether the jury did indeed award a lump sum or concluded that the evidence justified only one year of noneconomic damages. In any event, it appears that the jury was confused regarding whether they could award a lump sum for future damages. What is clear is that plaintiffs did not, as defendants contend, stipulate to noneconomic damages for a single year.

In *Kelly*, *supra*, our Supreme Court reviewed our state's jurisprudence on damage awards. It stated, "This Court has long recognized that the authority to measure damages for pain and suffering inheres in the jury's role as trier of fact." *Kelly*, *supra* at 35, citing *Griggs v Saginaw & F R Co*, 196 Mich 258; 162 NW 960 (1917) and *Michaels v Smith*, 240 Mich 671; 216 NW 413 (1927). The Court quoted the following tenet from its opinion in *Brown v Arnold*, 303 Mich 616, 627; 6 NW2d 914 (1942): "'The adequacy of amount of a verdict is also generally a matter for the jury. We do not substitute our judgment on this question unless a verdict has been secured by improper methods, prejudice, or sympathy. *Michaels v Smith*, 240 Mich 671[; 216 NW 413 (1927)].'" *Id.* at 35. The Court further reiterated the reasoning it set forth in *Sebring v Mawby*, 251 Mich 628; 232 NW 194 (1930), in which it stated:

> "The law furnishes no exact rule by which damages for pain and suffering can be measured. Their determination must necessarily be left to the good sense and sound judgment of the jury in their view of the evidence. It has frequently been said by courts and text-writers that the award of the jury will not be disturbed unless it is so great as to shock the judicial conscience or unless it was induced by something outside of the evidence, such as passion or prejudice." [*Kelly*, *supra* at 35, quoting *Sebring*, *supra* at 629.]

These tenets remind us of the fundamental principles that underlie our review of jury awards: "The amount allowed for pain and suffering must rest in the sound judgment of the triers of the facts." *Id.* at 35-36, citing *Watrous v Conor*, 266 Mich 397; 254 NW 143 (1934) and *Weil v Longyear*, 263 Mich 22; 248 NW 536 (1933).

If the verdict is within the range of the evidence a new trial is not warranted. *Means v Jowa Security Services*, 176 Mich App 466, 477; 440 NW2d 23 (1989). Consistent with

Supreme Court precedent, we have held that a new trial based on inadequate damages is not justified unless the verdict was so clearly inadequate and contrary to the evidence that it shocks the conscience. See, e.g., *Hill v Henderson*, 107 Mich App 551, 553; 309 NW2d 663 (1981). While the jury returned a verdict that was within the low range of reason, we cannot find, as a matter of law, that the verdict in this case was so clearly inadequate and contrary to the evidence that it shocks the conscience. We are bound by our Supreme Court's decision in *Kelly*, *supra*, that the "amount allowed for pain and suffering must rest in the sound judgment of the triers of fact."

Plaintiffs contend that the verdict was influenced by prejudice because the trial court erred in not allowing plaintiffs to review the jury questionnaires. While we are puzzled at the trial court's ruling, we are limited by the standard that governs granting a new trial: a new trial can only be granted on the basis asserted if a juror gave untruthful answers during voir dire or on the questionnaire and if truthful answers would have revealed grounds for a successful challenge for cause or would have caused the challenging party to dismiss a juror. *Froede v Holland Ladder & Mfg Co*, 207 Mich App 127, 130; 523 NW2d 849 (1994). In this case, plaintiffs failed to show that the verdict was influenced by prejudice pursuant to MCR 2.611(A)(1)(c). We therefore affirm the jury award to plaintiffs Lorene and Allie Saad.

II.

Plaintiff Raef Saad contends that the trial court erred in admitting videotape surveillance of him taken on June 30 and July 1, 2001. We find plaintiff's arguments on this issue to be without merit. Plaintiff Raef Saad also contends that this Court must grant a new trial because the admission of expert testimony violated a stipulated order. We agree.

Before trial, a stipulated order was entered that stated in relevant part, "Defendants concede that all of the injuries and damages being claimed by Lorene Saad and Raef Saad in this litigation constituted serious impairment of a bodily function and/or permanent disfigurement (threshold injuries) proximately caused by the negligence of Donald Davis." Predicated on this stipulation, plaintiffs filed a motion in limine to preclude defendants' witness, Dr. Monson, from testifying that the accident was not the cause of Mr. Saad's current medical problems. The trial court stated that "it's no longer relevant to testify about proximate cause" and that "the only relevant issue is the extent of the damages."

A stipulation is an agreement, admission, or concession made in a judicial proceeding by the parties or their attorneys. *Staff v Johnson*, 242 Mich App 521, 535; 619 NW2d 57 (2000). In *Staff*, this Court held that "stipulations of fact are binding, but stipulations of law are not binding." In *Eaton Co Bd of Rd Comm'rs v Schultz*, 205 Mich App 371, 379; 521 NW2d 847 (1994), this Court held that stipulations of fact, put on the record in open court, are binding.

In this case, defendants stipulated that Raef Saad's injuries satisfied the no-fault threshold and that all of his injuries were proximately caused by Davis's negligence. Therefore, defendants' expert testimony should have been limited to the extent of Saad's injuries. Instead, the trial court allowed defendants' expert to testify whether Saad's injuries were caused by the accident. As such, the testimony of defendants' expert witness violated the pretrial agreement.

Having found that defendants' expert violated the pretrial agreement, we next turn to the question of whether the trial court erred in denying Raef Saad's motion for a new trial on these grounds.

MCR 2.611(A)(1)(a) provides for a new trial to parties "whenever their substantial rights are materially affected" as the result of "an order of the court or abuse of discretion which denied the moving party a fair trial." In this case, plaintiff Raef Saad relied on the pretrial agreement that limited the scope of defendants' expert testimony to the extent –rather than the cause- of Saad's injuries. Defendants stipulated that Saad's injuries were proximately caused by Donald Davis's negligence, so they were precluded from introducing evidence of Raef Saad's degenerative preexisting condition. When the trial court allowed testimony from the defense expert that brought into issue before the jury the cause of Saad's injuries, Saad was denied a fair trial. Thus, we vacate the jury's verdict as to Raef Saad and remand the issues of Raef Saad's damages for a new trial.

III.

Last, defendants contend that the trial court abused its discretion in its award of case evaluation sanctions. This Court will uphold the determination of the amount of the award absent an abuse of discretion. *Elia v Hazen*, 242 Mich App 374, 619 NW2d 1 (2000). We affirm the case evaluation sanctions as to plaintiffs Lorene and Allie Saad, finding that the trial court properly exercised its broad discretion in such awards. *Zdrojewski v Murphy*, 254 Mich App 50, 73; 657 NW2d 721 (2002). But because we have vacated the jury award as to Raef Saad, we are bound to set aside that portion of case evaluation sanctions relative to Raef Saad, and we thereby remand the entire matter of case evaluations back to the trial court to award sanctions predicated only on the fees and costs incurred in defending the claims of Lorene and Allie Saad.

Affirmed in part, and reversed and remanded in part. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Bill Schuette
/s/ Stephen L. Borrello