STATE OF MICHIGAN

COURT OF APPEALS

JOHN McMILLAN,

Plaintiff-Appellant,

v

DWAYNE L. DAVIS,

Defendant-Appellee,

and

LARRY B. RIVERS and RIVERS INVESTMENT MANAGEMENT GROUP, INC., d/b/a RIVERS INVESTMENT,

Defendants.

UNPUBLISHED
August 5, 2010

No. 288298
Wayne Circuit Court
LC No. 07-700673-NO

Before: METER, P.J., and MURRAY and BECKERING, JJ.

PER CURIAM.

In this landlord-tenant personal injury action, plaintiff brought suit following a fall down the basement steps of rental property owned by defendant-appellee (defendant). Plaintiff alleged that he injured his right shoulder when a handrail along the basement steps of the residence gave way. Following a jury trial, plaintiff was awarded medical expenses in accord with the parties' stipulation,[1] but was not awarded anything for lost wages or pain and suffering. Plaintiff filed a motion for a judgment notwithstanding the verdict (JNOV) or alternatively a new trial, arguing primarily that the jury's verdict was inconsistent. The court denied the motion. Plaintiff now appeals, and we affirm.

Plaintiff argues that the trial court erred in failing to grant his motion. We disagree. We review a court's JNOV ruling de novo, considering the evidence and all legitimate inferences in the light

[1] The parties had stipulated that $4,639.83 represented the amount of necessary medical care, treatment, and services.

most favorable to the nonmoving party. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003). We review for an abuse of discretion a trial court's decision concerning a motion for a new trial. *McPeak v McPeak (On Remand)*, 233 Mich App 483, 490; 593 NW2d 180 (1999). The adequacy of the amount of an award is within the province of the jury, *Kelly v Builders Square, Inc*, 465 Mich 29, 35; 632 NW2d 912 (2001), and a court is required to make every effort to reconcile a seemingly inconsistent verdict, *Bean v Directions Unlimited Inc*, 462 Mich 24, 31; 609 NW2d 567 (2000). Nonetheless, a trial court may grant a new trial in the event of a verdict that is "clearly or grossly inadequate or excessive." MCR 2.611(A)(1)(d).

Plaintiff initially argues that he was entitled to a JNOV or a new trial because the jury's decision to award him economic damages for his past medical expenses, while failing to award any damages for pain and suffering, was inconsistent and against the great weight of the evidence. This argument was addressed in *Kelly*, 465 Mich at 39, which "reject[ed] . . . the principle that a jury behaves inconsistently when it awards medical expenses, but nothing for pain and suffering." The Court explained as follows:

> Plaintiff had the burden to prove each element of her case, including every item of claimed damages. Medical expenses and pain and suffering are distinct categories of damages. Each category may have a distinct evidentiary basis. For example, a claimant's own testimony about her subjective experiences is generally offered to prove pain and suffering. When a jury believes that a plaintiff has suffered an injury and incurred medical expenses, it may still assess separately any distinct proofs regarding pain and suffering.
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> In short, the jury is free to credit or discredit any testimony. It may evaluate the evidence on pain and suffering differently from the proof of other damages. No legal principle requires the jury to award one item of damages merely because it has awarded another item. [*Id*.]

The same reasoning applies here. Although plaintiff did testify that his shoulder "hurts all the time, especially in the wintertime" and that he has difficulty sleeping on the shoulder "because it aches," the jury may have concluded that his "subjective experience[]" was insufficient "to prove pain and suffering," see *id*., or may have found that his testimony on the issue lacked credibility. See *Brown v Pointer*, 41 Mich App 539, 552; 200 NW2d 756 (1972), rev'd on other grounds 390 Mich 346 (1973) ("[a] jury is entitled to believe all, part, or none of a witness's testimony").

Plaintiff also argues that the court erred in denying the motion because the jury failed to award damages for wage loss, and that therefore the verdict was inconsistent and against the great weight of the evidence. As with the prior assertion of error, however, the jury could have discredited plaintiff's testimony on the issue of wage loss and concluded that, in light of countervailing evidence, he had not adequately established an evidentiary basis for such an award. See *Kelly*, 465 Mich at 38-40. For example, a two-page request for medical leave obtained from plaintiff's prior employer and signed by plaintiff on the final page was introduced at trial, and this indicated that plaintiff was able to work. In addition, while plaintiff testified that his rate of pay was $12.45 an hour and that he worked 40 hours a week, evidence indicated that

he did not file a tax return for 2006 because he did not have income that year. His fall did not occur until late May of 2006. Moreover, the jury may have also credited defendant's testimony that plaintiff had informed him that he was leaving the home in order to relocate to Tennessee, despite plaintiff's denial that he made the statement and his assertion that he left because he could not work following the accident. It is the province of the jury to make credibility determinations when conflicts in the evidence exist. See *Dept of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007).[2]

We also reject plaintiff's assertion that a new trial is required because of erroneous evidentiary rulings. Plaintiff first takes issue with defense counsel's conduct of reading directly from a document not entered into evidence during his cross-examination. Plaintiff argues that defense counsel effectively provided evidence by reading directly from the document. However, the jury was specifically instructed that the lawyers' statements did not constitute evidence and should only be accepted if supported by the evidence. We can reasonably presume that the jury understood and followed this instruction. *Bordeaux v Celotex Corp*, 203 Mich App 158, 164; 511 NW2d 899 (1993). Moreover, even if this Court were to conclude that the trial court erred in allowing defense counsel to read from the document, the error would be harmless. The general argument defense counsel was articulating related to content in plaintiff's medical records from a hospital visit before his accident that indicated that plaintiff wished to move to Tennessee. Defendant had already provided similar testimony without objection.

Plaintiff also argues that the trial court erred in admitting the medical-leave request obtained from his prior employer. Generally, hearsay, which consists of an out-of-court statement offered to prove the truth of the matter asserted, is not admissible. MRE 801(c); MRE 802. However, an admission by a party opponent is not hearsay. MRE 801(d)(2). Plaintiff admitted that he had signed the document.[3] Thus, its admission into evidence was not outside the range of principled outcomes. *In re Kostin Estate*, 278 Mich App 47, 51; 748 NW2d 583, lv den 482 Mich 894 (2008).

Affirmed.

/s/ Patrick M. Meter

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[2] Plaintiff suggests that there is some indication that the jury may have held some racial bias against him. However, he has only given this proposition cursory treatment. Consequently, this argument has been abandoned. *Unibar Maintenance Servs, Inc* v *Saigh*, 283 Mich App 609, 628-629; 769 NW2d 911 (2009). At any rate, the affidavits plaintiff uses to try and impeach the verdict are insufficient to establish error requiring reversal. See, generally, *People v Budzyn*, 456 Mich 77, 91-92; 566 NW2d 229 (1997).

Moreover, the trial court instructed the jury that it should reach its verdict by applying the law to the facts of the case and should not be influenced by other factors, including race. Jurors are presumed to follow their instructions. *Bordeaux v Celotex Corp*, 203 Mich App 158, 164; 511 NW2d 899 (1993).

[3] We do not agree with plaintiff's assertion that the fact that it was only signed on the second page rendered it inadmissible.