IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ricky John Schaedel and Thora Schaedel, Appellants	:	
v.	:	No. 61 C.D. 2011
	:	Submitted: June 10, 2011
Nelson Cardenes Esteves, Sandra L. Lipe and City of Allentown	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT FILED: November 3, 2011

Ricky John and Thora Schaedel appeal an order of the Court of Common Pleas of Lehigh County (trial court) denying their post-trial motion for a new trial. The Schaedels contend that the jury verdict award of zero damages was against the weight of the evidence. Discerning no merit to the Schaedels' position, we affirm the trial court.

This case arose as the result of a motor vehicle accident that occurred in an intersection when Nelson Cardenes Estevez struck the trailer that Ricky John Schaedel was towing. Mr. Schaedel drove into the intersection without stopping at the stop sign because he claimed that low-hanging branches on a tree obscured his view of the sign. The tree was located on property owned by Sandra L. Lipe, and

prior to the accident, the City of Allentown had directed Lipe to remove the overgrowth. The City did not take steps to enforce its directive to Lipe.

The Schaedels filed suit against Estevez, Lipe and the City.[1] They alleged that the accident caused serious injuries to Mr. Schaedel's back and neck, which required surgery, and left him unable to do any work. They sought damages for pain and suffering, loss of wages, and medical expenses. Mrs. Schaedel also sought damages for loss of consortium. The defendants contended that Mr. Schaedel's back surgery was caused by long-existing degenerative disc disease, not the traffic accident. The jury found all parties to have acted negligently, the defendants and Mr. Schaedel. However, the jury answered in the negative the question of whether the negligent acts of "any Defendant(s)" was a "factual cause in bringing about harm to Plaintiff, Ricky John Schaedel." Certified Record, Item No. 65, at 1; Appellants' Brief, Attachment 2, at 1.

The Schaedels filed a motion for post-trial relief asking for a new trial asserting, *inter alia*, that the jury verdict was against the weight of the evidence. The trial court rejected the motion, and this appeal followed.

On appeal,[2] the Schaedels argue that the trial court erred in denying them a new trial. The jury's finding that no defendant had caused harm to Mr.

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[1] The Schaedels had a default judgment entered against Estevez.

[2] "Our standard of review in denying a motion for a new trial is to decide whether the trial court committed an error of law which controlled the outcome of the case or committed an abuse of discretion." *Daniel v. William R. Drach Co., Inc.*, 849 A.2d 1265, 1267-68 (Pa. Super. 2004) (quoting *Cangemi ex rel. Estate of Cangemi v. Cone*, 774 A.2d 1262, 1265 (Pa. Super. 2001)).

The decision to grant a new trial is within the sound discretion of the trial court. *Mano v. Madden*, 738 A.2d 493, 495 (Pa. Super. 1999) (en banc). "If the verdict bears a reasonable resemblance to the proven damages, it is not the function of the court to substitute its judgement

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Schaedel flew in the face of uncontroverted testimony that Mr. Schaedel had suffered a strain and sprain in the accident. The medical expert for the City, Dr. Walter Finnegan, testified specifically that Mr. Schaedel suffered a sprain and strain injury of the neck or back in the accident. According to the Schaedels, this uncontroverted evidence of injury combined with the finding of defendants' negligence meant that the jury's verdict was against the weight of the evidence.

It is well-settled that "[i]t is impermissible for a jury . . . to disregard the uncontroverted testimony from the experts for both parties that the plaintiff suffered some injury as a result of the accident in question." *Andrews v. Jackson*, 800 A.2d 959, 963 (Pa. Super. 2002) (citation omitted). Stated another way, "[w]here there is no dispute that the defendant is negligent and both parties' medical experts agree the accident caused *some* injury to the plaintiff, the jury may not find the defendant's negligence was not a substantial factor in bringing about at least *some* of plaintiff's injuries." *Id.* at 962 (emphasis in original). However, a jury may reject evidence up to the point that the verdict defies "common sense and logic" given the uncontroverted evidence. *Neison v. Hines*, 539 Pa. 516, 521, 653 A.2d 634, 637 (1995). Further, even where the plaintiff proves that defendant caused an accident that resulted in bodily injury, that does not necessitate an award of damages. The jury is the unique arbiter of *compensable* pain. *Majczyk v. Oesch*, 789 A.2d 717, 726 (Pa. Super. 2001).

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for the jury's." *Johnson v. White*, 964 A.2d 42, 46 (Pa. Cmwlth. 2009) (quoting *Kiser v. Schulte*, 538 Pa. 219, 225, 648 A.2d 1, 4 (1994)).

In *Majczyk*, the plaintiff, who was a passenger in a vehicle that was hit at a speed of five miles per hour, filed suit against the driver of the other vehicle. The impact did not damage either vehicle. At trial, defendant's medical experts conceded that plaintiff was injured in the accident, but the jury returned a verdict in favor of defendant. The plaintiff contended that she was entitled to damages and sought a new trial. The Superior Court affirmed the trial court's denial of a new trial, holding that it was within the province of the jury to "find for the defendant despite his or her obvious negligence because it does not believe that plaintiff's pain and suffering, if any, are compensable." *Majczyk*, 789 A.2d at 721.

The *Majczyk* record showed that plaintiff's treating physician testified that the accident caused the plaintiff to suffer a herniated disc as well as a cervical strain that healed three weeks later. The defense's medical expert, relying on plaintiff's medical records, confirmed that plaintiff had suffered a cervical strain but did not believe the accident caused a herniated disc. The plaintiff sought "compensation for her ongoing pain and suffering for a herniated disk, not for a few days or weeks of discomfort." *Id.* at 721. The Superior Court held that it was for the jury to decide whether

> the defendant caused the plaintiff's injuries *and whether the plaintiff suffered from compensable pain*. Indeed, the existence of compensable pain is an issue of credibility and juries must believe that plaintiffs suffered pain before they compensate for that pain.

Id. at 723 (citation omitted) (emphasis in original).[3] The plaintiff in *Majczyk* also sought compensatory damages, alleging that her herniated disc, which was treated surgically, left her unable to work or perform her usual daily activities. However, as with the claim of pain and suffering, the Superior Court concluded that the jury was free to hold that she did not suffer a serious injury but "the sort of transient rub of life for which compensation is not warranted." *Id.* at 726 (citing *Boggavarapu v. Ponist*, 518 Pa. 162, 167, 542 A.2d 516, 518 (1988)).

Here, the Schaedels note that the defendants' medical expert agreed that Mr. Schaedel suffered at least *some* injury *caused* by the automobile accident.[4]

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[3] The Superior Court reviewed a line of cases standing for the proposition that juries do not have to award pain and suffering damages for every injury. *Majczyk*, 789 A.2d at 723-25. *See, e.g.*, *Davis v. Mullen*, 565 Pa. 386, 391, 773 A.2d 764, 767 (2001) (holding that damages for medical expenses, but not pain and suffering, "should not be disturbed where the trial court had a reasonable basis to believe that: (1) the jury did not believe the plaintiff suffered any pain and suffering, or (2) that a preexisting condition or injury was the sole cause of the alleged pain and suffering"); *Brodhead v. Brentwood Ornamental Iron Co., Inc.*, 435 Pa. 7, 10, 255 A.2d 120, 122 (1969) (finding that minimal damage to milk truck raised doubts as to severity of the impact and supported a finding of no causal relationship between accident and injuries); and *Henery v. Shadle*, 661 A.2d 439, 442 (Pa. Super. 1995) (noting that a jury is not required to award damages if it believes the injury suffered by plaintiff was insignificant).

[4] The defendants' medical expert, Dr. Finnegan, conceded that Mr. Schaedel suffered a sprain and strain, as a result of the accident:

> [Counsel]: Well, are you telling me that it's just a coincidence that [Mr. Schaedel's] low back began to hurt after this accident because of those degenerative problems as a result – as a result of a trauma? It was just a coincidence that it came up within a day or two of this accident?
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> [Dr. Finnegan]: If you want a coincidence argument, you're throwing that word in there. I didn't say that. I said that he had sprain and strain. He had soft tissue stretch injuries. Given the twisting injury, the initial complaints, he did have soft tissue injuries which should have and could have healed in a time frame of three or four months. What was operated on was not a result of the accident.

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However, the defendants' expert did not agree that this injury required treatment by major surgery. By contrast, the Schaedels' expert opined that Mr. Schaedel's disc injury, surgery and subsequent pain were caused by the motor vehicle accident. The defendants' medical expert, Dr. Finnegan, testified that it was Mr. Schaedel's long-standing degenerative disc disease that necessitated his surgery, which did not "relate to the motor vehicle accident in any way, shape, or form." Reproduced Record at 166a (R.R.__).

Mr. Schaedel reported to bystanders and to the police officer called to the accident that he was not injured. He repeated that assertion to the insurance company that evening. Mr. Schaedel returned to work at his physically strenuous job as a refuse collector immediately after the accident and continued to work for the next five months. Although Mr. Schaedel transferred to a less demanding job in the traffic department, even that job involved manual labor, such as operating a jackhammer and cement drill. Mr. Schaedel also continued his side lawn maintenance business, using a push mower after his riding mower was damaged in the accident. Further, Mr. Schaedel reported neck and shoulder pain to his family doctor several months before the accident.

From the Schaedels' opening statement to their closing argument, the focus of their case was the claim that the accident caused an injury that required major surgery, which, in turn, caused Mr. Schaedel's loss of earnings and pain and suffering. Indeed, the Schaedels' vocational expert dated his wage loss

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Reproduced Record at 182a-83a (R.R. __). Thus, the evidence was uncontroverted that Mr. Schaedel suffered some injury, *i.e.*, sprain and strain, in the accident that would have resolved in three to five months.

calculations as of the first surgery in December of 2007, noting that Mr. Schaedel worked until then.

In sum, the facts that defendants' medical expert acknowledged that Mr. Schaedel suffered a strain and sprain in the accident and that the jury found both drivers, Lipe and the City all negligent do not require a new trial. The jury verdict that no defendant caused harm to Mr. Schaedel was not very specific, and there are several possible explanations for the jury's decision. The jury may have found that Mr. Schaedel's strain and sprain was no more than a "transient rub of life" and not significant enough to be compensable. *Boggavarapu*, 518 Pa. at 167, 542 A.2d at 518. The jury may have rejected the opinion of defendants' expert that the accident caused a strain and sprain, concluding instead that it was plaintiff's strenuous job that caused the muscle strain. Finally, the jury may have decided that Mr. Schaedel's degenerative disc disease necessitated his surgery, not the accident. It was within the province of the jury to conclude that the defendants' negligence did not cause harm to Mr. Schaedel.

The Schaedels argue, however, that our Supreme Court's holding in *Neison*, 539 Pa. 516, 653 A.2d 634, requires a different result. In *Neison*, the plaintiff suffered a neck sprain and a shoulder blade sprain as a result of a car accident, and the defendant conceded liability for the accident. The accident caused the plaintiff's head to be thrown back with such force that it shattered the rear window of her two seat sports car. One week after the accident, an orthopedic specialist diagnosed the plaintiff with a cervical sprain; thereafter, the plaintiff was diagnosed with a herniated disc. The plaintiff continued to work, but in a supervisory capacity. The defendant's medical expert, who examined the plaintiff

two years after the accident, opined that she exhibited a healed neck sprain and shoulder blade sprain. The jury returned a verdict in favor of the defendant, awarding the plaintiff no damages. The trial court granted a new trial, finding that the award of zero damages "shocked the conscience of the court." *Id.* at 520, 653 A.2d at 636. The Supreme Court upheld the grant of a new trial.

The Supreme Court explained that generally "victims must be compensated for all that they suffer from the tort of another." *Id.* at 523, 653 A.2d at 638 (quoting *Boggavarapu*, 518 Pa. at 167, 542 A.2d at 518). However, the Supreme Court also explained that a

> jury is entitled to reject any and all evidence up until the point at which the verdict is so disproportionate to the uncontested evidence as to defy common sense and logic.

Id. at 521, 653 A.2d at 637. In *Neison*, the Supreme Court affirmed the trial court's conclusion that the jury's verdict "shocked the conscience."

The Schaedels also rely on *Andrews*, 800 A.2d 959, a decision of our Superior Court. In *Andrews*, the plaintiff was injured when the defendant struck the plaintiff's vehicle, destroying its front end. The plaintiff filed suit, alleging that the accident had aggravated a prior fracture to his cervical vertebra. The defendant's medical expert conceded that the plaintiff had suffered a cervical strain but denied the aggravation. The jury found the defendant negligent and that the accident was a substantial factor in causing plaintiff's injuries, but it awarded zero damages. The trial court granted the plaintiff's motion for a new trial, and the Superior Court affirmed. It held that the jury was not free to disregard the evidence that defendant's negligence was a substantial factor in causing plaintiff's injury.

Neison and *Andrews* are distinguishable. In *Neison*, the plaintiff suffered a muscle strain serious enough to be detected two years after the accident. In both cases, there was a single defendant who was found solely liable for the accident. Here, the jury found multiple defendants, as well as the plaintiff, Mr. Schaedel, to have acted negligently. Finally, the jury did not find here, as in *Neison* and *Andrews*, that the defendants' negligence was a substantial factor in causing Mr. Schaedel's injuries.

Causation for an accident is distinct from causation for an injury. The critical distinction between causation for injuries and causation for an accident was addressed in *Daniel v. William R. Drach Co., Inc.*, 849 A.2d 1265 (Pa. Super. 2004). In *Daniel,* the plaintiff, while loading metal onto his truck, slipped and fell on defendant's loading dock. The plaintiff brought suit, arguing that the collection of oil and water on the floor made it slippery and caused his fall. The jury found the defendant to be negligent in its maintenance of the dock, but it also found that the negligence was not a substantial factor in causing the plaintiff's injuries. The trial court denied plaintiff's motion for a new trial. The plaintiff appealed, arguing that a finding of negligence and a finding of injury required the jury to award damages. The Superior Court held otherwise. It explained that it did not follow from the jury's finding defendant negligent that it was this negligence that caused the accident.

Here, the jury found that Lipe and the City were negligent in allowing the branches of the tree to obscure the stop sign. However, the jury also found that this negligence did not cause harm to Mr. Schaedel, perhaps because they did not believe this negligence caused the accident. It is impossible for this Court to say

that this logical result is against the weight of the evidence or "shocks one's sense of justice." *Neison*, 539 Pa. at 520, 653 A.2d at 636 (citations omitted).

We cannot conclude that the trial court abused its discretion in denying the Schaedel's request for a new trial. The jury found that the negligence of defendants was not the factual cause of Mr. Schaedel's harm. The fact that the defendants' expert opined that Mr. Schaedel suffered a muscle strain does not require a new trial on damages. The jury considered the evidence, and it was free to conclude that the defendants did not cause the accident, plaintiff did, or that the injury was not serious enough to warrant pain and suffering damages. The Schaedels sought damages for the surgery and the lost wages caused thereby. They presented no evidence that the separate muscle strain conceded by defendants' expert required an award of damages.

Accordingly, we affirm the order of the trial court.

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MARY HANNAH LEAVITT, Judge

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O R D E R

AND NOW, this 3rd day of November, 2011, the order of the Court of Common Pleas of Lehigh County, Pennsylvania, Civil Division, dated June 8, 2010, in the above captioned matter is hereby AFFIRMED.

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MARY HANNAH LEAVITT, Judge