

DIVISION I

ARKANSAS COURT OF APPEALS

No. CA 06-803

BOBBY J. WILLIAMS

APPELLANT

V.

RON ALEXANDER

APPELLEE

Opinion Delivered

October 24, 2007

APPEAL FROM THE PIKE COUNTY
CIRCUIT COURT
[NO. CV-2003-158]

HONORABLE TED C. CAPEHEART,
JUDGE

AFFIRMED

SARAH J. HEFFLEY, Judge

Appellant, Bobby Williams, has appealed the trial court's denial of his motion for new trial after receiving a jury verdict that awarded him \$14,565.88 for injuries he sustained in a car accident. On appeal, appellant argues that (1) the trial court erred in allowing evidence in violation of the collateral source rule; (2) the trial court erred in allowing evidence of previous unrelated medical treatment without introducing expert medical testimony that the earlier treatment was related to the present injuries; (3) the trial court erred in refusing to permit appellant's counsel to respond when appellee's counsel "opened the door to insurance" in closing arguments; and (4) the jury's verdict was inadequate and not supported by substantial evidence. We find no error and affirm.

Appellant was involved in a rear-end collision caused by appellee Ron Alexander on May 16, 2001. While driving on Highway 70 West in Hot Springs, appellee ran into the

back of appellant's minivan, causing him to hit the vehicle in front of him. Appellant received injuries to his knee, neck, and back and was taken to the hospital. He eventually incurred \$47,221.38 in medical bills, which included treatment for injured cervical ligaments and a C5-C6 cervical disc that required an anterior discectomy and fusion surgery.

Appellant filed suit against appellee for negligence on December 29, 2003, and the case went to trial on November 29, 2005. Appellee admitted liability but contested whether the accident was the proximate cause of all of appellant's physical problems and medical expenses. Appellant contended that although he had degenerative changes in his neck before the 2001 accident, they caused him no significant problems. Over appellant's objection, appellee entered into evidence a significant number of appellant's old medical records, including those related to an on-the-job back injury in 1990 for which he received a \$25,000 settlement in a workers' compensation proceeding. These medical records revealed that appellant had received treatment for neck problems as well. Also included in these records was a 1999 social security disability questionnaire in which appellant stated that he was not able to do much of anything and that he could not bathe or dress without his wife's assistance.

The trial court submitted the case to the jury with a general verdict form, and the jury returned a verdict for appellant in the amount of \$14,565.88. Appellant then filed a timely motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. The trial court denied this motion on January 20, 2006. This timely appeal followed.

On appeal, appellant argues that the trial court erred in denying his motion for new

trial under Rule 59 of the Arkansas Rules of Civil Procedure, specifically subsections (a)(5), (6), and (8). Rule 59(a) provides:

A new trial may be granted to all or any of the parties and on all or part of the claim on the application of the party aggrieved, for any of the following grounds materially affecting the substantial rights of such party ... (5) error in the assessment of the amount of recovery, whether too large or too small; (6) the verdict or decision is clearly contrary to the preponderance of the evidence or is contrary to the law; ... (8) error of law occurring at the trial and objected to by the party making the application.

The bulk of appellant's arguments allege errors of law occurring at the trial. Under subsection (a)(8), a new trial may be granted where there is error of law which was objected to by the party making the application, and the error materially affected the substantial rights of the party. *Ford Motor Co. v. Nuckolls*, 320 Ark. 15, 894 S.W.2d 897 (1995). A trial judge's discretion in granting or denying a new trial based on errors of law should not be disturbed absent manifest abuse. *Id.*

For his first alleged error of law, appellant argues that the trial court erred in allowing evidence, specifically his previous medical records, in violation of the collateral source rule. The collateral source rule provides that benefits received by a plaintiff from a source that is wholly independent of and collateral to the defendant does not reduce the damages recoverable for the defendant. *Moore v. Pulaski County Special Sch. Dist.*, 73 Ark. App. 366, 43 S.W.3d 204 (2001). The rule applies where the benefits received by the plaintiff from a collateral source are those that are payable to the plaintiff because of the defendant's actionable conduct. *Id.* In this case, the workers' compensation and social security benefits that appellant received as a result of the 1990 injury were not payable because of appellee's

conduct and could not have mitigated any damages awarded in this case. Therefore, we hold that the collateral source rule is inapplicable.

As subpoints under this argument, appellant also alleges that it was improper to admit extrinsic evidence to impeach him under Ark. R. Evid. 608(b) and that the trial court erred by admitting this evidence after partially ruling in appellant's favor on a motion in limine. Appellant's 608(b) argument is misplaced because the records were admissible to show that appellee's actions were not the proximate cause of all of appellant's damages and were not offered solely for impeachment purposes. In regard to the motion in limine, we note that in granting the motion, the trial court did rule that it would allow evidence of accidents relating to appellant's neck and back, which would certainly include the records in question. Furthermore, a motion in limine is a threshold motion, and a trial court is at liberty to reconsider its prior rulings during the course of a single trial. *ConAgra, Inc. v. Strother*, 340 Ark. 672, 13 S.W.3d 150 (2000).

For his second alleged error of law, appellant contends that the trial court erred by allowing evidence of his previous medical treatment, namely the workers' compensation records, without requiring expert medical testimony that the earlier treatment was related to the present injuries. We find that this argument is not preserved for our review because appellant did not object to the admission of this evidence on this ground at trial. A review of the record shows that appellant objected to the admissibility of the records on relevancy grounds, but did not mention the need for expert medical testimony explaining that the earlier treatment was related to the present injuries. A party cannot change the grounds for

an objection on appeal, but is bound by the scope and nature of his objections as presented at trial. *Buford v. State*, 368 Ark. 87, ___ S.W.3d ___ (2006). Therefore, we do not reach the merits of appellant's argument on this point.

For his third and final alleged error of law, appellant argues that the trial court erred in refusing to allow his counsel to respond when appellee's counsel "opened the door to insurance" during closing arguments. In his closing argument, appellee's counsel mentioned that appellee "has been asked to pay the bills in this case." At the close of appellee's argument, the court asked appellant if he had a rebuttal argument, and at that point appellant argued that appellee had "opened the door for insurance" by implying that appellee was going to have to pay any damages personally. The court disagreed and would not allow appellant to discuss insurance in his rebuttal argument.

The general rule is that it is improper for either party to introduce or elicit evidence of the other party's insurance coverage. *Esry v. Camden*, 328 Ark. 153, 942 S.W.2d 846 (1997). To support his argument on appeal, appellant cites to *Peters v. Pierce*, 308 Ark. 60, 823 S.W.2d 820 (1992), in which the supreme court found it was reversible error for the trial court to not allow the plaintiff to enter evidence of the defendant's insurance after defendant testified that he would be "financially devastated" if a judgment were entered against him. Appellee contends that *Peters* is distinguishable from the instant case because unlike the statement in *Peters*, the statement made by appellee's counsel did not touch upon appellee's financial condition, and his counsel was merely restating that appellant was seeking damages against the appellee. We agree that the attorney's comment did not specifically refer

to insurance or mislead the jury about appellee's financial condition and therefore affirm the trial court's ruling on this point.

In his fourth point on appeal, appellant argues that he is entitled to a new trial because the jury verdict was inadequate and not supported by substantial evidence, which are grounds for a new trial under subsections (a)(5) and (a)(6) of Ark. R. Civ. P. 59. When the primary issue is the alleged inadequacy of the damage award, this court will affirm the denial of a motion for new trial absent a clear and manifest abuse of discretion. *Pearson v. Henrickson*, 336 Ark. 12, 983 S.W.2d 419 (1999). When a motion for a new trial is made on the ground that the verdict is clearly contrary to the preponderance of the evidence, we affirm if the verdict is supported by substantial evidence, giving the verdict the benefit of all reasonable inferences in accordance with the proof. *Dovers v. Stephenson Oil Co., Inc.*, 354 Ark. 695, 128 S.W.3d 805 (2003). Substantial evidence is that which goes beyond suspicion or conjecture and is sufficient to compel a conclusion one way or the other. *Id.* It is only where fair-minded persons can only draw a contrary conclusion that a jury verdict should be disturbed. *Id.*

Appellant argues that the jury failed to assess damages for each element of damages to which he was entitled, despite the court's instruction to do so. Appellant is correct that the jury was instructed consistent with AMI 2201, which sets forth the elements of damages; however, the case was submitted to the jury on a general verdict, and the damages were not itemized. Thus, it is impossible to determine to which element or elements of damages the jury apportioned the \$14,565.88. Where a general jury verdict is used, this court is left in

the position of not knowing the basis for the jury's verdict, and this court will not question nor theorize about the jury's findings. *Hyden v. Highcouch, Inc.*, 353 Ark. 609, 110 S.W.3d 760 (2003).

Appellant also argues that the jury's failure to award appellant the full amount of his medical bills, \$47,221.38, is proof of inadequate damages and grounds for a new trial. As noted previously, this court will not theorize about a jury's findings. Moreover, it is obvious the jury did not believe all of appellant's damages were causally related to, or proximately caused by, appellee's negligence and awarded damages accordingly. There is substantial evidence to support the jury's verdict, and the trial court did not abuse its discretion in denying appellant a new trial on this ground.

Affirmed.

GLOVER and VAUGHT, JJ., agree.