

JUDGE BRIAN MILLER  
November 14, 2007

DIVISION II

CA07-83

November 14, 2007

BRANDI SMYTH  
APPELLANT  
v.

AN APPEAL FROM THE SALINE  
COUNTY CIRCUIT COURT  
[CV03-15-2]

JEFFERIE CARPENTER  
APPELLEE

HONORABLE GARY ARNOLD,  
JUDGE

AFFIRMED

Appellant Brandi Smyth presents two points in her appeal of the Saline County Circuit Court's denial of her motion for new trial. She first asserts that the court erred in finding that the jury's verdict was not clearly contrary to the preponderance of the evidence. She next asserts that the court erred in failing to address, in its order, whether she was fully compensated for her damages. We disagree and affirm.

Smyth was injured in a May 10, 2002 automobile accident with Jefferie Carpenter. After the accident, x-rays of Smyth's knee and back, revealing no fractures, were taken in the emergency room of a local hospital. Two weeks later, Smyth was treated by her personal physician, Dr. David Stewart, who diagnosed Smyth with a ligament strain/contusion to her right knee. Dr. Stewart prescribed physical therapy and pain medication. He released Smyth

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from treatment on August 13, 2002. Approximately five months after being released by Dr. Stewart, Smyth returned to Dr. Stewart complaining of knee and back pain. She requested and received a referral for an MRI, which returned a negative result.

On January 7, 2003, Smyth sued Carpenter for negligence, claiming \$5905.77 in medical expenses, \$580 in prescription medication costs, and \$409 in lost wages. She also sought damages for pain and suffering. Carpenter admitted liability for the accident, and the case proceeded to trial on the issue of damages.

There was evidence that the accident occurred at a low speed and caused little damage to the parties' vehicles. The evidence also established that Smyth had problems with her neck and back prior to her accident with Carpenter. The testimony also established that Smyth's claim for lost wages was based upon her inability to work for five days. The days she missed from work, however, all occurred after Dr. Stewart released her from treatment, and after she accepted employment with the attorney who brought her lawsuit and this appeal.

The jury returned a verdict for Smyth in the amount of \$2544. Pursuant to Ark. R. Civ. P. 59(a)(5) and (6), Smyth moved for a new trial, claiming that the verdict failed to sufficiently compensate her for her damages and that the verdict was clearly contrary to the preponderance of the evidence. The trial court denied the motion, and Smyth now appeals.

Smyth argues that the jury's verdict failed to fully compensate her for her damages and that it was clearly against the preponderance of the evidence. When the primary issue is the alleged inadequacy of the damage award, we will affirm the denial of a motion for new

trial absent a clear and manifest abuse of discretion. *Fritz v. Baptist Mem'l Health Care Corp.*, 92 Ark. App. 181, 211 S.W.3d 593 (2005); *see Kempner v. Schulte*, 318 Ark. 433, 885 S.W.2d 892 (1994); *Smith v. Petit*, 300 Ark. 245, 778 S.W.2d 616 (1989). When a motion for new trial is based upon the allegation that the verdict is clearly contrary to the preponderance of the evidence, we affirm the denial of the motion if the jury's verdict is supported by substantial evidence. *Schmidt v. Stearman*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_, \_\_\_ (Mar. 14, 2007); *see Chapman v. Ford Motor Co.*, 368 Ark. 328, 194 S.W.3d 765 (2006); *Thomas v. Olson*, 364 Ark. 444, 220 S.W.3d 627 (2005).

In reviewing the trial court's denial of a motion for new trial based on a claim that the damage award is inadequate, an important consideration is whether a fair-minded jury might reasonably have fixed the award at the challenged amount. *Kempner, supra*. Further, the jury is the sole judge of the credibility of the witnesses and of the weight and value of their evidence. *Id.* It may believe or disbelieve the testimony of any one or all of the witnesses, though such evidence is uncontradicted and unimpeached. *Id.* The reasonableness and necessity of medical expenses are questions of fact to be decided by the jury. *Id.*

Because the jury's verdict was reasonable and was not clearly contrary to the preponderance of the evidence, the trial court did not err. Furthermore, we cannot say that the jury resorted to speculation and conjecture in reaching its verdict. *See Griffin v. Woodall*, 319 Ark. 383, 892 S.W.2d 451 (1995). As set forth above, the jury was not required to believe that all of Smyth's injuries were caused by the accident with Carpenter, especially considering her history of neck and back problems. The jury was also allowed to consider

that all of the days that Smyth missed from work occurred after she was released by Dr. Stewart and that she requested the MRI, which returned a negative result. For all of these reasons, we hold that substantial evidence supports the jury's verdict and that the trial court did not abuse its discretion when it denied Smyth's motion for new trial.

Affirmed.

HART and GLOVER, JJ., agree.