IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

MARIE LEGROS and WILNER LEGROS,	)	C.A. No. 98C-02-033
Plaintiffs,	)	
5.	)	
DENA JEWELL,	)	
Defendant and Third-Party Plaintiff,	)	
AMENTHA SIMON,	)	
Third-Party Defendant.	)	

Submitted: December 21, 2000
Decided: March 26, 2001

Edward C. Gill, Esq., Georgetown, Delaware. Attorney for Plaintiffs.

Thomas P. Leff, Esq., Wilmington, Delaware. Attorney for Defendants.

Upon Consideration of Plaintiff's Motion for a New Trial
DENIED

VAUGHN, Resident Judge

ORDER

Upon consideration of the plaintiffs' motion for a new trial, the defendant's response, and the record of this case, it appears that:

1. The plaintiffs have moved for a new trial after a verdict for the defendant. Specifically, the jury concluded that the defendant was negligent in the operation of her motor vehicle, but that her negligence was not the proximate cause of the injuries complained of by the plaintiffs. The accident involved in this case was of such low impact that neither vehicle sustained any damage. Nonetheless, the plaintiffs contend that the jury's decision is completely contrary to the evidence and should shock the conscience of the Court. The plaintiffs also cite errors in the conduct of the trial. For the reasons which follow, the plaintiffs' motion is denied.

2. The pertinent facts are as follows. On October 12, 1996, Plaintiff Marie Legros was a front-seat passenger in a vehicle operated by Amentha Simon. Ms. Simon was in the process of exiting the Wal-mart parking lot in Milford and merging onto Route 113. The defendant, Dena Jewell, was behind Ms. Simon doing the same thing. While in the process of attempting to merge, Ms. Simon brought her vehicle to a stop. Ms. Jewell then hit her in the rear. The collision was at such low impact that an inspection by the investigating police officer revealed no physical evidence of an impact and no damage to either vehicle. Ms. Legros and her treating physician testified that the accident caused a tear of the medial meniscus of her right knee, pain to her forehead and breast bone, and aggravation of neck and back injuries which she initially incurred in a prior accident that occurred about six weeks before. The defendant presented the testimony of two doctors who tended to cast doubt on the extent of the defendant's injuries and whether they could have been caused by the October 12 accident. The defendant also presented testimony of Dr. Lawrence

Thibault, a biomechanical engineer, who testified that an accident of the type described in this case could not cause the injuries complained of by Ms. Legros.

3. Turning to the plaintiffs' contention that the verdict is contrary to the evidence, the trial judge cannot properly grant a new trial unless the jury's verdict is against the great weight of the evidence.[1] The Supreme Court has on occasion said that the verdict must be "manifestly and palpably against the weight of the evidence."[2] That standard is certainly not met in this case. A jury is not obligated to accept a plaintiff's case at face value. It is entitled to weigh and assess evidence and the credibility of witnesses even where evidence may not be formally rebutted. It should come as no surprise to anyone that a jury may take a skeptical view where injuries are claimed to have been caused by an accident so minor that neither car has any damage. It was entirely within the discretion of the jury in this case to decide that the injuries claimed by the plaintiff were not caused by such an accident and must have been caused by some other event, notwithstanding the testimony of the plaintiff and the medical evidence. In addition, there was at least one significant factual conflict, that being whether the plaintiff walked from the ambulance to the hospital, or was carried or assisted. And the doctors presented by the defendant, as mentioned above, did cast some doubt on the extent and cause of Ms. Legros' injuries. The verdict in this case is not against the great weight of the evidence and does not shock the conscience of the Court.

4. The plaintiff also contends that the verdict in this case was a result of

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[1] *Storey v. Camper*, Del. Supr., 401 A.2d 458, 465 (1979).

[2] *Shively v. Klein*, Del. Supr., 551 A.2d 41, 45 (1988); *Eustice v. Rupert*, Del. Supr., 460 A.2d 507, 510 (1983); *Luskin v. Stampone*, Del. Supr., 386 A.2d 1137, 1139 (1978).

prejudice and outside influences that affected the jury's verdict since she is a foreign national. The plaintiff offers no facts in support of this allegation, and I conclude that it is without basis. Finally, the plaintiff contends that the Court committed legal error by not asking a *voir dire* question requested by plaintiff, in allowing the testimony of Dr. Thibault, and in not correcting defense counsel's alleged vouching for Dr. Thibault in closing arguments. In the Court's view, the *voir dire* question complained of was adequately covered by other *voir dire* questions which were asked. The testimony of Dr. Thibault was consistent with common sense and given the very simple circumstances of this accident was relevant and reliable. In addition, to some extent it simply rebutted evidence offered by the plaintiff through the testimony of Dr. Quinn. I am satisfied that the vouching objection was handled correctly. I am satisfied that there was no legal error and that the points complained of did not prejudice the plaintiffs or affect the outcome of the trial.

5. THEREFORE, the plaintiffs' motion for a new trial is ***denied.***

IT IS SO ORDERED.

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Resident Judge

oc: Prothonotary
cc: Order Distribution