IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

REBECCA DELACY,	)	
	)	C.A. No. 04C-10-185 (JTV)
Plaintiff,	)	
	)	
v.	)	
	)	
JEANETTE T. WEEKS,	)	
	)	
Defendant.	)	

Submitted: July 13, 2006
Decided: October 30, 2006

William W. Erhart, Esq., Wilmington, Delaware. Attorney for Plaintiff.

Colin. M. Shalk, Esq., Casarino, Christman & Shalk, Wilmington, Delaware. Attorney for Defendant.

Upon Consideration of Plaintiff's
Motion For a New Trail
DENIED

VAUGHN, President Judge

Delacy v. Weeks
C.A. No. 04C-10-185 (JTV)
October 30, 2006

ORDER

Upon consideration of plaintiff's motion for a new trial, the defendant's opposition thereto, and the record of the case, it appears that:

1. This is an automobile accident case in which the plaintiff sought damages for injuries allegedly caused by negligence on the part of the defendant.

2. Trial took place between June 12, 2006 and June 14, 2006.

3. The jury found that the defendant was negligent but also found that the defendant's negligence was not the proximate cause of injury to the plaintiff.

4. Plaintiff contends that there was uncontradicted testimony that there was a causal link between the accident and her injuries. Plaintiff further contends that when such link is established a verdict of zero damages is inadequate as a matter of law. Plaintiff further contends that once the existence of an injury is established which is causally related to the accident, some damages must be awarded. She further contends that muscle spasm is an objective finding. She relies upon the Delaware cases of *Mason v. Rizzi*,[1] *Amalfitano v. Baker,*[2] and *Maier v. Santucci*.[3]

5. When reviewing a motion for a new trial, the jury's verdict is entitled to "enormous deference."[4] Traditionally, "the court's power to grant a new trial has been exercised cautiously and with extreme deference to the findings of the jury."[5] In the

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[1] 2004 Del. LEXIS 109 (Del. 2004).

[2] 794 A.2d 575 (Del. 2001).

[3] 697 A.2d 747 (Del. 1997).

[4] *Young v. Frase,* 702 A.2d 1234, 1236 (Del. 1997) (*citing* the Delaware Constitution, Art. IV, § 11(1)(a)).

[5] *Maier v. Santucci*, 697 A.2d 747, 749 (Del. 1997).

absence of exceptional circumstances, the validity of damages determined by the jury should be presumed.[6] This Court will not upset the verdict unless the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result.[7]

6. At trial, the plaintiff called as a witness Dr. Jennifer Chu. Dr. Chu examined plaintiff 16 months after the accident. Dr. Chu testified that she found injuries while examining the plaintiff, such as spasms, limitation of motion, redness, and swelling. Dr. Chu also concluded that these injuries were caused by the automobile accident. She treated the plaintiff for the injuries.

7. In defense, the defendant also called one doctor as a witness, Dr. Katz. Dr. Katz examined the plaintiff about 31 months after the accident. He testified that he did not find the injuries that Dr. Chu described. In fact, Dr. Katz testified that he did not find any injury when he examined the patient. He testified that he could not find a causal link between the accident and any injury to the plaintiff.

8. There was substantial conflict between the testimony of Dr. Chu and the testimony of Dr. Katz. In addition, Dr. Katz described some of Dr. Chu's methods as unique, including her performance and interpretation of EMG's. In fact, he testified that her methods, or some of them, were not accepted in the medical community. The differences in the testimony of the two witnesses was sufficiently sharp that their testimony could not be reconciled and the jury was within its discretion to reject the testimony of Dr. Chu and accept the testimony of Dr. Katz.

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[6] *Littrel v. Hanby,* 1998 Del. Super. LEXIS 10 at *3-4, citing *Young,* 702 A.2d at 1236-37.

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

9. The plaintiff also contends that there was evidence that physicians who had treated the plaintiff earlier, soon after the accident, specifically Silverside Medical Center and Dr. Sokoloff, recorded injuries including neck strain, spasms in various locations and headaches. However, neither Dr. Sokoloff nor any doctor from Silverside was called as a witness, nor were their records admitted as an exhibit. Their records came up only in the cross-examination of Dr. Katz. Dr. Katz was shown the records, or more accurately some of them, and asked if they said what they said. He was, in substance, asked to assume that the statements in the records he was shown were true, but he did not testify about those facts. The records of Silverside and Dr. Sokoloff were not facts or data upon which Dr. Katz based his opinions. This line of questioning was arguably permissible on cross-examination to test and explore the strength of Dr. Katz' opinions. However, since the records of Dr. Sokoloff and Silverside were never introduced as evidence, I do not consider them competent evidence sufficient to require the granting of a new trial.

10. Therefore, the plaintiff's motion for a new trial is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File