

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARC A. GULLO,)
) No. 254, 2000
 Plaintiff Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for New Castle County
)
 KIRSTEN WALTHER,) C.A. No. 97C-05-101-JEB
)
 Defendant Below)
 Appellees.)

Submitted: April 17, 2001
Decided: June 28, 2001

Before **WALSH, HOLLAND** and **STEELE**, Justices.

ORDER

This 28th day of June, 2001, it appears to the Court that:

1. The appellant, Marc A. Gullo, appeals the May 2, 2000 Superior Court Order that denied his motion for a new trial following a second trial in which a jury awarded him \$0 in damages for injuries he suffered during a car accident that occurred on June 10, 1995. The facts in this case are relatively simple and generally not in dispute. On June 10, 1995, Kirsten M. Walther's car collided with an auto driven by Gullo. Both cars were undamaged except for scratches on Gullo's rear bumper. Neither driver appeared injured at the time of the accident. Gullo apparently sought medical treatment for injuries he claimed he sustained in

the accident approximately six weeks later. He complained then of pain in his neck and shoulder.

2. Gullo filed suit in the Superior Court. The first trial began on November 9, 1998. The Superior Court directed a verdict on liability for Gullo and submitted the case to the jury solely on the issue of damages. The jury concluded that Gullo had not been injured in the car accident and it awarded Gullo \$0 in damages. The Superior Court granted Gullo's motion for a new trial.

3. On January 24, 2000, the second trial in this case began. The second jury heard basically the same evidence from the same witnesses. It too awarded Gullo \$0 in damages. This time, the Superior Court denied Gullo's motion for a new trial. The Superior Court granted Walther's request for costs totaling \$4,200, which included \$200 for arbitration and \$4,000 for expert testimony at both trials.

4. This Court's standard of review for a denial of a motion for a new trial is abuse of discretion.¹ In general, great deference is given to jury verdicts.² "As long as there is a sufficient evidentiary basis for the amount of the award, the jury's verdict should not be disturbed by a grant of ... a new trial as to damages."³ "[A] court's assessment of whether a jury's award of damages is within a range

¹ *Young v. Frase*, Del. Supr., 702 A.2d 1234, 1236 (1997).

² Del. Const., art. IV, § 11(1)(a).

³ *Frase*, at 1237.

supported by the evidence must necessarily be based on the evidence presented to the jury.”⁴

5. In this case, the Superior Court found that the verdict was not against the weight of the evidence nor did it shock the conscience of the court. Gullo complained of no injuries at the accident scene. After the accident, Gullo was treated by three neurologists and two neurosurgeons for subjective complaints of neck pain and numbness in his hand. His treating physicians reported Gullo’s examinations for objective symptomology to be normal.

6. In this case, the jury could reasonably conclude that Gullo suffered no injury resulting from the accident and, therefore, should not recover damages. It is well settled that a jury may choose to believe or disbelieve claims of injury based solely upon a plaintiff’s subjective complaints.⁵ This case falls within the range of a jury’s reasonable judgment in the absence of any testimony of objective symptomology. The award of costs to Walther is also consistent with our statutes and court rules.⁶ Our review of the record does not support the conclusion that the Superior Court abused its discretion.

⁴ *Id.* at 1237-38.

⁵ *DeBernard v. Reed*, Del. Supr., 277 A.2d 684 (1971).

⁶ See 10 *Del. C.* § 8906; Super. Ct. Civ. R. 54(d). Walther also contends that the award of costs is justified under Super. Ct. Civ. R. 68 because she offered Gullo \$15,000 for settlement.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice