

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ELMORE WALKER, JR. and )  
ERNESTINE WALKER, ) No. 78, 2004  
husband and wife, )  
 ) Court Below: Superior Court  
Appellants, ) of the State of Delaware in  
 ) and for New Castle County  
v. )  
 ) C.A. No. 00C-09-146  
JOHN N. CAMPANELLI, )  
 )  
Appellee. )

Submitted: August 4, 2004  
Decided: October 12, 2004

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices

***ORDER***

This 12<sup>th</sup> day of October 2004, on consideration of the briefs of the parties, it appears to the Court that:

1. In this personal injury action stemming from an auto accident, appellant, plaintiff below, Elmore Walker appeals the jury's finding that the appellee, defendant below, John Campanelli was negligent; but that his negligence did not proximately cause Walker's injuries.<sup>1</sup> Walker appeals that ruling and the trial judge's evidentiary ruling refusing to admit photographs of the cars involved. We find that the trial judge did not abuse his discretion when he refused to admit the photographs of the cars because Walker offered no expert testimony that would

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<sup>1</sup> The jury answered special interrogatories.

tie the extent of damage to the car to the severity of his injuries. The trial judge also denied Walker's motion for a new trial. Walker moved for a new trial on the grounds that in order to return a verdict of zero damages, the jury must have improperly ignored the objective findings of his medical experts. We find that the trial judge did not abuse his discretion when he denied Walker's motion for a new trial because medical evidence in the record contradicted Walker's experts' opinion based on the objective findings and the jury's verdict was therefore not against the great weight of the evidence. Accordingly, we AFFIRM.

### **The Trial Judge's Refusal To Admit The Photographs Of The Vehicles**

2. The standard of review for evidentiary rulings on appeal is abuse of discretion.<sup>2</sup> Walker argues that the trial judge abused his discretion when he refused to admit photographs of Walker's car. Additionally, Walker claims the trial judge misconstrued *Davis v. Maute*<sup>3</sup> and disregarded the admonition in *Eskin v. Carden*<sup>4</sup> that "*Davis* has been misinterpreted as a bar to the admission of photographs without expert testimony" and that "there may be many helpful purposes for admitting photographs . . . where these purposes do not require supporting expert opinion."<sup>5</sup> Under a 403 analysis, it is proper to admit relevant

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<sup>2</sup> *Davis v. Maute*, 770 A.2d 36, 38 (Del. 2001).

<sup>3</sup> 770 A.2d 36 (Del. 2000).

<sup>4</sup> 842 A.2d 1222 (Del. 2004).

<sup>5</sup> *Id.* at 1223.

photographs of damaged vehicles when their probative value outweighs the risk of unfair prejudice, confusion of the issues, or possible misleading of the jury.<sup>6</sup>

3. Walker sought to introduce photographs of his damaged car in an attempt to link the amount of damage to his vehicle to the injuries he allegedly suffered as a result of the accident. Walker argued that during cross-examination of the police officer that investigated the accident, the following exchange “opened the door” to the admission of the photographs into evidence:

Q: In the scheme of things, do you consider it a relatively minor accident?

A: Relatively unremarkable

Q: Unremarkable. You talked to the parties. You had different versions of what happened?

A: Correct.

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Q: I take it then from what you are telling me because it was an unremarkable accident, you did not make any effort to determine speed?

A: No.

Walker sought to introduce the photographs to show that the damage to his vehicle was not minor, but “moderate.” Walker also argued that one of his experts had seen the photographs and had characterized the impact as “significant.”<sup>7</sup> The trial judge refused to admit photographs because Walker offered no expert testimony

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<sup>6</sup> D.R.E. 403 (2004).

<sup>7</sup> The physician apparently formulated his opinion before seeing the pictures, as Walker’s attorney quoted the following testimony from the physician’s deposition, “I asked Dr. King at page 6 of his deposition, do you have an understanding from talking to Mr. Walker about the nature of the impact? Yes. What was your understanding? It was a significant impact. I *subsequently* saw pictures of his vehicle.” Appellant’s App. Op. Br. p. 31. (emphasis added).

that would tie the extent of damage to the car to the severity of his injuries. Although the photographs may have contradicted the police officer's testimony that the accident was "unremarkable," thus leaving the jury free to infer that Walker's injuries could not have been serious, admitting the photographs to rebut that testimony would have correspondingly created an inference that based upon the vehicular damage depicted the injury to Walker must have been serious.

4. Walker's purpose in offering the photographs was either to show a nexus between vehicle damage and his personal injuries, or to demonstrate that there was debris on the road at the time the accident occurred.<sup>8</sup> However, the photographs would have been cumulative and unnecessary to establish road debris because multiple witnesses testified to that fact. Had the photographs been admitted for either purpose, the trial judge would have run the risk that the jury might infer that the extent of Walker's injuries could be determined from the damage to his vehicle. No expert testimony supported such an inference. Walker's own accident reconstruction expert was unable to provide a link between the photographs and severity of personal injuries. Walker could not demonstrate how the photographs were relevant beyond his attempt to equate damage to personal injury or to contradict the police officer to show how speed may have

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<sup>8</sup> Walker argued that the door was opened because of the police officer's testimony about the nature of the accident and Campanelli's testimony that, as a result of the accident, the only damage to his vehicle was that the bumper of his vehicle had about five or six scratches. Trial Tr. at 24-25, 59.

related to causation. The trial judge correctly decided that the risk of unfair prejudice or jury confusion outweighed the photographs' probative value and the trial judge's cautionary instruction to disregard the officer's characterization of the accident as minor informed the jury that there was no correlation between the extent of damage to the vehicle and the injury to the occupant. The trial judge, therefore, did not abuse his discretion when he correctly concluded that admitting the photographs would confuse or mislead the jury into accepting an unsupported inference.

### **The Trial Judge's Denial Of Walker's Motion For A New Trial**

5. This Court reviews the denial of a motion for a new trial for abuse of discretion.<sup>9</sup> A new trial is warranted only if the jury's verdict is "clearly the result of passion, prejudice, partiality, or corruption, or that it was manifestly in disregard of the evidence or applicable rules of law."<sup>10</sup> Therefore, "unless the evidence preponderates so heavily against the jury verdict that a reasonable juror could not have reached the result," the jury's findings will not be disturbed.<sup>11</sup>

6. In a personal injury suit, "if a plaintiff conclusively proves an injury worthy of compensation resulting from the defendant's tortious conduct, the

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<sup>9</sup> *Storey v. Camper*, 401 A.2d 458 (Del. 1979).

<sup>10</sup> *Young v. Fraise*, 702 A.2d 1234, 1236 (Del. 1997).

<sup>11</sup> *Amalfitano v. Baker*, 794 A.2d 575 (Del. 2001).

plaintiff is entitled to at least some amount of damages.”<sup>12</sup> Where uncontested medical evidence links on injury to its proximate cause and is confirmed by independent objective testing, a jury award of zero damages is against the weight of the evidence.<sup>13</sup> The law, however, does not compensate for every loss and the jury serves as the conscience of the community, sending a message to exaggerating and overly litigious claimants.<sup>14</sup> In determining whether a compensable injury resulted from the defendant’s tortious conduct, a jury may reject an expert’s medical opinion when the opinion is substantially based on the subjective complaints of the patient.<sup>15</sup> Further, when medical experts differ on objective findings, the jury is free to believe whichever expert they find to be more credible. “The determination of the credibility and reliability of different experts is an area uniquely left to the jury to decide and may not be overturned unless there is no reasonable basis to support that decision.”<sup>16</sup>

7. At trial, Walker and Campanelli each presented two medical experts. Walker’s experts testified that both objective testing and subjective complaints confirmed that he had sustained severe, permanent injuries as a result of the accident. Campanelli’s experts, however, opined that the objective testing relied

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<sup>12</sup> *Hall v. Dorsey*, No. 96C-06-045, 1998 WL 960774 (Del. Super. Ct. Nov. 5, 1998).

<sup>13</sup> *Amalfitano*, 794 A.2d at 577.

<sup>14</sup> *Hall*, 1998 WL 960774 at \*6 citing *Furek v. Univ. of Delaware*, 594 A.2d 506, 525 (Del. 1990).

<sup>15</sup> *Kossol v. Duffy*, 765 A.2d 952 (Del. 2000).

<sup>16</sup> *Mumford v. Paris*, No. 00C-05-022WLW, 2003 WL 231611 at \*4 (Del. Super Ct. Jan. 31, 2003).

upon by Walker's experts did not support causation and that Walker's subjective complaints alone supported residual injuries related to the accident.

8. At trial, Dr. Alan J. Fink, a neurologist, and Dr. Conrad K. King Jr., a pain medicine specialist, testified for Walker. Dr. King stated that Walker, as a result of the accident, sustained "an annual tear at his disk at C4-5, a small" central disk "herniation C5-6 with C5-6 radiculopathy" evidenced by an EMG and an MRI. Dr. Fink opined that Walker had an abnormal EMG study that "correlated with the abnormal MRI findings of a herniated disk at C5-6."<sup>17</sup>

9. Dr. David Stephens, a defense expert, refuted Dr. Fink's testimony by stating that the positive finding on the MRI was not "clinically relevant" because there was no confirmation that it resulted from an injury.<sup>18</sup> Moreover, Dr. Stephens explained that Walker did not have a herniated disk and that the "central disk" that he did have would not cause radicular pain.<sup>19</sup> He contradicted Walker's experts' views on the significance of the objective test results. He opined that the only objective findings were inconsistent. He concluded that the positive finding on the MRI did not necessarily result from the injury, but, rather, more likely resulted from normal wear-and-tear.<sup>20</sup>

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<sup>17</sup> Appellant's App. Op. Br. at 25.

<sup>18</sup> Appellant's App. Op. Br. at 55.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

10. Dr. Stephens stated that Walker had suffered a flexion/extension injury of his cervical spine and a lumbar strain as a result of the accident but he based his diagnosis solely on Walker's subjective complaints. His examinations of Walker, which occurred a year after the accident, revealed complaints of pain by Walker but produced no objective findings of injury.

11. A second defense expert, Dr. John Meyers, testified that Walker exacerbated his pain symptoms during examination.<sup>21</sup> Dr. Meyers also testified that during a second examination of Walker, he noted a "dramatic overreaction of pain behavior," an "overreaction and exaggeration" by Walker, and signs of "possibly even malingering." Additionally, Dr. Meyers noted that while Walker was in the office, he demonstrated an "exaggerated, antalgic gait," and complained of left hip pain. However, when Dr. Meyers observed Walker after he had left the office, his gait was normal and his cane did not even touch the ground.

12. At trial, both defense experts at least initially agreed that Walker had suffered some degree of injury as a result of the accident.<sup>22</sup> When Dr. Stephens was questioned about the basis for his opinion, he explained that he based that initial opinion on the patients' history, which, he took "at face value".<sup>23</sup> However, Dr. Stephens testified that any possible initial injury had to have completely healed

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<sup>21</sup> Walker was being treated for his preexisting back and neck problems for up until two months before the accident.

<sup>22</sup> Appellant's App. Op. Br. at 56.

<sup>23</sup> *Id.*



since he believed the objective tests did not corroborate Walker's subjective complaints.

13. Walker's experts did introduce objective findings of injury which they causally related to the accident, but Campanelli's experts' testimony contradicted Walker's experts' conclusions from those findings and their relevance to the accident. Although Walker urges that both defense medical experts agreed that he suffered some injury at the time of the crash, the jury could have reasonably concluded that those experts based that conclusion on Walker's subjective complaints. Walker testified that immediately after the accident he was in severe pain and was taken to the hospital, x-rayed, and then released with instructions to follow up with his family doctor.<sup>24</sup> This was not a case where *uncontested* medical evidence confirmed by objective testing causally linked the injury to the accident.<sup>25</sup> Here, the significance of the objective tests was hotly contested. The trial judge correctly ruled that the jury could freely disregard medical opinion based on Walker's subjective complaints. Therefore, the trial judge did not abuse his discretion when he denied Walker's motion for a new trial because Campanelli's experts provided credible testimony allowing the jury to reach the reasonable

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<sup>24</sup> Instead of going to his family doctor, he testified that he met with his attorney two days later and then was seen by a physician recommended by his attorney.

<sup>25</sup> *Cf. Amalfitano*, 794 A.2d at 578 (holding that uncontradicted medical testimony based on objective findings requires the jury to return a minimal damages award).

conclusion that Campanelli's negligence did not proximately cause Walker's injuries.

14. For these reasons we conclude that the trial judge neither abused his discretion by denying the motion for a new trial nor by excluding the photographs.

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice