

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

PAUL FELL,)
)
 Appellant,)
)
 v.)
)
 NANCY A. CARLIN and KENNETH)
 CARLIN,)
)
 Appellees.)
)
)
)
 _____)

Case No. 2D07-2921

Opinion filed January 16, 2009.

Appeal from the Circuit Court
for Hillsborough County;
Ralph Steinberg, Judge.

Steven L. Brannock and Sarah C.
Pellenbarg of Holland & Knight, LLP,
Tampa, for Appellant.

Anthony J. Parrino and Katherine
Shadwick of Reynolds Stowell Parrino,
P.A., St. Petersburg, for Appellees.

KELLY, Judge.

Paul Fell appeals the final judgment entered against him in a personal injury action. Fell was a back-seat passenger in a Chevrolet Blazer involved in a rear-end collision in which the defendants, Nancy and Kenneth Carlin, admitted fault. On

appeal, Fell contends the trial court should have directed a verdict in his favor on the issue of whether he sustained an injury caused by the accident.¹ After a thorough review of the record, we conclude the trial court properly denied Fell's motion for a directed verdict. Accordingly, we affirm.

The standard of review on appeal of a trial court's ruling on a motion for directed verdict is the same test used by the trial court in ruling on the motion. Sims v. Cristinzio, 898 So. 2d 1004, 1006 (Fla. 2d DCA 2005).

A motion for directed verdict should be granted only where no view of the evidence, or inferences made therefrom, could support a verdict for the nonmoving party. In considering a motion for directed verdict, the court must evaluate the testimony in the light most favorable to the nonmoving party and every reasonable inference deduced from the evidence must be indulged in favor of the nonmoving party. If there are conflicts in the evidence or different reasonable inferences that may be drawn from the evidence, the issue is factual and should be submitted to the jury.

Id. at 1005 (citations omitted). Fell argues he was entitled to a directed verdict on the issue of whether he had sustained an injury as a result of the accident because every physician who testified at trial, including the physician who testified for the defense, opined that he had. While accurate, Fell's argument overlooks the fact that a jury may reject even uncontroverted expert medical testimony provided it has a reasonable basis to do so, such as where there is conflicting lay testimony. See Weygant v. Ft. Myers

¹Fell also contends that errors occurring during trial warrant a reversal and remand for a new trial. Based on our review of the record, we conclude that even if the issues he raises are in fact errors, trial counsel either did not preserve them or the alleged errors were not harmful; thus, the trial court did not abuse its discretion when it denied his motion for a new trial.

Lincoln Mercury, Inc., 640 So. 2d 1092, 1094 (Fla. 1994); Easkold v. Rhodes, 614 So. 2d 495, 498 (Fla. 1993).

Here, the jury heard testimony that would have provided it with a reasonable basis to reject the medical experts' opinions that Fell had an injury caused by the accident. The medical opinions regarding Fell's injury were based on his subjective complaints of pain. Accordingly, the validity of those opinions depended on Fell's candor in reporting his complaints. In particular, the Carlins' medical expert testified that while he believed Fell had sustained a soft tissue injury that was not permanent, his opinion was a "benefit of the doubt" diagnosis. He explained that this meant he based his opinion on Fell's subjective complaints of pain which he assumed were truthful; however, if they were not truthful, his opinion would not be valid. Thus, if the jury had a reasonable basis to conclude Fell was not candid with his doctors, it also had a basis to reject their opinions regarding whether he was injured as a result of the accident.

We conclude that the evidence, viewed in the light most favorable to the Carlins, provided the jury with a reasonable basis to conclude that Fell was not candid with his doctors. Among other things, the evidence showed the following: the impact was so minor neither vehicle sustained visible property damage; Fell did not seek emergency medical treatment although he later claimed to have experienced pain and stiffness immediately after the impact; two days after the accident Fell went to a previously scheduled doctor's appointment and never mentioned the accident, did not note any back or neck pain on the patient history form, did not complain of pain or stiffness, and did not exhibit symptoms of pain or injury during his physical examination;

Fell did not miss any work and did not complain of pain at work; and as time passed, Fell gave increasing estimates of the speed of the Carlins' car while admitting at trial that he had not seen the car before impact. In light of this evidence, a jury could reasonably infer that Fell had not been injured in the accident and that he had not been candid with his physicians. Accordingly, the trial court correctly denied Fell's motion for directed verdict and allowed this issue to go to the jury.

Affirmed.

FULMER and CASANUEVA, JJ., Concur.