

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CA 1857

DAVID COOPER HUSBAND OF/AND COREY COOPER
INDIVIDUALLY AND ON BEHALF OF SYDNEY COOPER

VERSUS

THERESA BARR AND ALLSTATE INSURANCE COMPANY

Judgment Rendered: MAY - 2 2014



On Appeal from the
22nd Judicial District Court,
in and for the Parish of St. Tammany,
State of Louisiana
Trial Court No. 2009-16748

Honorable William J. Knight, Judge Presiding

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

HIGGINBOTHAM, J.

In this action arising out of an automobile accident, plaintiffs appeal a jury verdict awarding allegedly inadequate general and special damages. Finding no abuse of discretion or error, we affirm.

FACTS

On April 27, 2009, Corey Cooper was driving her 1997 BMW car with her young daughter, Sydney Cooper, in the back seat. It was sometime between 6:30 to 6:45 am when Corey exited southbound Interstate 12 at Highway 59 in order to drop her daughter off at her mother's house prior to going to her job as an underwriter for Banker's Insurance Group. When Corey reached the end of the exit travel lane, she stopped for a passing vehicle before attempting to merge onto Highway 59. While stopped, Corey's car was rear-ended by a small Lexus SUV operated by Theresa Barr. According to Theresa, as she was exiting the interstate on her way to work, she came to a stop and then began to slowly move behind Corey's car while waiting to merge onto Highway 59. Theresa's bumper struck Corey's right rear tail light and bumper when Corey's car stopped. No airbags were deployed in either vehicle. Theresa's vehicle sustained only a scratch on the front bumper, which was not repaired; however, Corey's car sustained approximately \$3,900 in damage, which resulted in her car being a total loss. After the accident, each driver indicated they were not injured; they both drove their cars away from the scene of the accident and went to work as planned, and Sydney went to school for the day.

A few days after the accident, Corey and Sydney were both experiencing pain. Corey went to a hospital emergency room on April 30, 2009, complaining of back and neck pain, and Sydney was taken to her primary care physician on May 1, 2009, for whiplash-type neck pain. Sydney's pain resolved within one week of the accident, but Corey continued to have back pain for which she sought treatment from multiple doctors. Approximately six months after the accident, Corey was

referred to a neurosurgeon, Dr. Rand Voorhies, for further treatment of her back pain. When she initially saw Dr. Voorhies on October 16, 2009, Corey indicated for the first time that she was also experiencing some numbness in her hands. Eventually, Corey was referred to an orthopedic surgeon, Dr. Harold M. Stokes, who performed surgery for bilateral carpal tunnel syndrome on May 21, 2012.

On November 13, 2009, Corey filed a petition for damages, individually and on behalf of her daughter, against Theresa and her insurer, Allstate Insurance Company.¹ After a three-day jury trial on the merits, the jury found that Corey and Sydney had been injured as a result of the accident, and awarded Corey \$5,000 and Sydney \$1,500 for past pain, suffering, mental anguish, and emotional distress. Additionally, the jury awarded \$10,000 to Corey and \$322 to Sydney for past medical expenses. The jury specifically declined to award any damages for Corey's loss of enjoyment of life, disfigurement, future pain and suffering or future medical expenses, as well as Sydney's loss of consortium claim. After the jury verdict was rendered, the trial court denied a motion for judgment notwithstanding the verdict, and an alternative motion for new trial addressing the issue of the jury's abusively low damage awards. Corey and Sydney now appeal, assigning one specification of error: "[t]he jury erred in its woefully inadequate awards of damages."²

DISCUSSION

In assessing quantum for both general and special damages in cases of offenses, it is well-settled that a jury is given great discretion. See La. Civ. Code

¹ At the time of the accident, Corey was married to David Cooper, who subsequently passed away in October 2010. Initially, David joined in Corey's lawsuit to assert a loss of consortium claim. That claim is not at issue in this appeal.

² In their brief, Corey and Sydney outline nine issues of law and argument presented in support of their one assignment of error. The issues presented and briefed include the jury's alleged error in failing to award the full amount of special damages for Corey's back and wrist injuries; an inconsistent total special damage award to Corey, and an abusively low total general damage award to both Corey and Sydney; failure to award Corey damages for loss of enjoyment of life and disfigurement; failure to award Sydney damages for her loss of consortium; and the trial court's error in failing to grant the motion for judgment notwithstanding the verdict or the alternative motion for new trial.

art. 2324.1; **Guillory v. Lee**, 2009-0075 (La. 6/26/09), 16 So.3d 1104, 1116. Further, the jury's assessment of quantum or determination of the appropriate amount of damages is a determination of fact, which is entitled to great deference on appeal. **Guillory**, 16 So.3d at 1116. An appellate court's review of the amounts awarded by the jury for general and special damages is subject to the "abuse of discretion" standard of review. See **Bouquet v. Wal-Mart Stores, Inc.**, 2008-0309 (La. 4/4/08), 979 So.2d 456, 459. An appellate court must be cautious not to re-weigh the evidence or substitute its own factual finding just because it would have decided the case differently. **Guillory**, 16 So.3d at 1117. An appellate court may disturb a damages award and resort to a review of prior similar awards only after an articulated analysis of the facts reveals an abuse of discretion. **Bouquet**, 979 So.2d at 459.

Under the foregoing standard of review, we must first examine the facts and circumstances relating to Corey and Sydney's particular injuries. The primary disputed issues at the trial were the nature and causation of the claimed injuries to Corey's back and wrists and Sydney's neck. Corey and Sydney bore the burden of proving the causal connection between the accident and their resulting injuries. See **Oden v. Gales**, 2006-0946 (La. App. 1st Cir. 3/23/07), 960 So.2d 114, 118. Whether the accident caused the injuries is a factual question that should not be reversed on appeal absent manifest error. **Pena v. Delchamps, Inc.**, 2006-0364 (La. App. 1st Cir. 3/28/07), 960 So.2d 988, 994, writ denied, 2007-0875 (La. 6/22/07), 959 So.2d 498. With these principles in mind, we review the evidence of record to determine whether the jury's damage awards are contrary to the evidence or constitute an abuse of the vast discretion afforded to the jury.

Special Damages

Corey asserts that the jury erred in failing to award the full sum of her past medical expenses for her back and wrist injuries. A tort victim may ordinarily recover medical expenses, past and future, that are incurred as a result of an injury.

Menard v. Lafayette Ins. Co., 2009-1869 (La. 3/16/10), 31 So.3d 996, 1006. However, the plaintiff must prove, by a preponderance of the evidence, the existence of the injuries and a causal connection between the injuries and the accident. **Yohn v. Brandon**, 2001-1896 (La. App. 1st Cir. 9/27/02), 835 So.2d 580, 584, writ denied, 2002-2592 (La. 12/13/02), 831 So.2d 989. The test for determining whether that burden has been met is whether the plaintiff has established through medical testimony that it is more probable than not that the injuries were caused by the accident. **Id.**

Special damages such as medical expenses are those which have a “ready market value,” where the amount of damages theoretically may be determined with relative certainty. **Kaiser v. Hardin**, 2006-2092 (La. 4/11/07), 953 So.2d 802, 810 (per curiam). In reviewing a jury’s factual conclusions with regard to special damages, an appellate court must satisfy a two-step process based on the record as a whole before it may reverse or modify a special damage award: there must be no reasonable factual basis for the jury’s conclusions, and the findings must be clearly wrong. **Id.** Notably, where there are two permissible views of the evidence, the jury’s choice between them cannot be clearly wrong. See **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989).

A thorough review of the record shows that the jury apparently did not believe that all of Corey’s medical issues were related to the accident. Corey was continuously treated for back pain, beginning three days after the accident up until the date of trial, which was three years and eight months later. Corey testified that her medical bills totaled \$33,000. The back pain treatment included two doctors, intermittent physical therapy at three different locations, over-the-counter medication, a lumbar steroid injection, x-rays, two lumbar MRIs, and a lumbar discogram diagnostic procedure. The medical testimony and evidence related Corey’s back pain to the accident based on the history that she supplied to the doctors; however, Dr. John B. Logan and Dr. Voorhies both testified that they

could not relate the degenerative structural changes evident in Corey's lumbar MRI (a slight broad-based posterior protrusion of L4-5) to the accident with any degree of medical probability. Thus, Corey's overall diagnosis for her back was a soft-tissue sprain/strain injury to the lumbar spine, with no evidence of pinched nerves or nerve damage, that generally resolves within six months to a year. Much of the testimony surrounding Corey's back injury focused on her lack of consistent physical therapy as ordered by her physicians.

Corey was also treated for carpal tunnel syndrome, and eventually had surgery on both wrists; however, Corey did not reveal any hand/wrist pain or numbness to any healthcare provider until she was referred to Dr. Voorhies almost six months after the accident. Dr. Voorhies testified at trial that if the carpal tunnel symptoms were related to the accident, he would expect to see symptoms within several weeks of the accident. The doctor that performed Corey's surgery for bilateral carpal tunnel syndrome three years after the accident, Dr. Harold M. Stokes, testified that Corey disclosed to him that she began to experience numbness and tingling in her hands for the first time within a month of the accident. However, Dr. Stokes acknowledged that Corey's history as relayed to him was inconsistent with the history she gave to Dr. Voorhies that she had experienced mild hand symptoms before the accident, but they were worse after the accident. Dr. Stokes stated that in order to relate carpal tunnel syndrome to an accident, the symptoms would occur within four-to-six weeks. The physician retained to conduct an independent medical examination, Dr. Roch B. Hontas, testified that he could not relate Corey's carpal tunnel symptoms to the accident because of the minor nature of the impact and the medical records indicating that she did not report the symptoms until almost six months after the accident. Much of the testimony surrounding Corey's carpal tunnel syndrome focused on the fact that she did not tell any doctor about the symptoms in her hands until almost six months after the accident, and the fact that Corey's job entailed repetitive-type

motions from typing on a keyboard every day, which is a common cause of bilateral carpal tunnel syndrome.

The jury awarded \$10,000 for Corey's past medical expenses, seemingly rejecting all expenses related to the carpal tunnel syndrome diagnosis and surgery, as well as any expenses for back treatment beyond one year. Our review of the record fails to reveal any manifest error in the jury's conclusions. After weighing and evaluating the medical and lay testimony, the jury may accept or reject any expert's view. **Phiratsamy v. Pipes**, 27,209 (La. App. 2d Cir. 8/23/95), 660 So.2d 172, 175. Obviously, the jury is not required to totally accept a plaintiff's perception concerning the nature and extent of the injuries sustained. **Id.** See also **Ladner v. Government Employees' Ins. Co.**, 2008-0323 (La. App. 4th Cir. 10/8/08), 992 So.2d 1098, 1102, writ denied, 2008-2864 (La. 2/6/09), 999 So.2d 783. Thus, the jury could have reasonably rejected the relationship of Corey's carpal tunnel syndrome to the accident, as well as reasonably decided that Corey's back injury resolved within one year of the accident. A plaintiff's recovery of medical expenses must be confined to those expenses related to the accident. **Phiratsamy**, 660 So.2d at 175. We find the jury's award for special damages does not constitute an abuse of discretion and should not be increased as Corey contends.

General Damages

Corey and Sydney assert that the jury's total general damage awards of \$5,000 to Corey and \$1,500 to Sydney for their past pain, suffering, mental anguish, and emotional distress were abusively low. They also maintain error in the jury's failure to award Corey damages for loss of enjoyment of life and disfigurement and Sydney damages for loss of consortium. We reiterate that the discretion vested in the jury is great, even vast, so that an appellate court should rarely disturb an award of general damages. **Youn v. Maritime Overseas Corp.**, 623 So.2d 1257, 1261 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127

L.Ed.2d 379 (1994). General damages are those which are inherently speculative in nature and cannot be fixed with mathematical certainty, including damages for pain and suffering. **Wainwright v. Fontenot**, 2000-0492 (La. 10/17/00), 774 So.2d 70, 74. The role of an appellate court in reviewing a general damage award is not to decide what it considers to be an appropriate award, but rather, to review the exercise of discretion by the jury. **Bouquet**, 979 So.2d at 459.

In this case, the jury heard extensive testimony and was able to review the medical evidence that was introduced into the record. Based on our review of the record, especially focusing on Corey's own words detailing her ability to continue to work and stay active after the accident, that her daughter's pain resolved within a week and was "nothing serious," that she stopped attending physical therapy as often as recommended within two months of the accident, that she took only over-the-counter medications for her pain except briefly after her surgery, that her surgical scars look "pretty good," that she did not have any activities or hobbies that she did before the accident that she could not do after the accident, and she continued to play with and take care of her daughter alone, as well as take care of her house, yard, and rental property. The record reveals that the jury did not abuse its discretion in its general damage awards.

We reject as meritless all issues presented by Corey and Sydney's assignment of error. We further find that the trial court did not err in denying the motion for judgment notwithstanding the verdict and alternative motion for new trial.

CONCLUSION

For the above and foregoing reasons, the January 31, 2013 judgment rendered in accordance with the jury's verdict is hereby affirmed. Costs of this appeal are assessed to plaintiffs-appellants, Corey Cooper, individually and on behalf of Sydney Cooper.

AFFIRMED.