

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 0342

DREW MICHAEL PIZZO

VERSUS

LOUISIANA STATE PENITENTIARY D/B/A HUNTS
CORRECTIONAL CENTER, SGT. BURTON, ABC GATE
OPERATOR AND XYZ INSURANCE COMPANY

FEW
DATE OF JUDGMENT: NOV 07 2014

ON APPEAL FROM THE EIGHTEENTH JUDICIAL DISTRICT COURT
NUMBER 66850, DIV. C, PARISH OF IBERVILLE
STATE OF LOUISIANA

HONORABLE ALVIN BATISTE, JR., JUDGE

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Blake S. Leger
Donna U. Grodner
Baton Rouge, Louisiana

Counsel for Plaintiff-Appellee
Drew Michael Pizzo

James D. "Buddy" Caldwell
Attorney General
Tina Dennis Darensbourg
Assistant Attorney General
Baton Rouge, Louisiana

Counsel for Defendants-Appellants
Sgt. Stephanie Burton and Hunt
Correctional Center

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BEFORE: KUHN, PETTIGREW, AND WELCH, JJ.

Disposition: AFFIRMED IN PART AND REVERSED IN PART.

KUHN, J.

Defendants-appellants, Sgt. Stephanie Burton, and her employer, the Department of Public Safety and Corrections (collectively DPSC) while she worked at Elayn Hunt Correctional Center (Hunt), appeal the trial court's judgment, awarding damages to plaintiff-appellee, Drew Pizzo, an inmate at Hunt, as a result of the impact between a DPSC van in which he was being transported and a Hunt's sally port gate. Pizzo answered the appeal. We affirm the award in part and reverse in part.

Preliminarily we note that although DPSC appealed a judgment signed on March 28, 2013, the judgment was amended on April 16, 2014, with the consent of the parties, to alter the phraseology of the judgment. Thus, we review the amended judgment in this appeal. See La. C.C.P. art. 1951.

We first examine Pizzo's contention that the trial court's general damage award of \$14,000 was abusively low. He claims that his medical records support a finding that his injury was continuous until the date of trial and, therefore, the trial court erred in concluding his injury did not include all of the findings on a CT Scan taken on July 14, 2009.

It is well-settled that vast discretion is accorded to the trier of fact in fixing general damage awards. La. C.C. art. 2324.1. This vast discretion is such that an appellate court should rarely disturb an award of general damages. Thus, the role of the appellate court in reviewing general damage awards is not to decide what it considers to be an appropriate award, but rather to review the exercise of discretion by the trier of fact. *Purvis v. Grant Parish School Bd.*, 2013-1424 (La. 2/14/14), 144 So.3d 922, 927-28 (citing *Youn v. Maritime Overseas Corp.*, 623 So.2d 1257, 1260-61 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994)).

The initial inquiry, in reviewing an award of general damages, is whether the trier of fact abused its discretion in assessing the amount of damages. *Purvis*, 144 So.3d at 928. It is only after a determination that the trier of fact has abused its “much discretion” that a resort to prior awards is appropriate, and then only for the purpose of determining the highest or lowest point which is reasonably within that discretion. *Id.* (citing *Coco v. Winston Indus., Inc.*, 341 So.2d 332 (La.1976)).

In rendering its award the trial court made specific factual findings in support of the award it fashioned. This court reviews the trial court’s factual findings under the manifestly erroneous or clearly wrong standard. Thus, the issue before the court of appeal is not whether the trier of fact was right or wrong, but whether the fact-finder’s conclusion was a reasonable one. Where the fact-finder’s determination is based on its decision to credit the testimony of one or more witnesses that finding can virtually never be manifestly erroneous. *Purvis*, 144 So.3d at 926. And if the trial court findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse. *Sistler v. Liberty Mut. Ins. Co.*, 558 So.2d 1106, 1112 (La. 1990).

The trial court found the accident occurred as testified to by Sgt. Burton, *i.e.*, the gate hit the back of the van rather than Pizzo’s version that the van hit the gate. Noting the lack of evidence to support a finding that the results of the CT scan taken on July 14, 2009, were caused by the impact of the van and the gate, and that there were no objective tests performed before the accident to establish Pizzo’s condition before the accident, the trial court determined that Pizzo’s injury was a lower back strain. And based on the medical records, the trial court concluded that the strain from which Pizzo suffered was from the date of the accident in August 2007 until March 2008.

Based on our review of the record, these findings are supported by evidence and, as such, are not either manifestly erroneous or clearly wrong. Dr. John F.

Prejean, Jr. testified that the July 14, 2009, CT scan contained findings of a degenerative condition, which could have been a result of aging rather than trauma. He also stated that the CT scan findings supported a diagnosis of back strain. The medical record shows that despite numerous visits with healthcare providers, Pizzo did not mention pain in his back after March 19, 2008, until September 21, 2008. Thus, the record contains sufficient evidence to support a finding that after the accident, Pizzo suffered a lumbar strain that healed in March 2008. Subsequent complaints of back pain could have correctly been attributable to degenerative conditions brought on with aging. Because there is no manifest error in the trial court's conclusion that Pizzo suffered a seven-month lumbar strain as a result of the accident, the award of \$14,000 in general damages for the pain Pizzo testified he experienced with his injury was not an abuse of discretion.

We turn now to DPSC's claim, challenging the trial court's award of \$4,000 in medical expenses. A plaintiff may recover reasonable medical expenses that he incurs as a result of his injury. *Mack v. Wiley*, 2007-2344 (La. App. 1st Cir. 5/2/08), 991 So.2d 479, 489, writ denied, 2008-1181 (La. 9/19/08), 992 So.2d 932. Special damages are those damages that can be determined with some degree of certainty and include past and future medical expenses. *Richardson v. Christus Schumpert Health System*, 47,776 (La. App. 2d Cir. 2/27/13), 110 So.3d 264, 274, writ denied, 2013-0621 (La. 4/19/13), 112 So.3d 228. A plaintiff bears the burden of proving special damages by a preponderance of the evidence, and a trial court's award of special damages is subject to the manifest error standard of review. *Id.*

Past medical expenses are special damages that are capable of being determined with reasonable mathematical certainty and, as such, they must be proven by the person seeking them by a preponderance of the evidence. When claims for accrued medical expenses are supported by medical bills, these expenses

should be awarded unless there is contradictory evidence or reasonable suspicion that the bills are unrelated to the defendant's negligence. *Mack*, 991 So.2d at 489.

In making its award, the trial court relied on a single document presented during Pizzo's testimony that was admitted into evidence over DPSC's objection. The document is not self-authenticating; it is not certified; and it contains no identifying institutional letterhead or either a signature or a title of a person claiming accountability for the accuracy of its contents. According to Pizzo's testimony, it is "a document that seems to reference what [he] owe[d] from [Hunt]." Pizzo stated that he received the document from the business office at Hunt and that his estimation of the amount of the "Debt Owed" of \$5,524.39 that was charged to him for medical treatment subsequent to the accident was "[a]bout eighty percent." He testified the remaining balance was attributable to "legal mail." No one was called from Hunt or DPSC to identify or authenticate the document, and the record contains no other evidence of the amount of medical expenses this inmate may have incurred as a result of his seven-month lumbar strain.

The burden of proving these damages, which may be calculated with reasonable mathematical certainty, was on Pizzo. The uncertified, unauthenticated document from the business office does not in any manner itemize or associate the debt due of \$5,524.39 with any sick call visits or other medical treatment. The record is devoid of any evidence of an amount an inmate incarcerated at Hunt was required to pay on the date of the accident, or subsequently, to obtain medical attention. A voluminous medical record predating the accident was admitted into evidence because Pizzo had numerous medical issues unrelated to the accident. As such, it is impossible for this court on review to determine what amount, if any, of the debt due of \$5,524.39 was attributable to medical treatment. Thus, Pizzo failed his burden of proving medical damages by a preponderance of the evidence, and

the award of \$4,000 for this item of damages, unsupported by competent evidence, was manifestly erroneous. Accordingly, the trial court's award of medical expenses is reversed.¹

DECREE

For these reasons, that portion of the trial court's judgment which awards \$14,000 in general damages to Pizzo is affirmed; that portion of the judgment which awards \$4,000 in medical expenses is reversed. Appeal costs are assessed in the amount of \$646.25 to Sgt. Stephanie Burton and DPSC and \$646.25 to Pizzo.

AFFIRMED IN PART AND REVERSED IN PART.

¹ Because we conclude the trial court manifestly erred in awarding \$4,000 in medical expenses where the record contained no competent evidence to support such an award, we pretermitted a discussion of whether the trial court erred in denying DPSC's motion for new trial based on newly discovered evidence.