NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

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COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2020 CA 0362

KASEY WELCH

VERSUS

KEVONTA LONDON AND LOUISIANA DEPARTMENT
OF TRANSPORTATION AND DEVELOPMENNT

Judgment Rendered: DEC 30 2020

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number C641,495

Honorable Timothy Kelley, Judge Presiding

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BEFORE: WHIPPLE, C.J., WELCH, AND CHUTZ, JJ.

WHIPPLE, C.J.

Plaintiff, Kasey Welch, appeals the allocation of fault and awards for damages rendered by the trial court pursuant to a jury verdict for a motor vehicle accident in which she was rear-ended by defendant, Kevonta London, while he was in the course and scope of his employment with the defendant, Louisiana Department of Transportation and Development ("the DOTD"). For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

During the afternoon of August 20, 2014, Ms. Welch was driving a 2010 Nissan Maxima on Louisiana Highway 64, known as Church Street, in Zachary, Louisiana. As she was approaching Waywood Drive, she was struck from the rear by Mr. London, who was traveling in the same direction while driving a 2014 Dodge Ram owned by the DOTD.

On August 12, 2015, Ms. Welch filed suit against Mr. London, alleging negligence, and against the DOTD, alleging vicarious liability for the torts of its employee. On October 28, 29, 30, 31, 2019 and November 4, 2019, the matter was tried before a jury. At the conclusion of the trial, the jury returned a verdict in favor of Ms. Welch and awarded her the following for damages, subject to reduction in accordance with the jury's allocation of forty percent fault to her and sixty percent fault to Mr. London:

Past medical expenses	$ 70,000.00
Future medical expenses	$ 0
Past lost wages	$ 100,000.00
Past physical pain and suffering	$ 5,000.00
Past mental pain and suffering	$ 5,000.00
Loss of enjoyment of life	$ 0

The jury further found that Ms. Welch failed to mitigate her damages for past lost wages and reduced the award by ninety-five percent, for a total award of $5,000.00 in past lost wages. In accordance with the jury's verdict, the trial court rendered judgment in favor of Ms. Welch in the amount of $51,000.00. Ms. Welch now appeals, contending:

(1) The jury manifestly erred in assessing forty percent of fault to her because the record does not reveal any reasonable factual basis for a finding of negligence on her part and clearly establishes that Mr. London was the only faulty party in causing the accident;

(2) The jury abused its discretion by awarding insufficient damages for past and future pain and suffering, loss of enjoyment of life, and medical expenses, as the record contained uncontroverted evidence that her injuries were caused by this accident and lasted for several years; and

(3) The jury manifestly erred by finding that she failed to mitigate her damages for lost wages.

DISCUSSION

Comparative Fault
(Assignment of Error #1)

In her first assignment of error, Ms. Welch contends that the jury erred in assigning forty percent fault to her because there is no reasonable factual basis in the record for such a finding.

More than one party may be at fault for the damages sustained in a motor vehicle accident. This is premised in Louisiana's comparative negligence scheme articulated in LSA-C.C. art. 2323. Fontenot v. Patterson Ins., 2009-0669 (La. 10/20/09), 23 So. 3d 259, 267. In deciding which parties are responsible, a duty-risk analysis is used, wherein the plaintiff must prove that: (1) the conduct in question was the cause-in-fact of the resulting harm; (2) the defendants owed a

duty to the plaintiff, which the defendants breached; and (3) the risk of harm was within the scope of protection afforded by the duty breached. See Fontenot, 23 So. 3d at 267. The allocation of fault between comparatively negligent parties is a finding of fact. Sims v. State Farm Auto. Ins. Co., 98-1613 (La. 3/2/99), 731 So. 2d 197, 199. In apportioning fault, the fact finder shall consider both the nature of the conduct of each party at fault and the extent of the causal relationship between the conduct and the damages claimed. Schexnayder v. Bridges, 2015-0786 (La. App. 1st Cir. 2/26/16), 190 So. 3d 764, 773.

In Watson v. State Farm Fire and Casualty Ins. Co., 469 So. 2d 967, 974 (La. 1985), the Louisiana Supreme Court set forth guidelines for apportioning fault under the doctrine of comparative negligence, as follows:

> In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the casual relation between the conduct and the damages claimed.
>
> In assessing the nature of the conduct of the parties, various factors may influence the degree of fault assigned, including: (1) whether the conduct resulted from inadvertence or involved an awareness of the danger, (2) how great a risk was created by the conduct, (3) the significance of what was sought by the conduct, (4) the capacities of the actor, whether superior or inferior, and (5) any extenuating circumstances which might require the actor to proceed in haste, without proper thought.

Watson, 469 So. 2d at 974, citing Uniform Comparative Fault Act, Section 2(b).

The standard of review of comparative fault allocations is that of manifest error. Leonard v. Ryan's Family Steak Houses, Inc., 2005-0775 (La. App. 1st Cir. 6/21/06), 939 So. 2d 401, 410. The manifest error standard demands great deference to the fact finder's conclusions; for only the fact finder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. Where two permissible views of the evidence exist, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. Rosell v. ESCO, 549 So. 2d 840, 844 (La. 1989).

Indeed, where the fact finder's determination is based on its decision to credit the testimony of one of two or more witnesses, that finding can virtually never be manifestly erroneous. Martinez v. Wilson, 2019-0017 (La. App. 1st Cir. 9/27/19), 287 So. 3d 27, 31. If an appellate court finds a clearly wrong allocation of fault, the court should adjust the award, but then only to the extent of lowering or raising it to the highest or lowest point respectively that is reasonably within the fact finder's discretion. Schexnayder, 190 So. 3d at 773-74.

At trial, Ms. Welch testified that she was traveling in the right lane of travel for approximately two or three miles, began slowing down, and activated her turn signal to prepare to turn onto Waywood Drive. She testified that Mr. London's vehicle "plowed into" her vehicle and that the impact felt like a "huge push forward." She stated that she was wearing her seat belt, and was thrown forward, then backwards, and that her head hit the headrest. Additionally, she stated that all of the contents of her vehicle were thrown forward. Ms. Welch testified that at the scene of the accident, Mr. London apologized and told her he was not paying attention. Ms. Welch further testified that despite some soreness the day after the accident, she did not realize she had sustained serious injuries until "a week or two later," when she was experiencing "severe lower back pain" that was radiating down the back of her leg.

Mr. London testified that before the accident, he was driving a DOTD truck on his way back to the worksite after lunch with two of his co-workers as his passengers, and he noticed that the vehicle behind him "wanted to swerve around" him, but had to wait because there were other cars blocking the vehicle's path. He stated that once Ms. Welch got in front of him, they were initially travelling at a speed of thirty-five miles per hour, but she began to slow down to twenty-five and then fifteen miles per hour. Mr. London testified that Ms. Welch "just hit the brakes like that, just stopped" even though they were about thirty yards from the

next turn. He stated that although her turn signal was on once they both pulled into a nearby parking lot and got out of their vehicles, it was not on before the accident. He admitted that at the scene of the accident, he said he was sorry and that it was his fault. On cross-examination, Mr. London testified that the distance between where Ms. Welch passed his vehicle was around a mile and a half away from where the accident occurred and that "it might be longer than that."

As the following motorist in the rear-end collision, Mr. London is presumed negligent for having breached the duty imposed by LSA–R.S. 32:81(A), *i.e.*, that the driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the highway. Mart v. Hill, 505 So. 2d 1120, 1123 (La. 1987); Ly v. State through the Department of Public Safety and Corrections, 633 So. 2d 197, 201 (La. App. 1st Cir. 1993), writ denied, 93-3134 (La. 2/25/94), 634 So. 2d 835. In addition to the duty to follow at a reasonable and prudent distance, a motorist also has a duty to maintain a careful lookout, observe any obstructions present, and exercise care to avoid them. Ly, 633 So.2d at 201. Thus, as the following motorist, Mr. London was subject to a presumption of negligence and had the burden of exculpating himself from his fault for the accident. After considering all of the evidence at trial, the jury found that both Ms. Welch and Mr. London were negligent in the operation of their vehicles and were at fault in causing the accident, which the jury apportioned as forty percent to Ms. Welch and sixty percent to Mr. London.

On appeal, Ms. Welch contends that there is no reasonable basis for the jury's finding that she bore any fault in causing the accident, and thus, the jury was manifestly erroneous in making this determination. In support of this contention, Ms. Welch relies on LSA-R.S. 31:81 and argues that because Mr. London rear-ended her vehicle, he is presumed to be at fault, and thus, he bore the burden of

rebutting this presumption. She contends that although Mr. London admitted his own fault at the scene of the accident, he later "gave varying accounts" of how the accident occurred, whereas she has only told one version of events since the accident took place. She contends that based on the available testimony, "the only reasonable allocation of fault would be [one hundred percent] to Mr. London," because slowing down from thirty-five miles per hour to fifteen miles per hour to make a right turn "cannot conceivably be viewed as negligent by anyone."

Mr. London testified at trial that Ms. Welch stopped in the middle of the road about thirty yards from the turn. He further testified that he did not have a conversation with the officer who arrived at the scene of the accident; the officer only asked him to write a statement. In this written statement, Mr. London wrote that Ms. Welch slowed down to fifteen miles per hour and "just turned at the last minute." At the scene of the accident, the officer issued Mr. London a citation for following too closely. After a meeting with DOTD officials later that day, Mr. London signed a document again stating that Ms. Welch got in front of his vehicle and "attempted to make a right turn...abruptly without using a turn signal." Mr. London testified that the purpose of the meeting was to discuss the accident, and that during the meeting, he told his boss, Albert Shields, what happened and Mr. Shields wrote it down. Mr. London said that although he "had a lot of help with" the form, "it says what I said." Thus, Mr. London testified that he never changed his story about what happened in the accident and that "all of it was the truth."

As a court of review, our inquiry on appeal is whether the jury's factual findings herein were reasonable and amply supported by the record, regardless of how we may have weighed the evidence if we were sitting as the trier of fact. Moreover, we recognize that the allocation of fault is not an exact science, but is a search for an acceptable range, and any allocation by the fact finder within that range cannot be clearly wrong. Schexnayder, 190 So. 3d at 774. Also, as noted

above, credibility determinations can virtually never be manifestly erroneous. Martinez, 287 So. 3d at 31.

In this case, the jury heard conflicting evidence as to the exact circumstances surrounding the accident, including, in particular, whether or not Ms. Welch abruptly attempted to execute a right turn and whether her turn signal was activated at the time that Mr. London's vehicle struck her vehicle. Considering the conflicting testimony presented herein, and mindful of the great deference that we must afford to the jury as the trier of fact, on the record before us, we cannot say the jury's allocation of fault was manifestly erroneous or clearly wrong.

Accordingly, this assignment of error lacks merit.

Damages
(Assignment of Error #2)

Ms. Welch further contends that due to the extent and longevity of her injuries, the jury abused its discretion by awarding her an insufficient amount of damages with respect to her past and future pain and suffering, loss of enjoyment of life, and medical expenses.

"General damages" involve mental or physical pain or suffering, inconvenience, loss of gratification or intellectual or physical enjoyment, or other losses of lifestyle that cannot be measured definitively in terms of money. Hager v. State, ex rel. Dep't of Transp. and Dev., 2006-1557 (La. App. 1st Cir. 1/16/08), 978 So. 2d 454, 473, writs denied, 2008-0347, 2008-0385 (La. 4/18/08), 978 So. 2d 349. The primary objective of general damages is to restore the party in as near a fashion as possible to the state he was in at the time immediately preceding injury. Daigle v. U.S. Fidelity and Guar. Ins. Co., 94-0304 (La. App. 1st Cir. 5/5/95), 655 So. 2d 431, 437. The severity and duration of pain and suffering are factors to be considered in assessing quantum of damages for pain and suffering.

Thibodeaux v. USAA Cas. Ins. Co., 93-2238 (La. App. 1st Cir. 11/10/94), 647 So. 2d 351, 357.

It is well settled that a judge or jury is given great discretion in its assessment of quantum, for both general and special damages. Guillory v. Lee, 2009-0075 (La. 6/26/09), 16 So. 3d 1104, 1116; see also LSA-C.C. art. 2324.1. This assessment of quantum, or the appropriate amount of damages, by a trial judge or jury is a determination of fact. As such, in reviewing an award of general damages, the role of an appellate court 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. Wainwright v. Fontenot, 2000-0492 (La. 10/17/00), 774 So. 2d 70, 74. Because the discretion vested in the trier of fact is so great, an appellate court should rarely disturb an award of general damages on review. Dakmak v. Baton Rouge City Police Department, 2012-1468 (La. App. 1st Cir. 9/4/14), 153 So. 3d 498, 507.

The initial inquiry must always be directed at whether the trial court's award for the particular injuries and their effects upon this particular injured person is a clear abuse of the trier of fact's vast discretion. Thibodeaux, 647 So. 2d at 357. In reviewing an award of damages, as an appellate court, we do not rely on a comparison of other awards in other cases to determine if a particular award is appropriate. Instead, a comparative analysis should be undertaken only after the appellate court has found an abuse of discretion. Thibodeaux, 647 So. 2d at 357. Reasonable persons frequently disagree about the measure of damages in a particular case. It is only when the award is, in either direction, beyond that which a reasonable trier of fact could assess for a particular injury to the particular plaintiff under the particular circumstances that the appellate court should increase or reduce the award. Guillory, 16 So. 3d at 1117.

"Special damages" have a "ready market value," that supposedly can be determined with relative certainty. Pinn v. Pennison, 2016-0614 (La. App. 1st Cir. 12/22/18), 209 So. 3d 844, 849. Some special damages, such as medical and lost wages, are easily measured. See McGee v. A C And S, Inc., 2005-1036 (La. 7/10/06), 933 So. 2d 770, 774. A plaintiff is required to prove special damages by a preponderance of the evidence. Morever, the medical evidence must show the existence of the claimed injuries and a causal connection between the injuries and the accident. 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.

The standard of review applicable to an award of special damages is the manifest error standard. Kaiser v. Hardin, 2006-2092 (La. 4/11/07), 953 So. 2d 802, 810. The reviewing court must give great weight to factual conclusions of the trier of fact; where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed on review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. Perkins v. Entergy Corp., 2000-1372 (La. 3/23/01), 782 So. 2d 606, 612-13.

Special Damages: Past Medical Expenses

Ms. Welch contends that the jury manifestly erred and abused its discretion in failing to award her the full amount of her past medical expenses of $153,248.71, which she contends were incurred for necessary treatment and surgery for injuries sustained in the accident. She argues that the jury was manifestly erroneous in making this award, where her treating physicians testified that all of these costs were required and reasonable for her injuries.

Mr. London and the DOTD do not dispute that she incurred the amount of the medical expenses claimed; rather, they argue that the jury obviously did not find a causal relationship between all of the expenses incurred and the accident.

They argue that the decision of the jury to award less than the amount sought by Ms. Welch was proper and within the province of the jury, particularly where there was "no objective evidence whatsoever to support Ms. Welch's continued complaints of pain for years after the accident." They maintain that the jury did not err, as the jury apparently found that not all of the claimed expenses were medically necessary or causally related to injuries from this accident.

The record reflects that Ms. Welch did not seek medical attention at the scene of the accident; however, she testified that she experienced soreness the next day which progressively worsened until a week or two later, when she began experiencing severe lower back pain that radiated down into her legs. Additionally, her mother testified that she saw her around four days after the accident and Ms. Welch complained of soreness and discomfort in her back. On September 10, 2014, Ms. Welch went to see Dr. Nicole Halcovich, a chiropractor who had previously treated her in 2011, after she was rear-ended in a separate motor vehicle accident. Ms. Welch testified that in 2011, she only saw Dr. Halcovich for approximately two months and that her medical issues from that accident were fully resolved.[1]

After the 2014 accident at issue herein, she underwent approximately three months of treatment without an improvement in her condition. Thus, based on her continuing complaints of pain, Dr. Halcovich ordered an MRI, which was performed in October 16, 2014 and revealed a straightening of the cervical lordosis, a herniation at L5-S1 and T7-T8, and a disc bulge at L4-L5. However, shortly before the MRI was performed, Ms. Welch saw her primary care provider,

[1]Ms. Welch was also involved in a motor vehicle accident in 2007, wherein she rear-ended a vehicle and pushed that vehicle into another. She testified that in the 2007 accident, she only suffered brush burns from her air bags being deployed and she did not seek any medical treatment.

nurse practitioner Joey Bonin, and only complained of "discomfort [that was] moderate in intensity" in her back.

Based on the findings of the MRI, Ms. Welch went to see Dr. Kevin McCarthy, a board-certified orthopedic spine surgeon, on October 31, 2014.[2] To treat her injuries, Dr. McCarthy prescribed Norco, a narcotic pain medication, and Zanaflex, a muscle relaxant, and in November and December 2014, he performed two epidural steroid injections, which Ms. Welch stated did not provide major relief for her symptoms. Dr. McCarthy testified that due to her continued complaints of pain even after he had exhausted conservative treatment measures,[3] he ordered that she undergo a C.T. myelogram in February, 2015, to explore possible surgical options. He testified that a myelogram is an invasive test that he does not order until he thinks surgery is an option. After the myelogram was performed, he determined that she was not a surgical candidate; however, he instructed her that if her pain persisted, she would require a discogram to again determine whether she was a surgical candidate. Additionally, he testified that he told Ms. Welch that surgery "should be a last resort" for her and should only occur if her pain was "severe [and her] quality of life [wa]s miserable."

Dr. McCarthy then referred Ms. Welch to Dr. Joseph Turnipseed, an interventional pain management specialist, for a discogram, which was performed on March 17, 2015. The discogram, which specifically tests for pain coming from the disc itself, not radicular pain, showed an annular tear at L5-S1, which Dr. Turnipseed testified is "well known to be painful." Based on this finding and her continued complaints of pain, Ms. Welch was deemed to be a surgical candidate for a spinal fusion at this time. However, after this determination, Ms. Welch's

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[2] Ms. Welch testified that she decided to see Dr. McCarthy because, due to her home health job, she had dealt with his staff and some of his patients and she "knew overall he was a great doctor."

[3] Dr. McCarthy testified that conservative treatment consists of therapy, chiropractic care, medications, injections, and activity modification.

health insurance denied coverage for the surgery in May of 2015, concluding that the surgery was "not medically necessary." The denial letter stated that the insurer's decision did not mean that Ms. Welch could not or should not have the surgery, just that it would not be covered by her insurance because it was deemed "not medically necessary." Dr. McCarthy testified that these denials "constantly" happen with insurance; however, the decision was appealed, and again denied on June 26, 2015, because the surgery was again deemed "not medically necessary." Both the initial and subsequent appeal denial letters were entered into evidence at trial and stated that the surgery was found to be "not medically necessary." However, Ms. Welch testified at trial that the appeal was only denied because she was removed from the insurance plan.

After the insurance company denied the surgery, Ms. Welch treated with Dr. McCarthy until November 2015, and then did not see him again until February 2019, almost three and a half years later. During this period of more than three years, Ms. Welch's only treatment consisted of visits to pain management doctors, namely, Dr. Turnipseed and subsequently, Dr. Frederick Bowers,[4] who managed her medications based primarily on her subjective complaints of pain. During this time, she was prescribed 120 pills of Norco each month, or 4 pills per day, which Dr. Turnipseed testified was "not...over the top" in the pain management arena because Norco is weaker than a lot of other narcotics and her dosage was below half of the Centers for Disease Control and Prevention's cautionary threshold. Dr. Bowers also testified that Norco is commonly prescribed and this was "not a long duration" to prescribe the medication. He testified that there were no indications Ms. Welch was abusing her medication or taking it inappropriately. However, the jury also heard testimony from Ms. Welch that, during this time period where she

[4] Dr. Bowers took over Ms. Welch's treatment from Dr. Turnipseed on June 28, 2018.

was not working or seeking any other treatment, she continually refilled her prescriptions every month even though she purportedly was only taking 3 pills per day.

Ms. Welch also applied for disability benefits from the Social Security Administration (SSA) and was denied benefits on October 21, 2015, as she was not considered disabled under the SSA's rules, because she was "still able to move about effectively and take care of most of [her] daily needs." Ms. Welch testified that she applied for Social Security disability "more than once" and was always denied.

Ms. Welch testified that going into 2016, her plan was "to try and get some type of insurance so [she] could have the surgery." She testified that because her family was affected by the flooding in August of 2016, she was unable to get insurance as she did not want to ask her parents to help pay for it. Ms. Welch eventually applied for Medicaid benefits sometime in 2017. There is conflicting testimony in the record as to when Ms. Welch actually applied to be on Medicaid; at one point, she stated she "started to apply [for Medicaid] at the end of 2017." However, she later she stated that she began applying either the "beginning or middle of 2017." Additionally, while she stated that she had to wait to apply for Medicaid until her divorce was final, she also testified that she was unsure how her divorce related to an inability to qualify for Medicaid benefits.

Ms. Welch was accepted by Medicaid sometime at the end of 2017 or beginning of 2018, yet she still did not have the surgery. She stated that while she could have had the surgery, she chose not to because she consulted a "list" of doctors who accepted Medicaid to find that the only person who would perform the surgery on Medicaid was a medical "student [and she] did not feel comfortable

with that."[5] Eventually, Ms. Welch obtained private health insurance on January 1, 2019, and followed up with Dr. McCarthy to schedule the surgery. Dr. McCarthy ordered updated MRIs, which revealed the same annular tear and protrusions, so he went forward with the surgery. Ms. Welch testified that for several weeks after the surgery, she was experiencing severe pain, which she referred to as "surgery pain" that was different than her original pain.

Dr. McCarthy referred her to physical therapy with Eric Strahan, PT, which she testified she quit attending after she found the therapy painful and Dr. McCarthy suggested she delay the therapy for six to eight weeks. However, Mr. Strahan stated that she never complained of pain during or after their sessions and that as reflected in his records, she missed numerous appointments for personal reasons or vacations. Despite testifying at trial that she felt like "as much of the old [her was] back as possible," and that she was weaning herself off the pain medication, she continued to refill the prescription for 120 pills of Norco and the Zanaflex each month.

The DOTD requested an additional medical examination and professional opinion regarding Ms. Welch's condition, which took place on August 22, 2017 and was performed by Dr. Thad Broussard.[6] Ms. Welch's chief complaints at this visit were both chronic back and neck pain. Dr. Broussard testified that his physical examination of her neck and back were "objectively normal," and the diagnostic imaging did not provide any evidence that something was disabling her neck and back. He noted that while the diagnostic imaging revealed a disc protrusion at L5-S1, a disc bulge at L4-L5, and a small disc herniation at T7-T8, he did not find any evidence of a nerve root compression or radiculopathy, nor did he

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[5] During her deposition, Ms. Welch testified that she could have had surgery while on Medicaid, but she chose not to because she did not like any of the physicians that could perform the surgery.

[6] See LSA-C.C.P. art. 1464.

find any "objective [evidence] that would have precluded her from returning to work as a nurse."

Dr. Broussard stated that he believed Ms. Welch had reached maximum medical improvement long before and would have reached it no later than one year from the date of the accident. He further stated that given his findings, he would not have prescribed Norco to Ms. Welch for a prolonged period of time, especially not such "a big dose," nor would he have restricted her physical activity in any way. Dr. Broussard stated that he did not know Ms. Welch had obtained a discogram, a test he classified as completely subjective and one that not everyone in the medical community will perform, after his examination of her and that it found a "large annular tear" at L5-S1. He stated that he was unable to say that Ms. Welch was not suffering from discogenic pain, only that she did not have radiculopathy and that they are two different types of pain.

Dr. Curtis Partington, a diagnostic radiologist who performed diagnostic tests on Ms. Welch, testified that although the tests revealed bulging discs and a herniation in her lower back, there was no evidence of nerve root compression, impingement, or anything mechanical that would be causing her pain. He further testified that although the March 2015 discogram showed an annular tear in her back, there was no way to tell when the tear occurred or if it occurred in the accident. Dr. Partington reviewed the MRIs of Ms. Welch's back taken on October 16, 2014, and February 26, 2019, and concluded that there was "no difference" between the two reports and both did not show a need for surgical intervention.

Dr. McCarthy and Dr. Turnipseed both testified that while they could not be absolutely positive, they believed that her injuries were sustained as a result of the accident and caused her need for treatment. Although Dr. McCarthy testified that he did not think "somebody that was not having symptoms would" go through the

amount of treatment she underwent, Dr. Broussard testified that he could not find any objective basis to correlate Ms. Welch's subjective complaints of pain to his physical examination of her body. He explained that discograms are somewhat controversial among medical professionals because they rely solely on the patient's subjective complaints of pain. Additionally, Dr. Partington testified that it is not possible to tell when the annular tear in her back occurred. Moreover, when Ms. Welch presented to her primary care provider two months after the accident, she only complained of "discomfort" in her back.

Based on the evidence presented, we cannot say the jury was manifestly erroneous in its award for past medical expenses. Despite Ms. Welch's testimony that she had constantly experienced severe pain following the accident, the jury heard conflicting testimony from various medical professionals who examined her and reviewed her diagnostic tests. Additionally, the jury also heard evidence that from November, 2015, until February, 2019, the only treatment Ms. Welch sought was for monthly prescriptions for Norco and Zanaflex. The record also establishes that while she was not initially deemed a surgical candidate, even once she became eligible for surgery in 2015, she did not attempt to obtain the surgery until 2019, despite applying for and receiving Medicaid benefits in either 2017 or 2018. Accordingly, although the record indicates that Ms. Welch did suffer some injuries that were caused by the 2014 accident, the jury apparently determined that not all of her complaints were causally related to or necessitated by the accident. In doing so, the jury was required to weigh the testimony and make credibility determinations to resolve the conflicting evidence presented at trial. In making the award for past medical expenses, the jury was free to accept or reject any of the testimony presented and we are not able to amend the jury's findings absent manifest error or clear evidence that the jury abused its vast discretion. See Guillory, 16 So. 3d at 1116-17; see also Thibodeaux, 647 So. 2d at 357.

Considering the record in its entirety, we cannot say that the jury manifestly erred in its award for past medical expenses.

General Damages

As noted above, the jury awarded Ms. Welch a total of $10,000.00 for past physical and mental pain and suffering, and gave no award for loss of enjoyment of life. Pain and suffering, both physical and mental, refer to the pain, discomfort, inconvenience, anguish, and emotional trauma that accompanies an injury. Loss of enjoyment of life refers to detrimental alterations to the person's life or lifestyle or the person's inability to participate in the activities or pleasures of life that were formerly enjoyed prior to the injury. McGee, 933 So. 2d at 775.

The testimony at trial showed that prior to the accident, Ms. Welch was a married, twenty-eight-year-old home health nurse, who described her job as her "calling." However, the record also reflects that prior to the accident, she was being treated for depression, anxiety, insomnia, fatigue, and attention deficit disorder. Her treating nurse practitioner, Brittany Smith, testified that four months prior to the accident, Ms. Welch was suffering from "severe anxiety or depression" which was affecting her home and work life.[7] Nurse practitioner Joey Bonin also testified that he saw Ms. Welch approximately four months before the accident and she complained of being "severely depressed" and "more depressed than normal." However, Ms. Welch testified that before the accident she "had no complaints" and "felt [she] led a very good life."

Ms. Welch testified that after the accident, her depression went into "a spiral" so that she "basically... became a recluse" because the "only thing that would somewhat relieve" her pain was "being flat on [her] back." According to Ms. Welch, she left her job as a home health nurse in October 2014, because "the

[7] Specifically, Ms. Welch complained of hypersomnia, lack of energy, poor focus and concentration, lack of motivation, feeling scattered and disorganized, mood swings, crying spells, irritability, feeling overwhelmed and stressed, and hopelessness.

pain had gotten worse" and she could no longer perform her duties as a nurse. She stated that although she and her husband were having some marital issues before the accident, they had never discussed divorce "or anything like that" and she was "completely blindsided" when, in April, 2015, he asked for a divorce because he saw "no end in sight" with her back problems and the financial issues it created.

Ms. Welch stated that after the divorce, she was only online dating and would mostly only spend time together with her date at each other's house because it was "painful" to go out and do something social. She also testified that before her surgery in 2019, she only went on one trip to Natchez, Mississippi, and a "lot of the time [she] stayed in bed and slept." After her surgery, she went on two trips to the beach with a boyfriend and "basically got to dip her toes in the water" and she laid out by the beach the majority of the time.

Because the jury is entitled to great deference in assigning quantum, an appellate court cannot disturb an award if two permissible views exist. It is not our role to substitute our view of the evidence for that of the jury's. Based upon the evidence in the record, in determining the amount that should be awarded as general damages, the jury could have reasonably concluded that Ms. Welch lacked credibility regarding the impact that the accident and her injuries had on her life. Thus, on the record before us, we are unable to say the jury erred in concluding that $10,000.00 was an appropriate general damage award.

Accordingly, this assignment of error also lacks merit.

Mitigation of Damages
(Assignment of Error #3)

Through her third assignment of error, Ms. Welch contends that the jury was manifestly erroneous in finding that she did not mitigate her damages for lost wages.

An injured party has a duty to mitigate his or her own damages; he or she is required to take reasonable steps to exercise ordinary prudence to minimize the damage. Barsavage v. State Through Dep't of Transp. and Dev., 96-0688 (La. App. 1st Cir. 12/20/96), 686 So. 2d 957, 963, writs denied, 97-0595, 97-0634 (La. 04/18/97), 692 So. 2d 455, 456. The injured party need not make extraordinary efforts or do what is unreasonable or impracticable in his efforts to minimize the damages, but the efforts to minimize the damage must be reasonable and according to the rules of common sense, good faith, and fair dealing. Darnell v. Taylor, 236 So. 2d 57, 61 (La. App. 5th Cir.), writ refused, 239 So. 2d 346 (1970).

On appeal, Ms. Welch points to the fact that she returned to work six months after her surgery, despite Dr. McCarthy's instruction that she would not be fully recovered for twelve-to-fourteen months post-surgery, as evidence of her effort to mitigate her damages. Additionally, Dr. McCarthy testified that due to her injuries, she was unable to work until after she had surgery. At trial, Ms. Welch contended that because she was taking narcotic pain medication, she was a "liability" to her patients and "did not feel safe taking care of" them. She testified that she began looking for work in September 2019, but that she was unable to find a light duty nursing job due to her inexperience with such positions and the employment gap caused by the accident.

The DOTD counters that the jury's finding is amply supported by the evidence, noting that Ms. Welch continued to work for two months after the accident and then did not work, or attempt to work, for almost five years, until she had the surgery. The DOTD further points to the testimony of other health care providers, who stated there was no reason she could not perform light duty nursing work throughout this time and that she applied for disability more than once and was denied.

At trial, the DOTD also relied on a vocational rehabilitation expert, Barney Hegwood, to show that during the time period Ms. Welch was not working, there were light duty nursing jobs available in the Baton Rouge area and that they paid the same or similar wages as compared to her earnings before the accident. The DOTD contends that despite Ms. Welch's claim that she would have been unable to find a job while she was taking narcotic pain medication, she testified at trial that she was still taking the narcotic pain medication, yet had recently found employment in the home health field. Accordingly, the DOTD maintains that the jury properly considered all of the evidence presented at trial and reasonably concluded that she failed to mitigate her damages with respect to her claim for lost wages.

After a full trial on the merits, the jury found that Ms. Welch was entitled to $100,000.00 in damages for lost wages, but that she failed to mitigate those damages and reduced her award by ninety-five percent to $5,000.00.[8] On the record before us, we cannot say that the jury was manifestly erroneous in finding that Ms. Welch failed to adequately mitigate her damages for past lost wages. The evidence at trial showed that she was capable of working light duty nursing jobs, but she did not seek employment until September 2019, after the surgery on her back. Moreover, the jury could have reasonably concluded that if Ms. Welch had submitted to the surgery while she was on Medicaid, her symptoms would have begun to subside sooner and she would have been able to return to work at an earlier date, and thus, could have mitigated her claim for damages for lost wages.

Accordingly, this assignment of error also lacks merit.

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[8] At trial, Ms. Welch relied on the testimony of Dr. Randy Rice, an expert economist, to show that, from the time of the accident until the date of trial, she would have realized a loss of earnings of $243,703.00, not accounting for potential raises or inflation. However, we note that Ms. Welch only assigned as error on appeal the jury's finding that she failed to mitigate her damages. Accordingly, any error in failing to award the amount suggested by Dr. Rice is not before us on appeal. La. Uniform Rules, Courts of Appeal, Rule 1-3.

CONCLUSION

Based on the above and foregoing reasons, the trial court's November 27, 2019 judgment, in favor of plaintiff, Kasey Welch, and against defendants, Kevonta London and the State of Louisiana, through the Department of Transportation and Development, is hereby affirmed. Costs of this appeal are assessed to appellant, Kasey Welch.

AFFIRMED.