STATE OF MICHIGAN

COURT OF APPEALS

ANGELA SIMMONDS SCHOOLEY,

Plaintiff-Appellee/Cross-Appellant,

v

MARY VOELPEL, D.O.,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
December 5, 1997

No. 193648
Lapeer Circuit Court
LC No. 88-012717-NM

Before: Hoekstra, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Defendant appeals and plaintiff cross-appeals as of right from a judgment entered after a jury trial in the Lapeer Circuit Court in this medical malpractice case. We affirm.

On appeal, defendant argues that the trial court erred in refusing to reduce the jury's verdict to reflect the net present value of that portion of the award that must be attributable to future damages, or in the alternative, to compute and deduct from the judgment as a set-off the amount of the future pay-out of the structured settlement reached with a codefendant.[1] We disagree. The parties apparently agreed at trial that the jury verdict form would ask the jury for a single damages amount rather than separate amounts for past and future damages. Defendant has not, either in argument below or in her brief on appeal, specifically denied that this agreement was in fact entered. Consequently, by requesting the verdict form used, defendant has made it impossible to determine what portion of the verdict is attributable to past versus future economic damages.

Citing Judge Cynar's separate opinion in *May v William Beaumont Hospital*, 180 Mich App 728, 738-767; 448 NW2d 497 (1989), defendant argues that this Court can ascertain what the future damages award was by simply dividing the award by the number of years plaintiff is expected to live from the date of the injury to arrive at an annual award figure. However, the analysis employed by Judge Cynar and proposed by defendant was not adopted by a majority of the panel and therefore does not have the force of precedent. *Negri v Slotkin*, 397 Mich 105, 109; 244 NW2d 98 (1976). Further, unlike the case presented here, in *May* there was no issue concerning whether the error was attributable to trial counsel's conscious choice at trial. Additionally, we find that any determination of

what the jury awarded for past or future damages

is necessarily speculative and an improper invasion of the jury's function. See *Baldridge v Eastman's, Inc*, 52 Mich App 1, 7; 216 NW2d 615 (1974); *Hahnke v Ball*, 60 Mich App 114, 123; 230 NW2d 333 (1975); and *Joslin v Grand Truck Western R Co*, 35 Mich App 308, 312; 192 NW2d 261 (1971). Consequently, the trial court did not err in refusing to reduce the jury award to present value where it is impossible to know what portion, if any, was intended as future damages.

Defendant's alternative argument that the set-off for a structured settlement should be in the amount of the future pay-out is not supported by citation to any legal authority in support of the claim; therefore, we deem this argument abandoned. *Speaker-Hines & Thomas, Inc v Dep't of Treasury*, 207 Mich App 84, 90-91; 523 NW2d 826 (1994). This Court will not search for authority to support a party's position. *Id.*

In her cross-appeal, plaintiff argues that the trial court erred when it reduced the judgment by the amount of the settlement with Dr. Chapman before calculating the prejudgment interest due pursuant to MCL 600.6306; MSA 27A.6306. We disagree. This Court has already resolved this issue, contrary to plaintiff's position, in *Freysinger v Taylor Supply Co*, 197 Mich App 349, 352-353; 494 NW2d 870 (1992). *Freysinger* is binding pursuant to MCR 7.215(H), and we are not persuaded that *Freysinger* was incorrectly decided. Consequently, the trial court did not err.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Myron H. Wahls
/s/ Roman S. Gribbs

[1] In connection with this issue, plaintiff argues that the calculation of prejudgment interest pursuant to MCL 600.6013, MSA 27A.6013 is adversely impacted by the trial court's ruling. We decline to review this claim because it was not raised in defendant's statement of the issues presented as required by MCR 7.212(C)(5). *People v Wilkins*, 184 Mich App 443, 451 n 4; 459 NW2d 57 (1990). Further, we note that at oral argument defendant withdrew the claim that the trial court erred by granting plaintiff prejudgment interest on the award of costs and attorney fees.