

STATE OF MICHIGAN
COURT OF APPEALS

CHARLENE E. CLINE,

Plaintiff-Appellee,

v

CANTERBURY MEWS COOPERATIVE
and R & S MANAGEMENT, INC.,

Defendants-Appellants.

UNPUBLISHED

May 9, 2000

No. 205496

Wayne Circuit Court

LC No. 96-619640-NO

Before: Zahra, P.J., and Saad and Gage, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order denying their motion for judgment notwithstanding the verdict (JNOV). We reverse and remand for entry of judgment reducing the jury's award of past economic damages.

Following a jury trial in this slip and fall case, plaintiff was awarded \$3,000 for past noneconomic loss and \$20,000 for past economic loss. Thereafter, defendants brought a motion for JNOV, arguing the evidence at trial did not support the award for past economic loss. Defendants claimed there was evidence that, at most, supported an award of \$7,064.01 and sought a judgment reducing the award. The trial court denied defendants' motion without identifying proofs that supported an award of past noneconomic damages in excess of \$7,064.01.

On appeal, defendants contend the trial court erred in denying their motion for JNOV or, in the alternative, in failing to grant remittitur, because there was no evidentiary basis for the award of \$20,000 for past economic damages. We decline to consider whether remittitur is proper because the issue was not raised before and addressed by the trial court. *Alford v Pollution Control Inds*, 222 Mich App 693, 699; 565 NW2d 9 (1997). Defendants' claim that their motion for JNOV was accompanied by an alternative motion for remittitur is not supported by the record. Defendants sought relief from judgment exclusively through their motion for JNOV, and the trial court confined its consideration to whether JNOV was warranted.

We review de novo a trial court's decision on a motion for JNOV. *Attard v Citizens Ins Co of America*, 237 Mich App 311, 321; 602 NW2d 633 (1999); *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 672; 591 NW2d 438 (1998). JNOV is appropriate when there was insufficient evidence presented at trial to create an issue for the jury. *Anton v State Farm Mut Auto Ins Co*, 238 Mich App 673, 683; __ NW2d __ (1999); *Attard, supra*. In reviewing a trial court's ruling on a motion for JNOV, we examine the testimony and all legitimate inferences therefrom in the light most favorable to the nonmovant. *Id.*

In the present case, plaintiff presented evidence at trial that suggested she lost \$3,054 in wages and incurred \$4,010.01 in medical expenses as a result of the injuries caused by the slip and fall. During closing argument, plaintiff's counsel specifically requested the sum of the lost wages and medical expenses (\$7,064.10) as damages for economic loss. There was no evidence of past economic damages beyond \$7,064.01.¹ Therefore, it was wholly unreasonable for the jury to award past economic damages in excess of that amount. See *Attard, supra* at 324-325; see also *Farm Credit Services, supra*. Accordingly, we conclude that the trial court erred in denying defendants' motion for partial JNOV.²

We refuse to exercise our discretion to direct the trial court to determine whether a new trial should be granted in light of our reversal of its decision on the motion for JNOV. See MCR 2.610(E)(2). The parties do not dispute that plaintiff was entitled to, at most, \$7,064.10 in past economic damages and, therefore, we do not deem it necessary to remand for a new trial on the issue.

Reversed and remanded for entry of judgment reducing the jury's award of past economic damages to \$7,064.10. We do not retain jurisdiction.

/s/ Brian K. Zahra

/s/ Henry William Saad

/s/ Hilda R. Gage

¹ Indeed, in responding to defendants' motion for partial JNOV below, plaintiff did not identify proofs that would support a finding of past economic losses in excess of \$7,064.01, but rather speculated that the jury reversed the labels of its award for economic and noneconomic damages or misunderstood the difference between the two kinds of damages given they were not defined on the verdict sheet. Plaintiff urged the trial court to allow the verdict to stand or, alternatively, to correct the verdict by switching the economic and noneconomic damages. Plaintiff has not filed a brief on appeal and has not, at any time, suggested there is evidence supporting an award of more than \$7,064.01 in economic damages.

² JNOV need not be limited to situations where an entire verdict is to be set aside. Instead, this Court has resorted to "partial JNOV" to vacate discrete elements of a verdict that were themselves wholly lacking in evidentiary support. *Attard, supra* at 322-325.