STATE OF MICHIGAN

COURT OF APPEALS

WALTER PARIZON as Next Friend of MELISSA PARIZON, a Minor,	UNPUBLISHED June 21, 2002
Plaintiff-Appellee,	
V	No. 213251; 213754 Wayne Circuit Court
CHILDREN'S HOSPITAL OF MICHIGAN,	LC No. 95-512734-NO
Defendant-Appellant.	ON REMAND

Before: Wilder, P.J., and Holbrook, Jr., and Doctoroff, JJ.*

PER CURIAM.

In this medical malpractice case, we previously reversed the trial court's order granting plaintiff's motion for additur, and remanded for a new trial on both liability and damages. *Parizon v Children's Hospital of Michigan* (*Parizon I*), unpublished opinion per curiam of the Court of Appeals, issued 12/15/2000 (Docket Nos. 213251, 213754), slip op, pp 1, 3, 5.

The case is now before us on remand from the Supreme Court to consider, in light of *Kelly v Builders Square, Inc*, 465 Mich 29; 632 NW2d 912 (2001), "whether additur was required merely because the jury elected not to award any amount for future damages." The Supreme Court further instructed that in the event we conclude "that there was no basis to justify any award of additur, [we] should direct that the jury's award of $15,000 in damages be reinstated." *Id*. We now reverse and remand to the trial court for entry of judgment on the original verdict of $15,000.

I. Facts

As noted in our previous opinion:

> Plaintiff's complaint alleged that, during a hospital stay in August 1980, Melissa Parizon, then an infant, was injured when an IV inserted into her ankle infiltrated into the subcutaneous tissues around the vein. Plaintiff alleged that defendant was negligent in failing to recognize that the IV had infiltrated, in monitoring the infant's condition, and in failing to immediately and properly treat the injury. As a result of defendant's alleged negligence, Melissa Parizon suffered permanent scarring and disability. Following a trial, a jury found that defendant was negligent, that Melissa had suffered damages as proximate result of

* On remand, Judge Doctoroff has been substituted for Judge McDonald.

> defendant's negligence, and that the amount of damages from the date of the injury to the filing of the complaint was $15,000. The jury did not award any interest on the award for past damages, or award any future damages.
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> Plaintiff moved for additur or in the alternative a new trial. The court found that the jury's verdict was "totally inadequate" and, therefore, granted the motion for additur in plaintiff's suggested amount of $505,992, plus interest, taxable costs and fees, and entered a judgment for plaintiff in that amount. Defendant rejected the amount of additur and filed various motions for clarification and/or rehearing of the trial court's order, arguing that the court should have granted plaintiff's motion for a new trial unless defendant consented to the entry of judgment in an amount determined by the court to be the lowest amount supported by the evidence. The trial court denied defendant's motions. [*Parizon I*, slip op, p 1.]

Melissa also testified that she played high school varsity basketball and softball. *Id*. at 2. In addition, a video of Melissa playing high school basketball was introduced into evidence and shown to the jury, *id*., and Melissa testified that she quit playing volleyball because her ankle hurt her when she spiked the ball, that in other sports her ankle only hurt when she ran, that her ankle did not prevent her from performing at an "A" level in gym class, and that when her ankle hurt (two or three times a day) it felt "like a toothache in her ankle." While Melissa testified that she was embarrassed by the ankle scar, *id*., and therefore did not like to show her ankle, she could only remember one occasion when someone asked her about her scar. Her embarrassment also did not keep her from wearing high heels for certain functions. Melissa testified that she had no recollection of having her ankle evaluated by a physician, but she did recall going to a lawyer about the injury. Melissa showed the scar to the jury, and established for the record that the scar measured between two and three inches on her right ankle.

Melissa's mother testified that she consulted several physicians regarding Melissa's ankle, but she could not remember their names, or the number of times or over what period of time Melissa visited these physicians. Melissa's mother also testified that despite a plastic surgeon's recommendation that Melissa have yearly check ups on her ankle, Melissa did not see a plastic surgeon for eleven years, at which point it was determined that there was nothing more that could be done about the scar. Melissa's mother also testified that no physician had ever prescribed pain medication as a result of the ankle, that Melissa's physical activities had never been restricted, and that in addition to basketball and softball, Melissa had also participated in varsity volleyball.

Defendant introduced into evidence a September 16, 1992 report from a plastic surgeon at the Straith Clinic, which indicated that in the plastic surgeon's opinion, Melissa's scar would continue to improve in appearance as she aged.

II. Standard of Review

This Court reviews a trial court's decision granting a motion for additur for an abuse of discretion. *Palenkas v Beaumont Hosp*, 432 Mich 527, 533; 443 NW2d 354 (1999); *Joerger v Gordon Food, Inc*, 224 Mich App 167, 172; 568 NW2d 365 (1997). Likewise, a trial court has

discretion to grant or deny a motion for a new trial, and we will not disturb its decision unless there has been a palpable abuse of discretion. *Id*; see also *Kelly*, *supra* at 34.

III. Analysis

In *Kelly*, *supra* at 35-36, quoting *Brown v Arnold*, 303 Mich 616, 627-629; 6 NW2d 914 (1942), our Supreme Court observed:

> The adequacy of amount of a verdict is also generally a matter for the jury. We do not substitute our judgment on this question unless a verdict has been secured by improper methods, prejudice, or sympathy. No such showing has been made, nor is the verdict so inadequate as to shock the judicial conscience.
>
> . . . . The law furnishes no exact rule by which damages for pain and suffering can be measured. Their determination must necessarily be left to the good sense and sound judgment of the jury in their view of the evidence. It has frequently been said by courts and text-writers that the award of the jury will not be disturbed unless it is so great as to shock the judicial conscience or unless it was induced by something outside of the evidence, such as passion or prejudice.
>
> . . . . There is no absolute standard by which we can measure the amount of damages in personal injury cases. The amount allowed for pain suffering must rest in the sound judgment of the triers of facts.
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> * * *
>
> We cannot substitute our opinion for that of the jury as to the proper amount of damages to allow plaintiff for pain and suffering. [Internal citations omitted.]

In light of *Kelly*, we conclude as we did in *Parizon I* that

> the jury's $15,000 award for past damages is explainable by evidence suggesting that, while Melissa was injured, she had not suffered serious damages. At the time of trial, Melissa was a high school varsity athlete, playing on her school's basketball and softball teams. The jury had the opportunity to view the scar on her ankle, to listen to her testimony describing how the ankle hurt [everyday] and how she was embarrassed by the scar, and to view a video of Melissa playing basketball. The jury was free to accept or reject the evidence regarding damages. We believe the evidence allowed for a jury determination that plaintiff's past damages were minimal. [*Parizon I*, slip op, p 2.]

We further conclude, pursuant to *Kelly*, supra at 35-36, and MCL 600.6301(a), that the jury could reasonably find that Melissa was not entitled to future damages.

MCL 600.6301(a) provides:

> "Future damages" means damages arising from personal injury which the trier of fact finds will accrue after the damage findings are made and includes

> damages for medical treatment, care and custody, loss of earnings, loss of earning capacity, loss of bodily function, and pain and suffering.

In the instant case, the evidence established that Melissa could not recall receiving medical treatment for her ankle and that she never took prescription pain medication for the pain she suffered. Evidence also established that while "there was nothing else" that could be done medically to treat the scar, the scar would continue to improve as Melissa got older. In addition, no evidence was presented that Melissa lost earnings or earning capacity as a result of the ankle scar, or that Melissa would need medical care as a result of the injury. Based on this evidence and because a plastic surgeon also testified that Melissa's scar would continue to improve with age, we cannot conclude that the jury award of zero dollars in future damages was clearly or grossly inadequate, against the great weight of the evidence, contrary to law, or brought on by an error of law or influenced by passion or prejudice. See also MCR 2.611(A)(1).[1] Thus, because *Kelly* clearly establishes that "a court may grant a new trial following a jury verdict *only for one of the reasons stated in MCR 2.611(A)(1),*" on the facts presented in this case, we cannot conclude that the jury unreasonably decided not to award Melissa future damages.

Finally, we find that the jury's failure to award interest from the time of the injury until the time of the filing of the complaint is not a ground for a new trial or additur. Interest from the

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[1] MCR 2.611(A)(1) provides:

> (1) A new trial may be granted to all or some of the parties, on all or some of the issues, whenever their substantial rights are materially affected, for any of the following reasons:
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> (a) Irregularity in the proceedings of the court, jury, or prevailing party, or an order of the court or abuse of discretion which denied the moving party a fair trial.
>
> (b) Misconduct of the jury or of the prevailing party.
>
> (c) Excessive or inadequate damages appearing to have been influenced by passion or prejudice.
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> (d) A verdict clearly or grossly inadequate or excessive.
>
> (e) A verdict or decision against the great weight of the evidence or contrary to law.
>
> (f) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at trial.
>
> (g) Error of law occurring in the proceedings, or mistake of fact by the court.
>
> (h) A ground listed in MCR 2.612 warranting a new trial.

date of injury to the date of filing the complaint is an award that is within the purview of the jury. *Capital Mortgage Corp v Coopers & Lybrand*, 142 Mich App 531, 537; 369 NW2d 922 (1985), citing *Vannoy v City of Warren*, 26 Mich App 283, 288; 182 NW2d 65 (1970). Here, given the nature of Melissa's injury, the jury could reasonably conclude that interest should not be awarded on the $15,000 dollar verdict for past damages. Indeed, on the facts before us in this case, it is difficult to conclude when Melissa actually suffered those damages. As a result, we cannot find the jury's verdict to be unreasonable. Instead, plaintiff is only entitled to statutory interest from the time the complaint was filed until the judgment is satisfied. See MCL 600.6013.

IV. Conclusion

Because "no legal principle requires the jury to award one item of damages merely because it has awarded another item," *Kelly, supra* at 39, on the basis of the evidence in this case, we conclude that the jury verdict of $15,000 was reasonable, and that neither additur nor a new trial is warranted in this case. Accordingly, we reverse the trial court's order awarding additur, and remand for entry of judgment on the original jury verdict.

We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen