STATE OF MICHIGAN

COURT OF APPEALS

JEFFREY M. RUPERSBURG,

Plaintiff-Appellant,

v

ETKIN SKANSKA CONSTRUCTION CO. OF MICHIGAN, f/k/a A.J. ETKIN CONSTRUCTION CO., BAKER CONCRETE CONSTRUCTION, INC., and WHALEY STEEL CORP.,

Defendants-Appellees,

and

L.W. CONNELLY & SON, INC.,

Defendant.

UNPUBLISHED
November 30, 2006

No. 262388
Oakland Circuit Court
LC No. 2000-023553-NO

JODI L. RUPERSBURG and JEFFREY M. RUPERSBURG,

Plaintiffs-Appellants,

v

ETKIN SKANSKA CONSTRUCTION CO. OF MICHIGAN, f/k/a A.J. ETKIN CONSTRUCTION CO., BAKER CONCRETE CONSTRUCTION, INC., and WHALEY STEEL CORP.,

Defendants-Appellees,

and

L.W. CONNELLY & SON, INC.,

Defendant.

No. 262406
Oakland Circuit Court
LC No. 2002-045346-N

JEFFREY M. RUPERSBURG,

Plaintiff-Appellee,

v

ETKIN SKANSKA CONSTRUCTION CO. OF MICHIGAN, f/k/a A.J. ETKIN CONSTRUCTION CO., and BAKER CONCRETE CONSTRUCTION, INC.,

Defendants-Appellants,

and

WHALEY STEEL CORP. and L.W. CONNELLY & SON, INC.,

Defendants.

No. 262470
Oakland Circuit Court
LC No. 2000-023553-NO

JODI L. RUPERSBURG and JEFFREY M. RUPERSBURG,

Plaintiffs-Appellees,

v

ETKIN SKANSKA CONSTRUCTION CO. OF MICHIGAN and BAKER CONCRETE CONSTRUCTION, INC.,

Defendants-Appellants,

and

WHALEY STEEL CORP. and L.W. CONNELLY & SON, INC.,

Defendants.

No. 262471
Oakland Circuit Court
LC No. 2002-045346-NO

JEFFREY M. RUPERSBURG,

Plaintiff-Appellee,

v

No. 262560
Oakland Circuit Court
LC No. 2000-023553-NO

ETKIN SKANSKA CONSTRUCTION CO. OF MICHIGAN, f/k/a A.J. ETKIN CONSTRUCTION CO., and BAKER CONCRETE CONSTRUCTION, INC.,

Defendants-Appellees,

v

WHALEY STEEL CORP.,

Defendant-Appellant,

and

L.W. CONNELLY & SON, INC.,

Defendant.

JODI L. RUPERSBURG and JEFFREY M. RUPERSBURG,

Plaintiffs-Appellees,

v

No. 262561
Oakland Circuit Court
LC No. 2002-045346-NO

ETKIN SKANSKA CONSTRUCTION CO. OF MICHIGAN and BAKER CONCRETE CONSTRUCTION, INC.,

Defendants-Appellees,

v

WHALEY STEEL CORP.,

Defendant-Appellant,

and

L.W. CONNELLY & SON, INC.,

Defendant.

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

In this action for damages, plaintiffs Jeffrey Rupersburg, acting as next friend for his son Jamie Rupersburg, and his wife, Jodi Rupersburg, acting individually and in her capacity as next friend for Jamie, appeal the trial court's order denying their motion for judgment notwithstanding the verdict (JNOV) on their loss of consortium claims. Defendants Etkin Skanska Construction Company of Michigan [Etkin], Baker Concrete Construction, Inc. [Baker], and Whaley Steel Corporation [Whaley] appeal as of right the trial court's order denying their motions for judgment notwithstanding the verdict (JNOV), remittitur, and a new trial and upholding the jury verdict awarding $3,133,240 in future medical expenses to plaintiff Jeffrey Rupersburg.[1] Etkin, Baker, and Whaley also appeal the trial court's decision to use the simple interest method to reduce plaintiff's awards for future damages to present value. Further, Whaley appeals the trial court's decision to qualify Charles Morin, a metallurgical engineer, as an expert witness and to permit him to testify regarding Whaley's share of fault for the accident. Whaley also appeals the trial court's refusal to reduce plaintiff's award for future lost wages by the value of future cost of living increases in plaintiff's social security disability benefits. We affirm the trial court in all respects.

The defendant corporations were involved in the construction of a hotel in Pontiac, Michigan. Plaintiff, a 27-year-old electrician, worked at the site. On November 24, 1999, a Whaley employee directed the landing of a crane load on the ninth floor of the hotel. As the load was lowered to the floor, it hit a guardrail stanchion installed by Baker on the western edge of the floor. At this moment, plaintiff was exiting the hotel. The stanchion fell and struck plaintiff, causing extensive injuries to his head, neck, shoulder, and back. Defendants had not put up caution tape in the area to indicate a potential safety hazard or installed a covered walkway or other safety features to protect workers from falling objects.

Plaintiff filed a cause of action alleging that the negligence of Etkin, Baker, Whaley, and three other defendants caused his injuries, and plaintiffs filed loss of consortium claims on behalf of Jodi and Jamie. After trial, the jury attributed ten percent of fault for the accident to Etkin, 25 percent of fault to Baker, and 60 percent of fault to Whaley and awarded plaintiff damages, including damages for past and future lost wages and for past and future medical expenses.[2] The jury also determined that neither Jodi nor Jamie suffered damages for loss of consortium.

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[1] In this opinion, we will refer to Jeffrey Rupersburg individually as "plaintiff" and to Jodi Rupersburg and Jeffrey Rupersburg, in his capacity as next friend to Jamie Rupersburg, as "plaintiffs."

[2] Of the three remaining defendants, two settled with plaintiffs before trial, and the jury found that the third was not liable for plaintiffs' injuries. The jury also concluded that plaintiff's employer, a nonparty to this suit, was five percent liable for his injuries.

Plaintiffs claim that the trial court erred when it denied their motion for JNOV regarding their loss of consortium claims. We disagree. We review de novo the trial court's decision to grant or deny a motion for JNOV. *Craig v Oakwood Hosp*, 471 Mich 67, 77; 684 NW2d 296 (2004). The trial court may only grant a motion for JNOV when, "viewing the evidence and all legitimate inferences in the light most favorable to the nonmoving party, there are no issues of material fact with regard to which reasonable minds could differ." *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 14; 596 NW2d 620 (1999). "If reasonable jurors could disagree, neither the trial court nor this Court has the authority to substitute its judgment for that of the jury." *In re Estate of Leone*, 168 Mich App 321, 324; 423 NW2d 652 (1988).

"A claim for loss of consortium is simply one for loss of society and companionship." *Eide v Kelsey-Hayes Co*, 431 Mich 26, 29; 427 NW2d 488 (1988). Our Supreme Court has long recognized the right of a wife to recover damages for loss of consortium resulting from the negligent injury of her husband. *Montgomery v Stephan*, 359 Mich 33, 49; 101 NW2d 227 (1960). A wife's claim for loss of consortium includes claims for "loss of society, companionship, service, and all other incidents of the marriage relationship." *Washington v Jones*, 386 Mich 466, 472; 192 NW2d 234 (1971). Similarly, "a child may recover for loss of a parent's society and companionship caused by tortious injury to the parent." *Berger v Weber*, 411 Mich 1, 17; 303 NW2d 424 (1981).

We initially note that neither Jodi nor Jamie was required to testify at trial to maintain the loss of consortium claims. *Berryman v K Mart Corp*, 193 Mich App 88, 94; 483 NW2d 642 (1992). Nevertheless, plaintiffs fail to establish that no issue of material fact exists regarding whether they suffered loss of consortium. After the accident, plaintiff was the primary caregiver in the family. He spent his days at home, where he did light housework, ran errands, and took Jamie to school. He also assisted Jamie in his kindergarten class and helped Jodi homeschool Jamie for a four-month period. The jury could reasonably conclude that the "society and companionship" that plaintiff provided to his wife and son remained consistent or even *increased* after his accident, because plaintiff spent the time he would have devoted to working had he not been injured to attend to the needs of his home and family.

Further, plaintiffs failed to show that no question of fact exists regarding whether Jodi and Jamie were harmed by plaintiff's injuries. Although plaintiffs claim that no question of fact exists regarding whether Jodi and Jamie suffered loss of consortium because witness testimony establishing that they were harmed by plaintiff's accident was uncontradicted, the jury has the discretion to believe or disbelieve testimony, even when a witness's statements are uncontradicted. *Baldwin v Nall*, 323 Mich 25, 29; 34 NW2d 539 (1948).

> [Even if] there was evidence [to establish a claim or element] which probably ought to have satisfied any one to whom it was addressed;[] evidence is for the jury, and the trial judge cannot draw conclusions for them. It is said that on some points there was no evidence of a conflicting nature; but that does not aid the claimant. A jury may disbelieve the most positive evidence, even when it stands uncontradicted; and the judge cannot take from them their right of judgment. [*Wooden v Durfee*, 46 Mich 424, 427; 9 NW 457 (1881).]

Regardless, the evidence presented before the trial court does not conclusively establish that Jodi's mental health problems or Jamie's behavioral problems were caused by the harm they

suffered after being deprived of plaintiff's society and companionship. Although Jodi suffered two nervous breakdowns after plaintiff's accident, she also had a long history of physical health problems and had been admitted to a mental health clinic when she was a teenager. The jury could reasonably conclude that her nervous breakdowns and health difficulties preexisted plaintiff's accident and were not caused by her inability to cope with the changes that his injuries caused her and her family.

Similarly, although Jamie exhibited behavioral problems and was removed from two kindergarten programs after plaintiff's accident, he also exhibited developmental delays, had speech impairments, and had anger management issues before plaintiff's accident. Further, a social worker who observed Jamie's behavior in his kindergarten classroom opined that his behavioral problems were caused by both his preexisting developmental and communication impairments and by his inability to handle the changes and stress in his life caused by his parents' health problems. The jury could also reasonably conclude that Jamie's behavioral problems were a reaction to Jodi's health impairments or an outgrowth of his preexisting developmental delays, not merely a reaction to the changes that plaintiff's accident caused the Rupersburg family. Accordingly, the trial court did not err when it deferred to the jury's findings that Jodi and Jamie did not suffer loss of consortium and denied plaintiffs' motion for JNOV on their loss of consortium claims.

Defendants first argue that plaintiff presented insufficient evidence to support his award of $3,133,240 in damages for future medical expenses and, therefore, the trial court erred when it denied their motions for partial JNOV, remittitur, or a new trial regarding his award for future medical expenses. We disagree. Again, we review de novo the trial court's decision to grant or deny a motion for JNOV. *Craig*, *supra* at 77. We review for an abuse of discretion the trial court's denial of a motion for remittitur and for a new trial. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 261; 617 NW2d 777 (2000); *Henry v Detroit*, 234 Mich App 405, 415; 594 NW2d 107 (1999). "The trial court's function with respect to a motion for a new trial is to determine whether the overwhelming weight of the evidence favors the losing party." *Scott v Illinois Tool Works, Inc*, 217 Mich App 35, 41; 550 NW2d 809 (1996). Our function is to determine if the trial court abused its discretion in making such a finding. *Id.* To determine if remittitur is appropriate, the trial court must decide if the evidence supported the jury award. *Henry*, *supra* at 414. Remittitur is justified if the amount awarded is greater than the highest amount the evidence will support. *Palenkas v Beaumont Hosp*, 432 Mich 527, 531-532; 443 NW2d 354 (1989).

Defendants claim that the trial court should have granted their motions for JNOV, remittitur, or a new trial because plaintiff presented insufficient evidence to support the jury's award for future medical expenses. To determine if plaintiff presented sufficient evidence to support his award for future medical expenses, we "view the evidence in a light most favorable to the plaintiff and give the plaintiff the benefit of every reasonable inference. If, after viewing the evidence, reasonable people could differ, the question is properly left to the trier of fact." *Scott*, *supra* at 41 (citations omitted).

Pursuant to MCL 600.6305(2), plaintiff may recover damages for future medical expenses.[3] To establish damages for future medical expenses, plaintiff must establish with reasonable certainty that the injury sustained will require medical treatment in the future. *Motts v Michigan Cab Co*, 274 Mich 437, 441; 264 NW 855 (1936). An inability to prove the amount of damages does not preclude recovery for future damages when some degree of injury is established. *Berrios v Miles, Inc*, 226 Mich App 470, 478; 574 NW2d 677 (1997). Damages based on speculation or conjecture are not recoverable, but "damages are not speculative merely because they cannot be ascertained with mathematical precision." *Id.* "It is sufficient if a reasonable basis for computation exists, although the result be only approximate." *Id.*

"[W]here reasonable minds could differ regarding the level of certainty to which damages have been proved, this Court is careful not to invade the fact finding of the jury and substitute its own judgment." *Severn v Sperry Corp*, 212 Mich App 406, 415; 538 NW2d 50 (1995). Our Supreme Court noted, "[w]e do not, 'in the assessment of damages, require a mathematical precision in situations of injury where, from the very nature of the circumstances, precision is unattainable.'" *Godwin v Ace Iron & Metal Co*, 376 Mich 360, 368; 137 NW2d 151 (1965), quoting *Purcell v Keegan*, 359 Mich 571, 576; 103 NW2d 494 (1960). "Questions regarding what damages may be reasonably anticipated are issues better left to the trier of fact." *Health Call of Detroit v Atrium Home & Health Care Services, Inc*, 268 Mich App 83, 97; 706 NW2d 843 (2005).

First, plaintiff presented sufficient evidence to permit a juror to conclude with reasonable certainty that he would need medical treatment in the future. For example, plaintiff presented evidence indicating that he began to grind his teeth and tightly clench his jaw after fracturing his jaw in the accident and that he needed to wear a bite guard to control these impulses. A reasonable juror could conclude that he would require continued monitoring of this condition.

Plaintiff also presented evidence indicating that he developed excessive intraocular tension in his left eye after the accident, increasing his risk of developing glaucoma. After the accident, plaintiff also developed double vision, as well as a choroidal rupture and hazy vision in his left eye. His ophthalmologist noted that he would require annual examinations to monitor the intraocular tension in his eye and the development of abnormal blood vessels in his choroids. Further, the diameter of plaintiff's left pupil was permanently fixed, and he wore special tinted glasses to compensate for the inability of his pupil to dilate and retract in response to changes in light. A reasonable juror could conclude that plaintiff would incur medical expenses for examinations, prescriptions for corrective lenses, and other ophthalmologic treatments in the future.

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[3] MCL 600.6305(2) notes, "[t]he calculation of future damages for types of future damages described in [MCL 600.6305(1)(b)] shall be based on the costs and losses during the period of time the plaintiff will sustain those costs and losses." MCL 600.6305(1)(b)(i) requires that triers of fact in a personal injury action make specific findings of fact regarding future damages that a plaintiff might incur for health care costs and the periods over which these damages would accrue.

Plaintiff also established that he had recurring problems with his left shoulder after the accident, presenting evidence that his shoulder often became dislocated and that he had several surgeries in an attempt to address these injuries. Most notably, the orthopedic surgeon treating plaintiff's shoulder injury opined that his shoulder was weak and that he was prone to reinjuring it. Although plaintiff did not have any surgeries scheduled at the time of trial, a reasonable juror could conclude that he would require additional monitoring of his shoulder and would possibly need additional surgery or treatment for his shoulder in the future.

In addition, plaintiff provided evidence indicating that he took several prescription medications to address chronic medical problems that developed after the accident. He took Mirapex to control his restless leg syndrome, medication to control his seizure disorder, Kadian, Marinol, Vicodin ES, and Lidocaine patches to address his chronic pain, Midrin and Cyproheptadine to address his headaches, Ambien to sleep, and Prevacid to control the upset stomach caused by the other medications. Plaintiff also received nerve block injections in an attempt to lessen the pain in his back and face. Several of plaintiff's physicians opined that plaintiff would suffer from chronic pain, headaches, and nerve damage for the rest of his life. Consequently, a reasonable juror could conclude that plaintiff would continue to require constant monitoring of his nerve damage and chronic pain and would constantly need his current cocktail of prescription medications or a similarly extensive combination of medications to manage pain.

Plaintiff also attended therapy sessions with a speech language pathologist and planned to resume therapy focusing on memory techniques and mental processing. He also participated in rehabilitative counseling to address depression, anxiety, goal setting, and coping mechanisms, and his counselor recommended that he continue these sessions. Further, plaintiff took Prozac to control his depression. A reasonable juror could conclude that plaintiff would continue to receive these therapy and counseling sessions indefinitely and would continue to take antidepressants to treat his mental health problems.

Second, the jury had a reasonable basis for calculating that plaintiff would incur approximately $3,133,240 in future medical expenses and awarding him damages for future medical expenses in this amount. Plaintiff's neurologist opined that plaintiff's health would deteriorate in the future. She noted that he would remain on high doses of medication indefinitely and would likely develop posttraumatic arthritis in his neck and shoulder. Consequently, a reasonable juror could conclude that the average amount that plaintiff spent annually on health care for his chronic and ongoing medical problems in the five years between the time of his accident and the time of trial would be equivalent to or even lower than the amount that he would likely spend in the future on his chronic conditions.

The jury awarded plaintiff $223,190 in past medical expenses. This value is equivalent to the total amount plaintiff incurred in medical expenses from the time of the accident until the day the jury began its deliberations. On average, plaintiff incurred approximately $48,500 in medical expenses annually between the time of the accident and the time of trial. The jury's award for future medical expenses corresponds to an award of $35,000 annually, increased by three percent

for each year of plaintiff's life expectancy. By adding these annual awards, the jury reached a total award of $3,133,240 for future medical expenses.[4]

Although defendants argue that the jury award for future medical expenses was speculative because plaintiff failed to present evidence establishing the estimated costs of his anticipated future medical expenses, plaintiff provided evidence establishing that he incurred an average of $48,500 annually in past medical expenses. Although some of these expenses covered dental treatments, cataract surgery, and shoulder surgery that he might not receive again in the future, many of these expenses corresponded to plaintiff's doctor visits, therapy sessions, prescriptions, and other medical treatments that he would continue to have in the future, and plaintiff presented expert testimony establishing that his physical condition would deteriorate in the future. The jury's award of $35,000 annually for future medical expenses, adjusted by three percent for each year of plaintiff's expected life, is approximately 72 percent of the amount plaintiff incurred each year in medical expenses between the time of his accident and the time of trial. The average annual cost of plaintiff's past medical expenses creates a reasonable baseline on which the jury may approximate the anticipated costs of his future medical expenses. Further, because many of plaintiff's medical expenses addressed conditions that would require future monitoring and treatment, the jury's conclusion that he would annually incur medical expenses in the future that were approximately 72 percent of the annual cost of his medical expenses between the time of his injury and the time of trial was reasonable and supported by the evidence presented at trial. We will not disturb this finding of fact by the jury, and we hold that the trial court did not err when it upheld the jury's award for future medical expenses and denied defendants' motions for partial JNOV, remittitur, or a new trial.

Defendants argue that the trial court should have reduced plaintiff's awards for future damages to present value using a compound interest method instead of a simple interest method. Yet in *Nation v W D E Electric Co*, 454 Mich 489, 499; 563 NW2d 233 (1997), our Supreme Court held that "future damages under [MCL 600.6306] are to be reduced to present cash value using the same simple interest that has been employed under the common law for at least eighty years in Michigan." Lower courts are "obligated to follow the most recent pronouncement of the Supreme Court on a principle of law." *Washington Mut Bank, FA v ShoreBank Corp*, 267 Mich App 111, 119; 703 NW2d 486 (2005). Our Supreme Court has not made a more recent ruling on this issue. Because the trial court was bound to follow our Supreme Court's holding in *Nation*, it did not err when it reduced plaintiff's award of future damages to present value using the simple interest method.

Further, "[t]his Court is without authority to overrule decisions of [our] Supreme Court. *Ferguson v Gonyaw*, 64 Mich App 685, 694; 236 NW2d 543 (1975). Regardless of the merits of defendants' arguments, this Court is bound by the *Nation* Court's holding. Defendants must file for leave to appeal this issue to the Supreme Court in order to obtain the relief they seek.

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[4] Defendants do not contest the propriety of the jury's apparent decision to adjust the estimated value of plaintiff's future medical expenses by three percent annually.

Whaley also argues that the trial court abused its discretion when it permitted the introduction of the deposition testimony of metallurgical engineer Charles Morin, who testified as an expert regarding construction safety and construction site and accident reconstruction. We do not agree. We review the trial court's evidentiary rulings for an abuse of discretion. *Price v Long Realty, Inc*, 199 Mich App 461, 466; 502 NW2d 337 (1993). In particular, "[t]he qualification of a witness as an expert and the admissibility of the expert's testimony are within the trial court's discretion." *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997).

MRE 702 states that a witness may be qualified as an expert by "knowledge, skill, experience, training, or education." Although Morin received his formal education in metallurgical engineering, an expert need not possess professional academic credentials to be qualified to express an expert opinion. *O'Dowd v Linehan*, 385 Mich 491, 509; 189 NW2d 333 (1971). Instead, an individual may acquire special knowledge concerning a subject by reason of his employment. *People v Wilson*, 27 Mich App 171, 177; 183 NW2d 368 (1970).

Throughout his approximately 32-year career, Morin worked primarily in safety engineering, focusing on failure analysis and accident investigation. Although Whaley argues that most of Morin's experience is in the area of product safety analysis, Morin testified that he spent time on "hundreds" of construction sites throughout his career, mostly investigating construction site accidents. To investigate accidents, he often reconstructed events to determine the source of a particular problem. Morin also accompanied radiomen and signalmen on construction projects, gaining firsthand experience observing how these individuals directed the landing of a crane load on a construction site. In his deposition, Morin explained how a crane moves a load and the amount of swing a load has when it is moved, discussed the signalman's involvement in moving and landing the load, and commented on how the landing of the load in question in this case caused the stanchion to fall. We conclude that Morin had sufficient expertise working in areas concerning construction site safety and construction site accident investigation and reconstruction to discuss the likely causes of the accident in question in this case. Accordingly, the trial court did not abuse its discretion when it concluded that Morin had acquired sufficient knowledge and experience throughout his career to provide this testimony. Although the *extent* of Morin's qualifications to render an expert opinion in these areas is debatable, this is relevant to determine the weight, not the admissibility, of Morin's testimony. *Shinholster v Annapolis Hosp*, 255 Mich App 339, 350; 660 NW2d 361 (2003), aff'd in part and rev'd in part 471 Mich 540 (2004).

Whaley also argues that when the trial court admitted Morin's deposition testimony, it deprived Whaley of the opportunity to examine Morin regarding the "basis of his purported expertise" and to challenge his qualifications as an expert. First, Whaley claims that it did not schedule a pre-trial *Davis-Frye* hearing because it relied on representations that Morin would merely be asked to explain the operation of a load and not to "establish a standard" and that if Morin would be asked to "establish a standard" at trial, Whaley would be permitted to challenge Morin's qualifications to do so. Yet the *Davis-Frye* test is used to determine if a proposed expert opinion is grounded in a "recognized" field of scientific, technical, or other specialized knowledge by ensuring that the expert opinion is based on accurate and generally accepted methodologies. *Craig*, *supra* at 80. Whaley fails to explain why it should have been permitted to conduct a *Davis-Frye* test to determine if Morin's proposed expert opinions in the areas of

construction site safety and construction site accident investigation and reconstruction are based on a recognized field of knowledge.

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. [*Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Consequently, Whaley abandons this issue on appeal. *Moses, Inc v SEMCOG*, 270 Mich App 401, 417; 716 NW2d 278 (2006).

Second, Whaley argues that it relied on representations made during a pretrial motion hearing that Morin "would not be asked to 'establish a standard' but would merely 'explain the operation of a load . . . ." However, Whaley fails to explain why this distinction was significant to its purported decision not to examine Morin in detail regarding the basis of his expertise. Furthermore, at the deposition, plaintiff's attorney stated on the record that the deposition "is being taken pursuant to notice and agreement of counsel and it is intended to be used for any and all purposes allowable under the Michigan court rules." Although Whaley was represented by counsel at the deposition, it did not object on the record to the use of Morin's deposition for all purposes. Further, Whaley cross-examined Morin during the deposition regarding his familiarity with construction sites and the extent of his experience investigating construction site accidents, and most of this testimony was read into evidence during the trial. Whaley fails to explain why this opportunity to cross-examine Morin during his deposition and to admit this testimony into evidence was insufficient to ensure that his qualifications were adequately investigated before admitting him as an expert. "A party may not rely on this Court to make his arguments for him." *Rorke v Savoy Energy, LP*, 260 Mich App 251, 260; 677 NW2d 45 (2003). Therefore, we will not consider the issue further. *Moses, Inc*, *supra* at 417.

In addition, MRE 704 states, "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Because the trial court did not abuse its discretion when it qualified Morin as an expert, it did not abuse its discretion when it permitted Morin to opine that the Whaley signalman was at fault for the load hitting the stanchion, even though this was an ultimate issue of fact for the jury. Further, Morin noted that he limited his analysis to a determination of what caused the stanchion to be knocked off the ninth floor, and that he was not attempting to identify the party that was ultimately responsible for the accident. Therefore, we need not consider further Whaley's argument that Morin's testimony was not harmless.

Finally, Whaley argues that the trial court's failure to set off plaintiff's award for future lost wages by the future cost of living increases in his social security disability (SSD) benefits was in error. This issue concerns the proper interpretation of MCL 600.6303. We review de novo the interpretation and application of a statute as a question of law. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

When construing the provisions of a statute, our primary task is to discern and give effect to the intent of the Legislature. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).

> This task begins by examining the language of the statute itself. The words of a statute provide "the most reliable evidence of its intent . . . ." If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted. Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. [*Id.* (citations omitted).]

MCL 600.6303 sets forth the circumstances under which a jury award may be set off by a collateral source. The statute states:

> (1) In a personal injury action in which the plaintiff seeks to recover for the expense of medical care, rehabilitation services, loss of earnings, loss of earning capacity, or other economic loss, evidence to establish that the expense or loss was paid or is payable, in whole or in part, by a collateral source shall be admissible to the court in which the action was brought after a verdict for the plaintiff and before a judgment is entered on the verdict. Subject to subsection (5), if the court determines that all or part of the plaintiff's expense or loss has been paid or is payable by a collateral source, the court shall reduce that portion of the judgment which represents damages paid or payable by a collateral source by an amount equal to the sum determined pursuant to subsection (2). . . .
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> (2) The court shall determine the amount of the plaintiff's expense or loss which has been paid or is payable by a collateral source. . . . [T]hat amount shall then be reduced by a sum equal to the premiums, or that portion of the premiums paid for the particular benefit by the plaintiff or the plaintiff's family or incurred by the plaintiff's employer on behalf of the plaintiff in securing the benefits received or receivable from the collateral source.
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> * * *
>
> (5) For purposes of this section, benefits from a collateral source shall not be considered payable or receivable unless the court makes a determination that there is a previously existing contractual or statutory obligation on the part of the collateral source to pay the benefits.

Social security benefits are listed as types of collateral sources in MCL 600.6303(4) and, therefore, are among the types of payments that should be used to reduce the jury verdict pursuant to MCL 600.6303(1). *Haberkorn v Chrysler Corp,* 210 Mich App 354, 375; 533 NW2d 373 (1995).

In *Haberkorn*, this Court considered whether the trial court erred when it refused to reduce the amount of Haberkorn's award of damages provided by the jury by the amount of her social security benefits. The trial court "deemed plaintiff's social security benefits to be exceptions to the collateral source rule under [MCL 600.6303(5)] because a possibility existed that they would be reduced or eliminated when plaintiff resumed work or when the federal government opted to reduce or end such benefits altogether." *Id.* However, the *Haberkorn* Court explained that, pursuant to MCL 600.6303(5), collateral source benefits must be based on

a *previously existing* contractual or statutory obligation to pay, but not on a previously existing and *perpetual* obligation to pay. *Id.* at 376. This Court noted that by the time the trial court held the collateral source hearing, Haberkorn "had been certified by the Social Security Administration as disabled and was therefore entitled under 42 USC 423 to receive benefits." *Id.* Although a possibility existed that Haberkorn's benefits could be reduced or eliminated in the future, the *Haberkorn* Court did not require the trial court to consider this contingency when applying the collateral source rule. Pursuant to the *Haberkorn* Court's interpretation of MCL 600.6303, the trial court was only required to reduce Haberkorn's jury award by the amount she was statutorily required to receive in social security benefits at the time of the trial court's collateral source hearing.

When the Legislature required in MCL 600.6303(5) that future lost wages only be reduced by the value of collateral source payments owed to a plaintiff based on "previously existing statutory or contractual obligation[s]," it determined that the value of the collateral source payments should be calculated based on existing obligations at the time of the collateral source hearing. Any determination regarding the amount of future wages plaintiff will likely lose because of injury or the amount of future SSD benefits he will receive is inherently speculative. Further, any cost of living increase plaintiff might receive is contingent on the rate of inflation. See 42 USC 415(i). Although it is likely that plaintiff will receive cost of living increases in his SSD benefits over the next 30 years, it is not certain. Further, the rate of inflation in the next 30 years and, hence, the amount by which plaintiff's SSD benefits will increase is unknown. We conclude that MCL 600.6303 requires only that the trial court reduce plaintiff's future lost wages award by the value of the government's existing obligation to pay SSD benefits and not by the speculated cost of living increase in the value of plaintiff's SSD benefits in the future. The trial court properly refused to set off plaintiff's award for future lost wages by the speculated value of future cost of living increases in his SSD benefits.[5]

Affirmed.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens

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[5] Regardless, the jury verdict form indicates that the jury awarded plaintiff a consistent value of $105,000 annually in lost wages. We have found no indication that the jury considered inflation and cost of living increases when determining plaintiff's award for future lost wages. Therefore, any failure by the trial court to consider cost of living increases when determining the value of the SSD benefits by which plaintiff's award of future lost wages should be reduced is set off by the jury's similar failure to consider cost of living increases when awarding plaintiff future lost wages.