NO. COA12-268
NORTH CAROLINA COURT OF APPEALS

Filed: 20 November 2012

BETRINA Y. JENKINS,
Plaintiff,

v.

Craven County
No. 09 CVD 1916

INELL WHIMPER-JACKSON,
Defendant.

Appeal by defendant from the order entered 17 August 2010 granting plaintiff's motion for partial summary judgment and from judgment and orders entered 30 November 2011 denying defendant's motion for costs and granting plaintiff's motion for attorneys' fees and costs by Judge Cheryl Spencer in Craven County District Court. Heard in the Court of Appeals 29 August 2012.

Chestnutt, Clemmons & Peacock, P.A., by Gary H. Clemmons, for plaintiff.

Hall, Rodgers, Gaylord, & Millikan, PLLC, by Dwight G. Rodgers, Jr., and Kathleen M. Millikan, for defendant.

ELMORE, Judge.

On 27 January 2009, Inell Whimper-Jackson (defendant) was involved in a motor vehicle accident in which plaintiff allegedly sustained personal injuries as a result of defendant's negligence. The trial court granted plaintiff's motion for partial summary judgment on the issue of proximate cause and granted plaintiff's motion for costs. Defendant now appeals.

After careful consideration, we reverse the trial court's order of partial summary judgment as to the issue of proximate cause and remand for jury determination.

Background

After the accident, plaintiff, through counsel, attempted to settle the case with State Farm Insurance Company (State Farm), defendant's insurance provider. The parties exchanged five offers/counteroffers before defendant made a "top offer" to settle the claim for $6,800.00 on 3 September 2009. This offer was a "final offer," and plaintiff was informed that her only option was to settle the claim for $6,800.00 or file a complaint The parties were unable to reach an agreed settlement.

On 18 September 2009, plaintiff brought this action by filing a complaint against defendant, seeking $8,500.00 in compensatory damages, plus interest and costs, including reasonable attorneys' fees. On 2 October 2009, defendant,

through State Farm, offered plaintiff $8,000.00 as a full and final settlement. On 6 October 2009, plaintiff offered to settle the claim for $12,000.00. On 20 October 2009, defendant, now represented by counsel, offered to settle plaintiff's claim for $8,500.00, and indicated that, if plaintiff believed the value of her case to be $12,000.00, defendant would seek to have the case transferred to superior court. Thereafter, defendant made a motion to transfer the case to superior court, which was denied.

On 17 February 2010, plaintiff engaged in voluntary arbitration. Defendant did not attend the arbitration. The arbitrator awarded judgment against defendant in the amount of $8,929.30, plus interest, attorneys' fees, and costs in the amount of $10,082.00, for a total award of $19,011.60. Defendant made no offer to settle the case within 30 days following the arbitration award and judgment. In fact, defendant made no offers to settle the case from 12 November 2009 to 31 August 2010. Defendant appealed the arbitration award by filing a request for a trial *de novo* on 22 February 2010.

On 17 August 2010, the trial court granted plaintiff's motion for partial summary judgment in favor of plaintiff on the

issues of negligence, contributory negligence, and proximate cause, leaving only the issue of damages. On 5 November 2010, at a damages-only trial, the jury returned a verdict awarding $1,399.30 to plaintiff. On 30 November 2011, the trial court denied defendant's motion for costs and granted plaintiff's motion for attorneys' fees and costs pursuant to N.C. Gen. Stat. § 6-21.1 in the amount of $28,444.50, making the judgment finally obtained $31,069.24, plus pre-judgment interest on $1,399.30 from 18 September 2009 until the date of judgment.

I. Proximate Cause

Defendant first argues that the trial court erred in granting plaintiff's motion for partial summary judgment on the issue of whether plaintiff's injuries were proximately caused by the car accident. We agree.

"Our standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the record shows that 'there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.'" *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (quoting *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007)). "All inferences of fact . . . must be drawn against the movant and in favor of the party opposing the

motion." *Caldwell v. Deese*, 288 N.C. 375, 378, 218 S.E.2d 379, 381 (1975). Our Supreme Court has "emphasized that summary judgment is a drastic measure, and it should be used with caution. This is especially true in a negligence case in which a jury ordinarily applies the reasonable person standard to the facts of each case." *Williams V. Carolina Power & Light Co.*, 296 N.C. 400, 402, 250 S.E.2d 255, 257 (1979).

Proximate cause is an inference of fact generally drawn from other facts and circumstances. "It is only in *exceptional* cases, in which reasonable minds cannot differ as to foreseeability of injury, that a court should decide proximate cause as a matter of law. Proximate cause is ordinarily a question of fact for the jury[.]" *Id.* at 403, 250 S.E.2d at 258 (emphasis added). In personal injury actions, no specific medical evidence or testimony is needed when a layman of average intelligence and experience would know the cause of the injuries in question. *See Gillikin v. Burbage*, 263 N.C. 317, 325, 139 S.E.2d 753, 760 (1965).

Here, the evidence before the trial court was that plaintiff (1) did not feel any pain or symptoms immediately after the accident, (2) began to experience pain in her neck and shoulders approximately 30 minutes after the accident while at

the hospital, (3) saw a chiropractor for treatment of her neck and shoulder pain, (4) began to experience low back pain about one and one-half weeks after the accident which was also after she began treatment with the chiropractor, (5) had been in two previous car accidents during the 1990s in which she sustained serious injuries, and (6) reported that the pain and symptoms from those prior accidents had resolved and she was not experiencing any symptoms just prior to the collision with defendant.

This evidence could lead to a reasonable inference that plaintiff's injuries were caused by the injuries she suffered in her prior car accidents. Additionally, as plaintiff's back pain did not begin until one and one-half weeks after the accident, such pain may have been caused by her chiropractic treatment or some other intervening event during the interval between the accident and onset of the back pain. Therefore, we conclude that the cause of plaintiff's symptoms could be attributed to several factors. As such, this case is not so "exceptional" that reasonable minds could not differ as to the foreseeability of plaintiff's injuries. Accordingly, summary judgment on the issue of proximate cause was improper here. We reverse the

order of partial summary judgment as to this issue and remand for jury determination of proximate cause.

II. Attorneys' Fees and Costs

Because we have remanded the issue of proximate cause for jury determination, we deem it unnecessary to address defendant's remaining issues as to attorneys' fees and costs. The issues regarding these fees and costs raised on this appeal by defendant are now moot and not properly before us for decision at this time.

III. Conclusion

In sum, the trial court erred in granting plaintiff's motion for partial summary judgment on the issue of proximate cause. Issues regarding attorneys' fees and costs are, therefore, now moot and not properly before us for decision at this time.

Reversed and remanded.

Judges CALABRIA and STEPHENS concur.

Report per Rule 30(e).