

{¶3} According to plaintiff, she experienced pain and soreness after the fall; however, she did not seek immediate medical treatment because she expected those symptoms to subside within a few days. When that did not happen, plaintiff made an appointment with Dr. Deborah Venesy at OSU's Spine Center. Thereafter, she went to several different physicians to begin a series of treatments, some of which were helpful while others were not. Plaintiff also filed a claim with the Bureau of Workers' Compensation. The parties have stipulated that plaintiff received a permanent partial disability award of \$2,885.82 from that source. (Joint Exhibit 1.) She did not incur any uncompensated work loss. The substance of plaintiff's claims is that she has both ongoing pain and limitation of head, neck, and shoulder movement. Testimony revealed that she and her husband owned two horses that plaintiff previously enjoyed riding and showing, that they had two children who were ages 8 and 12 at the time of trial, and that the family was very involved in outdoor activities such as camping and boating. Plaintiff and her husband both testified that riding in their boat on rough water, or riding the horses (if the horses were doing anything other than walking) were very painful for plaintiff. They both testified that plaintiff had, and continues to have, difficulty with any activity that involves looking upward or raising her arms above her shoulders. Such activities include changing light bulbs, hanging curtains, painting, pruning trees, stringing Christmas lights, styling her hair, riding amusement park rides, and looking at fireworks or stars in the sky.

{¶4} The opinions of the expert witnesses differ as to the extent to which plaintiff's condition is related to the 1998 fall. There is evidence that plaintiff experienced a neck/back injury prior to the incident in question. However, the court finds that the previous injury had been healed by the time of the fall. Therefore, the court will focus only on the damages proximately related to the 1998 fall, and not any exacerbation of the previous injury.

{¶5} Plaintiff's expert, Dr. Korby, began treating plaintiff in June 1999. He treated her for approximately nine months, or until March 2000, then did not see her again until November 2003. Dr. Korby originally diagnosed plaintiff as suffering from a "cervical dorsal sprain/strain, myofascial pain *** a facet or spinal joint capsulitis synovitis with

referred pain, and a cervical radiculitis on the right side.” Dr. Korby developed a treatment plan for plaintiff beginning with home exercise and neuro stimulation and later moving on to physical therapy, facet injections, trigger point injections and acupuncture. In December 1999, an MRI was performed. Dr. Korby testified that the MRI detected disc protrusions at C4-5 and C5-6 with indentation to the dural sac of the nerve root. While he acknowledged that plaintiff did have some pre-existing degenerative changes, Dr. Korby also opined that the conditions he diagnosed, and as shown by the MRI, were causally related to plaintiff’s 1998 fall. He further opined that all of the physical limitations described by plaintiffs are consistent with plaintiff’s diagnosis.

{¶6} By contrast, defendant’s expert, Dr. Hauser, testified that plaintiff suffered cervical strain, or stretching of the muscles and ligaments of the neck. In Dr. Hauser’s opinion, “that was the part of her condition that seemed to persist and produce all these records as far as treatment and evaluation” and was the only injury that was directly and proximately related to the 1998 fall. With respect to plaintiff’s disc protrusions at C4-5 and C5-6, Dr. Hauser noted that the protrusions were very small; that there appeared to be no pressure on the nerve roots in those areas; and no indentation of the spinal cord related to the dural sac. In his opinion, the disc protrusions were part of plaintiff’s natural aging process and were not of clinical significance. He did state that plaintiff suffered a 25 percent limitation in motion of her neck, but he did not consider her injuries permanent or of such a nature as to require future treatment.

{¶7} Based upon the totality of the evidence, and after evaluation of the witnesses’ credibility, the court finds that plaintiff is entitled to recover damages in the amount of \$25,500, for pain and suffering, physical impairment, and loss of enjoyment of life, sustained as a direct and proximate result of defendant’s negligence. The court bases this finding on the extent of the injury suffered by plaintiff, the impact it had upon her daily life, and the pain and inconvenience of her treatment procedures. However, the court finds that the evidence is insufficient to demonstrate that plaintiff will incur future damages of that nature, or future medical expense as a direct and proximate result of the 1998 fall. In that regard, the court agrees with Dr. Hauser’s opinion. Pursuant to R.C. 2743.02(D),

plaintiff's award must be reduced by \$2,885.82 to offset the workers' compensation benefits that she received. Therefore, plaintiff's net award equals \$22,614.18.

{¶8} The court further finds that plaintiff Hugh Anderson has proven his claim of loss of consortium by a preponderance of the evidence. The court concludes that he is entitled to recover \$2,500 from defendant as compensation for that loss.

{¶9} Accordingly, judgment shall be rendered in favor of plaintiffs in the amount of \$25,139.18 which includes the \$25 filing fee.

{¶10} This case was tried to the court on the sole issue of plaintiffs' damages. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiffs in the amount of \$25,139.18 which includes but is not limited to \$22,614.18 for pain and suffering, physical impairment and loss of enjoyment of life due to defendants' negligence, as well as \$2,500 on the loss of consortium claim, plus the \$25 filing fee paid by plaintiffs. Court costs are assessed against defendants. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. WARREN BETTIS
Judge

Entry cc:

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