

COURT OF APPEALS
 STARK COUNTY, OHIO
 FIFTH APPELLATE DISTRICT

DOUGLAS WOODBURN, ET AL.

Plaintiffs-Appellees

-vs-

MOTORIST MUTUAL INSURANCE
 GROUP, ET AL.

Defendants-Appellees

BRUCE BELDEN

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.
 Hon. William B. Hoffman, J.
 Hon. Patricia A. Delaney, J.

Case No. 2014CA00140

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
 Common Pleas, Case No.
 2013CV02794

JUDGMENT:

REVERSED AND REMANDED

DATE OF JUDGMENT ENTRY:

July 13, 2015

APPEARANCES:

For Plaintiffs-Appellees:

VIVIANNE WHALEN
 Suite 206 Belden Village Tower
 4450 Belden Village St., NW
 Canton, OH 44718

For Defendant-Appellant:

JUDE B. STREB
 Millennium Centre -Suite 300
 200 Market Ave. N.
 P.O. Box 24213
 Canton, OH 44701-4213

Delaney, J.

{¶1} Defendant-Appellant Bruce Belden appeals the July 29, 2014 judgment entry of the Stark County Court of Common Pleas.

FACTS AND PROCEDURAL HISTORY

{¶2} Plaintiffs-Appellees Douglas and Valerie Woodburn filed a complaint against Defendant-Appellant Bruce Belden in the Stark County Court of Common Pleas on October 25, 2013. The Woodburns sought damages for bodily injuries allegedly sustained by Douglas Woodburn as the result of a motor vehicle accident with Belden. Valerie Woodburn asserted a claim against Belden for loss of consortium.

{¶3} Belden admitted liability for the motor vehicle accident. The matter proceeded to a jury trial on April 16, 2014 on the issues of the proximate cause of Douglas Woodburn's alleged injuries and damages. The following facts were adduced at trial.

{¶4} On October 31, 2011, Belden made a right turn onto Lake Avenue in Massillon, Ohio. As Belden made the right turn, Douglas Woodburn was stopped in his Chevy Cavalier on Lake Avenue while waiting for another car to turn in front of him. Belden was unable to stop his Honda Ridgeline and hit the rear of Woodburn's vehicle. Belden was traveling approximately 10 miles per hour at the time of the accident.

{¶5} The police were called to the scene of the accident. Belden admitted he was at fault for the accident. Woodburn told the police officer he was stiff after the accident but he did not require emergency medical assistance. Woodburn noted the impact caused little damage to the Chevy Cavalier. There were cracks in the plastic and

the paint was scratched. The metal frame under the bumper had a small dent. Woodburn went home after the accident and took ibuprofen for neck pain.

{¶6} Woodburn owns horses and takes care of them. The care for the horses involves lifting bales of hay. Woodburn works at Midwestern Industries, which requires him to lift coils of steel wire that weigh 60 to 100 pounds.

{¶7} After the accident, Woodburn testified he expected the pain in his neck to heal. Woodburn and his co-workers testified that but for a work-related finger injury, Woodburn was in good health before the accident. Woodburn noticed the pain increased after lifting and working at home. He took ibuprofen and lay down until the pain resolved. At work, he asked for assistance from his co-workers for lifting the coils of steel wire to prevent exacerbation of the pain.

{¶8} On December 5, 2011, because the pain did not resolve, Woodburn testified he went to his family physician. His physician ordered x-rays and prescription medication. Woodburn went for follow-up visits and his physician ordered physical therapy. Woodburn attended physical therapy starting on December 29, 2011. He completed his prescribed physical therapy, but the pain in his neck did not go away. Woodburn went back to his family physician who ordered an MRI of Woodburn's neck. Woodburn had two MRIs in March and May of 2012. The MRIs showed a herniated disc between C5-6.

{¶9} Woodburn's family physician referred him to a neurosurgeon. After his examination, the neurosurgeon determined Woodburn did not require surgery at that time. If Woodburn began experiencing tingling in his arms and legs, the neurosurgeon recommended surgery. Woodburn did not return for a follow-up visit.

{¶10} At the time of trial, Woodburn had no treatment for his neck pain since 2012. Woodburn testified he experienced headaches due to his neck pain. He was not able to help with the outside work at home, as he did before the car accident. He did not participate in outdoor activities, such as horseback riding or riding his motorcycle, because it would cause him neck pain.

{¶11} Woodburn's neurosurgeon testified at trial by videotape. He testified that to a reasonable degree of medical certainty, Woodburn suffered a herniated disc at C5-6 and a whiplash injury because of the October 31, 2011 car accident. The doctor stated he could not tell the age or the cause of a disc herniation from an MRI. He testified that disc herniations could be degenerative. The doctor was also unaware that Woodburn lifted heavy objects at home and at work.

{¶12} Woodburn presented medical bills related to the injuries in the amount of \$10,430.00.

{¶13} During the trial, the parties discussed the jury instructions. Counsel for Woodburn objected to the inclusion of a verdict form favoring the defendant. The dialogue as to this issue was as follows:

MS. WHALEN: * * * my only objection would be the form -- the verdict form favoring the Defendant. There's been no -- it's a clear liability accident, they have no defense doctor. And unless they're taking a position whatsoever, I don't think a verdict for Defendant is possible.

THE COURT: Typically I would agree with you that in the situation where somebody is involved in an accident and that individual goes to an emergency room that day, or a subsequent day, I feel that to not at least

go and get checked out is too onerous of a burden so I will, in those cases, only have the Plaintiff's verdict. However, when there is some period of time between the incident and the first treatment, it's up to the jury to decide whether or not that was proximately caused by the accident, and that's the reason there is both verdicts. So -- but your objection to that is noted for the record.

(Tr. 26-27).

{¶14} The jury left to deliberate at 3:55 p.m. The jury reached a verdict at 4:20 p.m. The jury found in favor of Belden.

{¶15} On April 25, 2014, the Woodburns filed a Motion for Judgment Notwithstanding the Verdict and/or Motion for a New Trial. In the motion, the Woodburns argued they should be granted a new trial pursuant to Civ.R. 59(A)(4) and (A)(6). Belden responded to the motion.

{¶16} On July 29, 2014, the trial court granted the Woodburns' Motion for New Trial. The judgment entry stated:

Upon full review, the Court finds that the failure to award any damages, in this case of admitted negligence on the part of the defendant, was not sustained by the weight of the evidence presented. Therefore, the Court finds that Plaintiff is entitled to a new trial.

{¶17} It is from this judgment entry Belden now appeals.

ASSIGNMENTS OF ERROR

{¶18} Belden raises four Assignments of Error:

{¶19} "I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GRANTING THE APPELLEES' MOTION FOR NEW TRIAL WHEN THE JURY VERDICT DOES NOT CONSTITUTE INADEQUATE DAMAGES AND IS NOT AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶20} "II. THE TRIAL COURT ERRED IN FAILING TO ARTICULATE THE MANNER IN WHICH THE JURY'S VERDICT WAS ALLEGEDLY AGAINST THE WEIGHT OF THE EVIDENCE.

{¶21} "III. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GRANTING THE APPELLEES' MOTION FOR NEW TRIAL WITHOUT ANY FINDING OF PASSION OR PREJUDICE, AS REQUIRED BY CIV.R. 59(A)(4).

{¶22} "IV. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY APPLYING THE WRONG LEGAL STANDARD IN GRANTING APPELLEES' MOTION FOR NEW TRIAL."

ANALYSIS

II.

{¶23} We first address Belden's second Assignment of Error because it is dispositive of this appeal. Belden contends in his second Assignment of Error that the trial court erred when it failed to articulate the manner in which the jury's verdict was allegedly against the manifest weight of the evidence. We agree.

{¶24} The Woodburns' motion for new trial was premised upon the following grounds in Civ.R. 59:

(4) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice;

* * *

(6) The judgment is not sustained by the weight of the evidence; however, only one new trial may be granted on the weight of the evidence in the same case;

{¶25} Where a trial court is authorized to grant a new trial for a reason that requires the exercise of sound discretion, the order granting a new trial may be reversed only upon a showing of abuse of discretion by the trial court. *Staley v. Allstate Property Cas. Ins. Co.*, 10th Dist. Franklin No. 12AP-1085, 2013-Ohio-3424, ¶ 10 citing *Rohde v. Farmer*, 23 Ohio St.2d 82, 262 N.E.2d 685 (1970), paragraph one of the syllabus. In ruling on a motion for new trial on the grounds that the judgment is not sustained by the weight of the evidence, the trial court must engage in a limited weighing of the evidence and must consider the credibility of the witnesses. *Id.* at paragraph three of the syllabus. This requires the trial court to exercise its discretion, and an order granting or denying a new trial on this basis will not be reversed absent an abuse of discretion. *Antal v. Olde Worlde Prods., Inc.*, 9 Ohio St.3d 144, 145, 459 N.E.2d 223 (1984). An abuse of discretion occurs where a court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983), citing *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

{¶26} In order to set aside a damage award as inadequate and against the manifest weight of the evidence, a reviewing court must determine that the verdict is so gross as to shock the sense of justice and fairness, cannot be reconciled with the

undisputed evidence in the case, or is the result of an apparent failure by the jury to include all the items of damage making up the plaintiff's claim. *Staley v. Allstate Property Cas. Ins. Co.*, 10th Dist. Franklin No. 12AP-1085, 2013-Ohio-3424, ¶ 11 citing *Bailey v. Allberry*, 88 Ohio App.3d 432, 435, 624 N.E.2d 279 (2d Dist.1993). Thus, in reviewing a motion for a new trial, a court does so with deference to the trial court's decision, recognizing that "the trial judge is better situated than a reviewing court to pass on questions of witness credibility and the 'surrounding circumstances and atmosphere of the trial.'" *Malone v. Courtyard by Marriott L.P.*, 74 Ohio St.3d 440, 448, 659 N.E.2d 1242 (1994), quoting *Rohde* at 94, 262 N.E.2d 685.

{¶27} Civ.R. 59(A) states that, when a new trial is granted, the court shall specify in writing the grounds upon which the new trial is granted. Belden argues the trial court abused its discretion by failing to provide sufficient factual reasons for granting a new trial. In *Antal v. Olde Worlde Products, Inc.*, 9 Ohio St.3d 144, 459 N.E.2d 223 (1984), syllabus, the Ohio Supreme Court held that when granting a motion for new trial based on the contention that the verdict is not sustained by the weight of the evidence, the trial court must articulate its reasons for doing so to allow a reviewing court to determine whether the trial court abused its discretion in ordering the new trial. While the determination of whether the trial court's statement of reasons for granting the new trial is sufficient is to be determined on a case-by-case basis, the trial court's reasons will be deemed insufficient if simply couched in the form of conclusions or statements of ultimate fact. *Id.* at 147.

{¶28} In this case, Belden stipulated he was negligent and his negligence caused the accident. The only issues for the jury's consideration were the extent to

which Belden's negligence proximately caused injuries to the Woodburns and the amount of money damages, if any, would fairly and adequately compensate the Woodburns for their injuries. In the absence of "circumstances [that] clearly indicate an obvious cause and effect relationship," "the issue of proximate cause is ordinarily one for determination by the jury." *Waugh v. Chakonas*, 9th Dist. Summit Nos. 25417, 25480, 2011-Ohio-2764, ¶ 8 quoting *Ornella v. Robertson*, 14 Ohio St.2d 144, 151, 237 N.E.2d 140 (1968).

{¶29} During the trial, the trial court overruled the Woodburns' objection to the inclusion of the defense verdict form. The trial court noted that while this was a case of admitted negligence, because Woodburn did not seek immediate treatment after the accident, it was up to the jury to determine whether the injury was proximately caused by the accident. The trial court, however, granted the motion for new trial on July 29, 2014 and stated:

Upon full review, the Court finds that the failure to award any damages, in this case of admitted negligence on the part of the defendant, was not sustained by the weight of the evidence presented. Therefore, the Court finds that Plaintiff is entitled to a new trial.

{¶30} It is not the place of the appellate court to weigh the evidence. However, in reviewing the order of the trial court, sufficiently detailed reasoning specified in writing is necessary to allow the appellate court to conduct a meaningful review to determine whether the trial court abused its discretion in ordering a new trial. *Mannion v. Sandel*, 91 Ohio St.3d 318, 322, 2001-Ohio-47, 744 N.E.2d 759. In this case, the trial court concluded that because the case involved admitted negligence, the failure of the jury to

award damages was against the manifest weight of the evidence. It did not specify what evidence it relied upon to reach this conclusion. Upon our consideration of the record in this case, we find the trial court did not sufficiently articulate its reasons for granting a new trial to allow this court to conduct a meaningful review of the decision.

{¶31} We sustain Belden's second Assignment of Error.

{¶32} For the reasons stated above, the trial court's judgment is hereby reversed and remanded. On remand, the trial court is to reconsider its decision granting a new trial and, if it reaches the same conclusion, it is to sufficiently detail its findings for granting a new trial by following the requirements set out in *Antal*.

I., III., and IV.

{¶33} We sustained Belden's second Assignment of Error. We will not consider Belden's remaining Assignments of Error for they are premature based on our decision on the second Assignment of Error.

CONCLUSION

{¶34} The judgment of the Stark County Court of Common Pleas is reversed and remanded for further proceedings consistent with this opinion and law.

By: Delaney, J.,

Gwin, P.J. and

Hoffman, J., concur.