

Affirmed and Opinion Filed December 21, 2016.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-00052-CV

**TEMANI ADAMS, Appellant
V.
JENIFER BELLAS AND MICHAELA BELLAS, Appellees**

**On Appeal from the 192nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-14-04905**

MEMORANDUM OPINION

Before Justices Francis, Fillmore, and Stoddart
Opinion by Justice Stoddart

Temani Adams appeals the denial of her motion for new trial following an adverse jury verdict. In a single issue, Adams asserts the trial court erred by denying her motion for new trial because the evidence is legally and factually insufficient to support portions of the jury's damages award. We affirm the trial court's judgment.

FACTUAL BACKGROUND

Adams, a lawyer who owns her own law firm, was injured in a car accident when the vehicle she was driving was hit by a car driven by Michaela Bellas.¹ Adams testified her body "jerked forward" upon impact, but her seatbelt restrained her. Her head "went forward and then

¹ The vehicle Adams was driving was owned by her mother who was a plaintiff in the lawsuit but is not a party to this appeal. The vehicle driven by Michaela Bellas also was owned by her mother, Jennifer Bellas, who was a defendant below and is a party to this appeal. Because Michaela and Jennifer Bellas are both parties to the appeal and have the same last name, we will refer to them by their first names.

it went back and hit the headrest kind of hard.” At the scene of the accident, Adams did not think she was injured. She drove from the scene of the accident to the courthouse to attend a hearing. However, later in the day, she developed a headache. Several hours later, she was seen by a physician at an emergency room. The doctor noted her chief complaints were a cough and back pain, and diagnosed an upper respiratory infection and back strain. She received a prescription for pain medication.

Approximately three weeks after the accident, Adams saw a chiropractor at Advantage Healthcare. On her initial visit, Adams completed a questionnaire where she indicated she did not feel pain immediately after the accident but, at the time of her visit, she had back pain, leg problems, stiff joints, sore muscles, walking problems, chest pain, pain over her heart, difficulty breathing, and headaches. Adams was diagnosed with “a cervical sprain/strain, a thoracic sprain/strain, lumbar strain/sprain, headache, and a right knee sprain/strain.” During six sessions with the chiropractor, Adams was treated with massage and electric stimulation, hot and cold packs, and chiropractic manipulation. Her treatment ended approximately three months after the accident.

The chiropractor referred Adams to a separate facility for an MRI of her knee, which indicated a “mild prepatellar subcutaneous fluid signal [which] may represent bruising or edema and a small popliteal cyst.” It did not show any structural damage to her knee.

Adams sued Michaela and Jennifer for negligence and sought damages for past medical expenses, past physical pain and suffering, and past lost earnings. The case proceeded to trial where a jury found the negligence of Adams and Michaela proximately caused the accident. The jury awarded damages for past medical expenses, past physical pain, and mental anguish. However, the jury awarded zero damages for past physical impairment and past loss of earning

capacity. Adams filed a motion for new trial asserting the jury's verdict on damages is legally and factually insufficient. The trial court denied the motion and this appeal followed.

LAW & ANALYSIS

We review the trial court's denial of a motion for new trial for an abuse of discretion. *Waffle House, Inc. v. Williams*, 313 S.W.3d 796, 813 (Tex. 2010). A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law or if it fails to analyze the law correctly or apply the law correctly to the facts. *See, e.g., In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005). Legal and factual sufficiency are relevant factors to be considered when assessing whether the trial court abused its discretion. *Varel Int'l Indus., L.P. v. PetroDrillbits Int'l, Inc.*, No. 05-14-01556-CV, 2016 WL 4535779, at *4 (Tex. App.—Dallas Aug. 30, 2016, pet. filed) (mem. op.). However, an abuse of discretion does not occur when a trial court bases its decision on conflicting evidence, as long as some evidence reasonably supports the trial court's decision. *See id.*

When reviewing the legal sufficiency of the evidence, we credit evidence favoring the jury verdict if reasonable jurors could and disregard contrary evidence unless reasonable jurors could not. *Kelley/Witherspoon, LLP v. Armstrong Int'l Servs., Inc.*, No. 05-14-00130-CV, 2015 WL 4524290, at *2 (Tex. App.—Dallas July 27, 2015, pet. denied) (mem. op.) (citing *Del Lago Partners, Inc. v. Smith*, 307 S.W.3d 762, 770 (Tex. 2010)). We uphold the jury's finding if more than a scintilla of competent evidence supports it. *Id.* (citing *Haggar Clothing Co. v. Hernandez*, 164 S.W.3d 386, 388 (Tex. 2005) (per curiam)). The final test for legal sufficiency is "whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review." *Id.* (quoting *City of Keller v. Wilson*, 168 S.W.3d 802, 822, 827 (Tex. 2005)).

When reviewing a factual sufficiency challenge to an adverse finding on which the party had the burden of proof, we determine whether the adverse finding is against the great weight and preponderance of the evidence. *Leimeister v. Cosmic Limousine & Transp. Co., Inc.*, No. 05-14-01363-CV, 2016 WL 1601616, at *2 (Tex. App.—Dallas Apr. 20, 2016, no pet.) (mem. op.) (citing *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001) (per curiam); *Grant v. Cruz*, 406 S.W.3d 358, 363 (Tex. App.—Dallas 2013, no pet.)). We will set aside a jury finding only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. *Id.* (citing *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986) (op. on reh'g); *Grant*, 406 S.W.3d at 363).

“Establishing causation in a personal injury case requires a plaintiff to ‘prove that the conduct of the defendant caused an event and that this event caused the plaintiff to suffer compensable injuries.’” *JLG Trucking, LLC v. Garza*, 466 S.W.3d 157, 162 (Tex. 2015) (quoting *Burroughs Wellcome Co. v. Crye*, 907 S.W.2d 497, 499 (Tex. 1995)). “[I]f evidence presents ‘other plausible causes of the injury or condition that could be negated, the [proponent of the testimony] must offer evidence excluding those causes with reasonable certainty.’” *Id.* (quoting *Transcontinental Ins. Co. v. Crump*, 330 S.W.3d 211, 218 (Tex. 2010)).

Adams asserts the jury’s awards of \$1,246.69 for medical care expenses and zero damages for physical impairment sustained in the past and loss of earning capacity sustained in the past are against the great weight and preponderance of the evidence. The jury awarded Adams damages for past medical care expenses, albeit less than she requested, and past physical pain and mental anguish, but denied any damages for physical impairment in the past and loss of earning capacity in the past from the same event. Given those findings, it is clear the jury believed that Adams suffered some injury as a result of the accident. *See Lanier v. E. Foundations, Inc.*, 401 S.W.3d 445, 456 (Tex. App.—Dallas 2013, no pet.).

A. Medical Expenses

Adams argues the uncontroverted evidence shows she incurred medical expenses in the amount of \$4,661.50, but the jury only awarded \$1,246.69. Adams presented an affidavit from Advantage Health showing Advantage Health had not been paid but had a right to be paid \$4,661.50. The affidavit states that the services provided were necessary and the amount charged for the services was reasonable.

Although Adams argues she is entitled to recover the full amount of the \$4,661.50 due to Advantage Health, the jury could have concluded Adams failed to show the car accident caused \$4,661.50 in medical expenses.

The evidence shows Adams did not have any physical pain immediately after the accident and she proceeded from the accident site to the courthouse. Later that day, she went to the emergency room where the doctor diagnosed an upper respiratory infection and a cough as well as back pain. Not until three weeks after the accident did Adams go to the chiropractor.

Adams did not furnish testimony from the chiropractor who treated her. Instead, the only medical evidence offered by Adams was the testimony of Dr. Jason Hill, a chiropractor who works for Fort Worth Healthcare Systems, part of Advantage Healthcare, and her records from Advantage Healthcare. Because Hill never treated Adams, he had no personal knowledge about her injuries. His testimony was based on his review of Adams's records from Advantage Healthcare. Therefore, Hill could not answer several questions about her treatment, could not testify that the treatment for her injuries was necessary and reasonable, and did not testify that the car accident caused the problems about which Adams complained.

While Hill generally explained why patients are referred for MRIs, he did not explain why Adams needed an MRI or whether the accident caused an injury that necessitated an MRI. Hill stated the MRI showed mild prepatellar subcutaneous fluid. When asked what that meant

“in layman’s terms,” Hill stated: “Basically, the cyst is there very frequently. Most people have a Baker’s cyst in their knee. Then the other is just bruising.” He testified there was no structural damage to her knee. From this, the jury could have concluded the cyst in Adams’s knee is common, hers was not a result of the car accident, and any treatment for the cyst was not attributable to Michaela.

It was the jury’s role to weigh the evidence and resolve any conflicts or inconsistencies. Based on the evidence in this record, the jury could have concluded \$1,246.69, rather than \$4,661.50, was the amount of money necessary to compensate Adams for her injuries resulting from the accident. Given the record before us, we conclude there is more than a scintilla of competent evidence to support the jury’s award of damages for past medical care and the award is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

B. Lost Earnings

There also is conflicting evidence about whether Adams lost income because of the accident. Adams testified she is a self-employed attorney who is not required to work a traditional schedule. Adams testified that the treatment at Advantage Healthcare caused her to miss hours in the office when she could have been working and earning money. However, she also testified she scheduled treatments during times when she was less busy, and she returned to work afterward.

Adams testified the accident occurred on a Tuesday and she stayed at home the following three days. Although she had seven or eight court settings that week, she was in pain and could not attend court so she paid a friend approximately \$700 to handle the settings for her. Adams declined three potential bond reduction clients for which she could have earned \$4,500 in legal fees. She also was unable to appear at a bond reduction hearing for which she planned to charge

\$10,000. In total, she testified she lost approximately \$15,000 in income during the week of the accident. When asked how much money she was seeking in lost wages, Adams replied she did not “have a calculator,” but thought she was entitled to \$14,500 for the bond hearings and \$16,000 for missing 80 billable hours for clients with civil matters.

Hill testified that Adams’s file did not include any slips to show she missed work to attend her appointments. When asked whether Adams would need such a slip because she is self-employed, Hill replied: “you wouldn’t need a slip to give to your boss; but however, if you were to need something to show that you were off work for a certain amount of time, then you would have one.”

It was the jury’s role to weigh the evidence and resolve any conflicts or inconsistencies. The evidence at trial about past lost earnings could have led to several conclusions by the jury, including that Adams missed work the week after the accident because of the upper respiratory infection rather than the accident; that although Adams went to appointments at Advantage Health during working hours, she was able to schedule those appointments during times when she was less busy and she could work additional hours to compensate for lost time in the office; or that the car accident did not cause Adams’s physical injuries.

Given the record before us, we conclude there is more than a scintilla of competent evidence to support the jury’s award of zero dollars for lost income in the past and the jury’s failure to award these requested damages is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

C. Physical Impairment

“Physical impairment” was not defined for the jury. The supreme court has stated that physical impairment may be considered, among other things, “loss of enjoyment of life.” *Goggans v. Ford*, No. 05-14-01239-CV, 2015 WL 8523302, at *5 (Tex. App.—Dallas Dec. 9,

2015, pet. filed) (mem. op) (quoting *Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 772 (Tex. 2003)). “[T]he effect of any physical impairment must be substantial and extend beyond any pain, suffering, mental anguish, lost wages or diminished earning capacity and . . . a claimant should not be compensated more than once for the same elements of loss or injury.” *Id.* (quoting *Golden Eagle Archery*, 116 S.W.3d at 772). Adams relies solely on evidence of lost wages to support her physical impairment claim. However, such lost wages are not compensable as physical impairment sustained in the past. *See id.* Therefore, we conclude the evidence is factually and legally sufficient to support the jury’s award of zero dollars for past physical impairment.

CONCLUSION

Because Adams has not shown the evidence is legally or factually insufficient to support the jury’s damages awards, we conclude the trial court did not abuse its discretion by denying Adams’s motion for new trial. We affirm the trial court’s judgment.

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/Craig Stoddart/
CRAIG STODDART
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

TEMANI ADAMS, Appellant

No. 05-16-00052-CV V.

JENIFER BELLAS AND MICHAELA
BELLAS, Appellees

On Appeal from the 192nd Judicial District
Court, Dallas County, Texas

Trial Court Cause No. DC-14-04905.

Opinion delivered by Justice Stoddart.

Justices Francis and Fillmore participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is
AFFIRMED.

It is **ORDERED** that appellees Jennifer Bellas and Michaela Bellas recover their costs of
this appeal from appellant Temani Adams.

Judgment entered this 21st day of December, 2016.