Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00759-CV

Rayanna **RUFFIN**,
Appellant

v.

Jose Rene **SANCHEZ** and Javier T. Rodriguez d/b/a Rocas Trucking,
Appellees

From the 225th Judicial District Court, Bexar County, Texas
Trial Court No. 2014-CI-14321
Honorable Peter Sakai, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: September 13, 2017

AFFIRMED

Rayanna Ruffin appeals a judgment awarding her damages for injuries she sustained in an automobile accident. Ruffin asserts the trial court erred in excluding an exhibit from evidence and granting a directed verdict on her gross negligence claim. Ruffin also contends the jury's damage award is against the great weight and preponderance of the evidence. We affirm the trial court's judgment.

BACKGROUND

On June 18, 2013, Jose Rene Sanchez, who was employed by Javier Rodriguez d/b/a Rocas Trucking, was driving a dump truck when the dump truck and an automobile being driven by Ruffin collided. Ruffin sued Sanchez and Rodriguez asserting negligence and gross negligence claims.

The trial court granted a directed verdict on Ruffin's gross negligence claims, and a jury found the negligence of both Sanchez and Ruffin proximately caused the accident. The jury attributed 51% of the responsibility to Sanchez, and 49% to Ruffin. The jury awarded Ruffin $3,460 for past medical expenses, $2,000 for past physical pain and mental anguish, and $1,000 for past physical impairment. Reducing the damage award by 49%, the trial court entered a judgment in favor of Ruffin for $3,294.60, plus interest and court costs. Ruffin appeals.

EXCLUSION OF EVIDENCE

In her third issue on appeal, Ruffin contends the trial court erred in excluding an exhibit that listed "at least 26 safety and equipment violations that were issued against [Rocas Trucking] by the US DOT shortly before and after the accident."

"We review a trial court's exclusion of evidence for an abuse of discretion." *JLG Trucking, LLC v. Garza*, 466 S.W.3d 157, 161 (Tex. 2015). The exhibit Ruffin sought to have admitted consisted of two pages printed from the Department of Transportation's website listing violations apparently discovered during inspections of at least three different vehicles. When Ruffin offered the exhibit as evidence, objections were made that the exhibit was hearsay, was outside the pleadings which did not allege negligence based on improper maintenance, and was never produced during discovery. Based on these objections, the trial court excluded the exhibit from evidence.

In her brief, Ruffin does not address any of the objections or argue how the trial court abused its discretion in sustaining those objections. Instead, her entire argument on this issue consists of three sentences. In the first sentence, she explains the reasons she sought to introduce the exhibit as evidence. She then argues, "The excluded evidence contained in Plaintiff's Exhibit 10 was admissible, was controlling on a material issue, and was not cumulative of other evidence." Finally, she states "The exclusion of this evidence probably caused the rendition of an improper judgment." Although Ruffin cites general legal authority to support her second and third statements, none of the cited authorities address why the exhibit was admissible because: (1) it did not contain hearsay or was admissible under an exception to the hearsay rule; (2) it related to a negligence theory alleged in Ruffin's pleadings; and (3) it was not required to be produced in discovery. "Because [Ruffin] fails to present any argument or analysis in [her] brief with respect to the propriety of the trial court's rulings on [the defendants'] objections, [she] has waived this complaint and has not established any error in connection with the trial court's evidentiary ruling[]." *Flores v. Grayson Cty. Cent. Appraisal Dist.*, No. 05-16-00180-CV, 2016 WL 7384161, at *2 (Tex. App.—Dallas Dec. 21, 2016, no pet.) (mem. op.) (holding complaint regarding exclusion of evidence waived when appellant failed to address the hearsay and discovery objections raised as bases for excluding the evidence); *see also In re Estate of Marley*, 390 S.W.3d 421, 425 (Tex. App.–El Paso 2012, pet. denied) ("We have no duty—or even right—to perform an independent review of the record and applicable law to determine whether there was reversible error because, by doing so, we would abandon our role as neutral adjudicators and become an advocate."); TEX. R. APP. P. 38.1(i) ("The [appellant's] brief must contain a clear and concise argument for contentions made, with appropriate citations to authorities and to the record.").

GROSS NEGLIGENCE

In her first two issues, Ruffin argues the trial court erred in granting a directed verdict on her gross negligence claims.

"In reviewing the granting of a directed verdict, we follow the standard of review for assessing the legal sufficiency of the evidence." *Ibarra v. Nat'l Constr. Rentals, Inc.*, 199 S.W.3d 32, 37 (Tex. App.—San Antonio 2006, no pet.). "[W]e examine the evidence in the light most favorable to the person suffering an adverse judgment and decide whether there is any evidence of probative value to raise an issue of material fact on the question presented." *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 217 (Tex. 2011).

"[G]ross negligence involves two components: (1) viewed objectively from the actor's standpoint, the act or omission complained of must involve an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (2) the actor must have actual, subjective awareness of the risk involved, but nevertheless proceed in conscious indifference to the rights, safety, or welfare of others." *Lee Lewis Const., Inc. v. Harrison*, 70 S.W.3d 778, 785 (Tex. 2001). "The first element, 'extreme risk,' means not a remote possibility of injury or even a high probability of minor harm, but rather the likelihood of serious injury to the plaintiff. *Id.* "The second element, 'actual awareness,' means that the defendant knew about the peril, but its acts or omissions demonstrated that it did not care." *Id.*

Initially, we note Ruffin's brief does not contain any citations to the record; therefore, she does not cite any evidence introduced at trial that raised a material fact issue on her gross negligence claims. *See* TEX. R. APP. P. 38.1(i) (providing argument must be supported with appropriate citations to the record). Instead, she argues "it was unlawful for the dump truck to be on the road at the time of the accident" because it "had numerous US DOT safety and maintenance violations." However, Ruffin acknowledges that her evidence of those violations was excluded,

and both Sanchez and Rodriguez testified the vehicle did not have any mechanical problems. Ruffin also argues Sanchez "never filled out a job application rendering it unlawful for him to have been driving the dump truck at the time of the accident." Ruffin does not, however, explain how Sanchez's failure to fill out a job application involved an extreme risk of serious injury to Ruffin. *See Lee Lewis Const., Inc.*, 70 S.W.3d at 785. Ruffin also does not cite to any evidence in the record in an effort to establish Sanchez did not have the experience to drive the dump truck or posed an extreme degree of risk based on his driving record. Therefore, we hold the trial court did not err in granting the directed verdict.

DAMAGES

In her final issue, Ruffin contends she proved she incurred over $35,000 in past medical bills; therefore, the jury's award of only $3,460 for past medical expenses was against the great weight and preponderance of the evidence.

"When a party attacks the factual sufficiency of an adverse finding on an issue on which she has the burden of proof, she must demonstrate on appeal that the adverse finding is against the great weight and preponderance of the evidence." *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001). "The court of appeals must consider and weigh all of the evidence, and can set aside a verdict only if the evidence is so weak or if the finding is so against the great weight and preponderance of the evidence that it is clearly wrong and unjust." *Id.* In conducting a factual sufficiency review, a reviewing court "must not merely substitute its judgment for that of the jury." *Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 761 (Tex. 2003).

"[W]hether to award damages and how much is uniquely within the factfinder's discretion." *Id.* at 772. A jury is "not tied to awarding damages exactly as requested by the injured party." *Bayer Corp. v. DX Terminals, Ltd.*, 214 S.W.3d 586, 606 (Tex. App.—Houston [14th Dist.] 2006, pet. denied). Instead, the jury must judge the credibility of the witnesses, assign the

weight to be given to witness testimony, and resolve any conflicts or inconsistencies in the evidence. *Barrajas v. VIA Metro. Transit Auth.*, 945 S.W.2d 207, 209 (Tex. App.—San Antonio 1997, no writ).

The evidence at trial established Ruffin received medical treatment for her injuries for approximately three months following the accident for which she incurred $3,460 in medical expenses. She was released from that treatment in September of 2013 and did not seek any additional medical treatment until January of 2014 when she had one appointment with a medical doctor and an MRI. She then did not have another medical appointment until August of 2014. After the August 2014 medical appointment, Ruffin did not have another appointment until March of 2015, when she began receiving additional treatment.

John S. Toohey, M.D., an orthopedic surgeon, testified the only medical treatment that was reasonably necessary was the treatment Ruffin received immediately following her accident. Dr. Toohey opined the only injuries Ruffin sustained as a result of the accident were sprains or strains to her neck and upper back which were resolved by the initial treatment. He further explained the reasons he did not believe any additional medical treatment was necessary.

It was in the jury's province to believe Dr. Toohey's testimony especially given the long delays between the dates Ruffin sought treatment. Therefore, having reviewed all of the evidence presented, we hold the jury's damage award was not against the great weight and preponderance of the evidence.

CONCLUSION

The trial court's judgment is affirmed.

Sandee Bryan Marion, Chief Justice