In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-22-00450-CV

JARED STONE, Appellant

V.

CLAYTON L. CHRISTIANSEN AND DONNA M. CHRISTIANSEN, Appellees

On Appeal from the 355th District Court
Hood County, Texas
Trial Court No. C2019417

Before Birdwell, Womack, and Walker, JJ.
Memorandum Opinion by Justice Walker

MEMORANDUM OPINION

This appeal arises from a jury verdict in a lawsuit brought by appellant Jared Stone, a UPS deliveryman, against appellees Clayton and Donna Christiansen[1] after the Christiansens' dog attacked him while he was making a delivery to their home. The jury found the Christiansens liable for Stone's injuries but, according to Stone, awarded only "a meager, arbitrary sum of damages." Arguing that the jury's damages findings "are against the great weight and preponderance of the evidence," Stone filed a motion for new trial, which the trial court denied. In a single issue, Stone argues that the trial court erred by denying his motion for new trial. We affirm.

I. BACKGROUND

In January 2018, Stone rang the Christiansens' doorbell to deliver a case of wine. The Christiansens' son Mark, then a senior in high school, answered the door.[2] While Stone and Mark were engaged in conversation about the delivery, "Bear," the Christiansen's blind Welsh Corgi, slipped past Mark out the door and bit Stone's right calf.[3] The bite caused deep puncture wounds that required stitches.

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[1]At some places in the record, the appellees' last name is spelled "Christianson." Both parties spelled the appellees' name as "Christiansen" in their briefing before this court, and we will likewise use this spelling.

[2]The Christiansens were out of town when the attack took place.

[3]Stone's and Mark's versions of events are somewhat different. In Stone's account of the incident, Bear charged right at him after slipping past Mark. The incident lasted 1 to 1.5 minutes; Stone was unable to get Bear to release his bite despite hitting him with his UPS computer clipboard; and Stone eventually pulled out

Stone's stitched-up wounds soon became infected. As a result, Stone was required to make approximately ten visits to Avalon Urgent Care to treat the infection. Stone's treatment included having purulent material drained from his wounds, a procedure he described as being extremely painful.[4]

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a pocketknife in an attempt to extricate himself from Bear's grip. Bear had blood all over him and only released his grip after Mark put an arm under Bear's chest and pulled really hard.

But according to Mark, Bear—who was blind and could not run—did not charge at Stone but instead initially went past him and only bit Stone after bumping into him when he turned around to go back towards the house because Mark called his name. Mark testified that the incident only lasted approximately 5 to 10 seconds and that he did not see Stone hit Bear with anything or wield a pocketknife. Further, Mark denied having to grab Bear to get him to release Stone's leg (because Bear simply let go) and did not recall seeing any blood on Bear after the incident.

[4]Stone testified that during his second visit to Avalon on January 15, 2018, the doctor had to cut his stitches out, use a scalpel to slice open his wounds, and then cut out any tissue that needed to be removed—all without anesthesia due to the infection. Stone described it as "the worst thing [that he has] ever had to deal with in [his] life." He also testified that he had to undergo this excruciating procedure—or something very close to it—approximately ten times.

But, as the Christiansens pointed out at trial, Avalon's medical records do not support Stone's account. Although the records from the January 15 visit reflect that Stone's "[s]utures [were] removed to allow purulent material to drain" and that "purulent material [was] expressed from each wound," they do not mention the use of a scalpel to make a cut or incision or the need for—much less the unavailability of—an anesthetic. Further, the records from Stone's subsequent visits do not reflect the repetition of the painful procedure Stone described but instead show a steady pattern of improvement. For example, the records from Stone's January 16 visit indicate that Stone "report[ed] that [his] pain . . . [had] significantly improved" from the day before and that the "[s]igns of infection" had likewise "improved." On January 17, "[n]o drainage [was] noted," and Stone reported "that the redness [and] pain [were] getting better." On January 18, Stone's treating physician assistant noted that although Stone had reported that his wounds had bled the previous night when he had removed his

Stone sued the Christiansens, asserting negligence and strict liability claims. He sought damages for, among other things, past and future pain and suffering, past and future mental anguish, future medical care expenses,[5] past and future physical impairment, and future loss of earnings.

The case was tried to a jury, which found the Christiansens liable for Stone's injuries. On the question of damages, the jury awarded Stone the following amounts:

> a. Medical care expenses that, in reasonable probability, . . . Stone will incur in the future.
>
> Answer: $65,000
>
> b. Loss of earning capacity that, in reasonable probability, . . . Stone will sustain in the future.
>
> Answer: $0.00
>
> c. Physical pain sustained in the past.
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> Physical pain means the conscious physical pain experienced by . . . Stone.
>
> Answer: $5,000
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> d. Physical pain, in reasonable probability, . . . Stone will sustain in the future.

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bandages, the infection continued to "show improvement" and "no purulent drainage" was observed. On January 19, Stone's treating physician assistant noted that he would "consider [incision and drainage] at [Stone's] next visit if drainage or other signs of infection worsen," but the records of Stone's subsequent visits reflect that Stone's infection improved rather than worsened and do not indicate that an incision-and-drainage procedure was ever performed.

[5]Stone initially sought to recover both past and future medical care expenses but subsequently nonsuited his claim for past medical expenses.

Answer: $0.00

e. Physical impairment sustained in the past.

Answer: $0.00

f. Physical impairment that, in reasonable probability, . . . Stone will sustain in the future.

Answer: $0.00

g. Mental anguish sustained in the past.

Answer: $5,000

h. Mental anguish that, in reasonable probability[,] . . . Stone will sustain in the future.

Answer: $0.00

Thus, the jury awarded Stone a total of $10,000 for past pain and mental anguish and $65,000 for future medical expenses but awarded him nothing for future pain or mental anguish, past or future physical impairment, or future loss of earning capacity.

Dissatisfied with the jury's damages award, Stone filed a motion for new trial, which the trial court denied after a hearing. This appeal followed.

II. DISCUSSION

In a single issue, Stone argues that the trial court erred by denying his motion for new trial because the jury's damages findings are against the great weight and preponderance of the evidence. We disagree.

A. APPLICABLE LAW AND STANDARD OF REVIEW

Generally, a jury has great discretion in considering evidence on the issue of damages, and its findings are entitled to great deference from an appellate court. *See*

In re State Farm Mut. Auto. Ins. Co., 483 S.W.3d 249, 263 (Tex. App.—Fort Worth 2016, no pet.); *Hammett v. Zimmerman*, 804 S.W.2d 663, 664–65 (Tex. App.—Fort Worth 1991, no writ); *see also Lehmann v. Wieghat*, 917 S.W.2d 379, 385 (Tex. App.—Houston [14th Dist.] 1996, writ denied) ("The general rule is that a finding of the jury is entitled to great deference by the appellate court unless the record reflects that the jury is motivated by passion, prejudice[,] or something other than conscientious conviction."). Nevertheless, a court may overturn a jury's finding on damages if the evidence supporting it is so weak or is so contrary to the great weight and preponderance of the evidence that it is clearly wrong and unjust. *See Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001); *see also Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986) (holding that in reversing a jury's verdict on appeal, an appellate court must "detail the evidence relevant to the issue in consideration and clearly state why the jury's finding is factually insufficient or is so against the great weight and preponderance as to be manifestly unjust; why it shocks the conscience; or clearly demonstrates bias").

Thus, when presented with an argument that a jury's failure to award damages is against the great weight and preponderance of the evidence, we must consider and weigh all of the evidence to determine whether it is sufficient to support the verdict. *See Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 761 (Tex. 2003); *see also Gregory v. Chohan*, 670 S.W.3d 546, 557 (Tex. 2023) (holding that because courts "must insist that every aspect of our legal system . . . yields rational and non-arbitrary results based

on evidence and reason[,]" the amount of damages awarded by a jury "must be based on evidence"). In conducting our factual-sufficiency review, we must bear in mind that, as always, "[w]hen evidence conflicts, the jury's role is to evaluate the credibility of the witnesses and reconcile any inconsistencies, and as a general proposition, the jury may 'believe all or any part of the testimony of any witness and disregard all or any part of the testimony of any witness.'" *Anderson v. Durant*, 550 S.W.3d 605, 616 (Tex. 2018) (quoting *Golden Eagle Archery*, 116 S.W.3d at 774–75); *see also Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005); *McGuffin v. Terrell*, 732 S.W.2d 425, 428 (Tex. App.—Fort Worth 1987, no writ) (recognizing that although an appellate court has the authority to overturn a jury's verdict if it is against the great weight and preponderance of the evidence, the credibility and weight to be given the evidence are within the province of the jury, and an appellate court cannot substitute its judgment for that of the jury just because it might have reached a different conclusion).

When addressing evidentiary sufficiency challenges to a jury's damages findings, Texas courts have uniformly recognized a distinction between cases in which the plaintiff has presented uncontroverted "objective" evidence of an injury caused by a defendant's negligence and cases in which the plaintiff's injuries are more "subjective" in nature.[6] *Rumzek v. Lucchesi*, 543 S.W.3d 327, 332 (Tex. App.—El Paso 2017, pet.

[6]"Whether damages are subjective or objective can most easily be distinguished by a common example. A headache is an illustration of a subjective injury, whereas a physical wound would be an example of an objective injury." *Hudetts v. McDaniel*, No. 07-96-0353-CV, 1997 WL 716883, at *6 (Tex. App.—Amarillo Dec. 17, 1997, no

denied) (citing cases). "[T]he more subjective the damages alleged, the more deference we give to jury findings on those damages." *Hudetts*, 1997 WL 716883, at *6 (citing *Hyler v. Boytor*, 823 S.W.2d 425, 427 (Tex. App.—Houston [1st Dist.] 1992, no writ)). "When there is uncontroverted, objective evidence of an injury and the causation of the injury has been established, appellate courts are more likely to overturn jury findings of no damages for past pain and mental anguish." *State Farm*, 483 S.W.3d at 263 (first citing *Grant v. Cruz*, 406 S.W.3d 358, 363 (Tex. App.—Dallas 2013, no pet.); and then citing *Blizzard v. Nationwide Mut. Fire Ins. Co.*, 756 S.W.2d 801, 805 (Tex. App.—Dallas 1988, no writ)).

"But 'more likely' does not necessarily mean 'must.'" *Blevins v. State Farm Mut. Auto. Ins. Co.*, No. 02-17-00276-CV, 2018 WL 5993445, at *9 (Tex. App.—Fort Worth Nov. 15, 2018, no pet.) (mem. op.) (first citing *Lanier v. E. Founds.*, Inc., 401 S.W.3d 445, 456 (Tex. App.—Dallas 2013, no pet.); and then citing *Lehmann v. Wieghat*, 917 S.W.2d 379, 384–85 (Tex. App.—Houston [14th Dist.] 1996, writ denied)). Even objective evidence of an injury does not mandate a damages award if the injury is "less serious and accompanied only by subjective complaints of pain," particularly where an award of past medical expenses is made. *State Farm*, 483 S.W.3d at 264; *see also Enright v. Goodman Distrib., Inc.*, 330 S.W.3d 392, 397 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (observing that "[s]ome objective injuries are so

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pet.) (not designated for publication) (citing *Dupree v. Blackmon*, 481 S.W.2d 216, 221 (Tex. App.—Beaumont 1972, writ ref'd n.r.e.) (Keith, J., concurring opinion)).

significant that an award of damages for physical pain is mandated"); *Blizzard*, 756 S.W.2d at 805; *McGuffin*, 732 S.W.2d at 428 (noting that jury evidently found injury "so minimal as to not warrant an award for past pain and suffering" despite awarding medical expenses for treatment of muscle spasms).

Here, Stone challenges the jury's findings in several damages categories. Bearing in mind the principles set forth above, we will conduct a factual-sufficiency review of each of these findings.

B. PAST PHYSICAL IMPAIRMENT

Stone first challenges the jury's zero-dollar award for past physical impairment. According to Stone, because the Christiansens offered no evidence to controvert his testimony that he suffered impairment in both his work and private life, the jury's award is against the great weight and preponderance of the evidence. We disagree.

As a damages category, physical impairment encompasses the loss of the injured party's former lifestyle, the effect of which "must be substantial and extend beyond pain, suffering, mental anguish, lost wages[,] or diminished earning capacity." *Blevins*, 2018 WL 5993445, at *13 (quoting *Golden Eagle Archery*, 116 S.W.3d at 772). To recover such damages, a claimant must prove that (1) he incurred injuries that are distinct from, or extend beyond, injuries compensable through other damage elements; and (2) these distinct injuries have had a "substantial" effect. *Enright*, 330 S.W.3d at 402. "[B]ecause of the vague line of demarcation between damages for physical impairment and other categories of nonpecuniary damages," Texas courts

tend to closely scrutinize recoveries for physical impairment. *Gordon v. Redelsberger*, No. 02-17-00461-CV, 2019 WL 619186, at *13 (Tex. App.—Fort Worth Feb. 14, 2019, no pet.) (mem. op.).

Relying on *Hammett*, 804 S.W.2d at 664, Stone argues that because he suffered an objective injury and presented uncontroverted evidence that the injury impaired his lifestyle, the jury's failure to award him any damages for past physical impairment is against the great weight and preponderance of the evidence. However, *Hammett* is distinguishable. Here, unlike *Hammett*, in which the jury awarded the plaintiffs no damages other than past medical expenses, 804 S.W.2d at 666, the jury awarded Stone a total of $10,000 for past pain and mental anguish. Thus, *Hammett*'s recognition that an objective injury must necessarily be accompanied by some "degree of pain, suffering[,] and mental anguish" does not—as Stone argues—compel us to conclude that the jury's zero-damages award for past physical impairment is against the great weight and preponderance of the evidence. *Id.* at 668. Having awarded Stone damages for the past pain and mental anguish that he suffered from his objective injury, the jury was not required under our decision in *Hammett* to additionally find that his injury had a "substantial" effect on his lifestyle that would entitle him to additional damages. *See Enright*, 330 S.W.3d at 402.

While the dog bite that Stone suffered was an objective injury, the evidence of physical impairment—predominantly consisting of Stone's testimony regarding how much the dog bite had impacted his lifestyle—was subjective in nature; therefore, the

jury was free to exercise its credibility prerogative to disbelieve it. *See Hunter v. Tex. Farm Bureau Mut. Ins. Co.*, 639 S.W.3d 251, 260 (Tex. App.—Houston [1st Dist.] 2021, no pet.) (noting that when "the evidence of a plaintiff's injuries is more subjective than objective in nature"—that is, "when the injury's existence and symptoms largely depend on the plaintiff's word, rather than medical testing"—"[t]he jury has the latitude to decline to award damages for . . . physical impairment . . . because their existence effectively turns on the plaintiff's credibility"); *Robinson v. Minick*, 755 S.W.2d 890, 893 (Tex. App.—Houston [1st Dist.] 1988, no pet.) (holding that because the weight to be given and the credibility of a plaintiff's testimony are questions for the jury, when the evidence of past and future physical impairment is subjective, such damages can be denied when there is reason to doubt the plaintiff's claims). And the jury had reason to doubt Stone's credibility regarding the extent of his physical impairment. For example, Stone claimed that he could not complete his work as a UPS deliveryman as quickly as he could before the bite, but the record indicates that he had nevertheless been able to work full time during the 4.5 years between the incident and trial and had averaged approximately the same number of steps and floors per week as he had before his injury. Additionally, Stone claimed that his injury had caused him to gain approximately twenty pounds because he had been forced to abandon his active lifestyle, but his medical records show virtually no weight gain since the incident.[7]

[7]According to Stone's medical records, he weighed 180.8 pounds in

In sum, because Stone's evidence of physical impairment was predominantly made up of his own testimony—which the jury, as the sole judge of a witness's credibility, was free to disbelieve, *see Golden Eagle Archery*, 116 S.W.3d at 761—we cannot conclude that the jury's zero-damages award for past physical impairment is so contrary to the great weight and preponderance of the evidence that it is clearly wrong and unjust, *see Dow Chem. Co.*, 46 S.W.3d at 242.

C. FUTURE PAIN, MENTAL ANGUISH, AND PHYSICAL IMPAIRMENT

Stone next challenges the jury's zero-damages awards for future pain, mental anguish, and physical impairment. According to Stone, because the jury awarded him $65,000 for future medical expenses and the evidence at trial showed that any future medical treatment would be needed to help ameliorate Stone's future pain, the jury's findings that Stone was unlikely to suffer any future pain, mental anguish, or physical impairment are inconsistent and thus untenable. Again, we disagree.

Even when a jury awards damages for future medical expenses, it may still enter zero-damages findings for future pain, mental anguish, and physical impairment. *See Elo v. Hurwitz ex rel. Hurwitz,* No. 03-18-00776-CV, 2020 WL 1696809, at *8 (Tex. App.—Austin Apr. 8, 2020, no pet.) (mem. op.) ("The jury could have determined that its awards for future medical costs and future lost earning capacity sufficiently

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January 2018 when the injury occurred, and while his weight increased to 187.4 pounds by November 2018, as of April 2019, it was back down to 181 pounds—an increase of only 0.2 pounds.

compensated [appellant] for her accident-related injuries and that she should not be further compensated through awards for future pain, anguish, and impairment."); *Laquey v. Cox*, No. 02-17-00005-CV, 2017 WL 4413353, at *2 (Tex. App.—Fort Worth Oct. 5, 2017, no pet.) (mem. op.) (holding that evidence of purely subjective complaints of pain was sufficient to justify zero-damages award for future pain even though jury awarded damages for past pain and past and future medical expenses to the plaintiff); *Cox v. Centerpoint Energy, Inc.*, No. 14-05-01130-CV, 2007 WL 1437519, at *6–7 (Tex. App.—Houston [14th Dist.] May 17, 2007, no pet.) (mem. op.) (holding evidence factually sufficient to sustain jury's finding of zero damages for future pain despite jury's award of future medical expenses). Thus, the mere fact that the jury awarded Stone future medical expenses does not, in and of itself, mean that its zero-damages awards for future pain, mental anguish, and physical impairment are contrary to the great weight and preponderance of the evidence.

As we have recognized, "[a]n award of future damages in a personal injury case is always speculative." *Gordon*, 2019 WL 619186, at *4 (quoting *Pipgras v. Hart*, 832 S.W.2d 360, 365 (Tex. App.—Fort Worth 1992, writ denied)). Thus, we are "particularly reluctant" to disturb a jury's findings concerning future damages categories. *Pipgras*, 832 S.W.2d at 365.

The evidence concerning Stone's future pain, mental anguish, and physical impairment primarily consisted of Stone's and his medical expert Dr. Miranda's

testimony, which the jury was free to disbelieve or assign little weight.[8] *See Hunter*, 639 S.W.3d at 261; *Robinson*, 755 S.W.2d at 893; *see also Prati v. New Prime, Inc.*, 949 S.W.2d 552, 555 (Tex. App.—Amarillo 1997, pet. denied) ("It is particularly within the jury's province to weigh opinion evidence and the judgment of experts, and the jury has considerable discretion in evaluating opinion testimony on the question of the amount of damages." (first citing *Kirkpatrick*, 862 S.W.2d at 772; and then citing *McGalliard v. Kuhlmann*, 722 S.W.2d 694, 697 (Tex. 1986))). And, the jury had reason to doubt this testimony. As noted above, Stone had shown that he had still been able to perform his physically demanding job for UPS in the 4.5 years between his injury

[8]Stone points out that the Christensens' own expert acknowledged that Stone will suffer chronic pain in the future. But as noted above, "[m]atters of pain and suffering . . . are necessarily speculative, and it is particularly within the jury's province to resolve these matters and determine the amounts attributable thereto." *Lanier*, 401 S.W.3d at 455. The jury could reasonably have concluded that even though Stone would suffer future pain, such pain would not be significant enough to warrant monetary compensation. *See Chohan*, 670 S.W.3d at 556 ("Compensatory damages awards are meant to compensate victims, not to punish or deter tortfeasors."); *cf. Enright*, 330 S.W.3d at 402 ("The jury could have concluded . . . that any pain [appellant] reported in connection with the bruise he sustained from the 2005 accident was not compensable . . . because it was too slight . . . ."); *Chadbourne v. Cook*, No. 05-99-00353-CV, 2000 WL 156955, at *2 (Tex. App.—Dallas Feb. 15, 2000, no pet.) (not designated for publication) ("[T]he jury could reasonably conclude any pain and suffering [appellant] endured was too negligible to warrant monetary compensation."). Alternatively, the jury was free to disbelieve the Christensens' expert or to assign his testimony concerning Stone's chronic pain little weight. *See Kirkpatrick v. Mem'l Hosp. of Garland*, 862 S.W.2d 762, 772 (Tex. App.—Dallas 1993, writ denied) ("It is particularly within the jury's province to weigh opinion evidence and the judgment of experts."). Thus, the Christiansens' expert's concession that Stone will suffer future pain does not in and of itself show that the jury's zero-damages award for future pain is so against the great weight and preponderance of the evidence that it is clearly wrong and unjust. *See Dow Chem. Co.*, 46 S.W.3d at 242.

and trial, averaging roughly the same number of steps and floors per week as he did prior to his injury. In addition, although Dr. Miranda's future damages model called for Stone to receive three steroid injections per year—123 over his lifetime—to manage his pain, in the 4.5 years between his injury and trial, Stone had only two such injections, the last of which was administered in July 2021—more than a year before trial. Indeed, in April 2022, Stone's doctor noted in his records that Stone was "doing very well" and had experienced "significant pain relief."

Further, while most of Dr. Miranda's opinions concerning the future pain, mental anguish, and physical impairment that Stone was likely to experience were necessarily based on what Stone had told him, the two primary pieces of objective evidence upon which Dr. Miranda relied were effectively called into question by the defense. Dr. Miranda concluded that Stone had suffered nerve damage in his calf based on an EMG test, but the Christiansens' medical expert pointed out that Stone's EMG was inconclusive because no "F wave" test was done on Stone's uninjured leg.[9]

[9]Dr. Scott, the Christiansens' medical expert, explained that the conclusion that Stone had sustained nerve damage in his leg was based on a single abnormality in his EMG—the absence of stimulation during an F wave test in which electricity is transmitted up to the back and then back down to the leg. Ordinarily, this transmission of electricity creates a "potential" that can be measured and analyzed. In Stone's case, the EMG testers were unable to get F wave potentials on his injured leg and concluded that this was caused by a problem with the nerve. However, as Dr. Scott pointed out, the absence of a potential does not necessarily mean that there is something wrong with the nerve; thus, what a tester should do in that situation is to test the other (uninjured) leg to determine whether normal F waves can be obtained in that leg. Only "if you get normal F waves on the other side," would the lack of a

The only other objective evidence of ongoing injury was Dr. Miranda's observation that Stone's right (injured) calf was one centimeter (2.7%) smaller than his left. However, Dr. Miranda acknowledged that he had not measured Stone's calves before his injury, so he did not know how they compared prior to the incident.

Given the inherently speculative nature of future damages awards, the primarily subjective nature of the evidence, and the inconclusiveness of what little objective evidence of Stone's ongoing injury is contained in the record, we cannot conclude that the jury's zero-damages awards for future pain, mental anguish, and physical impairment are so contrary to the great weight and preponderance of the evidence that they are clearly wrong and unjust. *See Dow Chem. Co.*, 46 S.W.3d at 242.

D. PAST PAIN AND MENTAL ANGUISH

Stone also challenges the jury's $5,000 awards for past pain and mental anguish. According to Stone, these "paltry" awards are "wholly inadequate" to compensate Stone for the serious pain and mental anguish that he suffered as a result of his injury. However, we cannot conclude that the evidence is insufficient to support these awards.

"The presence or absence of pain, either physical or mental, is an inherently subjective question." *Gen. Motors Corp. v. Burry*, 203 S.W.3d 514, 551 (Tex. App.—Fort Worth 2006, pet. denied) (op. on reh'g). Because "pain and suffering injuries are

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potential in the injured leg "be indicative of pathology." However, Stone's uninjured leg was not tested.

'not subject to precise mathematical calculations or objective analysis, . . . the jury has wide latitude' in determining the appropriate amounts" of damages necessary to compensate for such injuries. *Elo*, 2020 WL 1696809, at *4 (quoting *Tagle v. Galvan*, 155 S.W.3d 510, 518 (Tex. App.—San Antonio 2004, no pet.)); *see also Lanier*, 401 S.W.3d at 455.

As is typical in personal injury cases, the evidence of Stone's pain and mental anguish primarily consisted of his testimony and medical records reflecting what he told treaters. Thus, Stone's credibility is central to his claims of physical pain and mental anguish, and, as a result, the jury's role in assessing damages in these categories is paramount. *See Ononiwu v. Eisenbach*, 624 S.W.3d 37, 46 (Tex. App.—Houston [1st Dist.] 2021, no pet.) (citing *Diamond Offshore Servs. Ltd. v. Williams*, 542 S.W.3d 539, 552 (Tex. 2018)). Although Stone testified concerning the "immense . . . pressure" and pain that he felt when Bear bit him and the excruciating experiences that he endured while receiving treatment for his infected wounds, other evidence suggested that Stone may have exaggerated some aspects of his account. For example, Stone testified that during his second visit to Avalon Urgent Care on January 15, 2018, the doctor had to cut his stitches out, use a scalpel to slice open his wounds, and then cut out any tissue that needed to be removed—all without anesthesia due to the infection—and that he had to undergo this same agonizing procedure—or something close to it—approximately ten times. But, as the Christiansens pointed out at trial, Stone's medical records from Avalon do not support his account. In fact, they do not

reflect that any incision-and-drainage procedure was actually performed during Stone's January 15 visit—or during any of his subsequent visits. Given the subjective nature of the evidence underlying Stone's claims for past pain and mental anguish and the evidence casting some doubt on his credibility, it was the jury's prerogative to disbelieve or discount Stone's testimony, and it implicitly did so. *See Schott v. Knight*, No. 01-06-00727-CV, 2007 WL 4465586, at *3 (Tex. App.—Houston [1st Dist.] Dec. 20, 2007, no pet.) (mem. op.); *see also Ononiwu*, 624 S.W.3d at 46.

Given the inherently subjective nature of assessing damages for pain and mental anguish and the jury's prerogative to disbelieve or discount Stone's testimony supporting his claims for such damages, we cannot conclude that the jury's $5,000 awards for past pain and mental anguish are so contrary to the great weight and preponderance of the evidence that they are clearly wrong and unjust. *See Dow Chem. Co.*, 46 S.W.3d at 242.

E. FUTURE MEDICAL EXPENSES

Finally, Stone challenges the jury's $65,000 award for future medical expenses. As noted above, because "[a]n award of future damages in a personal injury case is always speculative," we are "particularly reluctant" to disturb a jury's findings concerning future damages categories. *Pipgras*, 832 S.W.2d at 365. And we see no reason to disturb the jury's award for future medical expenses in this case.

Based primarily on the testimony of his medical expert Dr. Miranda, Stone sought approximately $1.47 million for future medical expenses. However, during

trial, the Christiansens exposed a number of flaws in Dr. Miranda's projections. For example, as noted above, they pointed out that while Dr. Miranda's future damages model called for Stone to receive three steroid injections per year—123 over his lifetime—to manage his pain, in the 4.5 years between his injury and trial, Stone had only had two such injections. In addition, while Dr. Miranda's future-expense estimate included four psychological sessions per year, Stone had only participated in one such session prior to trial.

The parties stipulated that Stone's past medical costs, including emergency services, during the 4.5 years between the incident and trial totaled $65,000. Given that Stone had thus far only required two steroid injections—the most recent of which had been administered more than a year before trial—and one psychological session, the jury could have reasonably concluded that his condition was improving and that, accordingly, his future medical expenses would not exceed the amount that he had already incurred.[10] Juries often must make such extrapolations in calculating future damage awards, *see Pipgras*, 832 S.W.2d at 365, and based on the record before us, we cannot say that the jury's award is clearly wrong or unjust, *see Dow Chem. Co.*, 46 S.W.3d at 242.

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[10]As the Christiansens point out, it is also possible that the jury was confused by the parties' stipulation concerning past medical expenses and put the stipulated $65,000 amount in the only blank on the charge available for medical expenses—the blank for *future*, not *past*, medical expenses—and that the jury thus intended to award no extra damages for medical expenses beyond the $65,000 that Stone had already incurred.

Having considered and weighed all of the evidence supporting each of the jury's challenged damages findings[11] and having concluded that none of them are so contrary to the great weight and preponderance of the evidence that they are clearly wrong and unjust, we overrule Stone's sole issue.

III. CONCLUSION

Having overruled Stone's sole issue, we affirm the trial court's judgment.

/s/ Brian Walker

Brian Walker
Justice

Delivered: September 7, 2023

[11]Stone's brief did not address the jury's zero-damages award for future loss of earning capacity. Thus, we presume that he did not wish to challenge that finding. To the extent that Stone asserts that the future-loss-of-earning-capacity award was erroneous, we conclude that this argument has been forfeited due to inadequate briefing. *See* Tex. R. App. P. 38.1; *Huey v. Huey*, 200 S.W.3d 851, 854 (Tex. App.—Dallas 2006, no pet.); *see also Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284 (Tex. 1994) (observing that error may be waived by inadequate briefing); *Jackson v. Vaughn*, 546 S.W.3d 913, 922 (Tex. App.—Amarillo 2018, no pet.) (holding appellant had waived issue due to inadequate briefing).