

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Nicholas J. Roberts,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20050930-CA
v.)	
)	F I L E D
William Kurt Dobson,)	(September 28, 2006)
)	
Defendant and Appellee.)	2006 UT App 396

Third District, Salt Lake Department, 040905547
The Honorable J. Dennis Frederick

Attorneys: Robert W. Hughes, Salt Lake City, for Appellant
Kristin A. VanOrman, Salt Lake City, for Appellee

Before Judges Bench, Orme, and Thorne.

THORNE, Judge:

Nicholas J. Roberts appeals from a jury verdict awarding him damages arising from a 2003 collision in which William Kurt Dobson's vehicle struck Roberts's vehicle from behind. Roberts raises various challenges to the amount of the jury's damages award, asserting that the uncontradicted evidence warrants damages in excess of the \$1300 actually awarded.

"[I]t is the exclusive function of the jury to weigh the evidence and to determine the credibility of the witnesses." Child v. Gonda, 972 P.2d 425, 433 (Utah 1998) (quotations and citations omitted). However, the broad fact-finding discretion afforded to juries is not entirely without limit, and it is the duty of the courts to safeguard "against the exercise of despotic power or unreasoning action by any official or functionary," including juries. Super Tire Mkt., Inc. v. Rollins, 18 Utah 2d 122, 417 P.2d 132, 135 (1966). "This is the basis for the right of review on appeal whereby a court or jury may be prevented from obdurately refusing to accept credible uncontradicted evidence without any rational basis for doing so." Id. Uncontradicted evidence "may be persuasive, or in some instances even conclusive," but this "depend[s] upon the circumstances." Id.

Even where evidence is uncontradicted, when "there is a basis from which bias, prejudice or self-interest may be seen, or there is anything incredible in the testimony, the jury is not obliged to accept it." Page v. Federal Sec. Ins. Co., 8 Utah 2d 226, 332 P.2d 666, 669 (1958). Here, although there is little reason to doubt that Roberts actually incurred the medical expenses and other costs that he alleges, there is considerable question as to the portion of those expenses that can reasonably be attributed to Dobson's negligence.

The jury heard evidence that Roberts was also involved in a 1999 auto accident, which caused similar injuries and ultimately resulted in a fourteen percent permanent impairment rating. The 2003 accident occurred at low speed, perhaps as low as five miles per hour, and Roberts showed no physical manifestation of injury at the scene. Roberts declined ambulance transport to a medical facility, and was instead examined at his home later in the day by Dr. Jonathan Horne, a personal friend. Horne recommended the medication, physical therapy, MRI scans, and time off from work that constituted the bulk of Roberts's claimed damages.

Dr. Scott Knorpp conducted his own medical examination of Roberts and testified as Dobson's expert witness. Knorpp testified that Roberts suffered only a temporary worsening of his previously existing injuries, not a permanent aggravation as Roberts alleged. Knorpp testified that there was no objective evidence of any separate injury or permanent disability arising from the 2003 accident, and that MRI scans taken after the 2003 accident actually revealed an improvement from Roberts's 1999 condition. Knorpp also described a series of "credibility maneuvers" that he administered to Roberts as a means of determining whether Roberts was embellishing his symptoms. Roberts repeatedly failed these tests, reporting pain in response to "maneuvers that simply can't cause pain." From this, Knorpp concluded that Roberts was intentionally or unintentionally embellishing his reported injuries.¹

This evidence casts serious doubt on whether the full amount of Roberts's claimed damages can fairly be attributed to Dobson's 2003 negligence. It appears the jury's award represents an attempt to identify those expenses that actually resulted from the 2003 accident, while rejecting those that resulted chiefly from the 1999 accident, were the result of embellishment, or

¹The jury also learned that Roberts had been involved as a plaintiff or claimant in prior litigation, including a lawsuit arising from the 1999 accident, a lawsuit involving a piece of glass in Roberts's salad, and a workers' compensation action.

represented an unnecessarily aggressive response to relatively minor injuries.

Under these circumstances, we will not disturb the jury's damages award or the trial court's denial of various motions aimed at increasing that award. Affirmed.

William A. Thorne Jr., Judge

WE CONCUR:

Russell W. Bench,
Presiding Judge

Gregory K. Orme, Judge