

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MELINDA KINSLEY,)	
)	DIVISION ONE
Appellant,)	
)	No. 65509-4-I
v.)	
)	
JAMES C. BARNETT and RITA L.)	UNPUBLISHED OPINION
BARNETT, husband and wife,)	
)	
Respondents.)	FILED: June 6, 2011
_____)	

Dwyer, C.J.—A jury verdict awarding medical treatment expenses for an injury but nothing for pain and suffering will not be disturbed if, considering all the credible evidence presented at trial, a jury could conclude that the plaintiff failed to sufficiently prove pain and suffering. In this case, the verdict awarded Melinda Kinsley \$8,700 in stipulated economic damages for medical care and treatment, \$269 in lost wages, and \$0 for noneconomic damages. Kinsley argues that the noneconomic damage award is contrary to the evidence and that the trial court abused its discretion in denying her motion for a new trial. Because she has not provided a complete record of the evidence produced at trial, we are unable to determine whether the verdict was within the range of the

evidence. Accordingly, we affirm.

I

In November 2006, Kinsley sued James and Rita Barnett for personal injuries she allegedly suffered in an automobile collision. She sought damages for medical treatment expenses, lost wages, and other general damages, including pain and suffering. The medical treatment included an emergency room visit, primary doctor appointments, acupuncture, and physical therapy.

The case was tried to a jury over four days. Although Kinsley has not provided a transcript of the trial, the record indicates that she and her co-workers testified to pain she experienced following the accident. The Barnetts disputed the nature and severity of Kinsley's injuries and presented expert testimony as part of their case.

The court's jury instruction on damages set forth the measure of damages and directed the jury to award \$8,700 in stipulated economic damages:

You must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by the negligence of the defendant.

Your verdict must include the following undisputed past economic damages:

Medical care, treatment and services through end of treatment, 2004: \$8,700.

In addition, you should consider the following past economic damages elements:

The reasonable value of necessary medical care, treatment and services received from April, 2006, to the present time.

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The reasonable value of earnings lost to the present time.

In addition you should consider the following noneconomic damages elements:

The nature and extent of the injuries.

The disability and loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.

The pain and suffering, both mental and physical, experienced and with reasonable probability to be experienced in the future.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Instruction No. 8, Clerk's Papers (CP) at 41. The jury awarded \$8,700 for "undisputed past economic damages," \$269.68 for "additional past economic damages," and \$0 for "past and future noneconomic damages." CP at 30.

Kinsley moved for a new trial, arguing that the award of roughly \$9,000 in medical expenses and lost wages but \$0 in noneconomic damages "was against the weight of the evidence, so inadequate as to show passion or prejudice, and did not do substantial justice." CP at 48; see CR 59(5), (7), (9). In response, the Barnetts argued that the verdict was within the range of the evidence. They pointed out that they presented expert testimony undermining Kinsley's claims and supporting a conclusion that her injury was mild and short-lived. Following a lengthy hearing, the trial court denied the motion:

I am not persuaded that the verdict is not within the range of proven damages. . . . I'm just left with the conclusion that there was a failure on the part of the plaintiff to carry her burden of proof on the non-economic damages.

. . .

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I think that the jury was entitled to essentially believe the testimony of the defense doctor. . . . And frankly, I think that the jury did not find plaintiff's contentions credible.

. . .

I think in essence it simply comes down not to passion or prejudice, not to something not within the range of the evidence for the jury to do, but simply comes down to the jury's right to conclude that there is a failure of proof on general damages.

Report of Proceedings at 33-40.

Kinsley appeals.

II

Juries have considerable latitude in assessing damages, and a damage award will not be lightly overturned. Palmer v. Jensen, 132 Wn.2d 193, 197, 937 P.2d 597 (1997); Wash. State Physicians Ins. Exch. v. Fisons Corp., 122 Wn.2d 299, 329-30, 858 P.2d 1054 (1993); Cox v. Charles Wright Academy, Inc., 70 Wn.2d 173, 176, 422 P.2d 515 (1967) (“[T]he law gives a strong presumption of adequacy to the verdict.”). Although courts have discretion to grant a motion for a new trial if a damage award is not based on, or is at odds with, the evidence, the motion must be denied if the verdict is within the range of the credible evidence. Robinson v. Safeway Stores, Inc., 113 Wn.2d 154, 161-62, 776 P.2d 676 (1989); Wooldridge v. Woolett, 96 Wn.2d 659, 668, 638 P.2d 566 (1981); Herriman v. May, 142 Wn. App. 226, 232, 174 P.3d 156 (2007). In reviewing a court's exercise of discretion on such motions, we view the evidence in the light most favorable to the verdict. See Palmer, 132 Wn.2d at 197-98. We also bear in mind that the trial court is in a better position than is this court to determine

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whether a verdict represents passion or prejudice or is within the range of the evidence. See Physicians Ins. Exch., 122 Wn.2d at 329-30.

Here, Kinsley contends that she was entitled to a new trial because the parties stipulated that the \$8,700 in medical bills, which included months of treatment, were reasonable and necessary and related to the collision. Given the stipulation, the award of lost wages, and Kinsley's evidence of pain and suffering, she contends the jury's award of no general damages is contrary to the evidence. A survey of the relevant law demonstrates that the record before us is insufficient to review this contention.

It is well settled that "there is no per se rule that general damages must be awarded to every plaintiff who sustains an injury." Palmer, 132 Wn.2d at 201. Rather, the adequacy of a verdict on general damages "turns on *the evidence*," Palmer, 132 Wn.2d at 201 (emphasis added), and "[a] jury may award special damages and no general damages when '*the record* would support a verdict omitting general damages.'" Gestson v. Scott, 116 Wn. App. 616, 620, 67 P.3d 496 (2003) (emphasis added) (quoting Palmer, 132 Wn.2d at 202). Thus, if the evidence at trial calls into question the cause, degree, or credibility of alleged pain and suffering, a verdict awarding medical treatment expenses without general damages may be within the range of the evidence. In this regard, the decision in Lopez v. Salgado-Guadarama, 130 Wn. App. 87, 122 P.3d 733 (2005), is instructive.

There, Lopez sued for injuries allegedly suffered in an automobile collision. Similar to Kinsley, Lopez presented evidence of a hospital visit, extended care from a chiropractor, an orthopedist, and a physical therapist, and three days of lost wages. The Lopez defendants, like the Barnetts, presented expert testimony that Lopez suffered only “a minor injury not worthy of the extended medical treatment he received.” Lopez, 130 Wn. App. at 90. The jury awarded Lopez all of his economic damages in the amount of \$3,536.80, but awarded nothing for his alleged pain and suffering. In denying Lopez’s motion for additur or a new trial, the district court concluded that he “failed to sustain his burden in proving that the collision and injuries, if any, were of such consequence to award any damages for pain and suffering.” Lopez, 130 Wn. App. at 90. The superior court reversed, holding that the verdict was contrary to the evidence.

In reversing the superior court, Division Three of this court noted the evidence before the jury allowed it “to conclude that any pain Mr. Lopez felt as a direct result of the accident was short-lived.” Lopez, 130 Wn. App. at 93. The court held that “the jury was entitled to conclude that the plaintiff incurred reasonable medical expenses as a result of the accident, *while at the same time concluding he failed to carry his burden of proving general damages.*” Lopez, 130 Wn. App. at 93 (emphasis added). The court affirmed the denial of Lopez’s motion for a new trial because “the jury’s failure to award damages for pain and

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suffering was consistent with the evidence.” Lopez, 130 Wn. App. at 92.

Here, the defense put on expert testimony and evidently disputed many of Kinsley’s claims. The trial court also noted that Kinsley’s credibility was called into question. It thus appears that the jury’s verdict may have been within the range of the evidence. Kinsley, however, has not provided a transcript of the trial. An appellant has the burden of providing an adequate record for review, and the trial court’s decision must stand if this burden is not met. Stevens County v. Loon Lake Prop. Owners Ass’n, 146 Wn. App. 124, 131, 187 P.3d 846, 849 (2008). Because the record provided is insufficient to determine whether the verdict is within the range of the evidence, Kinsley’s appeal fails.

Affirmed.

Dupre, C. S.

We concur:

Schiveller, J.

Cox, J.