

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 10, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2529

Cir. Ct. No. 2009CV350

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

GORDON E. LUEDERS,

PLAINTIFF-RESPONDENT,

V.

**RODNEY K. LEFLER AND PROGRESSIVE UNIVERSAL
INSURANCE COMPANY,**

DEFENDANTS-APPELLANTS,

THE PLAN HANDLERS, INC. AND MEDICARE,

DEFENDANTS.

APPEAL from a judgment and an order of the circuit court for Waupaca County: RAYMOND S. HUBER, Judge. *Affirmed.*

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

¶1 PER CURIAM. Rodney Lefler and Progressive Universal Insurance Company appeal a circuit court judgment and order entered after a jury trial in this personal injury case. Lefler and Progressive argue that the respondent, Gordon Lueders, did not meet his burden of proving that the past medical expenses he was awarded by the jury were for treatment of injuries caused by the accident at issue in this case. For the reasons set forth below, we affirm the judgment and order of the circuit court.

BACKGROUND

¶2 This is a personal injury case arising from a boating accident in June 2006. Lueders had been sitting in a chair on a pontoon boat when Lefler drove by in another boat in a no wake zone. The wake created by Lefler's boat came in contact with the pontoon boat and caused Lueders to tip out of his chair and sustain injuries to his neck and shoulder. Lueders filed a complaint, naming Lefler and his liability insurer, Progressive, as defendants.

¶3 The case proceeded to a jury trial at which the only issue the jury was asked to consider was what sum of money would fairly and reasonably compensate Lueders for his past medical and healthcare expenses and his past pain, suffering, and disability. The jury returned a verdict against Lefler and Progressive and in favor of Lueders in the amount of \$89,945.97, which included an award of \$29,945.97 for past medical expenses. After trial, Lefler and Progressive filed a motion requesting that the circuit court change the answer for past medical expenses on the verdict from \$29,945.97 to \$7,052.44. The circuit court denied the motion in an order and entered judgment in favor of Lueders in the amounts specified in the jury verdict, plus taxable costs and statutory interest. Lefler and Progressive now appeal.

STANDARD OF REVIEW

¶4 When considering a motion to change the jury's answers to verdict questions, we view the evidence in the light most favorable to the verdict, and we affirm if the verdict is supported by any credible evidence. *Kubichek v. Kotecki*, 2011 WI App 32, ¶14, 332 Wis. 2d 522, 796 N.W.2d 858. We will search the record for credible evidence that sustains the verdict, and if the evidence gives rise to more than one reasonable inference, we will accept the inference the jury reached. *Id.*

DISCUSSION

¶5 On appeal, Lefler and Progressive challenge only that portion of the verdict that awarded past medical expenses to Lueders. Lefler and Progressive argue that Lueders did not meet his burden of proving that his medical bills were for the treatment of injuries caused by the accident, and that he failed to present required expert testimony on the issue. Lueders argues that expert testimony was not required to prove the reasonableness and necessity of his medical expenses, but that even if it were, he satisfied that requirement by presenting expert testimony from physician Scott Davis.

¶6 We need not decide the issue of whether Lueders could have proved the reasonableness and necessity of his medical expenses without expert testimony because the record reveals that Lueders did in fact present expert testimony. At trial, Lueders' counsel played for the jury the videotape deposition of Lueders' family doctor, Scott Davis. Davis testified that he provided treatment to Lueders beginning several months before the boating accident through the month of trial. Davis testified that, prior to the accident, there was no documentation in Lueders' records of any neck symptoms or shoulder symptoms, other than headaches.

Davis performed a complete neurologic exam on Lueders in order to investigate the headaches. He did not document any neck or shoulder problems in his notes from the exam. However, Davis testified that after the boating accident, Lueders experienced chronic neck pain, right shoulder pain, and myofascial pain consistent with a sprain or strain type of injury. Davis opined that it was more than likely that the accident was a substantial factor in causing Lueders' neck and shoulder problems.

¶7 Lueders also testified at trial. He testified that in the year and a half before the accident he felt great and that “[e]verything was working like it should be.” He did not see a doctor for any neck problems in that time period. Davis referred Lueders to a physiatrist, Dr. Randy Schultz, to investigate a complaint of leg pain in December 2005. The jury was read a portion of Schultz’s notes from that office visit, which stated that Lueders had a functional range of motion of his spine without significant pain.

¶8 At trial, Lueders introduced into evidence documentation of his medical expenses as well as an itemized accounting of all the expenses he had incurred related to treatment of his neck and shoulder injuries since the accident. Lefler and Progressive admitted to the reasonableness of the medical expenses, but did not admit that the expenses were necessary or that they were the result of injuries caused by the boating accident. On appeal, Lefler and Progressive argue that the circuit court relied in error on WIS. STAT. § 908.03(6m)(bm) (2011-12),¹ which provides that there is a rebuttable presumption that billing statements or

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

invoices that are patient health care records state the reasonable value of the services provided, and that the services provided were reasonable and necessary.

¶9 We are not persuaded by Lefler and Progressive's argument regarding WIS. STAT. § 908.03(6m)(bm) because, as stated above, there was no dispute regarding whether the amounts charged for Lueders' medical expenses, for treatment of Lueders' neck and shoulder injuries after the accident, were reasonable. What was disputed was whether the medical expenses were for injuries caused by the boating accident. Or, to put it in other words, whether the boating accident caused injury to Lueders that made it necessary for him to incur the medical expenses he itemized and introduced into evidence. This is the very issue that the parties argued at trial. Lefler and Progressive took the position that Lueders' neck and shoulder injuries were pre-existing and, therefore, not caused by the boating accident. Lueders argued that the neck and shoulder injuries for which he received treatment, and therefore incurred expenses, were caused by the accident. The jury heard competing evidence, including from medical experts, on both sides, weighed the evidence, and found in Lueders' favor.

¶10 Viewing the evidence in the light most favorable to the verdict, we agree with Lueders that the record contains sufficient credible evidence to sustain the verdict. See *Kubichek*, 332 Wis. 2d 522, ¶14. To summarize, Lueders presented expert testimony from Davis that his neck and shoulder injuries were more than likely caused by the boating accident. The notes of Davis and of Schultz from their appointments with Lueders do not reference neck and shoulder problems pre-dating the accident. Finally, Lueders' own testimony indicates that he did not experience neck and shoulder pain in the eighteen months prior to the accident. The jury considered this evidence and found it to be credible and we will not second-guess those credibility determinations on appeal. See *Royster-*

Clark, Inc. v. Olsen's Mill, Inc., 2006 WI 46, ¶26, 290 Wis. 2d 264, 714 N.W.2d 530. The jury also considered the evidence presented by Lefler and Progressive, disputing the causation of Lauders' injuries and whether he was entitled to past medical and healthcare expenses and past pain, suffering, and disability. The jury found in favor of Lueders and returned a verdict that included an award of \$29,945.97 in past medical expenses. Because the jury's verdict was supported by credible evidence in the record, as discussed above, we will not disturb it on appeal.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

