

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 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. 2013AP1656

Cir. Ct. No. 2011CV9644

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

KAREN F. BURRIS,

PLAINTIFF-APPELLANT,

v.

MARKEL INSURANCE COMPANY,

DEFENDANT-RESPONDENT,

**AMERICAN UNITED TAXICAB COMPANY, LASSINE SOUMAHORO, MARA
HENNINGSEN, A/K/A MARA KINOSISAN AND MANAGED HEALTH
SERVICES INSURANCE CORPORATION,**

DEFENDANTS.

APPEAL from an order of the circuit court for Milwaukee County:
TIMOTHY M. WITKOWIAK, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 KESSLER, J. Karen Burris appeals an order of the circuit court denying her motion after the verdict. Burris contends that the circuit court erred in refusing to change the jury's verdict to include compensation for a knee injury she claims was sustained as a result of a car accident. Burris also contends that sufficient evidence did not support the jury's verdict. We affirm.

BACKGROUND

¶2 According to the facts in the record, on December 16, 2008, Burris was the passenger in a taxicab driven by Lassine Soumahoro. While riding in the backseat, Burris sustained injuries when the vehicle collided with another car. Burris did not go to the hospital immediately, but rather went to the emergency room the following day. Burris testified that she went to the hospital the following day because she noticed considerable swelling in her right knee, the result, she stated, of hitting her right leg against the backseat of the taxi during the accident. A medical report from Burris's emergency room visit states that Burris complained of pain in her hip, shoulder, lower back and finger, but does not mention Burris's right knee.

¶3 Burris followed up with her primary care physician, Dr. Joselito Baylon, on December 22, 2008. Dr. Baylon's report stated that Burris was feeling back pain, but did not indicate that Burris suffered a knee injury. Dr. Baylon referred Burris to an orthopedic specialist and physical therapy. Burris began physical therapy in January 2009.

¶4 In March 2009, Burris fell on the staircase in her home. According to Burris, her right knee gave out, leading to significant knee injury requiring arthroscopic surgery. Burris then filed the lawsuit underlying this appeal against multiple defendants, including American United Taxicab Company and its insurer,

Markel Insurance Company (“Markel”). Burriss sought to recover all medical costs related to injuries incurred as a result of the collision, as well as for future pain and suffering.

¶5 Multiple witnesses testified at the trial, and multiple medical reports were presented to the jury. Burriss testified that she injured her right knee during the collision when she struck her knee against the back seat of the taxicab. She stated that she went to the emergency room the following day, at which time her knee was examined and she was advised to follow up with Dr. Baylon. Burriss also stated that Dr. Baylon referred her to physical therapy for her knee. Burriss also visited Dr. Kevin Weidman, an orthopedic surgeon, who advised Burriss to continue with physical therapy. Burriss eventually underwent arthroscopic knee surgery, and was required to continue physical therapy following the surgery.

¶6 Dr. Weidman, through video testimony, opined that Burriss injured her knee as a result of the collision. Dr. Weidman also stated that Burriss’s medical records were not available for his review and that his opinion was based solely on Burriss’s impression that she injured her knee in the collision.

¶7 Multiple medical reports were also entered into evidence, including: (1) the emergency room report; (2) a letter from Dr. Weidman stating that Burriss’s knee injury resulted from the collision; and (3) physical therapy reports from before and after Burriss’s fall. Counsel for Markel asked Burriss about the emergency room report, Dr. Baylon’s report, and multiple physical therapy reports dated before her fall. Burriss confirmed that none of the asked-about reports reflected a knee injury. Burriss also confirmed that physical therapy reports, dated after her fall, do reflect a knee injury.

¶8 The jury awarded Burris \$3579.38 in damages for past medical bills. Specifically, the award compensated Burris for the costs of: (1) the emergency room visit; (2) two visits with Dr. Baylon; and (3) physical therapy bills predating her March 2009 fall. The jury did not award compensation for Burris’s knee surgery, or for the physical therapy appointments following the surgery, finding that Burris’s knee injury was not caused by the collision.

¶9 Burris filed a post-verdict motion seeking compensation for expenses related to her knee surgery. Relying on *Hanson v. American Family Mutual Insurance Co.*, 2006 WI 97, 294 Wis. 2d 149, 716 N.W.2d 866, Burris argued that the verdict was contrary to Wisconsin law and was not supported by sufficient evidence. Burris also moved for a new trial in the interest of justice because the jury’s failure to award compensation for her surgery was contrary to the great weight of the evidence.

¶10 The circuit court denied the motion in a written order, finding *Hanson* inapplicable to the facts of Burris’s case, and that credible evidence supported the jury’s verdict. Accordingly, the circuit court also denied Burris’s request for a new trial.

DISCUSSION

¶11 In reviewing a jury award, we may not substitute our judgment for the jury’s; rather, we determine whether the award is within reasonable limits. *Brain v. Mann*, 129 Wis. 2d 447, 455, 385 N.W.2d 227 (Ct. App. 1986). If there is any credible evidence which under any reasonable view supports the award, we “will not disturb the finding unless it is so unreasonably low that it shocks the judicial conscience.” *See id.* When the verdict has the approval of the

circuit court, we will set aside the verdict only for an evident erroneous exercise of discretion. *See id.*

The Jury's Verdict is not Contrary to Wisconsin Law.

¶12 On appeal, Burris reiterates her arguments made to the circuit court. Relying on *Hanson*, Burris contends that she is entitled to the full extent of her medical bills, including expenses related to the knee surgery, because her fall stemmed from an injury initially incurred as a result of the collision. Burris argues that *Hanson* stands for the proposition that an injured party is entitled to compensation for the full value of treatment if the initial injury results from a collision.

¶13 In *Hanson*, the Wisconsin Supreme Court reiterated the rule first acknowledged in *Selleck v. City of Janesville*, 100 Wis. 157, 75 N.W. 975 (1898), that “when a tortfeasor causes an injury to another person who then undergoes unnecessary medical treatment of those injuries despite having exercised ordinary care in selecting [a] doctor, the tortfeasor is responsible for all of that person’s damages arising from any mistaken or unnecessary surgery.” *Hanson*, 294 Wis. 2d 149, ¶20. In that case, Jo-El Hanson complained of lower back, neck and rib pain following an automobile accident. *Id.*, ¶¶4-5. Hanson sought treatment for her ailments and eventually underwent surgery on her neck. *Id.*, ¶¶5-6. The operating surgeon concluded that Hanson’s surgery was necessary; however, a neurosurgeon retained by the defendant insurance company testified that Hanson’s surgery was unnecessary and suggested that Hanson’s surgeon may have committed malpractice by operating on her. *Id.*, ¶¶6-7. The jury awarded Hanson past medical expenses for treatment obtained after the accident but before the surgery. *Id.*, ¶10. Hanson filed a post-verdict motion, seeking the full amount of

her medical costs, including costs related to the surgery. *Id.*, ¶11. The circuit court denied the motion.

¶14 The supreme court upheld our decision reversing the circuit court. Acknowledging the *Selleck* rule, the supreme court held that regardless of the necessity of Hanson’s surgery, Hanson’s initial neck injury resulted from the automobile accident. *Hanson*, 294 Wis. 2d 149, ¶27. The court noted that while Hanson may have received faulty medical advice as to treatment, the jury determined that Hanson indeed suffered a neck injury as a result of the accident. *See id.* Accordingly, the supreme court found that Hanson was entitled to the full costs of her treatment. *Id.*, ¶30.

¶15 Here, unlike *Hanson*, the jury rejected Burris’s contention that she incurred a knee injury as a result of the collision. Because the jury did not find a causal connection between the accident and Burris’s knee injury, the jury did not award damages for treatment stemming from Burris’s fall. The jury was presented with competing evidence as to whether the necessity of Burris’s knee surgery stemmed from an injury originally arising from the collision. The jury determined that Burris’s knee injury was a separate injury from those arising from the collision. A jury is free to draw its own inferences from competing evidence. *Weber v. Chicago & Northwestern Transp. Co.*, 191 Wis. 2d 626, 637, 530 N.W.2d 25 (Ct. App. 1995). The jury’s verdict did not violate Wisconsin law.

Sufficiency of the Evidence.

¶16 We will not reverse a verdict for insufficient evidence unless, “considering all credible evidence and reasonable inferences therefrom in the light most favorable to the party against whom the motion is made, there is no credible evidence to sustain a finding in favor of such party.” *See WIS. STAT.*

§ 805.14(1) (2011-12).¹ ““To reverse, this court must conclude that there is such a complete failure of proof that the verdict must have been based on speculation.”” *Nieuwendorp v. American Family Ins. Co.*, 191 Wis. 2d 462, 472, 529 N.W.2d 594 (1995) (citation omitted).

¶17 We agree with the circuit court that credible evidence supports the jury’s verdict. The jury heard testimony from Burris and Dr. Weidman, both of whom testified that Burris’s right knee injury was caused by the collision. However, the defendants offered rebuttal evidence that the jury was free to accept. Specifically, the defendants noted that neither Burris’s emergency room record, Dr. Baylon’s report, nor Burris’s physical therapy records predating her fall indicated a right knee injury. The jury also heard Dr. Weidman testify that he did not review any of Burris’s medical records and that his opinion was based solely on Burris’s statements to him. It is the jury’s role to evaluate the credibility of witnesses and weigh the evidence. *Morden v. Continental AG*, 2000 WI 51, ¶39, 235 Wis. 2d 325, 611 N.W.2d 659. Therefore, when the evidence supports more than one reasonable inference, “we accept the particular inference reached by the jury.” *See id.* Here, the evidence supports two reasonable inferences—that the collision caused Burris’s knee injury and that the collision did not cause the injury. The jury’s finding that Burris’s knee injury did *not* result from the collision must be sustained. Thus, Burris’s award excluding the medical expenses associated with her knee surgery was proper.

¶18 Because the jury’s verdict was not contrary to Wisconsin law, and because sufficient evidence supports the jury’s verdict, we do not address Burris’s

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

argument that she is entitled to a new trial in the interest of justice. We affirm the circuit court.²

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

² The defendants urge us to impose sanctions on Burris's counsel for misrepresentations made in Burris's reply brief. We decline to impose sanctions in this case, but we do warn counsel that inaccurate record citations are grounds for sanctions. *See* WIS. STAT. RULE 809.83(2).

