

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

MICHELE J. REID )  
 ) C.A. No. 01C-10-046 JTV  
Plaintiff, )  
 )  
v. )  
 )  
MICHELLE A. HINDT )  
 )  
Defendants, )  
 )

*Submitted: October 7, 2005*  
*Decided: January 31, 2006*

William D. Fletcher, Jr., Esq., Schmittinger and Rodriguez, Dover, Delaware for Plaintiff.

Jeffrey A. Young, Young & McNelis, Dover, Delaware for Defendant, Michelle A. Hindt.

*Upon Consideration of*  
*Plaintiff's Motion For a New Trial*  
**GRANTED**

**Vaughn, President Judge**

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**OPINION**

This is a personal injury, automobile accident case. At trial, the defendant's negligence was not disputed. The jury was asked to do the following: "State the amount of compensation to which Michele Reid is entitled for her injuries and damages, proximately caused by the motor vehicle accident of November 5, 1999." The jury decided that the amount was zero. The plaintiff has now moved for a new trial.

**FACTS**

On November 5, 1999, Michele J. Reid ("plaintiff") was stopped in the left lane on Route 13, north of Woodside, Kent County, Delaware, because of construction work. Michelle A. Hindt ("defendant") failed to notice that traffic had stopped and collided with the plaintiff's vehicle in the rear.

The only medical testimony presented at trial was that of the plaintiff's treating physician, Dr. Richard DuShuttle. His initial evaluation of the plaintiff took place on November 18, 1999. The doctor found the presence of "spasms in the trapezius" and diagnosed a cervical strain along with muscle and ligament injuries. He testified that the motor vehicle collision on November 5, 1999 was the cause of her injuries. He recommended a course of physical therapy and prescribed medication for her condition. Muscle spasm was also documented in the physical therapy record dated November 22, 1999. Under objective findings, there was a positive notation in her records for muscle spasm in the cervical and lumbosacral paraspinals. The plaintiff had an MRI done on December 10, 1999 which was normal. She visited Dr.

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DuShuttle on December 27 and stated she was unable to go back to work but felt improvement with the physical therapy. The doctor noted there was still mild tenderness at the base of her neck and observed crepitus (a crinkly, cracking or grating sound in the joints) of the cervical spine. On January 17 the plaintiff was re-evaluated by Dr. DuShuttle. She stated that she was about 80-90% better and claimed discomfort in the low back only. The examination showed no objective neuro, motor, or sensory deficits but there was still bilateral trapezius tenderness. The doctor noted no findings of radiculopathy (herniated disc), no muscle atrophy, and no foot weakness bilaterally. After this examination, a return visit was recommended for two months out, if needed. She contacted the office on February 23 stating that she re-injured her back.

The defense offered no medical evidence to controvert Dr. DuShuttle's opinion that the plaintiff's injuries were caused from the motor vehicle collision.

**STANDARD OF REVIEW**

When reviewing a motion for a new trial, the jury's verdict is entitled to "enormous deference."<sup>1</sup> Traditionally, "the court's power to grant a new trial has been exercised cautiously and with extreme deference to the findings of the jury."<sup>2</sup> In the absence of exceptional circumstances, the validity of damages determined by

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<sup>1</sup> *Young v. Frase*, 702 A.2d 1234, 1236 (Del. 1997) (citing the Delaware Constitution, Art. IV, § 11(1)(a)).

<sup>2</sup> *Maier v. Santucci*, 697 A.2d 747, 749 (Del. 1997).

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the jury should be presumed.<sup>3</sup> This Court will not upset the verdict unless the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result.<sup>4</sup>

**CONTENTIONS OF THE PARTIES**

The plaintiff contends that based on the evidence presented, the jury award of \$0 is against the great weight of the evidence because the defendant admitted liability and disputed only the nature and extent of the plaintiff's injuries. The plaintiff further contends that the medical evidence was uncontroverted that the plaintiff suffered injury from the collision, with objective findings. The plaintiff also points out that the jury instructions were tailored so that the jury would award some damages to the plaintiff. The defense contends that the plaintiff's claims were of alleged muscle strains to the neck and lower back; that the objective signs of injury were minimal; that muscle strains are subjective in nature; that the credibility of the plaintiff and her treating physician were in issue; that the plaintiff was vague, if not evasive, regarding critical items such as other accidents and injuries, giving differing versions of events at different times; and that her demeanor and physical demonstrations while testifying, completely contradicted her own testimony.

**DISCUSSION**

The Delaware Supreme Court has held that "where the evidence conclusively

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<sup>3</sup> *Littrel v. Hanby*, 1998 Del. Super. LEXIS 10 at \*3-4, citing *Young*, 702 A.2d at 1236-37.

<sup>4</sup> *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979).

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establishes the existence of an injury, however minimal, a jury award of zero damages is against the weight of the evidence.”<sup>5</sup> In *Amalfitano v. Baker*, the Supreme Court concluded that “where medical experts present uncontradicted evidence of injury, confirmed by objective medical tests supporting a plaintiff’s subjective testimony about her injuries and offer opinions that the injuries relate to the accident about which the plaintiff complains, a jury award of zero damages is against the weight of the evidence.”<sup>6</sup> In that case, the plaintiff was stopped or stopping when her vehicle was struck from behind by the defendant’s vehicle. Several hours after the accident the plaintiff began experiencing back pain and went for treatment at a medical center. She was prescribed pain medication for her neck pain and released. She went to her doctor after the pain had not subsided and was prescribed rest, medication, and physical therapy with a chiropractor. At trial, the plaintiff testified she continued to experience pain and had not been able to return to her pre-accident routine. Her doctor and the chiropractor testified that they detected spasm and limited range of motion through objective testing which supported her subjective complaints of headache, and back and neck pain. They also testified that it was their opinion, based on the aforementioned symptoms, that the auto accident was the proximate cause of her injuries. The jury awarded zero damages and the plaintiff’s motion for a new trial was denied. On appeal the Court held that “uncontradicted medical evidence of injuries and their proximate cause, confirmed by independent objective testing, meet

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<sup>5</sup> *Maier v. Santucci*, 697 A.2d 747, 748 (Del. 1997) (medical experts from the opposing sides agreed there was injury, however, the nature and extent of those injuries was in dispute.)

<sup>6</sup> 794 A.2d 575, 578 (Del. 2001).

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the standard of ‘conclusive’ evidence of injury that would require a reasonable jury to return a verdict of at least minimal damages.”<sup>7</sup> The defendant in *Amalfitano*, as in the case at bar, chose not to call a doctor as a witness to challenge the plaintiff’s experts’ opinions. The court noted that “the defense presented the jury with *no basis upon which to reject Amalfitano’s uncontradicted subjective complaints, the confirmatory objective findings of her medical experts, or their ultimate findings that she suffered injuries proximately caused by the accident.*”<sup>8</sup> Although the jury can reject a plaintiff’s assertion of subjective complaints as not credible, they may not reject uncontradicted, objective findings of injury with medical expert opinion that the injuries were caused by the accident. The rulings in *Maier* and *Amalfitano* have been deemed by this Court to stand for the proposition that un-rebutted medical expert opinion supported by objective tests is conclusive.<sup>9</sup>

The case law supports the plaintiff’s contention that a zero damages award for her in this case is against established Delaware precedent. The plaintiff’s subjective complaints were supported by Dr. DuShuttle’s objective findings of injury. Her medical records and the testimony of her doctor verify that, subsequent to the accident, she suffered from “spasms in the trapezius,” and that he diagnosed a cervical strain along with muscle and ligament injuries. The doctor testified that it was his opinion that the proximate cause of the plaintiff’s injuries was the auto

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<sup>7</sup> *Id.* at 577.

<sup>8</sup> *Id.* at 578.

<sup>9</sup> *Redden v. Amalfitano*, 2002 Del. Super. LEXIS 168 at \*1-2. The reappearance of the name “Amalfitano” is apparently a coincidence.

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accident. Although the defense does argue that the plaintiff was evasive or contradictory during her testimony at trial, the uncontroverted objective findings of her physician should not have been rejected by the jury. Based on the uncontroverted evidence of the plaintiff's physical injuries presented at trial and her doctor's opinion that they were caused by the accident, the jury had to award damages in some amount.

In the alternative, the defendant urges the Court to award an *additur*. The Court declines to do so and orders a new trial.

The Motion for a New Trial is ***granted***.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary  
cc: Order Distribution  
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