

I. INTRODUCTION

Plaintiffs have filed a Motion for a New Trial pursuant to Superior Court Civil Rule 59 (“Rule 59”). Upon consideration of the evidence presented at trial and a review of Plaintiffs’ motion and defendant’s response, this court concludes Plaintiffs’ motion should be **DENIED**.

Defendant has filed a Motion for Costs under Superior Court Civil Rule 54 (“Rule 54”). Upon a review of the motion, this court concludes Defendant’s motion should be **GRANTED** in the amount of \$4393.44.

II. BACKGROUND

This case arises from injuries Plaintiff Elmore Walker, Jr. (“Walker”) allegedly suffered as a result of an automobile accident with Defendant John N. Campanelli (“Campanelli”). A jury trial was held from July 7 through 10, 2003. The jury’s verdict found Campanelli was negligent but that Campanelli’s negligence was not the proximate cause of Walker’s injuries and awarded no damages to Plaintiffs.

Plaintiffs filed a Motion for a New Trial on July 24, 2003. Campanelli filed a response on August 5, 2003.

Campanelli filed a Motion for Costs on July 15, 2003. Plaintiffs did not file a response.

III. STANDARD OF REVIEW

In a Motion for a New Trial, the court starts with the fundamental principle that the jury's verdict is presumed to be correct.¹ The court must determine whether the jury's verdict is against the great weight of evidence.² The jury's verdict should not be disturbed unless it is clearly shown to be the result of passion, prejudice, partiality or corruption, or that it was manifestly in disregard of the evidence or applicable rules of law.³ If a case "involves a controverted issue of fact in which the evidence is conflicting and out of the conflict may be gathered sufficient evidence to support a verdict for either party, the issue of fact will be left ... to the jury...."⁴ The court will not upset the verdict of a jury unless "the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result."⁵

Delaware Superior Court Civil Rule 54 ("Rule 54") provides that "costs shall be allowed . . . to the prevailing party upon application to the Court within ten (10) days of the entry of final judgment unless the court otherwise directs."⁶

¹ *Young v. Frase*, 702 A.2d 1234, 1236 (Del. 1997).

² *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979) (internal citation omitted).

³ *Young*, 702 A.2d at 1237 (internal citation omitted).

⁴ *Storey*, 401 A.2d at 463 (internal citation omitted).

⁵ *Id.* at 465 (internal citation omitted).

⁶ Super. Ct. Civ. R. 54(d).

IV. DISCUSSION

A. Plaintiffs' Motion for a New Trial.

Plaintiffs argue uncontroverted evidence of injury to Walker as a result of Campanelli's negligence was presented at trial. Therefore, an award of zero damages is inadequate as a matter of law. In addition, Plaintiffs argue that the court's refusal to admit photographs of the vehicles involved in the collision into evidence amounts to reversible error.

Campanelli counters that all of the evidence of Walker's injuries was based on Walker's subjective complaints. The jury, therefore, was free to consider Walker's credibility in deciding the weight to give Walker's claims of injuries, including opinions on the injuries given by experts. Campanelli additionally argues that introduction of the photographs of the vehicles, in the absence of any expert testimony relating visual damage to Walker's injuries, would be "unguided speculation."

1. Whether Plaintiffs presented uncontroverted evidence of injuries.

Delaware law is clear that when a plaintiff presents undisputed medical expert opinion regarding causation of plaintiff's injuries, a jury is required to award past lost wages and past medical expenses.⁷ It is equally clear that when an expert's opinion is based on subjective symptoms alone, even if the expert accepts

⁷ *Christina School District v. Reuling*, 577 A.2d 752 (Del. 1990).

those subjective accounts of the injuries, the jury is entitled to reject the expert's opinion and award no damages.⁸

The court finds that all of Walker's injuries were based upon his subjective complaints. In fact, some of Walker's alleged injuries were not supported by any medically cognizable relationship between the site of the injury and the locus of the symptoms. The court thus finds this is an issue of Walker's credibility. The credibility of any witness is solely for the jury to determine.⁹ The court finds there was a sufficient basis for the jury to conclude that Walker's injuries, if any, were so minimal that they were not worthy of compensation.¹⁰ "The credibility judgments made by the jury will not be disturbed by the court unless it is clearly against a fair and reasonable determination of the issues presented."¹¹ The court, therefore, finds no basis for granting a new trial on this issue.

2. Admissibility of photographs of damaged vehicles.

In *Davis v. Maute*, the court made clear that an inference that minimal damage to a plaintiff's vehicle translated to minimal personal injuries amounted to

⁸ *Sullivan v. Sanderson*, 2002 WL 1162305 at **3 (Del Super.).

⁹ *Knight v. State*, 690 A.2d 929, 932 (Del. 1996).

¹⁰ *See Hall v. Dorsey*, 1998 WL 960774 at *6 (Del. Super.).

¹¹ *Thomas v. Lagola*, 2003 WL 22496355 at *1 (Del. Super.) (internal citation omitted).

“unguided speculation.”¹² In the case at bar, this court finds Plaintiffs are attempting to use photographs of the vehicles to make the opposite conclusion – that significant damage to the vehicle translates to significant personal injuries to Walker. The court finds this use as equally impermissible as the use in *Davis*. The court finds no reason to disturb its trial ruling denying the admission of the photographs into evidence. The court thus finds no basis for granting a new trial on this issue.

B. Motion for Costs.

Campanelli, as the prevailing party, has requested reimbursement for the following expenses under Rule 54:

Dr. Meyers' deposition fee	\$1,700.00
Dr. Stephens' expert testimony fee	\$2,000.00
Videographer charges for Dr. Meyers' deposition	\$ 693.44

1. Costs for expert witness testimony.

The award of costs for expert witness testimony is committed to the sound discretion of the trial court.¹³ When determining reasonable reimbursement for expert costs, the court must “recognize that a significant disruption to a physician’s

¹² 770 A.2d 36, 41 (Del. 2001).

¹³ See *Donovan v. Delaware Water & Air Resources Com'n.*, 358 A.2d 717, 723 (Del. 1976); 10 Del C. § 8906 (1999).

practice occurs when a physician is called to testify as an expert witness and that such testimony is important to the court since it assists the trier of fact and serves a significant public interest.”¹⁴ There is no fixed formula to determine reasonable expert fees.¹⁵ Nevertheless, in 2002, the court held that a fee of \$1,800 was appropriate for expert medical testimony that lasted about an hour and a half plus travel time for a total of a half-day of the witness’ time.¹⁶

The expert fees submitted in the case at bar are in line with expert fees recently awarded.¹⁷ The court, therefore, **GRANTS** Campanelli’s Motion for Costs in the amounts of \$1,700 for Dr. Meyers’ testimony and \$2,000 for Dr. Stephens’ testimony.

2. Videographer fees.

The cost of videotaping a deposition is allowable when the video deposition is introduced into evidence.¹⁸ The cost of transcription of a deposition is allowable

¹⁴ *Sliwinski v. Duncan*, 1992 WL 21132 at *2 (Del.).

¹⁵ *Id.*

¹⁶ *Dunckle v. Prettyman*, 2002 WL 833375 at *4 (Del. Super.).

¹⁷ *Berry v. Seramone-Isaacs*, 2003 WL 231246 at **2 (Del. Super.); *Patterson v. Coffin*, 2003 WL 22853657 at *6 (Del. Super.).

¹⁸ *Nygaard v. Lucchesi*, 654 A.2d 410, 413 (Del. Super. 1994).

when the transcription is introduced into evidence.¹⁹ Dr. Meyers' video deposition was introduced into evidence.

The court will, therefore, **GRANT** Campanelli's Motion for Costs for videographer fees in the amount of \$693.44.

V. CONCLUSION

For the above reasons, the court finds no legal basis for granting Plaintiffs' Motion for a New Trial, therefore, Plaintiffs' Motion for a New Trial is **DENIED**.

Campanelli's Motion for Costs is **GRANTED** in the amount of \$4393.44.

Calvin L. Scott, Jr.
Superior Court Judge

¹⁹ *Id.*