IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

MARK L. WARRINGTON and CHRISTINE R. WARRINGTON, f/k/a/ Neumann,	)	C.A. No. 99C-03-015 JTV
Plaintiffs,	)	
RONALD K. PETERSON,	)	
Defendant.	)	

Submitted: November 14, 2004
Decided: February 24, 2004

A. Richard Barros, Esq., Barros, McNamara, Malkiewicz & Taylor, Dover, Delaware. Attorney for Plaintiffs.

Robert B. Young, Esq., Young &Young, Dover, Delaware. Attorney for Defendant.

Upon Consideration of Defendant's
Motion for a New Trial, or Remittitur
DENIED

VAUGHN, Resident Judge

ORDER

Warrington v. Peterson
C.A. No. 99C-03-015 JTV
February 24, 2004

Upon consideration of the defendant's motion for a new trial, or remittitur, the plaintiffs' opposition, and the record of the case, it appears that:

1. The plaintiffs, Mark L. Warrington and Christine R. Warrington, were injured in a motor vehicle accident caused by the defendant, Ronald K. Peterson. A jury returned verdicts of $460,000 in favor of plaintiff Mark L. Warrington and $40,000 in favor of plaintiff Christine R. Warrington.

2. The evidence established that the defendant caused the accident. Evidence was presented that Mr. Warrington suffered extensive injuries which required knee surgery, surgery to the cervical spine, and separate surgery to the lumbar spine. He experienced headaches and substantial and ongoing pain to the cervical spine, the right arm and hand, lumbar spine, buttocks and legs. There was evidence of other injury as well. Having viewed and listened to the evidence as presiding judge, it is clear to me that the jury was well within its discretion to conclude that Mr. Warrington's injuries were painful, permanent, and changed his life significantly for the worse.

3. The evidence permitted the jury to conclude that Mrs. Warrington has permanent injury to the neck and low back.

4. When considering a motion for a new trial, the jury's verdict is presumed to be correct.[1] A verdict should be set aside only when it is against the weight of the evidence,[2] or where the amount of an award "is so grossly out of

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[1] *Lacey v. Beck*, 161 A.2d 579, 580 (Del. Super. 1960).

[2] *James v. Glazer*, 570 A.2d 1150, 1156 (Del. 1990).

proportion to the injuries suffered as to shock the court's conscience and sense of justice."[3] A jury's verdict should not be disturbed unless it is manifest that it was the result of passion, prejudice, partiality or corruption, or that it was clearly in disregard of the evidence or applicable rules of law.[4] The verdict must be manifestly and palpably against the great weight of the evidence or for some reason, or a combination of reasons, justice would miscarry if it were allowed to stand.[5]

5. The defendant first contends that the verdicts were excessive. However, based upon the evidence presented, the Court finds that the verdicts were reasonable. The Court's conscience was not shocked by the verdicts.

6. The defendant next contends that the testimony of Scott D. Batterman, Ph.D., a biomechanical expert, should not have been admitted. Dr. Batterman was called as a witness by the plaintiffs. Prior to trial, the Court denied a defense motion *in limine* to exclude that testimony. Dr. Batterman's ultimate opinion was that the nature and impact of the accident was consistent with the plaintiffs' claimed injuries. His testimony was, therefore, corroborative of the testimony of the plaintiffs and also the treating physicians who testified that the injuries were caused by the accident. The defendant argues that the testimony should have been ruled inadmissible on the basis of cases precluding biomechanical discussion of medical

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[3] *Young v. Frase,* 702 A.2d 1234 (Del. 1997).

[4] *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979).

[5] *McCloskey v. McKelvey*, 174 A.2d 691 (Del. Super. 1961).

causation. He specifically mentions the cases of *Kelly v. McHaddon* [6] and *Davis v. Maute,* [7] although his argument is not limited to these two cases. He also argues that the testimony was prejudicially cumulative and confusing.

7. *Kelly* recognized that the testimony of a biomechanical engineer may be admissible but that such a witness cannot offer a medical opinion on causation. In this case, Dr. Batterman did not offer a "medical opinion" on the cause of either plaintiffs' injuries. In *Davis*, the Supreme Court held that, in the absence of expert testimony, a party cannot argue to the jury that there is a correlation between the extent of damage to a vehicle and the extent of an occupant's injuries. While the case held that expert testimony was necessary to support an argument that a correlation exists between the extent of damage to a vehicle and injury to an occupant, it did not address the admissibility, or inadmissibility, of expert testimony itself.

8. I remain convinced that Dr. Batterman's testimony was properly admissible to show the physical forces involved in the accident and the effect of those forces on the plaintiffs' bodies. Dr. Batterman did not stray into the area of "medical causation." His testimony was not cumulative as it added a dimension to the plaintiffs' case which was not contained in the testimony of any other witness. Evidence is not cumulative merely because it makes a same or similar point which has been made in a different way by other evidence. Dr. Batterman's testimony was

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[6] 770 A.2d 36 (Del. 2001).

[7] 2001 Del. Supr. LEXIS 60.

not confusing. The contentions that Dr. Batterman's testimony should have been excluded under authorities such as the ones mentioned, or because it was prejudicially cumulative, or confusing, are rejected.

9. The defendant next contends that the two plaintiffs should have been barred from testifying because they were not listed as witnesses on the pre-trial stipulation. This was no doubt a mere oversight on the part of counsel for plaintiffs. Upon inquiry when the point was raised prior to trial, the Court could discern no unfair prejudice to the defendant in permitting the plaintiffs to testify. Any prejudice to the defendant was more than offset by the manifest injustice of denying the plaintiffs the opportunity to testify at their own trial

10. The defendant next contends that plaintiffs' counsel was permitted to ask Dr. Ducker, a defense witness, questions on re-cross examination that went beyond the scope of the re-direct examination, specifically, a question concerning work limitations. I am not persuaded that the question complained of was beyond the scope of the re-direct. In addition, the decision to allow the question was within the Court's discretion and no substantial right of the defendant was affected.

11. Finally, the defendant contends that in closing argument plaintiffs' counsel improperly stated that the future medical expenses in evidence could increase. Upon objection by defense counsel, the Court sustained the objection and gave a curative instruction to the jury. In addition, counsel for the plaintiffs readily acknowledged to the jury that he had made an incorrect statement and that the jury should consider only the dollar amount in evidence. As a result of these corrective actions, the defendant suffered no prejudice.

12. Accordingly, the defendant's motion for a new trial or remittitur is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
Resident Judge

oc: Prothonotary
cc: Order Distribution
File