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ANGELINA SANTA MARIA v. KATIE KLEVECZ ET AL.
(AC 21280)

Dranginis, Flynn and Daly, Js.

Argued January 8—officially released May 21, 2002

(Appeal from Superior Court, judicial district of New London, Hon. D. Michael Hurley, judge trial referee.)

Warren Miller, with whom was *R. Edward Phillips*, for the appellant (plaintiff).

Mark J. Sheehan, with whom was *Francine R. Devin*, for the appellees (defendants).

Opinion

DRANGINIS, J. The plaintiff, Angelina Santa Maria, appeals from the judgment of the trial court rendered in her favor in this personal injury action, claiming that the court should have granted her motion to set aside the verdict. On appeal, the plaintiff claims that the motion was denied improperly because (1) the jury's failure to award noneconomic damages was contrary to the jury instructions and the evidence, (2) the amount of economic damages was contrary to the evidence presented and (3) the jury's award compels the conclusion that the jury was mistaken or influenced by prejudice, corruption or partiality. We affirm the judgment of the trial court.

This appeal arises from a personal injury action

brought by the plaintiff to recover damages for injuries she sustained in an automobile accident with the defendants, Brian Klevecz and Katie Klevecz. At trial, the defendants admitted liability for the collision. The extent of injuries allegedly sustained by the plaintiff, however, was disputed. The jury awarded the plaintiff \$2000 in economic damages. It did not award noneconomic damages. The plaintiff subsequently filed a motion to set aside the verdict, which the court denied. This appeal followed.

We must first consider whether the record is adequate for our review. In this case, the court denied the plaintiff's motion to set aside the verdict without comment. It did not prepare a written memorandum of decision, nor is there a signed transcript of an oral decision as required by Practice Book § 64-1. The plaintiff failed to complete the record by way of a motion for articulation. "It is incumbent upon the appellant to take the necessary steps to sustain its burden of providing an adequate record for appellate review. . . . Without the necessary factual and legal conclusions furnished by the trial court . . . any decision made by us respecting [the defendant's claims] would be entirely speculative. . . . We have, on occasion, reviewed claims of error in light of an unsigned transcript as long as the transcript contains a sufficiently detailed and concise statement of the trial court's findings. . . . Where the transcript does not reveal the basis of the court's factual conclusion, we will not review the appellant's claims." (Internal quotation marks omitted.) *Mitchell v. Silverstein*, 67 Conn. App. 58, 61–62, 787 A.2d 20 (2001), cert. denied, 259 Conn. 931, A.2d (2002). The record in this case includes an unsigned transcript that contains a sufficiently detailed and concise statement of the court's finding. See *Solomon v. Solomon*, 67 Conn. App. 91, 92, 787 A.2d 4 (2001). We therefore will review the plaintiff's claims.

"[T]he proper appellate standard of review when considering the action of a trial court granting or denying a motion to set aside a verdict and motion for a new trial . . . [is] the abuse of discretion standard. . . . In determining whether there has been an abuse of discretion, every reasonable presumption should be given in favor of the correctness of the court's ruling. . . . Reversal is required only where an abuse of discretion is manifest or where injustice appears to have been done. . . . We do not . . . determine whether a conclusion different from the one reached could have been reached." (Internal quotation marks omitted.) *Hackling v. Casbro Construction of Rhode Island*, 67 Conn. App. 286, 289, 786 A.2d 1214 (2001). With that standard of review in mind, we turn to each of the plaintiff's claims.

I

The plaintiff first claims that the jury award was contrary to the court's instructions. Specifically, the

plaintiff claims that the jury was instructed that she was entitled to noneconomic damages for “pain, suffering, physical or mental disability or impairment,” but that the jury failed to award noneconomic damages despite evidence supporting such an award.¹

“In a recently decided case, *Wichers v. Hatch*, 252 Conn. 174, 745 A.2d 789 (2000), our Supreme Court discussed the test that a trial court should use in deciding whether to set aside a verdict awarding economic damages but no noneconomic damages, and stated that the jury’s decision to award economic damages and zero noneconomic damages is best tested in light of the circumstances of the particular case before it. Accordingly, the trial court should examine the evidence to decide whether the jury reasonably could have found that the plaintiff had failed in his proof of the issue. That decision should be made, not on the assumption that the jury made a mistake, but, rather, on the supposition that the jury did exactly what it intended to do.

“As we previously have stated, although the trial court has a broad legal discretion in this area, it is not without its limits. Because in setting aside a verdict the court has deprived a litigant in whose favor the verdict has been rendered of his constitutional right to have disputed issues of fact determined by a jury . . . the court’s action cannot be reviewed in a vacuum. The evidential underpinnings of the verdict itself must be examined. Upon issues regarding which, on the evidence, there is room for reasonable difference of opinion among fair-minded men, the conclusion of a jury, if one at which honest men acting fairly and intelligently might arrive reasonably, must stand, even though the opinion of the trial court and this court be that a different result should have been reached. . . . [I]f there is a reasonable basis in the evidence for the jury’s verdict, unless there is a mistake in law or some other valid basis for upsetting the result other than a difference of opinion regarding the conclusions to be drawn from the evidence, the trial court should let the jury work their will.” (Internal quotation marks omitted.) *Daigle v. Metropolitan Property & Casualty Ins. Co.*, 60 Conn. App. 465, 477–78, 760 A.2d 117 (2000), *aff’d*, 257 Conn. 359, 777 A.2d 681 (2001).

The transcript reveals that the court denied the plaintiff’s motion to set aside the verdict on the ground that the jury’s valuation of noneconomic damages was based on its assessment of the credibility of the witnesses and that the court could find no reason to usurp the jury’s finding. We agree.

The jury heard testimony concerning the nature and extent of the plaintiff’s alleged injury and pain and suffering. The jury first heard testimony from the plaintiff herself that she suffered neck and back pain, headaches, nausea, constipation and hemorrhoids, and that she

had trouble sleeping. The jury had before it deposition testimony from Steven Grob, a chiropractor. He testified that the plaintiff had pain and that his initial diagnosis of her was a “lumbar disk displacement of L5, S1, which is the lowermost disk space in the lower back, lumbar radiculitis, cervical strain/sprain injury, headaches or cervical cranial syndrome and thoracic or mid-back strain/sprain.” He rated the plaintiff as having a permanent disability that he described as “5 percent whole person impairments to the cervical, thoracic and lumbar spines as a result of the accident . . . that converts to 11 percent whole person impairment.”

Michael Yoel, also a chiropractor, testified for the defendants. He testified that he reviewed the plaintiff’s medical records and performed a medical examination of her. He testified that he observed no abnormalities or deformities and that the plaintiff utilized a full range of motion. In fact, he testified that the plaintiff’s physical examination was “normal” and that he did not think that she had “any permanent physical disability.” We note that Yoel did testify that “she had some injury and felt pain for a couple of weeks or maybe a couple of months.” He went on to state, however, “I just don’t believe it was . . . a permanent injury.” He further undermined Grob’s testimony by raising questions about his diagnoses and treatment plans.²

Our review of the record reveals that the defendants disputed the nature and extent of the plaintiff’s injuries. On the basis of the testimony adduced at trial, we conclude that it was reasonable for the jury to conclude that the plaintiff’s alleged pain and suffering was, at a minimum, exaggerated. First, the accident was relatively minor. It caused little or no damage to the vehicles and did not require emergency care for any of the parties. Second, the plaintiff complained of various ailments, which, if the jury believed Yoel, were not supported by her medical record or physical examination, and were not necessarily causally related to the accident. The record further supports the conclusion that the plaintiff received treatment well beyond that which was medically necessary. The jury also heard testimony that the plaintiff previously had injured herself in a slip and fall. It was reasonable therefore for the jury to conclude that the fall or other stressors³ were at least partially responsible for the plaintiff’s alleged pain and suffering. That is consistent with the jury’s award of economic damages substantially less than the amount sought. Cf. *Schroeder v. Triangulum Associates*, 259 Conn. 325, 333–34, 789 A.2d 459 (2002) (zero noneconomic damages improper where jury found defendant fully liable for all of plaintiff’s claimed economic damages). “It is the province of the jury to weigh the evidence and determine the credibility and the effect of testimony [T]he jury is free to accept or reject each expert’s opinion in whole or in part.” (Citation omitted; internal quotation marks omit-

ted). *Marchell v. Whelchel*, 66 Conn. App. 574, 583, 785 A.2d 253 (2001). We therefore cannot conclude that the court abused its discretion in denying the plaintiff's motion to set aside the verdict based on the jury's award of zero noneconomic damages.

II

The plaintiff next claims that the jury's award of \$2000 in economic damages was contrary to the evidence presented. The plaintiff further claims that because the award was contrary to the evidence, the jury therefore must have been "mistaken, influenced by prejudice, corruption or partiality."⁴ We are not persuaded.

"The test that governs the propriety of the amount of an award in these circumstances is whether the award falls somewhere within the necessarily uncertain limits of just damages or whether the size of the verdict so shocks the sense of justice as to compel the conclusion that the jury was influenced by partiality, prejudice, mistake or corruption. . . . On issues where the evidence allows room for reasonable differences of opinion among fair-minded people, if the conclusion of the jury is one that reasonably could have been reached, it must stand even though the trial court might have reached a different result." (Citation omitted; internal quotation marks omitted.) *Hackling v. Casbro Construction of Rhode Island*, supra, 67 Conn. App. 294–95.

The plaintiff argues that if the jury accepted the testimony of her expert witness, Grob, the evidence supports an award of \$11,394.71. She points out that Yoel testified that she might need up to three months of treatment. The plaintiff concedes, as she must, that "the jury could reasonably have accepted only a portion of Dr. Yoel's testimony and determined, therefore, that less than three months of chiropractic treatment with Dr. Grob was reasonable and necessary." She then argues, disingenuously,⁵ that the \$2000 award "does not correspond to any reasonable combination of evidence presented to the jury."

"[T]he determination of the amount of damages to be awarded, if any, is solely the jury's function." General Statutes § 52-216b (b); *Daigle v. Metropolitan Property & Casualty Ins. Co.*, supra, 60 Conn. App. 473–75. "Although damages often are not susceptible of exact pecuniary compensation and must be left largely to the sound judgment of the trier . . . [a] situation does not invalidate a damage award as long as the evidence afforded a basis for a reasonable estimate by the [trier] of that amount. . . . Mathematical exactitude in the proof of damages is often impossible The determination of damages involves a question of fact that will not be overturned unless it is clearly erroneous." (Internal quotation marks omitted.) *Giulietti v. Giulietti*, 65 Conn. App. 813, 862–63, 784 A.2d 905, cert. denied, 258 Conn. 946, 947, 788 A.2d 95, 96, 97 (2001).

We cannot say, in the present case, that the jury's award of \$2000 in economic damages was contrary to the evidence. As we stated, the jury had before it testimony that not all of the plaintiff's treatments were necessary. The jury reasonably could have apportioned economic damages according to its assessment of necessary treatment. The plaintiff's own examples demonstrate that the jury's assessment of damages was proper.

The judgment is affirmed.

In this opinion DALY, J., concurred.

¹ General Statutes § 52-572h (a), which sets forth the relevant definitions of economic and noneconomic damages, provides in relevant part: "(1) 'Economic damages' means compensation determined by the trier of fact for pecuniary losses including, but not limited to, the cost of reasonable and necessary medical care, rehabilitative services, custodial care and loss of earnings or earning capacity excluding any noneconomic damages; (2) 'noneconomic damages' means compensation determined by the trier of fact for all nonpecuniary losses including, but not limited to, physical pain and suffering and mental and emotional suffering"

² Among other things, Yoel testified that the cervical spine deterioration to which Grob referred in his testimony (1) often does not present pain, (2) the plaintiff's complaints of pain were inconsistent with her cervical spine curvature and (3) could not necessarily be attributable to a traumatic injury, but may have been due to normal deterioration. Yoel also testified, contrary to Grob's assertion, that observations with respect to the plaintiff's uneven stature were insignificant. He stated that there was nothing in the record or from his examination to support Grob's conclusion that the plaintiff suffered from lumbar disc displacement or lumbar radiculitis, and testified about inconsistencies and inadequacies in Grob's medical record keeping for the plaintiff.

³ The record revealed that the plaintiff recently was divorced and was considering attending college.

⁴ The plaintiff also argues that in light of the jury's award of economic damages, the jury's failure to award noneconomic damages must have been the result of prejudice, corruption or partiality. Because we held in part I that the award of zero noneconomic damages was supported by the evidence, we conclude that this claim is without merit.

⁵ The plaintiff in her principal brief cites three different combinations of costs amounting to \$2098.15, \$1972.05 and \$2021.05.