IN THE COURT OF APPEALS 04/09/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00278 COA

PAMELA WILLIAMSON WALKER

APPELLANT

v.

W.L. TURNER TRUCKING, INC.

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JOHN LESLIE HATCHER

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

RALPH E. CHAPMAN

DANA J. SWAN

ATTORNEYS FOR APPELLEE:

WILLIAM O. LUCKETT, JR.

N.J. MCMULLEN, JR.

NATURE OF THE CASE: PERSONAL INJURY-AUTOMOBILE ACCIDENT

TRIAL COURT DISPOSITION: JURY VERDICT IN THE AMOUNT OF $80.00 AWARDED IN FAVOR OF PAMELA WILLIAMSON WALKER

BEFORE THOMAS, P.J., COLEMAN, AND McMILLIN, JJ.

McMILLIN, J., FOR THE COURT:

In this case, Pamela Williamson Walker appeals the jury verdict and resulting judgment awarding her damages in the amount of $80.00 covering certain medical bills incurred as a result of injuries sustained in an automobile accident. Walker argues that, based on a review of the evidence, the jury verdict was against the overwhelming weight of the evidence and was the result of bias, passion, or prejudice. Walker also asserts error in the trial court's ruling on certain evidentiary matters.

After a review of the testimony presented at trial, we are unconvinced that the jury's verdict is so low as to evidence bias, passion, or prejudice against Walker. We further find that the trial court's evidentiary ruling in question was not so prejudicial as to rise to the level of reversible error. We, therefore, affirm the judgment of the lower court.

I.

FACTS

On May 16, 1989, Pamela Williamson Walker was involved in an accident with Tommie James Owten, a driver for W.L. Turner Trucking, Inc. Walker, who was traveling in Coahoma County on Highway 61, stopped at a yield sign at the intersection of Highway 61 and Highway 6 before entering Highway 6. At that time, Walker's Dodge van was struck from the rear by an eighteen-wheel vehicle driven by Owten.

The jury was presented with conflicting testimony as to the fault of the drivers involved in the accident and the extent of injuries sustained. Walker testified that she had stopped at the yield sign to allow a blue truck to clear the intersection, and that she did not see Owten until she was hit from the rear. Owten, however, testified that not only were there no cars in the vicinity of the intersection but that Walker stopped, proceeded slowly, and then suddenly stopped again, forcing him to suddenly slam on the brakes and ultimately rear-end her van. Officer Bradford Terry, the investigating officer, testified that Walker was issued no citation, and Owten was cited for failure to yield and listed the accident as minor with no injuries.

Although Walker did not initially note any injury at the scene, she testified that approximately six days after the accident, she sought medical attention for stiffness, headaches, and blurred vision. She was treated by Dr. Warrington, her local physician, for the pain, and referred to Dr. Pang, a physician in Clarksdale, for the vision problems. The medical bills for these treatments totaled $80.00. After a period of six months from the accident and after Walker had retained an attorney to represent her in regard to the accident, she began a course of seeking medical advice and psychological attention from various doctors recommended by friends and counsel. This pattern continued for the three years leading up to trial.

The jury returned with a unanimous verdict awarding Walker $80.00. Walker filed a motion for additur, or in the alternative, a new trial which was denied by the trial court. Walker thereupon filed this appeal.

II.

THE JURY VERDICT

Walker takes issue with the lower court's denial of additur and motion for new trial. Walker specifically argues that the jury verdict was against the overwhelming weight of the evidence. Walker contends that the jury's failure to award damages in the total amount of medical bills submitted is the result of bias, passion, and prejudice.

This Court is bound by a well-settled standard when reviewing a motion for new trial in the lower court. The trial judge is given wide latitude and discretion in the grant or denial of a motion for new trial. *Moody v. RPM Pizza, Inc.,* 659 So. 2d 877, 881 (Miss. 1995). The trial judge should grant a motion for new trial only if the credible evidence, viewed in the light most favorable to the non-moving party, would result in a miscarriage of justice if allowed to stand. *Id.* This Court will reverse only for an abuse of that discretion. *Id.*

In order to alter a jury award by additur, the trial court must find either (1) that the jury verdict is so shocking to the conscience that it is the product of bias, passion, and prejudice or (2) the verdict is contrary to the overwhelming weight of credible evidence. *See* Miss. Code Ann. § 11-1-55 (1972). The trial court is not permitted to alter the verdict by substituting its judgment for that of the jury simply because it is of the opinion that more or less should have been awarded. *Brake v. Speed,* 605 So. 2d 28, 34 (Miss. 1992) (citing *Toyota Motor Co. v. Sanford,* 375 So. 2d 1036, 1038-39 (Miss. 1979)); *see also Green v. Grant,* 641 So. 2d 1203, 1208 (Miss. 1994); *Rodgers v. Pascagoula Pub. School Dist.,* 611 So. 2d 942, 945-46 (Miss. 1992).

In this case, Walker submitted into evidence medical bills totaling $9,575.00 incurred between May 1989 and April 1992, which she alleged were necessary to treat injuries she had received in the accident with Owten. These medical bills were for physical therapy, chiropractic services, several visits to both a neuro-psychologist and a psychologist, as well as several general practitioners and an orthopedic surgeon, and a hospital stay for cervical traction. Walker is correct in her assertion that, based on section 41-9-119 of the Mississippi Code of 1972, proof that these bills were paid or incurred because of her injury is prima facie evidence that the bills are reasonable. Miss. Code Ann. § 41-9-119 (1972). However, these bills may be rebutted by evidence presented by the opposing party, leaving the ultimate question of reasonableness and necessity for the jury to determine. *See Jackson v. Brumfield,* 458 So. 2d 736, 737 (Miss. 1984).

The jury obviously found that certain medical bills were either unnecessarily incurred or unrelated to the accident in question. There was evidence in the record to support such a conclusion. The initial examination by Dr. Pang, the eye doctor who treated Walker, noted Walker's condition indicated a history of scintillating skulltoma consistent with basilar migraines. This indicated that Walker may have had problems with headaches in the past. Further, the jury could have believed that Walker's injuries were incurred prior to the accident or not proximately caused by the accident. Testimony indicated that Walker had been treated in February 1989, just one month prior to the accident, for blows received from her husband to the head and back. Walker was also treated in January 1992 for injuries received in a slip and fall accident.

Finally, the jury could have attributed Walker's headaches, muscle pain, and tension to several factors. There was the stress from her divorce, which was final shortly after the accident and the adjustment for her and her children to a new husband and child after her remarriage within a short period of time. In addition, there was the stress of a family business failure which forced her to seek other work, all of which occurred within 1989, the year of the accident.

The jury could have also believed that Walker exaggerated the extent of her injuries for purposes of the suit. A job application was introduced on which Walker failed to report any headache problems (either frequent or severe), and which failed to report any previous back injuries. These omissions stood in stark contrast to her reference on the application to her stomach and thyroid problems and a recent foot surgery. The jury's determination could also be supported by a report from Dr. Long, the neuro-psychologist, which indicated that Walker fit the profile of an individual with a long history of preoccupation with somatic concerns who tends to dwell on physical problems, causing aggravation of any such problems.

Dr. Warrington stated that he had treated Walker several times since the May 1989 visit following the accident, and Walker had not complained of neck or back pain since that time. In addition, the jury was presented with video tape depicting Walker participating in everyday activities such as lifting her grandson, grocery shopping, and planting flowers.

Taking the evidence in the light most favorable to the non-moving party, the jury verdict awarding damages in the amount of $80.00 is supported by credible evidence. When, as in the case at bar, the reasonableness and necessity of expenses is disputed by the parties, "this Court will defer to the jury, which determines the weight and worth of testimony and the credibility of the witness at trial." *Green v. Grant*, 641 So. 2d 1203, 1209 (Miss. 1994) (citations omitted). We cannot say that the trial judge abused his discretion in denying the motion for additur or motion for new trial, and we, therefore, affirm the ruling of the lower court.

III.

THE MEDICAL REPORT AND SUPPORTING AFFIDAVIT

Walker asserts that the trial court committed reversible error by admitting into evidence an M.R.I. report ordered by Dr. Barr after the date Dr. Barr was deposed. Dr. Barr did not testify at the trial, and Dr. Duke, who prepared the report pursuant to Dr. Barr's request, was not called as a witness. On that state of the record, Walker complains that the report was inadmissible hearsay.

Turner Trucking asserts that the record was admissible under Mississippi Rule of Evidence 803(6), commonly known as the "business records" exception to the hearsay rule. Rule 803(6) establishes the necessary predicate that must be laid for admission of business records by requiring that the criteria for admission under the exception be "shown by the testimony of the custodian or other qualified witness . . . ." M.R.E. 803(6). No such sponsoring witness on behalf of the report was offered by Turner Trucking, which had the burden of establishing the applicability of the exception. *Butler v. Pembroke*, 568 So. 2d 296, 298 (Miss. 1990).

It may be that the necessity for such a sponsoring witness was obviated by the fact that the report was actually furnished to Turner Trucking by Walker during the course of discovery. This would seem sufficient to meet any questions as to the genuineness of the report, and it does not appear open to reasonable doubt that the report, if authentic, would be a business record of Stage Road Magnetic Imaging, the organization on whose behalf Dr. Duke was acting.

We decline, however, to delve into the intricacies of this argument for the reason that we have concluded that the admission of the report, whether error or not, was clearly harmless. The report substantially impeaches itself with the statement that the "[s]tudy [was] somewhat limited by patient movement and repeated swallowing." Beyond that, the text of the report consists of highly technical phraseology that is essentially unintelligible to this Court, and we surmise was equally uninstructive to the jury. In that circumstance, the report, standing alone, has no probative value one way or the other on the issues submitted to the jury for decision.

Had Turner Trucking produced an "expert" who proceeded to interpret the report in a light favorable to the defense, then the issue of the initial admissibility of the report would become crucial. In the present state of the record, we conclude that the report provided essentially no useful information to the jury, neither does it appear that it was calculated to mislead or confuse the jury. Its admission, even if erroneous, did not produce the unfair prejudice that is required for reversal. *Century 21 Deep S. Properties, Ltd. v. Corson*, 612 So. 2d 359, 369 (Miss. 1992).

THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY AWARDING PAMELA WILLIAMSON WALKER $80.00 DAMAGES IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, PAYNE, AND SOUTHWICK, JJ., CONCUR. KING, J., DISSENTS WITHOUT WRITTEN OPINION.