

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00808 COA**

FANNIE YATES

APPELLANT

v.

MARTHA E. WEEKS

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	06/29/96
TRIAL JUDGE:	HON. JOSEPH H. LOPER JR.
COURT FROM WHICH APPEALED:	WEBSTER COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JIM WAIDE
ATTORNEY FOR APPELLEE:	RICHARD SPANN
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY
TRIAL COURT DISPOSITION:	DEFENDANT TO PAY PLAINTIFF \$353 IN DAMAGES.
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE BRIDGES, C.J., COLEMAN, DIAZ, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Fannie Yates brought suit against Martha E. Weeks for injuries suffered in an automobile accident. A jury returned a verdict for Yates, but only for \$353 in damages. Yates alleges on appeal that the trial court should not have admitted testimony concerning previous claims for similar injuries, and that she should have a new trial on the issue of damages. We affirm.

FACTS

On September 2, 1994, Yates and Weeks were both traveling northbound on Adams Avenue in Eupora. Weeks's vehicle collided with Yates's vehicle. The collision took place immediately after Weeks had rounded a curve in the road in an area where there was a slight rise in the roadway.

Yates testified that she was braking in order to turn left into a driveway and was hit from behind by Weeks. A bystander who witnessed the accident testified that he saw Yates's brake lights go on as she passed his driveway, then Weeks ran into the back of Yates's vehicle.

Weeks testified that she had not been immediately behind Yates and had not seen her vehicle until she rounded the curve. Weeks claimed that she did not see brake lights or a turn signal and did not realize until too late that Yates's vehicle was not moving. Weeks testified that she was traveling at a speed of between 30 and 35 m.p.h.

Officer Hunter investigated the accident. He testified that Yates told him that she was slowing to stop in order to ask the person standing in his driveway a question. Yates did not indicate to the officer that she planned to turn into the driveway. The officer also testified that Weeks told him that she had not realized until too late that Yates was slowing or stopping.

Yates had neck and back pain and was transported to the emergency room of the Webster County Hospital. Yates was released to the care of Dr. Ozborn, her family physician. Dr. Ozborn treated Yates for dizziness, headaches, cervical strain, loss of memory, vertigo, contusions, and acute and chronic anxiety. Yates's medical records indicated that she also suffers from degenerative disc disease. Yates was later treated by a neurologist and a physical therapist, neither of whom testified. Yates presented hospital bills amounting to \$4,097, a medical bill from Dr. Ozborn for \$219 and a medical bill from Dr. Fletcher for \$168. Yates testified at trial that her symptoms had not subsided.

Weeks's counsel raised in cross-examination various previous injuries that Yates had suffered. Those questions are issues on appeal, which we discuss below.

At the close of the evidence, the jury was instructed to allocate fault. It was also told to consider pre-existing injuries, if any, and to reduce the amount of damages to be awarded Yates based on them. Neither party requested a special interrogatory. The jury returned a general verdict in favor of Yates in the amount of \$353. Yates filed a motion for a new trial which was denied.

DISCUSSION

I. ADMISSION OF TESTIMONY

During direct examination, Yates's own counsel asked her if she had prior to the accident suffered any of the physical problems that she alleges arose from the accident. He specifically asked if she "ever had any problem with back pain except for that accident back in the 80's?" Yates testified that she had not. On cross-examination Weeks's counsel inquired about a twenty-year old accident Yates had in Mathiston in which she had complained of a back injury. The court overruled a relevancy objection, holding that the information was relevant since Yates's credibility was at issue. Yates testified that she could not remember whether or not she had been in an accident in Mathiston. She did remember a 1986 accident in which she had rolled her car and had to be treated for injuries.

Weeks's counsel also inquired about a workers' compensation claim that Yates had made while working at the Futorian plant. Yates objected to the line of questioning based on relevance, but the trial court overruled the objection. Yates admitted to having received a back injury and being treated for it.

Relevant evidence is any evidence having a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." **M.R.E. 401**. Although relevant evidence is generally admissible, it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. **M.R.E. 403**. The trial judge has broad discretion on evidentiary rulings. *Sumrall v. Mississippi Power Co.*, **693 So. 2d 359, 365 (Miss. 1997)**.

Yates sought compensation for the ailments suffered as a result of the accident. She testified that she had not had any of the health problems complained of prior to the accident, with one exception. The testimony elicited on cross-examination, however, established the possibility that Weeks was not the proximate cause of many of Yates's health problems. Her specific denial of having suffered prior back injuries allowed her to be impeached under Rule of Evidence 607. The evidence was relevant to causation and credibility. *See Boyd v. Smith*, **390 So. 2d 994, 997-98 (Miss. 1980)**.

II. NEW TRIAL ON ISSUE OF DAMAGES

Yates claims that the jury verdict was against the overwhelming weight of the evidence. In denying Yates's motion for a new trial, the trial court necessarily resolved the issues of comparative negligence and pre-existing injuries in favor of Weeks. *Dynasteel Corp. v. Aztec Indus., Inc.*, **611 So. 2d 977, 981 (Miss. 1992)** (we are required "to proceed on the assumption that the trial judge resolved all such fact issues in favor of the appellee"). These presumed findings are upheld unless we find them clearly erroneous. *Id.*

There was conflicting evidence regarding both negligence and damages in the case. Yates testified that she was stopped and preparing to turn into a driveway. Weeks testified that as she came around the curve, Yates was stopped in the middle of the road and had neither her brake lights nor her turn signal engaged. A witness testified that Yates had passed his driveway prior to braking in the roadway. Jury instruction D-10 required the jury to consider any proportionate fault attributable to Yates and reduce any damages accordingly. There was sufficient evidence by which a reasonable juror could have found that negligence on the part of Yates contributed to the accident.

In addition to the disputed evidence of liability, the jury received disputed evidence of damages. The extent of the injuries caused by the accident was contradicted by testimony of prior accidents and injuries. When faced with contradictory evidence, we will defer to the jury. *Green v. Grant*, **641 So. 2d 1203, 1209 (Miss. 1994)**.

**THE JUDGMENT OF THE CIRCUIT COURT OF WEBSTER COUNTY IS AFFIRMED.
ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.J.J., COLEMAN, DIAZ, HERRING,
HINKEBEIN, KING, AND PAYNE, JJ., CONCUR.**