

NOTICE
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2012 IL App (4th) 120240-U

NO. 4-12-0240

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 27, 2012
Carla Bender
4th District Appellate
Court, IL

DANNY J. PEDIGO,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
SADIE AZZO,)	No. 10L188
Defendant-Appellee.)	
)	Honorable
)	John Schmidt,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff's evidence failed to prove defendant's negligence was the proximate cause of his injuries and damages, the trial court did not err in directing a verdict in defendant's favor.

¶ 2 In August 2010, plaintiff, Danny J. Pedigo, filed a complaint against defendant, Sadie Azzo, in connection with an auto accident in which plaintiff allegedly suffered injuries. In October 2011, a jury trial commenced. At the end of plaintiff's case, the trial court granted defendant's motion for a directed verdict.

¶ 3 On appeal, plaintiff argues the trial court erred in directing a verdict in favor of defendant. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2010, plaintiff filed a complaint seeking to recover damages from

defendant in connection with an auto accident that occurred in August 2008. The complaint alleged plaintiff was stopped in his pickup truck at an intersection north of Auburn, Illinois, when defendant rear-ended him. Plaintiff claimed defendant failed to exercise reasonable care in the operation of her vehicle, and her acts of negligence caused injuries to plaintiff.

¶ 6 In April 2011, defendant filed a motion for leave to file an amended answer, wherein she desired to confess she was negligent at the time of the accident but sought to contest the issues of causation and damages. In June 2011, defendant filed her amended answer.

¶ 7 In July 2011, plaintiff filed an amended complaint setting forth single counts of negligence (count I) and willful and wanton misconduct (count II). Defendant filed an objection, and the trial court determined count II could not stand. Thereafter, defendant filed an answer, admitting she was negligent but denying plaintiff was injured or sustained damages as he claimed.

¶ 8 In August 2011, defendant filed a motion to quash and for sanctions. Defendant claimed plaintiff's attorney continued to seek her cell-phone records, which she stated were immaterial because negligence had been confessed. The trial court granted the motion to quash the subpoena but decided against ordering fees. The court also stated as follows: "When and if this case goes to trial, it is going to be done on the matter of negligence and damages. Negligence has been confessed, so half the battle has been won."

¶ 9 In October 2011, a jury trial commenced. Plaintiff testified he was 74 years old at the time of the trial. Plaintiff stated the 2008 accident took place in front of his business. He was released from the hospital on the same day as the accident. He has headaches that he did not have before the accident. More specifically, plaintiff stated he has had one headache since the

accident and it has been continuous. It only changes in intensity depending on what he does. He has dizziness everyday and it has gotten worse. His trouble with his memory has also worsened.

¶ 10 Prior to the August 2008 accident, plaintiff stated he was in "very good health." He was in an accident in 1999 in which he was "hit much harder." After he recovered, plaintiff worked approximately 60 to 70 hours per week. He underwent physical therapy after an accident in 1999 but not after the 2008 accident. After the 2008 accident, plaintiff "could basically do just about anything [he] could ever have done for a little bit, but not much." He could not do anything strenuous and he had trouble remembering. He frequently went home from work because he was fatigued, dizzy, or had a headache. Plaintiff believed he had 80% recovered from his 1999 accident but only 50% recovered from the 2008 accident. Plaintiff testified he incurred medical expenses as a result of the 2008 accident.

¶ 11 Plaintiff testified he is a self-employed sod farmer. He stated he cannot play softball anymore. He stated he was "extremely good" at playing the piano. His ability to play suffered after the 1999 accident and he never was able to get back to his previous standard. Plaintiff stated it is difficult for him to mow the lawn because he gets dizzy.

¶ 12 On cross-examination, plaintiff remembered his deposition testimony where he stated he was working approximately 40 to 50 hours per week. He agreed he continued to do the same activities in his landscaping and sod business but less of it. He stated he was hospitalized for two or three days after his 1999 accident, was treated by specialists, and underwent physical therapy. As to the 2008 accident, he left the hospital the same day, saw no specialists, and did not partake in any physical therapy. Plaintiff stated a vision-related problem was caused by the 1999 accident.

¶ 13 The evidence deposition of Dr. Randy Western, a family practice physician, was read to the jury. In 1999, plaintiff suffered a fractured hand, "third nerve palsy," and a laceration to his scalp. Dr. Western saw plaintiff in February 2005, and plaintiff complained of sleepiness, dizziness, and blurriness. In March 2006, plaintiff reported decreased hearing, ringing in his ears, difficulty driving, and short-term memory issues. On August 26, 2008, plaintiff reported to Dr. Western that he had been in a car accident and the force of the crash had knocked his head back into the window. Dr. Western stated he did not observe any blood in plaintiff's eardrums or any mucosa in his nasal passages. Plaintiff's neck was "soft" but he "didn't really have much in the way of tenderness." Dr. Western stated plaintiff's gait appeared "fairly normal." Plaintiff's magnetic resonance imaging after his 2008 accident showed "no acute abnormality" and a computerized tomography scan revealed no internal bleeding.

¶ 14 Dr. Western saw plaintiff again in February 2009 and everything "appeared normal." Plaintiff complained of blurry vision, headaches, and intermittent difficulty with swallowing but clarified the latter was "a fairly rare problem and was just sore from time to time." Dr. Western saw plaintiff again in July 2009 and they discussed plaintiff's sleep apnea. In July 2010, plaintiff complained of a throat irritation, blurred vision, difficulty in concentrating, and vertigo.

¶ 15 Carl Rice testified he had worked at plaintiff's sod farm for almost 22 years. Rice knew plaintiff when he was injured in the 1999 accident and saw him improve over the next nine years. Rice arrived at the scene of the 2008 accident and noticed plaintiff's rear window was shattered. Plaintiff was talking but "seemed distorted a little bit." Rice stated he saw "a blood spot" on top of plaintiff's head. In March 2009, Rice stated plaintiff's memory "wasn't quite

there." Rice also stated plaintiff "gets dizzy" and is "not near as stable as he used to be."

¶ 16 Wanda Pedigo, plaintiff's wife, testified his condition improved between 1999 and 2008. On cross-examination, Wanda stated she observed plaintiff having short-term memory problems two years before the 2008 accident. She also stated plaintiff had a deviation problem with one of his eyes after the 1999 accident.

¶ 17 Linda Capranica, plaintiff's daughter, testified she is a partner in Pedigo Landscaping. She stated plaintiff improved physically after the 1999 accident and returned to playing basketball and traveling for business. Since the 2008 accident, Capranica does not ride with plaintiff because he "doesn't seem to be able to move quickly enough to anticipate things" and he "seems to get disoriented." She also stated he "seems to have more trouble putting things in order and sorting things out in a way that causes the job to work more efficiently."

¶ 18 After the close of plaintiff's case, defense counsel moved for a directed verdict based on the lack of proof of damages caused by the accident. The trial court found insufficient evidence to show defendant's negligence was the proximate cause of plaintiff's claimed injuries.

¶ 19 In November 2011, plaintiff's attorney moved to withdraw as counsel. Thereafter, plaintiff filed a *pro se* motion to reconsider the directed verdict. In February 2012, the trial court denied the motion to reconsider. This appeal followed. While this case was on appeal and after the briefs had been filed, plaintiff's appellate counsel, who was also counsel at trial, passed away. This court granted plaintiff leave to retain new counsel or otherwise indicate how he wanted to proceed. Plaintiff filed his intent to proceed *pro se* and submitted a case summary.

¶ 20 II. ANALYSIS

¶ 21 On appeal, plaintiff argues the trial court erred in directing a verdict in favor of

defendant. We disagree.

¶ 22 "A motion for a directed verdict will not be granted unless all of the evidence so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand." *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 225, 938 N.E.2d 440, 446 (2010) (citing *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510, 229 N.E.2d 504, 513-14 (1967)). A directed verdict is improper when "there is any evidence, together with reasonable inferences to be drawn therefrom, demonstrating a substantial factual dispute, or where the assessment of credibility of the witnesses or the determination regarding conflicting evidence is decisive to the outcome." *Maple v. Gustafson*, 151 Ill. 2d 445, 454, 603 N.E.2d 508, 512 (1992). A trial court's grant of a directed verdict is reviewed *de novo*. *Krywin*, 238 Ill. 2d at 225, 938 N.E.2d at 446.

¶ 23 "To recover damages based upon negligence, a plaintiff must prove that the defendant owed a duty to the plaintiff, that the defendant breached that duty, and that the breach was the proximate cause of the plaintiff's injury." *Krywin*, 238 Ill. 2d at 225, 938 N.E.2d at 446. To establish liability in a rear-end collision, the plaintiff must "do more than demonstrate that the defendant was negligent. [Citation.] A plaintiff in a negligence action must show the breach of a duty of care, proximate causation and compensable damages." *Wiker v. Pieprzyca-Berkes*, 314 Ill. App. 3d 421, 425, 732 N.E.2d 92, 96 (2000).

"Where the injury complained of is remote in time from the accident or the condition is one that is shrouded in controversy as to origin, such as the intervention of either a prior or subsequent injury or disease, layman testimony may be insufficient to establish

a prima facie showing of a causal relationship.' " *Harris v. Day*, 115 Ill. App. 3d 762, 770, 451 N.E.2d 262, 266 (1983) (quoting *Hyatt v. Cox*, 57 Ill. App. 2d 293, 299, 206 N.E.2d 260, 263 (1965)).

¶ 24 In the case *sub judice*, defendant admitted she was negligent in the accident. However, plaintiff's evidence failed to show his alleged injuries were proximately caused by defendant's negligence. Moreover, plaintiff failed to establish his entitlement to damages as a result of defendant's negligence.

¶ 25 Here, there was no physician opinion testimony that plaintiff's condition was the proximate result of the 2008 auto accident. No doctor testified plaintiff's hospital visit was medically necessary. No medical records or medical bills from that hospitalization were admitted into evidence. The only evidence of the payment of medical bills was through the testimony of Wanda Pedigo, but that testimony took place outside the presence of the jury in an offer of proof that was rejected by the trial court. Dr. Western's testimony indicates plaintiff's various maladies were not caused by the accident or were experienced by him after the 1999 accident and through the years before his 2008 accident. The evidence failed to establish plaintiff had suffered injuries or damages proximately caused by defendant's admitted negligence.

¶ 26 Plaintiff, however, argues defendant's negligence, as a matter of law, was the proximate cause of his damages. In his brief on appeal, plaintiff contends defendant admitted liability in a letter from her attorney and admitted fault in her pleadings. Plaintiff argues he was no longer required to come forward with evidence of negligence, fault, or liability.

¶ 27 We find plaintiff's argument without merit. Defendant did admit she was negligent in her answers to plaintiff's complaints. However, defendant denied plaintiff was injured or sustained damages as he claimed. She continued to contest the issues of causation and damages.

¶ 28 "Judicial admissions are defined as deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge." *In re Estate of Rennick*, 181 Ill. 2d 395, 406, 692 N.E.2d 1150, 1156 (1998). "A party is not bound by admissions regarding conclusions of law because the courts determine the legal effect of the facts adduced." *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 475, 939 N.E.2d 487, 499 (2010). Here, what was written in legal correspondence by the defendant's attorney did not amount to a judicial admission. Even if it could be argued the letter constituted an admission of negligence, fault, and liability, plaintiff still did not present evidence of damages to which defendant would be required to pay. As plaintiff's evidence failed to establish he was entitled to recover, the trial court did not err in directing a verdict in favor of defendant.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court's judgment.

¶ 31 Affirmed.