2017 IL App (1st) 162076-U

FIFTH DIVISION
June 23, 2017

No. 1-16-2076

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

GUADALUPE JIMENEZ, Plaintiff-Appellant, v. JUSTIN PERRY and UNION PACIFIC RAILROAD COMPANY, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County No. 13 L 014249 Honorable Jeffrey Lawrence, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County denying plaintiff's motion for a directed verdict, judgment notwithstanding the verdict, and a new trial.

¶ 2 After Guadalupe Jimenez (Jimenez) was injured in a two-vehicle collision with Justin Perry (Perry), she filed an action in the circuit court of Cook County against Perry and his employer, Union Pacific Railroad Company (Union Pacific). The jury returned a verdict in favor of the defendants and against Jimenez. On appeal, Jimenez contends that the trial court erred in denying her motion for (i) a directed verdict, (ii) judgment notwithstanding the verdict, and (iii) a new trial. For the reasons stated below, we affirm the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 On October 31, 2013, Jimenez drove her 1970 Ford Maverick eastbound in the far right lane of North Avenue in Villa Park, Illinois, as Perry drove a 2005 Ford F250 truck in the same direction in the middle lane. As Perry turned right to enter a gas station on the south side of North Avenue, his truck collided with Jimenez's vehicle.

¶ 5 Jimenez filed a complaint against Perry and Union Pacific, alleging that her "serious and permanent" injuries resulted from Perry's negligent conduct. She further alleged that Perry was an "employee, agent, apparent agent and/or servant" of Union Pacific and was driving the Ford truck within the scope of his employment at the time of the collision. In their answer, the defendants admitted that Perry was driving the Ford truck within the scope of his employment. The defendants denied any negligence and asserted an affirmative defense of contributory negligence. In her answer to the affirmative defense, Jimenez denied any negligence on her part.

¶ 6 The testimony during the jury trial included the following. Officer Timothy J. Walsh, Jr. (Officer Walsh) of the Villa Park police department testified that he responded to the accident at 8:15 a.m. Although Jimenez indicated that she was injured, she refused an ambulance, and Officer Walsh did not observe or report any "evident" injuries. He checked the box indicating "property damage only" on the citation he issued to Perry.

¶ 7 At trial, Jimenez testified she drove at a speed of 20 or 25 miles per hour in heavy traffic on North Avenue. As she held her steering wheel to turn right onto another street, she observed "something" in her peripheral vision. She felt an impact when her driver-side door was struck by Perry's truck. Her right hand struck the passenger side of her automobile and then her shoulder struck the window on the driver-side door. According to Jimenez, her vehicle spun around twice before coming to a halt facing westbound on North Avenue. After the impact, Jimenez sat in her

vehicle for four or five minutes as she cried, shook, and hit the steering wheel. Although her automobile was emitting smoke, she started it and drove to an adjacent street. During the trial, the photographs of her vehicle and Perry's truck were published to the jury.

¶ 8 Perry testified he was driving a "railroad truck" with special equipment to "ride the rails" which "sits a little bit higher" than a normal vehicle. Although Perry was not certain whether it had rained before or during the accident, the pavement was wet. As he drove at a speed of 25 miles per hour in rush hour traffic on North Avenue, he decided to make a right turn to access a gas station. Perry testified that he activated his turn signal three to six seconds prior to moving into the right lane. As he started to move over, he checked his rearview mirror and passenger side mirror. Although Perry checked his blind spot, he was looking over the top of Jimenez's vehicle. He did not notice Jimenez's vehicle immediately prior to impact.

¶ 9 Perry testified that the front right bumper of his truck hit the driver's side door of Jimenez's vehicle. He estimated that her vehicle was slightly ahead of his truck at the time of the impact. According to Perry, her vehicle spun in front of his truck, turning slightly over 180 degrees. Perry was uncertain whether he applied his brakes before the collision.

¶ 10 Perry pulled into the gas station, contacted 911, and telephoned his supervisor at Union Pacific, Todd Martindale (Martindale). Perry admitted to Martindale that he was probably responsible for the accident. During an initial conversation with a police officer who responded to the accident, Perry relayed that he thought he was in the right lane when the collision occurred and that Jimenez's vehicle attempted to "come around" his truck as he was turning. During a second conversation, Perry informed the officer that he had been driving in the middle lane and had turned into her vehicle. After Perry was issued a traffic citation for improper lane usage, he pled guilty and paid the ticket. When questioned during cross-examination regarding the two

descriptions he provided to police, he testified that he was a little shaken up from the accident.

¶ 11 Steve Gonzales (Gonzales), a Villa Park firefighter, testified that he was on the second ambulance which responded to the accident 90 minutes after Jimenez refused the first ambulance. As the "primary caregiver" at the scene, he was responsible for taking Jimenez's vital signs and medical history, assessing her complaints, and relaying information to the emergency room. Although Jimenez complained of left shoulder pain, Gonzales did not observe any bruising or deformities in her shoulder area. In a written report regarding the accident, Gonzales noted that Jimenez expressed "no further complaints" en route to the hospital. He also noted "normal, no pain or deformities" for her neck area, middle back, and lower back. According to Gonzales, Jimenez would have been placed in a cervical collar and on a backboard if she had complained of back pain.

¶ 12 Jimenez testified that she informed police and paramedics at the scene that she was injured. She initially refused an ambulance because she was "scared" to travel in another moving vehicle. When a second ambulance arrived at the scene, Jimenez acquiesced to being transported by ambulance. At the hospital she received pain medication and was released two or three hours later after x-rays were taken.

¶ 13 Jimenez then testified regarding her medical issues before the accident. In 2007, she suffered muscle spasms in her back and was prescribed muscle relaxants and pain medication. She sought treatment for sharp back pain in early 2012, and she subsequently requested a referral from her primary care physician due to a dull back pain. In August 2012, she was examined by an orthopedic physician, who prescribed pain medication and a CT (computerized tomography) scan. Jimenez testified that she did not have an MRI (magnetic resonance imaging)[1] because

[1] Although unclear from the transcript, the terms "CT" and "MRI" may have been used

medicine alleviated her pain within two weeks. From August 2012 until the time of the accident, she did not experience any back pain, and she participated in a soccer league as a goalie.

¶ 14 After she returned home from the hospital on the date of her accident with Perry, she felt soreness on her left side. A few days later, Jimenez was examined by Dr. Suneela Harsoor (Dr. Harsoor), a pain management doctor recommended by her attorney. According to Jimenez, Dr. Harsoor asked her to describe the accident but otherwise did not inquire into her prior medical history. During periodic appointments, Dr. Harsoor provided various treatments, including two "nerve block" injections which were minimally effective. Jimenez testified that her shoulder pain subsided but she continued to experience shooting back and left leg pain.

¶ 15 Approximately six months after the accident, Jimenez visited Dr. Avi Bernstein (Dr. Bernstein), an orthopedic surgeon who recommended and ultimately performed a lumbar fusion operation. Following her release from the hospital three days after surgery, she continued to experience pain, and Dr. Harsoor prescribed pain medication. Jimenez testified that she continued to experience back pain and intermittently wore a back brace as of the time of the trial.

¶ 16 During cross-examination, Jimenez testified that when the first ambulance arrived, she informed the paramedics that the range of her shoulder pain was a "10 out of 10." Yet, despite experiencing pain and difficulty with breathing and standing, she waited 90 minutes for the second ambulance to transport her to the hospital. She acknowledged that she was diagnosed with sciatica in 2008 but denied experiencing "chronic low back pain" prior to the incident with Perry.

¶ 17 Dr. Harsoor testified that Jimenez had informed her that she "might have gone through the window" had she not been wearing a seatbelt during the accident. After conducting an

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interchangeably by Jimenez and/or her counsel. Any ambiguity based on such terminology does not affect our analysis herein.

examination of Jimenez, Dr. Harsoor diagnosed her with "acute pain because of trauma, sprain and strain of lumbar spine, as well as sprain and strain of neck." She prescribed anti-inflammation medication and a muscle relaxant and later prescribed a pain killer.

¶ 18 Jimenez received physical therapy in Dr. Harsoor's office. An MRI which was performed in December 2013 demonstrated disc protrusion and facet effusion (the collection of fluid in the spinal joints) but no stenosis (the narrowing of the open spaces in the spine). A discogram and a CT scan in April 2014 revealed disc protrusion and a tear to her disc. After her back operation, Jimenez returned to Dr. Harsoor for physical therapy. Dr. Harsoor opined that the accident with Perry was "one of the causes" of her pain. During cross-examination, Dr. Harsoor testified Jimenez did not share any information regarding her prior history of lower back pain during their initial visit.

¶ 19 Dr. Bernstein testified that 32-year-old Jimenez had informed him of the accident. He reviewed an MRI of her lower back, which demonstrated "age appropriate wear and tear degenerative changes" in the lower three discs and "on the left side at L5-S1 there was a focal disc protrusion suggesting an injury to the disc." Dr. Bernstein recommended a discogram to confirm the source of her back pain, which revealed a tear in the wall of a disc. In order to "stabilize the disc and fuse the level," he performed a spinal fusion surgery on Jimenez in June 2014. Although Dr. Bernstein was satisfied with Jimenez's progress during multiple follow-up examinations, she described physical pain and certain psychological concerns. A CT scan in July 2015 revealed "no obvious problems."

¶ 20 During direct examination, Dr. Bernstein opined that the motor vehicle accident was a proximate cause of Jimenez's disc tear and disc protrusion because she "had severe ongoing continuous pain" since the accident. During cross-examination, he acknowledged that his

opinion was based on the history provided to him by Jimenez. On the patient questionnaire which she completed before her initial appointment with Dr. Bernstein, she did not reference her prior diagnosis of sciatica or otherwise mention any history of back issues prior to the accident. He confirmed that an individual's back issues may have multiple causes, including acute trauma, degenerative changes, or a genetic predisposition.

¶ 21 Dr. Michael Winer (Dr. Winer), an orthopedic surgeon retained on behalf of Jimenez, testified that he had reviewed her medical records. He opined that the vehicle accident was a proximate cause of her injuries. Dr. Winer characterized her back pain prior to the accident as episodes of temporary aggravation with some pain after which Jimenez experienced some improvement and felt better. Conversely, after the accident, he testified that he would describe her condition as in a state of permanent aggravation. Dr. Winer further opined that there is a high probability that Jimenez will develop "adjacent segment disease progressive degeneration" at or near the spinal fusion site. During cross-examination, Dr. Winer acknowledged that Jimenez had made statements to her primary care physician concerning a childhood fall from a ferris wheel.

¶ 22 Dr. David Fardon (Dr. Fardon), an orthopedic surgeon retained by the defendants, testified regarding Jimenez's treatment for back pain commencing in 2007. He characterized her as "someone who has chronic low back pain with a periodic increase and proclivity to go to the emergency room when it gets worse." According to Dr. Fardon, there were "many similarities" between her back pain before and after the accident. Based on his review of a CT scan performed on Jimenez in 2011, he believed that an "abnormality," *i.e.*, a bulging disc, already existed at that time.

¶ 23 Dr. Fardon testified that he would not expect the type of injury sustained by Jimenez

during the accident to result in a permanent injury to the discs in her lower back. He further opined that Jimenez may be a "little more susceptible to adjacent segment disease but not because of the accident." During cross-examination, he testified that Jimenez "had some pain related to the aftereffects of that collision" but "there is no reason to think that it would have gone on beyond two or three months." Dr. Fardon was uncertain whether she had sustained any injury as a result of the collision but testified that "[t]here is no evidence of an injury."

¶ 24 At the close of evidence, the parties stipulated that Jimenez's post-accident medical bills totaled $242,944.02. Jimenez's counsel moved for a directed verdict[2] on liability. Defense counsel argued that Perry's duty to exercise reasonable care did not require perfection from him. The trial court noted that his guilty plea to improper lane usage was a judicial admission and that he testified that he did not see Jimenez's vehicle prior to the impact, despite his obligation to maintain a proper lookout. The trial court expressed surprise that Jimenez had not previously moved for summary judgment as to liability, given Perry's apparent negligence and the lack of any evidence of contributory negligence. Defense counsel responded that Perry exercised the ordinary care expected of a reasonable person by looking over his shoulder, activating his turn signal, and using his mirrors.

¶ 25 The trial court observed that if the motion for a directed verdict were granted, it would create the possibility of reversible error. After initially stating that the motion was granted, the trial court subsequently stated that the motion was denied "[i]n the interest of finality," but required a jury instruction on improper lane usage. In accordance with Illinois Pattern Jury Instructions, Civil (IPI), No. 60.01, the jury was instructed as follows:

> "There was in force in the State of Illinois at the time of the occurrence in

[2] Although counsel requested a "directed finding," we assume the reference is to a "directed verdict."

> question a certain statute which provided that, 'A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.'
>
> If you decide that a party violated this statute on the occasion in question, then you may consider that fact together with all of the other facts and circumstances in evidence in determining whether and to what extent, if any, a party was negligent before and at the time of the occurrence."

¶ 26 During closing arguments, Jimenez requested an award of $1,192,000. The jury returned a verdict in favor of the defendants and against Jimenez, and the trial court entered the verdict. Jimenez subsequently filed a written posttrial motion for (i) a directed verdict as to liability pursuant to section 2-1202(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1202(a) (West 2016)), (ii) judgment notwithstanding the verdict, and (iii) a new trial. Jimenez argued that the evidence at trial clearly established Perry's negligence when he attempted to change lanes. She noted that Perry had admitted some responsibility for the collision to his supervisor at Union Pacific and had pled guilty to a traffic citation for improper lane usage. In their response, the defendants argued that Jimenez failed "to acknowledge that the evidence to which [she] points – Perry's act of pleading guilty to a traffic citation of improper lane usage and Perry's testimony that he did not see [Jimenez's vehicle] prior to impact – only established how the motor vehicle accident occurred and not that Perry failed to act reasonably under the circumstances."

¶ 27 In denying the posttrial motion, the trial court characterized the accident as "minor" and stated that "[t]he jury simply did not believe that she was injured in this accident, nor do I." Jimenez timely filed the instant appeal.

¶ 28 ANALYSIS

¶ 29 Jimenez advances three primary contentions on appeal. First, she argues that the trial court erred in denying both her oral motion and subsequent written motion for a directed verdict as to liability. Second, Jimenez asserts that the trial court erred in denying her motion for judgment notwithstanding the verdict. Lastly, she contends that the trial court erred in denying her motion for a new trial. We address each argument in turn.

¶ 30 Directed Verdict

¶ 31 The trial court denied Jimenez's oral motion and her posttrial motion for a directed verdict as to liability. A directed verdict should be granted only in cases where all of the evidence, viewed in the light most favorable to the nonmoving party, so overwhelmingly favors the movant that no contrary verdict could ever stand. *Harris v. Thompson*, 2012 IL 112525, ¶ 15; *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 100 (2010). We review an order denying a motion for a directed verdict *de novo*. *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 225 (2010).

¶ 32 Section 2-1202(a) of the Code provides, in pertinent part:

> "If at the close of the evidence, and before the case is submitted to the jury, any party moves for a directed verdict the court may (1) grant the motion or (2) deny the motion or reserve its ruling thereon and submit the case to the jury. If the court denies the motion or reserves its ruling thereon, the motion is waived unless the request is renewed in the post-trial motion." 735 ILCS 5/2-1202(a) (West 2016).

The trial court initially stated that the oral motion for a directed verdict was granted, but ultimately stated that it would "split the apple" by issuing IPI 60.01 and deny the motion.

Although Jimenez cites various statements made by the trial court as support for her arguments in favor of a directed verdict, we are neither bound nor influenced by the trial court's momentary comments or inclinations, given our *de novo* review of this issue. See, *e.g.*, *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 20 (noting that *de novo* review is "completely independent of the trial court's decision" and "the reviewing court does not need to defer to the trial court's judgment or reasoning").

¶ 33 The action presented by Jimenez is based on the defendants' alleged negligence. "The elements of a negligence cause of action are a duty owed by the defendant to the plaintiff, a breach of that duty, and an injury proximately caused by the breach." *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 294 (2000). "The standard of care, also known as the standard of conduct, falls within the duty element." *Id.* In an ordinary negligence case, the standard of care required of a defendant is to act as a reasonably prudent or ordinarily careful person would act. *Id.* at 295.

¶ 34 Jimenez observes that anyone driving a motor vehicle anywhere has the duty to maintain a proper lookout for pedestrians, other vehicles or other obstacles in the vehicle's path. See *Alexander v. Yellow Cab Co.*, 241 Ill. App. 3d 1049, 1054 (1993). The defendants do not challenge this contention but instead frame the relevant issue as not whether Perry "caused the collision itself but whether [he] caused the collision *because he failed to act reasonably*." (Emphasis in original.)

¶ 35 We share the defendants' view that the occurrence of the accident is not dispositive regarding the determination of negligence. "The occurrence of an accident, even where the plaintiff has exercised ordinary care, does not of itself raise any presumption of negligence on the defendant's part." *Burgdorff v. International Business Machines Corp.*, 74 Ill. App. 3d 158,

163 (1979). Viewed in the light most favorable to the defendants, the evidence demonstrates that Perry, while traveling under the speed limit, had activated his turn signal, looked over his shoulder, and checked his mirrors prior to the collision. Pursuant to the IPIs regarding negligence (IPI 10.01) and ordinary care (IPI 10.02), the jury was instructed that "[t]he law does not say how a reasonably careful person would act under those circumstances. That is for you to decide." A jury could – and ultimately did – conclude that his actions met the standard of care, *i.e.*, that Perry acted as a reasonably careful person.

¶ 36 We also reject Jimenez's argument that Perry's testimony regarding checking his mirrors and his "blind spot" was "physically impossible or so inherently improbable as to be contrary to the common sense of mankind." See *Old Second National Bank of Aurora v. Gould*, 75 Ill. App. 3d 839, 844 (1979). Because Perry testified that Jimenez's vehicle was "slightly ahead" of his truck, she asserts that "there was no blind spot." Although Jimenez implicitly suggests that a "blind spot" must extend *behind* a vehicle, Perry apparently utilized the term to explain a different limitation on his visibility. Describing the "blind spot" on the passenger side of his truck, Perry testified: "With the height of the vehicle, I was looking over the top of her." Contrary to Jimenez's contention, his testimony was neither "physically impossible" nor "inherently improbable."

¶ 37 We further note that, by pleading guilty to improper lane usage, Perry did not concede liability in any subsequent civil action. See, *e.g.*, *Kalata v. Anheuser-Busch Companies, Inc.*, 144 Ill. 2d 425, 434-35 (1991) (noting that the violation of a statute or ordinance designed to protect human life or property does not constitute negligence *per se*, and the defendant may prevail by showing that he acted reasonably under the circumstances); *Wegener v. Anna*, 11 Ill. App. 3d 316, 318 (1973) (providing that the "violation of a statute is only a prima facie evidence

of negligence"). In accordance with IPI 60.01, the jury was instructed that it "may consider" the traffic law violation "together with all of the other facts and circumstances in evidence in determining whether and to what extent, if any, a party was negligent[.]" The plain language of this IPI indicates that Perry's guilty plea regarding improper lane usage was not dispositive regarding the determination of negligence herein.

¶ 38 As previously noted, a directed verdict should be granted only if the evidence, viewed in the light most favorable to the defendants, so overwhelmingly favors Jimenez that no contrary verdict could ever stand. See *Harris*, 2012 IL 112525, ¶ 15. Such is not the case herein. For the reasons stated above, we conclude that the trial court properly denied Jimenez's oral motion and written posttrial motion for a directed verdict as to liability.

¶ 39 Judgment Notwithstanding the Verdict

¶ 40 Jimenez next contends that the trial court erred in denying her motion for judgment notwithstanding the verdict (JNOV). As with a directed verdict, a motion for JNOV should be granted only where all of the evidence, viewed in the light most favorable to the nonmoving party, so overwhelmingly favors the movant that no contrary verdict could ever stand. *Id.* An order denying a motion for JNOV is reviewed *de novo*. *Id.*

¶ 41 Jimenez advances certain arguments on appeal regarding JNOV matters – *e.g.*, regarding the standard of care – which we have rejected in our discussion (above) regarding her motions for a directed verdict as to liability. The Illinois Supreme Court has observed that although motions for a directed verdict and motions for JNOV "are made at different times, they raise the same questions and are governed by the same rules of law." *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 37.

¶ 42 Jimenez further contends that the evidence was overwhelmingly in her favor on the issues

of proximate cause and damages, *i.e.*, that the negligence of the defendants proximately caused her injuries. She observes that Drs. Harsoor, Bernstein, and Winer opined that her accident with Perry resulted in her back injuries. Jimenez also asserts that the defendants' expert witness, Dr. Fardon, "testified that as a result of the accident [Jimenez] suffered an injury that caused her some pain." Citing *Watson v. South Shore Nursing & Rehabilitation Center, LLC*, 2012 IL App (1st) 103730, Jimenez contends that the "jury was not free to disregard all of the medical evidence by all of the doctors including the [defendants'] expert doctor witness that [Jimenez] was injured in the accident."

¶ 43 In *Watson*, a nursing home patient was injured and later died, and the administrator of his estate filed a survival and wrongful death action against the home. *Id.* ¶¶ 1, 2. Although the jury awarded other damages, it awarded no damages for loss of society. *Id.* ¶ 2. After the trial court denied the plaintiff's motion for a new trial on that issue, the appellate court reversed and remanded for additional proceedings. *Id.* ¶ 65. The appellate court noted that the decedent's daughters had offered "unrebutted testimony" during the trial as to the "love, companionship, and affection they shared with [their father] until his death." *Id.* ¶ 38.

¶ 44 Unlike in *Watson*, the relevant testimony was not "uncontradicted," as Jimenez claims. Dr. Fardon testified during direct examination that he thought Jimenez "sustained an injury that caused her some *** pain," but he did not "think she sustained an injury for which there is a documentation of a permanent effect." During cross-examination, Jimenez's counsel questioned Dr. Fardon whether "she sustained no injury but just had pain." Dr. Fardon responded, "I don't know. She sustained no injury that was identified. That doesn't mean she didn't have one." Although Jimenez contends that "[t]he uncontradicted evidence in this case is that [she] was injured in [an automobile] accident," Dr. Fardon testified that there was no "identified" injury or

"evidence of an injury." The jury also was presented with evidence regarding Jimenez's complaints, diagnoses, and treatments for back issues in the years before her accident with Perry.

¶ 45 As discussed above, JNOV should be granted only if the evidence, viewed in the light most favorable to the defendants, so overwhelmingly favors Jimenez that no contrary verdict could ever stand. See *Harris*, 2012 IL 112525, ¶ 15. JNOV is a very difficult standard to meet, and the power of the trial court to reverse a jury verdict is limited to only extreme situations. *Johnson v. Loyola University Medical Center*, 384 Ill. App. 3d 115, 121 (2008). For the reasons discussed herein, the evidence regarding proximate cause and damages did not overwhelmingly favor Jimenez such that the verdict could not stand. We conclude that the trial court did not err in denying Jimenez's motion for JNOV.

¶ 46 New Trial

¶ 47 Jimenez's final argument is that the trial court erred in denying her motion for a new trial. "[O]n a motion for new trial, the trial court will weigh the evidence and order a new trial if the verdict is contrary to the manifest weight of the evidence." *Lawlor*, 2012 IL 112530, ¶ 38. A verdict is against the manifest weight of the evidence only where the opposite conclusion is clearly evident or the jury findings are arbitrary, unreasonable, and not based on any of the evidence. *Id*. We will not reverse a trial court's ruling on a motion for a new trial "unless it is affirmatively shown that the trial court abused its discretion." *Id*. "In determining whether the trial court abused its discretion, the reviewing court should consider whether the jury's verdict was supported by the evidence and whether the losing party was denied a fair trial." *Maple v. Gustafson*, 151 Ill. 2d 445, 455 (1992).

¶ 48 In the instant case, the jury heard conflicting testimony regarding the details of the accident and the nature and extent of Jimenez's purported injuries. For example, Jimenez

testified that her vehicle "spun twice" after the collision, but Perry testified that her vehicle spun "just slightly over 180 degrees." Although Jimenez told Dr. Harsoor that she would have been thrown through the windshield had she not been wearing her seatbelt during the accident, Gonzales – the primary caregiver on the second ambulance – characterized the accident as "minor." The photographs in evidence do not depict severe damage to her 43-year-old vehicle, and Jimenez was able to restart her automobile, at least temporarily, after the accident. Despite experiencing shoulder pain that Jimenez characterized as "10 out of 10," she refused to travel in the first ambulance. Ninety minutes later, she described shoulder pain, but no back pain, to Gonzales.

¶ 49 "Because the evidence was conflicting and disputed questions of fact were presented, determination of the truth depended upon the jury's evaluation as to the credibility of the witnesses." *Thomas v. Northington*, 134 Ill. App. 3d 141, 148 (1985). The credibility issues in this trial were particularly significant in light of Jimenez's failure to report her history of back issues to Drs. Harsoor and Bernstein, as well as the subjective nature of her complaints regarding pain. "The question of whom to believe and what weight to be given all of the evidence was a decision for the trier of fact, whose determinations should not be upset on review unless manifestly erroneous." *Maple*, 151 Ill. 2d at 460. We further note that the trial judge, when ruling on the motion for a new trial, had the benefit of his prior observation of the witnesses' appearance, manner of testimony, and credibility. *Id.* at 456.

¶ 50 Based on our review of the record, we conclude that Jimenez failed to meet her burden to establish her entitlement to a new trial. The trial court did not abuse its discretion in denying her motion for a new trial.

¶ 51 CONCLUSION

¶ 52 For the reasons stated herein, the judgment of the circuit court of Cook County is affirmed in its entirety.

¶ 53 Affirmed.