

NOTICE

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FILED
March 12, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 160732-U

NO. 4-16-0732

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ONETA KAUL,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Macoupin County
WALTER COMBS,)	No. 14L27
Defendant-Appellee.)	
)	Honorable
)	Kenneth R. Deihl,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Harris and Justice Turner concur in the judgment.

ORDER

¶ 1 *Held:* The appellate court concluded, in this auto accident case, that the trial court (1) did not err in denying plaintiff's motion for judgment notwithstanding the verdict and (2) did not abuse its discretion in denying plaintiff's motion for a new trial.

¶ 2 In September 2014, plaintiff, Oneta Kaul, filed a complaint against defendant, Walter Combs, alleging that defendant breached his duty of ordinary care in the operation of his motor vehicle when he caused his vehicle to collide with plaintiff's vehicle. In May 2016, a jury trial was held at which testimony was introduced showing that plaintiff and defendant were involved in a slow speed collision. Plaintiff testified that she experienced pain at least every other day, that she underwent physical therapy as a result of the accident, and that she has incurred approximately \$20,000 in medical bills because of the accident.

¶ 3 The jury returned a verdict finding for defendant and against plaintiff. In June

2016, plaintiff filed a motion for judgment notwithstanding the verdict, or in the alternative, a new trial. In September 2016, the trial court denied plaintiff's motion.

¶ 4 On appeal, plaintiff argues that (1) the trial court erred when it denied plaintiff's motion for judgment notwithstanding the verdict and (2) the trial court abused its discretion by denying plaintiff's motion for a new trial. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 A. Procedural History

¶ 7 In September 2014, plaintiff filed a complaint against defendant, alleging that defendant breached his duty of ordinary care in the operation of his motor vehicle when he caused his vehicle to collide with plaintiff's vehicle causing injuries to plaintiff. In May 2016, defendant conceded that he negligently operated his vehicle. However, defendant (1) argued that the accident did not cause plaintiff's alleged injuries and (2) disputed the extent of her injuries.

¶ 8 In May 2016, a jury trial was held at the beginning of which the trial court informed the jury that defendant conceded he was negligent in operating his vehicle. As a result, the only issues remaining were (1) whether defendant's conduct was the proximate cause of plaintiff's injuries and, assuming proximate cause is established, (2) the extent of plaintiff's injuries.

¶ 9 B. The Jury Trial

¶ 10 1. *Plaintiff's Testimony*

¶ 11 Plaintiff testified that on May 15, 2013, she was driving on Blair Avenue in Virden, Illinois, when she approached the intersection of Blair Avenue and Green Street. As she passed through the intersection, defendant's vehicle struck her car, damaging the driver's side rear quarter-panel and breaking the rear axle of her car. Plaintiff testified that she was driving

approximately 10 miles per hour and that her vehicle's air bags did not deploy.

¶ 12 Immediately after the accident, she "got out of the car and was ranting and raving at [defendant] for hitting me. * * * [However], about 15, 20 minutes later I felt a sharp pain go from the lower base of my neck straight down the middle of my back." She sought medical attention in the emergency room later that day at the Carlinville Area Hospital. She frequently experiences pain and underwent physical therapy as a result of this accident. She incurred approximately \$20,000 in medical bills because of this accident.

¶ 13 *2. Defendant's Testimony*

¶ 14 Defendant testified that on May 15, 2013, he was involved in a low-speed accident with plaintiff when the brakes on his car failed. He was driving approximately 10 miles per hour when he struck the rear driver's side of plaintiff's vehicle. Defendant described the accident as a low-impact collision.

¶ 15 *3. Dr. Chopra's Testimony*

¶ 16 Dr. Kamal Chopra, a primary care physician, testified that he examined plaintiff on May 22, 2013, eight days after the accident. Chopra reviewed records of plaintiff's treatment at the emergency room, including diagnostic studies, X-rays, and CAT (computerized axial tomography) scans of her spine and neck, and concluded that plaintiff's condition was "normal." His examination revealed that plaintiff "was not in any distress." Chopra believed that plaintiff had not suffered a serious injury as a result of the accident. Likewise, Chopra did not believe that plaintiff suffered a permanent injury as a result of the accident. Nonetheless, Chopra did prescribe pain relievers and muscle relaxers to ease plaintiff's discomfort.

¶ 17 *4. Dr. Narla's Testimony*

¶ 18 Dr. Koteswara Narla, a board-certified neurologist, testified that he treated plain-

tiff in July 2013. Plaintiff had limited neck movement, and Narla recommended continuing physical therapy and medications. Narla assumed that "the accident has triggered" plaintiff's pain. Narla believed that the physical therapy and other medical treatment that plaintiff received was reasonable and necessary and that this treatment was related to the vehicular accident. Narla testified that it was possible that plaintiff was suffering from mild disc bulging prior to the accident and that bony spurs found on her CT (computerized tomography) scan and MRI (magnetic resonance imaging) could have existed prior to the accident.

¶ 19 *5. Closing Arguments*

¶ 20 During closing arguments, plaintiff argued that she was injured as a result of the accident and that defendant's negligence was the proximate cause of the injuries. Defendant argued that the damages plaintiff was seeking were unreasonable and that plaintiff "has a financial interest, and her testimony is going to be biased, and I think that's important." Defendant also highlighted inconsistencies in plaintiff's case and argued that her pain, if any, may have been caused by a preexisting condition.

¶ 21 *6. Jury Deliberations*

¶ 22 Following closing arguments, the trial court read the instructions to the jury. Approximately one hour after the jury had begun its deliberations, it sent a request for "an itemized breakdown of * * * medical bills to include May-September 2013." The court denied that request. Approximately 15 minutes later, the jury returned a verdict finding for defendant and against plaintiff.

¶ 23 *C. Posttrial Proceedings*

¶ 24 In June 2016, plaintiff filed a motion for a new trial, or in the alternative, judgment notwithstanding the verdict. In September 2016, the trial court denied plaintiff's motion.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 On appeal, plaintiff argues that the trial court (1) erred when it denied the motion for judgment notwithstanding the verdict and (2) abused its discretion by denying plaintiff's motion for a new trial. We address these issues in turn.

¶ 28 A. Judgment Notwithstanding the Verdict

¶ 29 Plaintiff argues that she was entitled to judgment notwithstanding the verdict because, even when viewing the evidence in the light most favorable to defendant, the evidence so overwhelmingly favored plaintiff that a contrary verdict cannot stand. We disagree.

¶ 30 1. *Standard of Review*

¶ 31 We review *de novo* a trial court's denial of a motion for judgment notwithstanding the verdict. *Ford v. Grizzle*, 398 Ill. App. 3d 639, 650, 924 N.E.2d 531, 542 (2010). A judgment notwithstanding the verdict is properly entered when all the evidence, when viewed in the light most favorable to the nonmoving party, so overwhelmingly favors the moving party that no contrary verdict could ever stand. *Id.* The trial court may not grant judgment notwithstanding the verdict if (1) there is any evidence, together with reasonable inferences to be drawn from that evidence, demonstrating a substantial factual dispute or (2) where assessment of the credibility of a witness is decisive to the outcome of the case. *Maple v. Gustafson*, 151 Ill. 2d 445, 454, 603 N.E.2d 508, 512 (1992). A judgment notwithstanding the verdict may not be granted merely because a verdict is against the manifest weight of the evidence. *Id.* at 453.

¶ 32 2. *Applicable Law*

¶ 33 To recover damages for negligence, a plaintiff must prove that (1) defendant owed plaintiff a duty, (2) that defendant breached that duty, and (3) that the breach was the prox-

imate cause of plaintiff's injuries. *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 235-36, 938 N.E.2d 440, 452 (2010).

¶ 34 Proximate cause requires a plaintiff to prove that defendant's negligence was (1) the actual cause or the cause in fact of his injury — that is, but for the defendant's conduct, the accident would not have occurred — and (2) the legal cause of his injury — that is, the defendant's conduct was so closely tied to the plaintiff's injury that he should be held legally responsible for it. *Trigsted v. Chicago Transit Authority*, 2013 IL App (1st) 122468, ¶ 52, 994 N.E.2d 682. Whether proximate cause exists is a question of fact reserved for the trier of fact, and this court will defer to findings of facts as long as they are not against the manifest weight of the evidence. *Krywin*, 238 Ill. 2d at 226; *Upper Salt Fork Drainage Dist. v. DiNovo*, 385 Ill. App. 3d 1083, 1097, 904 N.E.2d 84, 96 (2008). A finding is against the manifest weight of the evidence only when the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Tamraz v. Tamraz*, 2016 IL App (1st) 151854, ¶ 19, 53 N.E.3d 1090.

¶ 35 3. Analysis

¶ 36 On this record, we conclude that the jury could have found that defendant's actions were not the proximate cause of plaintiff's injuries and such a finding would not be against the manifest weight of the evidence. See *id.* The evidence at trial demonstrated that plaintiff was involved in a low-speed accident in which the vehicles were traveling approximately 10 miles per hour. The jury heard the testimony of Chopra, who believed that plaintiff had not suffered a serious injury as a result of this accident. The jury could also have found plaintiff's claims of injury to be meritless or that they were the result of a preexisting condition.

¶ 37 Based on this evidence, a reasonable jury could conclude that this minor accident

was not the actual cause of plaintiff's supposed injury. *Trigsted*, 2013 IL App (1st) 122468, ¶ 52. We also note that the outcome of this case depended upon the credibility of several witnesses. Accordingly, the trial court did not err in denying plaintiff's motion for judgment notwithstanding the verdict. *Maple*, 151 Ill. 2d at 453.

¶ 38 B. Motion for a New Trial

¶ 39 Next, plaintiff argues that the trial court abused its discretion by denying her motion for a new trial. We disagree

¶ 40 When a party files a posttrial motion for a new trial, the trial court should weigh the evidence and may set aside the verdict and order a new trial if the verdict is contrary to the manifest weight of the evidence. *Hamilton v. Hastings*, 2014 IL App (4th) 131021, ¶ 26, 14 N.E.3d 1278. A finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident or when the findings of the jury are unreasonable, arbitrary, or not based upon any of the evidence. *Tamraz*, 2016 IL App (1st) 151854, ¶ 19.

¶ 41 A trial court's denial of a motion for a new trial will not be reversed on appeal unless the court abused its discretion. *Hamilton*, 2014 IL App (4th) 131021, ¶ 26. In determining whether the trial court abused its discretion, this court considers whether the jury's verdict was supported by the evidence and whether the losing party was denied a fair trial. *Id.*

¶ 42 As we have already stated, the jury's verdict was not against the manifest weight of the evidence. Thus, the trial court did not abuse its discretion in denying plaintiff's motion for a new trial. See *id.*

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the trial court's rulings.

¶ 45 Affirmed.