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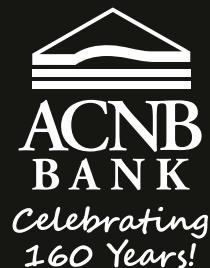
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IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW NO. 19-SU-913

DONALD W. WERT, Petitioner

v.

CARLOS A. FERNANDEZ, Respondent

To: Carlos A. Fernandez and any other parties and interest

A hearing for involuntary transfer of ownership of a motor vehicle is to be held on October 3, 2019 at 11:00 a.m. in Courtroom No. 4, third floor, Adams County Courthouse, 111 Baltimore Street, Gettysburg, PA 17325. The information with regard to the vehicle that is the subject of this matter is a 2005 Mercedes Benz, Model C-320 series sedan, VIN no. WDBRF84JX5F690138, title no. 73502918001FE.

John A. Wolfe, Esq. Attorneys for Petitioner 47 West High Street Gettysburg, PA 17325 (717) 337-3754

8/30, 9/6 & 9/13

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that Frictionless Real Estate, LLC, a Pennsylvania limited liability company with a principle office at 27 Chambersburg Street, Gettysburg, Pennsylvania, 17325, did file in the Office of the Secretary of the Commonwealth of Pennsylvania, on August 21, 2019, registration of the fictitious name: THE JAMES GETTYS HOTEL, under which it intends to do business at 27 Chambersburg Street, Gettysburg, Pennsylvania, pursuant to the provisions of the Act of Assembly of December 21, 1988, known as the "Fictitious Names Act."

Barley Snyder LLP Attorneys

9/13

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, September 20, 2019 at 8:30 a.m.

SHOWERS—Orphans' Court Action Number OC-48-2019. The First and Final Account of Doris A. Showers, Administratrix CTA of the Walter C. Showers, late of Cumberland Township, Adams County, Pennsylvania.

DEARDORFF—Orphans' Court Action Number OC-78-2019. The First and Final Account of Nancy J. Bross, Executrix of the Joyce K. Deardorff, late of Oxford Township, Adams County, Pennsylvania.

Kelly A. Lawver Clerk of Courts

9/6 & 9/13

NOTICE OF DISSOLUTION

NOTICE IS HEREBY GIVEN to all persons interested or who may be affected by DS&GS, INC., a Pennsylvania business corporation, that the Board of Directors is now engaged in winding up and settling the affairs of said Corporation so that its corporate existence shall be ended by the filing of Articles of Dissolution with the Department of State of the Commonwealth of Pennsylvania pursuant to the provisions of the Pennsylvania Business Corporation Law of 1988.

Barley Snyder LLP Attorneys

9/13

NOTICE OF DISSOLUTION

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Barley Snyder LLP Attorneys

9/13

ANTHONY VELLA VS. CAROL HOPKINS

1. Defendant admitted liability and a jury trial occurred on the issue of damages only in this Court on March 13, 2019. At the conclusion of the trial, the jury initially returned a verdict of zero dollars for all damages. This Court ordered the jury to return to deliberate as both parties had stipulated to the liability of Defendant. The jury after a short additional deliberation returned with a verdict of \$20,000 for past, present and future pain and suffering, embarrassment and humiliation, and loss of enjoyment of life. The jury gave zero dollars for loss of earning capacity and for disfigurement.

2. Plaintiff has alleged in his Motion for Post-Trial Relief that he is entitled to a new trial because (1) the jury ignored this Court's instructions and (2) because the final verdict on damages was so low that it was against the weight of the evidence.

3. Because the jury found for an amount against Defendant by awarding Plaintiff \$20,000, it is clear that the jury followed the instructions given to them by this Court, and thus, Plaintiff's first claim that the jury ignored this Court's instructions lacks merit, and is not a basis for granting a new trial.

4. The jury was free to believe Plaintiff injuries from the accident likely resolved in a relatively short period of time. Based on Dr. Fernandez's testimony, the jury could have reasonably believed that Plaintiff only suffered \$20,000 worth of damages.

5. Evidence showed despite injury, Plaintiff's earning capacity was actually increasing in the years since the accident. The jury was free to believe that Plaintiff did not suffer a loss of earning capacity as a result of Defendant's negligence.

6. In the jury's mind, Plaintiff did not present uncontroverted evidence, or perhaps sufficient evidence to satisfy Plaintiff's burden of proof on the matter of alleged disfigurement.

7. Plaintiff's claims that the jury ignored this Court's instructions, and that the jury's damages went against the weight of the evidence both fail.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, 16-S-1314, ANTHONY VELLA VS. CAROL
HOPKINS

Troy L. M. Brown, Esquire, Attorney for Plaintiff

Seth T. Black, Esquire, Attorney for Defendant

Campbell, J., August 12, 2019

OPINION

Before this Court is Plaintiff Anthony Vella's Motion for Post-Trial Relief filed on March 20, 2019. Plaintiff asserts that he is entitled to a new trial because the jury's verdict for \$20,000 awarded to Plaintiff was improper. Plaintiff asserts the jury ignored this Court's instructions, and awarded an amount that was "absurdly low" and against the weight of evidence. For the reasons set forth herein, the attached Order denying Plaintiff's Motion for Post-Trial Relief is entered.

BACKGROUND

Plaintiff, Anthony Vella, was in an automobile accident with Defendant, Carol Hopkins, on September 6, 2015 in Lower Township, New Jersey. Defendant admitted liability and a jury trial occurred on the issue of damages only in this Court on March 13, 2019.

At the conclusion of the trial, the jury initially returned a verdict of zero dollars for all damages. This Court ordered the jury to return to deliberate as both parties had stipulated to the liability of Defendant. The jury after a short additional deliberation, returned with a verdict of \$20,000 for past, present, and future pain and suffering, embarrassment and humiliation, and loss of enjoyment of life. The jury gave zero dollars for loss of earning capacity and for disfigurement.

Plaintiff filed a Motion for Post-Trial Relief for a new trial on damages on March 20, 2019 and filed a brief in support of his motion on April 15, 2019. Defendant then filed a brief in opposition of Plaintiff's Motion for Post-Trial Relief on April 15, 2019, and this matter has now come before this Court.

STANDARD OF REVIEW

In reviewing a motion for a new trial, a trial court may only grant the motion when the jury's verdict is so contrary to the evidence that it "shocks one's sense of justice." **Neison v. Hines**, 653 A.2d 634, 636 (Pa. 1995). The jury can choose to believe all, some, or none of the testimony from any given witness. **Id.** at 637. A verdict must not be the product of passion, prejudice, partiality, or corruption, or a verdict must bear some reasonable relation to the loss suffered by the plaintiff demonstrated by uncontroverted evidence presented at trial. **Id.** If the verdict bears a reasonable resemblance to the proven damages, it is not the court's function to substitute its judgement for the jury's. **Rettger v. UPMC Shadyside**, 991 A.2d 915, 934 (Pa. Super. 2010).

DISCUSSION

Plaintiff has alleged in his Motion for Post-Trial Relief that he is entitled to a new trial because (1) the jury ignored this Court's instructions and (2) because the final verdict on damages was so low that it was against the weight of the evidence.

Plaintiff's first claim is that the jury ignored this Court's instructions because it initially returned with a verdict of zero, despite

stipulated liability, contrary to the instructions. Plaintiff further argues the fact that the jury spent such a short amount of time deliberating, after being sent back to the jury deliberation room, demonstrates that jury did not follow this Court's instructions.

At the conclusion of the trial, this Court instructed the jury that because both parties agreed Defendant was negligent in causing Plaintiff's harm, and because Defendant's negligence was the factual cause of the harm to Plaintiff, some damages must be awarded. **Pa. SSCJI (CIV), 7.50**. This Court further went on to instruct the jury that because Plaintiff and Defendant disagree on the amount of damages Defendant caused, the jury was responsible for determining the amount of damages that Plaintiff was entitled to receive. **Pa. SSCJI (CIV), 7.50**.

While the jury may have initially returned a verdict of \$0, contrary to this Court's instructions, this Court clarified for the jury that it must award some amount to Plaintiff, as per the jury instructions, and directed the jury back into deliberation. After further deliberations, however brief, the jury then returned a verdict of \$20,000 for past, present, and future pain and suffering, embarrassment and humiliation, and loss of enjoyment of life, thus following this Court's instructions by awarding what it felt was an appropriate amount of damages to fully compensate Plaintiff.

The fact that the jury may have only spent ten to fifteen minutes during its second round of deliberations, as Plaintiff claims, in determining the amount of damages is irrelevant. There is no time frame on how long a jury must deliberate. Rather, once five-sixths of jurors are in agreement on the appropriate amount of damages, deliberations end and that verdict is returned. This Court polled the jurors after they returned from jury deliberations, and the required five-sixths of jurors were in agreement on the amount of damages to be awarded to Plaintiff. Because the jury found for an amount against Defendant by awarding Plaintiff \$20,000, it is clear that the jury followed the instructions given to them by this Court, and thus Plaintiff's first claim that the jury ignored this Court's instructions lacks merit, and is not a basis for granting a new trial.

Plaintiff's second claim is that the damages awarded by the jury were so low that the verdict is against the weight of the evidence. Plaintiff took specific issue with the fact that he was only awarded \$20,000 total for damages, and argues that he was entitled to a much greater amount.

For Plaintiff's claim that the awarding of \$20,000 in damages was so low that it goes against the weight of evidence to have merit, he must prove that the verdict was the product of passion, prejudice, partiality, or corruption, or the verdict was not in a reasonable relation to the loss suffered by Plaintiff. **Nieson**, 653 A.2d at 637. The evidence presented by Plaintiff needs to be uncontroverted in order for the jury's verdict to be against the weight of the evidence. **Id.** In addition, in order to be entitled to a new trial, Plaintiff must show that the verdict "shocks one's sense of justice." **Id.** at 636.

The problem here for Plaintiff is that Appellate authority is clear that the jury is free to believe all, some, or none of the testimony from any witness. **Id.** at 637. Furthermore, this Court may not substitute its own judgement in place of the jury's as long as there is a reasonable resemblance for the damages that were awarded. **Rettger**, 991 A.2d at 934.

At trial, Plaintiff's expert witness, Dr. Beutler, testified that Plaintiff suffered a herniated disk and pinched nerves in his neck, and weakness and numbness in his left arm as a result of the accident.

On the other hand, Defendant's expert witness, Dr. Fernandez, disagreed as to the extent of Plaintiff's pain resulting from the automobile accident. Dr. Fernandez testified that Plaintiff had a high grade sprain or strain muscular injury and a low back muscle or ligament injury, but that these types of injuries heal within a short period of time, usually a few months. The jury was free to believe all, part, or none of the testimony of either witness. There is no requirement for the jury to find the testimony of Plaintiff's treating physician to be more credible than Defendant's independent medical expert. While both doctors agreed Plaintiff suffered some injury in the accident, thereby requiring the award of some amount of damages to Plaintiff, they disagreed as to the severity or extent of the injuries. The jury was free to believe Plaintiff's injuries from the accident likely resolved in a relatively short period of time. Based on Dr. Fernandez's testimony, the jury could have reasonably believed that Plaintiff only suffered \$20,000 worth of damages. A verdict of \$20,000 does, therefore, have a reasonable relation to the evidence presented, and this Court may not substitute its own judgement for the jury's.

Additionally, the jury's verdict does not shock one's sense of justice as it is reasonable under the circumstances. Because there is a

reasonable relation between the damage suffered according to Defendant's expert witness, and the amount awarded by the jury, Plaintiff is not entitled to a new trial.

Next Plaintiff claims that receiving \$0 in damages for his loss of past and future earning capacity was against the weight of the evidence. Plaintiff argued that his injury has prevented him from earning the amount of money he was entitled to receive prior to his injury because he took a reduced role at his pizza restaurant. However, while his argument states he has taken a reduced role at the restaurant, he remains an owner, and the facts presented show that his income has actually increased since the time of the accident.¹

Plaintiff's expert, Terry Leslie, showed data that suggested Plaintiff suffered significant monetary losses each year following the accident. But these numbers were contradicted by Plaintiff's personal income tax filings to the IRS.² Plaintiff testified at trial that his business expanded in the years since the accident including adding a liquor license to sell beer. Additionally, Dr. Beutler testified that Plaintiff had informed him that he had started a new food truck business on the side, in addition to owning the pizza shop. Evidence showed despite injury, Plaintiff's earning capacity was actually increasing in the years since the accident. The jury was free to believe that Plaintiff did not suffer a loss of earning capacity as a result of Defendant's negligence. Thus, the jury's verdict giving \$0 in damages for a loss of earning capacity was proper.

The verdict, given the contradicting evidence presented at trial, does not shock this Courts sense of justice. The jury's verdict was not against the weight of the evidence, and Plaintiff is not entitled to a new trial on the issue of loss of earning capacity damages.

Plaintiff's last claim is that because the jury verdict was \$0 for Plaintiff's disfigurement claim, the verdict was against the weight of

¹ According to Plaintiff's personal tax documents, his total personal income from his wages and shareholder income combined has increased in both 2016 and 2017 following the accident in 2015. Plaintiff's 2015 personal income was \$70,749, while his 2016 personal income was \$94,521, and his 2017 personal income was \$103,877. (Exhibit G) Terry Leslie Expert Report page 5.

² Plaintiff's post-injury earning capacity personal income does not match up with his personal tax disclosures. The expert report claims to show that his personal income each year was much lower than what he earned according to the IRS. (Exhibit G) Terry Leslie Expert Report pages 5, 8.

the evidence. Plaintiff's basis for this claim is that due to the accident he can no longer move his neck in its full range of motion and has suffered atrophy in his left arm. The problem with Plaintiff's argument is that he did not show the jury any neck or arm movement problems, and solely relied on his doctor's testimony about these issues. Plaintiff did not show photographs or even a courtroom display of the claimed atrophy in his arm. Once again, Plaintiff's evidence was contradicted by Defendant's expert witness, Dr. Fernandez who testified that Plaintiff's present claims of disfigurement were not related to the accident.

A reasonable jury verdict could then be \$0 in damages for disfigurement because Plaintiff did not present uncontroverted testimony. Again, this Court does not have a reason to substitute its own judgment for that of the jury. Additionally, one's sense of justice is not shocked by the jury's verdict on the issue of disfigurement. In the jury's mind, Plaintiff did not present uncontroverted evidence, or perhaps sufficient evidence to satisfy Plaintiff's burden of proof on the matter of alleged disfigurement.

Plaintiff is not entitled to a new trial for loss of disfigurement damages as the jury's verdict was not against the weight of the evidence.

CONCLUSION

Plaintiff's claims that the jury ignored this Court's instructions, and that the jury's damages went against the weight of the evidence both fail. The jury entered into a proper verdict and the jury's verdict of \$20,000 in damages for Plaintiff was reasonable given the contradicting evidence and testimony presented to it. While we cannot speculate on or get into the minds of the jurors, it is quite possible the jury did not feel Plaintiff satisfied its burden of proof as to the severity of Plaintiff's damages.

Therefore, for the reasons set forth above, the attached Order denying Plaintiff's Motion for Post-Trial Relief is entered.

ORDER

AND NOW, on this 12th day of August, 2019, for the reasons stated in the attached Opinion, Plaintiff's Motion for Post-Trial Relief is denied.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF DOROTHY T. BURKHARDT, a/k/a DOROTHY THERESA BURKHARDT, DEC'D

Late of Sykesville, Carroll County, Maryland

Frances Ann Starlings, 2248 Bollinger Mill Road, Finksburg, MD 21048; Mary T. Unglesbee, 2250 Bollinger Mill Road, Finksburg, MD 21048

Attorney: Ann C. Shultis, Esq., Salzmann Hughes, P.C., 1147 Eichelberger Street, Suite F, Hanover, PA 17331

ESTATE OF CYPRIAN N. GEBHART, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Scott L. Kelley, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

Attorney: Scott L. Kelley, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF ARTHUR EARL GLAZIER, JR., DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Julia Glazier, 206 East King Street, East Berlin, PA 17316

Attorney: Thomas R. Nell, Esq., 130 W. King Street, P.O. Box 1019, East Berlin, PA 17316

ESTATE OF EDWARD HARBAUGH, SR., a/k/a EDWARD LESTER HARBAUGH, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executrix: Geneva Harbaugh, c/o Barbara Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

Attorney: Barbara Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

ESTATE OF THEODORE EUGENE KREITZ, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Christina M. Bowers, 11 Berkey Road, East Berlin, PA 17316

Attorney: Arthur J. Becker, Jr., Esq., Becker Law Group, P.C., 529 Carlisle Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF CLAIR E. GOLDEN, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Paula Elaine Lecrone, 756 Brough Road, Abbotstown, PA 17301

Attorney: Thomas R. Nell, Esq., 130 W. King Street, P.O. Box 1019, East Berlin, PA 17316

ESTATE OF ROSELLA V. HARTLAUB, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executors: Samuel T. Hartlaub, 931 Beck Road, Gettysburg, PA 17325; Lucy M. Knight, 3443 Hanover Road, Gettysburg, PA 17325; Victoria L. Martin, 1981 Whitehall Road, Littlestown, PA 17340; Linda S. Morrison, 1 Cherry Court, New Oxford, PA 17350

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FRANCES M. LEIDY, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Penny L. Mohlenrich, c/o Genevieve E. Barr, Esq., 11 Carlisle Street, Hanover, PA 17331

Attorney: Genevieve E. Barr, Esq., 11 Carlisle Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF DORIS R. FREDERICK, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Julie R. Stonesifer, c/o Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

Attorney: Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

ESTATE OF GEORGE C. KING a/k/a GEORGE CHALMERS KING, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Randy K. King, 23 Colonial Drive, Hanover, PA 17331

Attorney: Amy E.W. Ehrhart, Esq., 118 Carlisle Street, Suite 202, Hanover, PA 17331



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