

FILED
SUPREME COURT
STATE OF WASHINGTON
9/1/2022 3:49 PM
BY ERIN L. LENNON
CLERK

CAUSE No. 101058-3

SUPREME COURT
OF THE STATE OF WASHINGTON

AVI LEANNE TAYLOR, Appellant,

v.

MIRINA STONE, Respondent.

ANSWER TO PROPOSED PETITION FOR REVIEW

Mark M. Miller, WSBA No. 16382
Attorney for Respondent Mirina Stone

Law Offices of Mark M. Miller
Employees of Farmers Insurance Exchange,
a Member of the Farmers Insurance Group of Companies
PO Box 258829
Oklahoma City, OK 73125-8829
Telephone: (425) 564-0203
Email: mark.miller@farmersinsurance.com

TABLE OF AUTHORITIES

Table of Cases

<u>Bitzan v. Parisi</u> , 88 2n.2d 116, 558 P.2d 775 (1977) ...	7,8,9
<u>City of Tacoma v. State</u> , 117 Wn.2d 348, 361, 816 P.2d 7 (1991).....	3,13
<u>In re Estate of Palmer</u> , 145 Wn. App. 249, 265-66, 187 P.3d 758 (2008)	3
<u>In re Pers. Restraint of Heidari</u> ,159 Wn. App. 601, 609, 248 P.3d 550 2011)	13
<u>Leak v. U.S Rubber Co.</u> , 9 Wn. App. 98, 511 P.2d 88 (1973).....	9,10,11
<u>Lidstrand v. Silvercrest Indus.</u> , 28 Wn. App.359, 364, 623 P.2d 710 (1981).....	3
<u>Mason v. Mortgage America Inc.</u> , 114 Wn.2d 842, 853, 792 P.2d 142 (1990)	3
<u>Palmer v. Jenson</u> , 132 Wn.2d 193, 937 P.2d 597 (1997)..	4,5,6,7
<u>Stevens v. Gordon</u> , 118 Wn. App. 43, 55, 74 P.3d 653 (2003)	11

Regulations and Rules

RAP 13.4 (b)pg. 1,2,14

Other Authorities

WPI 45.20pg. 14

WPI 45.22pg. 14

I. INTRODUCTION

Respondent Mirina Stone (hereinafter Stone) respectfully requests that Appellant Avi Taylor's (hereinafter Taylor) Proposed Petition for Review of the Court of Appeals May 2, 2022 Opinion Terminating Review be denied. As the following argument and authorities establish, none of the issues raised by Taylor satisfy the requirements of RAP 13.4(b) to warrant the Supreme Court accepting review. The decision of the Court of Appeals in no way conflicts with any Supreme Court decision or any other Court of Appeals decision and does not involve any question of law under the Washington State Constitution or United States Constitution. Moreover, the Court of Appeals Unpublished Decision upholding the trial court's bench trial verdict pursuant to the "substantial evidence" standard does not involve an issue of substantial public interest.

Taylor had her days in court (a five-day bench trial) to prove her injuries and damages arising from a minimal-impact intersection collision and the court awarded her \$35,000 in non-

economic damages based on all the evidence presented. The Court of Appeals affirmed that result in all respects based on its review of the record and application of the substantial evidence standard, and there are no compelling considerations in this case for the Supreme Court to accept review of the Court of Appeals decision.

II. ARGUMENT

A. None of Taylor's Arguments Requesting Review Meet the Requirements of RAP 13.4(b).

To obtain this court's review, Taylor must show that the Court of Appeals decision conflicts with (1) a decision of the Supreme Court or (2) another Court of Appeals decision, or (3) that she is raising a significant constitutional question, or (4) there is an issue of substantial public interest. RAP 13.4(b)(1)-(4). While Taylor's Petition argues that the Court of Appeals decision conflicts with other Supreme Court and Court of Appeals opinions and that the decision raises issues of substantial public interest, a simple review of the Court of Appeals decision in this case as well as the actual record on

appeal establishes that no conflicts exist and nothing about this civil bench trial decision or the subsequent review of the decision by the Court of Appeals under the “substantial evidence” standard¹ that raises any public interest issues. Accordingly, there is no basis for the Supreme Court to review this case.

¹ The Court of Appeals Opinion in this case stated the Standard of Review as follows:

Upon appeal of a bench trial, “respondents are entitled to the benefit of all evidence and reasonable inference therefrom in support of the findings of fact entered by the trial court.” Mason v. Mortgage America Inc., 114 Wn.2d 842, 853, 792 P.2d 142 (1990)(quoting Lidstrand v. Silvercrest Indus., 28 Wn. App.359, 364, 623 P.2d 710 (1981). After a trial court has weighed the evidence, our review is limited to determining whether substantial evidence supports the court’s findings, and, if so, whether the findings support its conclusions. City of Tacoma v. State, 117 Wn.2d 348, 361, 816 P.2d 7 (1991). Substantial evidence is that which would persuade a fair-minded, rational person of the truth of the finding. In re Estate of Palmer, 145 Wn. App. 249, 265-66, 187 P.3d 758 (2008).

1. The Court of Appeals Decision Does Not Conflict With any Supreme Court or Other Court of Appeals Decisions.

Taylor argues that the Court of Appeals decision in this case conflicts with Palmer v. Jenson, 132 Wn.2d 193, 937 P.2d 597 (1997), a jury trial arising from a car accident where the jury's verdict was for the exact amount of the medical bills, leading to the presumption it did not include any general damages despite clear and uncontroverted evidence that plaintiff suffered injuries in the accident. *Id.* at 195-96. The Supreme court in Palmer the reviewed the record to determine if the omission of general damages was contrary to the evidence and granted a new trial, concluding that "The medical evidence substantiates Pamela Palmer's claim that she experienced pain and suffering for over two years after the accident. We hold the jury's verdict providing no damages for Palmer's pain and suffering was contrary to the evidence." *Id.* at 203.

Palmer is not in conflict with the Court of Appeals decision in this matter and is not helpful to Taylor's Petition for Review. Palmer does not stand for the proposition that Taylor should have been awarded additional general damages for "disability, disfigurement, mental anguish & loss of enjoyment of life" which she wrongly claims were "uncontested." See Taylor's Proposed Petition for Review at 7-8. It stands for the proposition that a jury's award of medical specials only when there is uncontested pain and suffering is likely an insufficient verdict. Taylor was awarded significant damages for pain and suffering in this matter, however, in a bench trial where the trial court issued Findings of Fact and Conclusions of Law and found that "as a direct and proximate cause of the collision Plaintiff Avi Taylor sustained pain and loss of enjoyment of life for a period of time" and awarded her a total of \$35,000 for noneconomic damages. CP 27.

Moreover, there were no "uncontested" damages in this case which the trial court failed to award. All injuries and

damages were contested by Stone with medical evidence from a neurosurgeon, Dr. James Blue, whose physical examination of Taylor showed that she had normal neurological and sensory function. RP 474. Following the CR 35 examination Dr. Blue concluded, within a reasonable degree of medical certainty, that there was no objective evidence of injury to Taylor in the 2016 accident. RP 478-79. There wasn't any structural or radiographic evidence of injury, and no evidence of any local trauma. RP 479.

Additionally, there was no testimony from Taylor's only medical expert, Dr. Gallegos, ND, that Taylor was "disfigured" or suffered "disfigurement" from the accident, or that she suffered any permanent "disability." Taylor never asked Dr. Gallegos about any permanent disability, and Dr. Gallegos hadn't treated Taylor for a couple of years when she testified at trial that she "would not stop treatment until she was at or near pre-accident status. It looks like – it looks like she was getting – it looked like she was getting close, although we didn't see

what would happen without treatment.” RP 433-34. Simply put, this matter is not a case where there were uncontested general damages that the trial court forgot/failed to award, and the Palmer case does not conflict with the Court of Appeals decision which reviewed the record and the trial court’s findings under the “substantial evidence” standard and affirmed after finding no error.

None of the other cases cited by Taylor come remotely close to conflicting with the Court of Appeals decision in this matter. For example, Taylor argues that she was entitled to future damages under Bitzan v. Parisi, 88 2n.2d 116, 558 P.2d 775 (1977), a case where the jury awarded future damages to Bitzan based for the most part on his own testimony that he was continuing to suffer pain, disability, and loss of earnings up to the time of trial. Bitzan held that “proof of pain and suffering as late as at time of trial even though subjective in character will warrant an instruction on future damages.” *Id.* at 122. Taylor argues she was “still suffering pain, suffering, disability,

lost earnings, and more, from the time of the February 23, 2016 collision to the date of trial on November 2, 2021 – a period of over five years, was evidenced by many” and therefore should have been awarded future damages. *See Proposed Petition for Review at 22.*

Bitzan only stands for the proposition that a jury instruction is warranted in a jury case if there is sufficient evidence of future damages, it doesn’t dictate that future damages must be awarded, as that is for the jury to decide. In a bench trial it is for the judge to decide. Stone presented substantial evidence that Taylor did not suffer any ongoing injuries, and Taylor ignores the trial court’s Finding of Fact 25 where the trial court stated:

The court finds that as a direct and proximate cause of the collision, Plaintiff Avi Taylor sustained pain and loss of enjoyment of life for a period of time.

CP 27. While the trial court did find that Taylor sustained pain and loss of enjoyment of life, she put a limit of the pain and suffering to a “period of time.” The trial court did not find that

,Taylor was disfigured, disabled, had any permanent injuries, or would have future pain or suffering. The trial court was not required to award Taylor future damages just because she presented some testimony on future damages, as there was substantial evidence to show she did not have ongoing symptoms from the accident, including Dr. Blue's testimony that at the time he examined her there was no objective evidence of any ongoing injury, with a normal sensory and neurologic exam. RP 478-79. The Court of Appeals upheld the trial court's findings and conclusions based on the substantial evidence rule, including the trial court's decision not to award future non-economic damages. *See* Court of Appeals Opinion at 9-12. Nothing in the Court of Appeals Opinion conflicts with Bitzan.

Finally, Taylor claims that the Court of Appeals decision in this case conflicts with the decision of Leak v. U.S Rubber Co., 9 Wn. App. 98, 511 P.2d 88 (1973) on the issue of her right to future medical care. *See* Proposed Petition for Review

at 24-25. Leak involved a case where the plaintiff had a preexisting seizure condition which had had not been active for several years, but soon after a vehicle accident his seizures returned. *Id.* at 99. Plaintiff claimed that the accident lit-up his preexisting seizure condition and that he would require future medical care. Expert medical testimony from his treating doctor confirmed that the resumption of seizure activity was “more likely than not” caused by the trauma of the accident. *Id.* at 100. At trial the jury awarded \$48,000 to the plaintiff.

Leak held as follows:

Since plaintiff’s epileptic seizures were recurring at the time of trial and he had received medical attention for the seizures, including a neurological study at the University of Washington Hospital, it could be inferred from the evidence that future treatment would be necessary. Likewise, since his back and neck were continuing to cause him pain, both from the initial injury and aggravation and worsening of a preexisting arthritic condition to that area, it could be inferred that he would have additional medical treatment in the future. The court was warranted in submitting the issue of future medical expense to the jury.

Id. at 104.

Taylor argues that the Leak decision is in direct conflict with the Court of Appeals decision in this case which stated as follows:

Here, Taylor concedes that “[u]nfortunately, the medical bills did not end up getting admitted” at trial. And while damages “are awardable for medical expenses that are reasonably certain to be necessary in the future, Stevens v. Gordon, 118 Wn. App. 43, 55, 74 P.3d 653 (2003)(citing Leak v. United States Rubber Company, 9 Wn. App. 98, 103, 511 P.2d 88 (1973), Taylor failed to present any exhibits or testimony as to her future need for medical treatment and costs of such treatment. Based on Taylor’s failure to provide objectively verifiable proof of her past and future medical costs, the trial court correctly declined to award damages for medical expenses.

See Court of Appeals Opinion at 12.

As the Court of Appeals and the record make clear, Taylor failed to present any exhibits or testimony to support future medical costs, and therefore the trial court was correct in denying any claim for future medicals. Nothing was presented by Taylor to prove that future medical expenses were reasonably certain to be necessary, and nothing the Leak

opinion required that the trial court award future medical care which was not support by the evidence.

2. This Case Does Not Involve Issues of Substantial Public Interest.

Taylor appears to argue that this simple auto accident case and the Court of Appeals Unpublished Decision that affirmed the trial court's damage award in a bench trial under the "substantial evidence" standard raise issues of substantial public interest because there are so many people seeking damages for automobile injuries in Washington. *See* Proposed Petition For Review, pp. 25-35. She claims that the Court of Appeals decision creates an "unprecedented reduction of damage recovery," *Id.* at 6, and seems to advocate that jury verdict forms be revised to delineate all types of non-economic damages. *Id.* at 10-15.

The amount of damages awarded in a bench trial is not an issue of substantial public interest that requires Supreme Court review. It is a discretionary decision by the trial judge as to the

amount of damages awarded, and the Court of Appeals is the safeguard that ensures there was substantial evidence to support the court's findings, and if so, whether the court's findings support its conclusions. City of Tacoma v. State, 117 Wn.2d 348, 361, 816 P.2d 7 (1991). That is what happened in this case, and the Court of Appeals affirmed the damages awarded by the trial court after its review of the evidence. Taylor may believe she should have been awarded more damages, but the trial court heard all the evidence and decided otherwise. There is nothing about that result that requires review by this court.

As to Taylor's claim that this case raises an issue of substantial public interest because the trial court didn't delineate her award to address every possible element of economic damages, there is no such requirement. Jury instructions and verdict forms are not required in bench trials, *see In re Pers. Restraint of Heidari*, 159 Wn. App. 601, 609, 248 P.3d 550 (2011), but even in jury trials the most specific the standard verdict form get is requiring the jury to provide a total

amount for past economic damages, a total for future economic damages, and a total for past and future noneconomic damages. *See* WPI 45.20. Other verdict forms just require the jury write in a single total for all damages. *See, e.g.*, WPI 45.22.

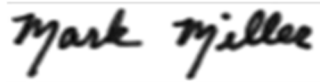
Requiring a judge or jury to assign a dollar amount to every element of non-economic or economic damages is needless and will not increase the total award, and such an idea is not a reason for the Supreme Court to accept review in this case.

III. CONCLUSION

Taylor has not presented any viable argument under RAP 13.4(b) that would warrant review by the Supreme Court. The Court of Appeals decision in this case was correctly decided under the “substantial evidence” standard, and it does not conflict with any Supreme Court or other Court of Appeals decisions. Moreover, Taylor has failed to raise an issue of substantial public interest, and her Petition for Review should

be denied.

Respectfully Submitted,

A rectangular box containing a handwritten signature in black ink that reads "Mark M. Miller".

Mark M. Miller, WSBA#16382
Attorney for Respondent Stone

Law Offices of Mark M. Miller
15500 SE 30th Place, Suite 201
Bellevue, WA 98007
425-564-0203

This document contains 2507 words in compliance with RAP
18.17

LAW OFFICES OF MARK M. MILLER

September 01, 2022 - 3:49 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,058-3
Appellate Court Case Title: Avi Leanne Taylor v. Mirina Stone

The following documents have been uploaded:

- 1010583_Answer_Reply_20220901154712SC795193_5511.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was Stone Answer to Petition full.pdf

A copy of the uploaded files will be sent to:

- ombience.om@gmail.com

Comments:

Sender Name: Mark Miller - Email: mark.miller@farmersinsurance.com
Address:
PO BOX 258829
OKLAHOMA CITY, OK, 73125-8829
Phone: 425-644-4440

Note: The Filing Id is 20220901154712SC795193