FILED
Court of Appeals
Division I
State of Washington
8/1/2022 4:41 PM

FILED
SUPREME COURT
STATE OF WASHINGTON
8/2/2022
BY ERIN L. LENNON
CLERK

101058-3

No. 826808

SUPREME COURT

OF THE STATE OF WASHINGTON

AVI LEANNE TAYLOR,

Petitioner

v.

MIRINA BARBARA JANE STONE

Respondent

PROPOSED PETITION FOR REVIEW

Avi Taylor
Petitioner
PO BOX 1014
Monroe, WA
(206) 715-6161

TABLE OF CONTENTS

Table of Authorities……………………………………..v-vii

A. IDENTITY OF PETITIONER………………………1

B. COURT OF APPEALS DECISION…………………1

C. ISSUES PRESENTED FOR REVIEW…………..…1

i) Is it the Palmer rule, that appellate courts should accept items of damage that are conceded, or is it the rule created by this decision, that a verdict omitting conceded items of damage will stand?

ii) Is it the Palmer rule, that damages endured and evidenced deserve compensation, or is it the rule created here that they're not?

iii) Is disfigurement compensable in civil cases, as the Washington Pattern Jury Instructions illustrate, or only in criminal cases, as this opinion holds?

iv) Are noneconomic damages distinguishable, and if so, should they be delineated in the verdict? Or, is it as this decision holds, that pain and suffering is synonymous with noneconomic damages?

v) Is it the Bitzan rule, that a case should be governed by the applicable case law, or does someone need to announce the law to activate it, as the appellate courts here hold?

vi) Do findings still need to be entered on all material issues, and must they have a reasonable basis in the evidence and law? Or not, as Division One holds here?

vii) Is it the Harris rule, that it's improper to incorporate asymptomatic, preexisting conditions, or are issues that have been dormant for years relevant and reliable, as Division One holds?

viii) Is it the Vangemert rule, that entrepreneurs are allowed to recover for lost earnings? Or is it as this decision affirms, that lost earnings is either synonymous with or contingent on lost profits?

ix) Is it the Bitzan rule; does the continued existence of elements of damage at trial equate to an award for future damages, or are future damages left with injured parties now, as held here?

x) Is it the Leak rule, that evidence of the need for future medical care is sufficient, without specifying the cost; or, is it as these courts hold, that future medical care is contingent on costs?

D. STATEMENT OF THE CASE……………………….4-6

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED..6

I. Summary of argument…………………………………6

II. Standard of Review…………………………………..…7

III. THE BREACH OF VERTICAL STARE DECISIS CREATED BY THE COURT OF APPEALS OPINION MANDATES REVIEW UNDER RAP 13.4(b). ………..7-23

(i-ix)

IV. THE BREACH OF HORIZONTAL STARE DECISIS CREATED BY THE COURT OF APPEALS OPINION MANDATES REVIEW UNDER RAP 13.4(b)………..23-25

(x)

V. THESE ISSUES ARE OF SIGNIFICANT
PUBLIC INTEREST……………………………………25

F. CONCLUSION………………………………………..36

Appendix

TABLE OF AUTHORITIES

Washington Cases

Bitzan v. Parisi……………………………………2, 3, 15, 16, 22
88 Wn.2d 116, 121-22, 558 P.2d 775 (1977)

Fahndrich v. Williams…………………………..…8, 17
194 P. 3d 1005, 147 Wash. App. 302 (Ct. App. 2008)

Federal Signal v. Safety Factors……………..……17, 18
125 Wn. 2d 413, 422, 443 (Wash. 1994)

Harris v. Drake……………………………….…3, 20
152 Wash. 2d 480, 99 P.3d 872 (2004)

In re Pers. Restraint of Arnold…………………23, 24
410 P.3d 1133 (Wash. 2018)

Johnson v. Howard………………………….……23
45 Wn.2d 433 (1954) 275 P.2d 736

Kirk v. Washington State University……………2, 11
109 Wn. 2d 448, 464, 746 (Wash. 1987)

Leak v. United States Rubber Co.………………4, 15, 24, 25
9 Wn. App. 98, (Wash. Ct. App. 1973)

Palmer v. Jensen……………………………….1, 2, 7, 8, 17, 35
132 Wash.2d 193, 203, 937, P. 2d 597 (1997)

Presbytery of Seattle v. Schulz…………………7
449 P.3d 1077 (Wash. Ct. App. 2019)

Rasmussen v. Employment Sec. ………………..7
98 Wash. 2d 846, 849-50, 658 P.2d 1240, 1242 (1983).

Robinson v. City of Omak……………………..8, 17, 19
No. 38219-2-III (Wash. Ct. App. Jun. 9, 2022)

Sorenson v. City of Bellingham……………….26
80 Wn.2d 547, 558, 496 P.2d 512 (1972)

State v. Gore……………………………………7
101 Wash.2d 481, 487, 681 P.2d 227 (1984)

Vangemert v. McCalmon………………………3, 20, 21
414 P.2d 617, 618 (Wash. 1966)

Federal Case

Arpin v. United States…………………………18
521 F.3d 7 69 (7th Cir. 2008)

Other Authorities

https://cdn.harvardlawreview.org/wp-content/uploads/pdfs/vol125_%20ssmith.pdf ……………………………33, 34

https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights ………32

https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1008&context=faculty_articles ……..………35

https://www.researchgate.net/publication/228156971_Towards_a_Global_Model_for_Adjudicating_Personal_Injury_Damages_Bridging_Europe_and_the_United_States …11

https://doh.wa.gov/sites/default/files/legacy/Documents/Pubs//689144.pdf?uid=62e2138a8b9bb …………………………..….30

http://wtsc.wa.gov/wp-content/uploads/dlm_uploads/2022/01/Data-Overview-1-20-2022-Hoff-Roberts.pdf ……………………..29

https://www.seattletimes.com/seattle-news/transportation/2021-was-the-deadliest-on-washington-roads-in-15-years-puzzling-experts/ …28

https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8059708/ ……29

American Law Reports, 1984/2000; Hermes, 1987) ….10, 11

Sloan & Hsieh, 1990; Sloan & van Wert, 1991)………..12

Rules

RAP 13.4(b)

I. INTRODUCTION

A. IDENTITY OF PETITIONER

Petitioner Avi Taylor asks this court to accept review of the Court of Appeals decision designated in Part B of this petition.

B. COURT OF APPEALS DECISION

A copy of the decision filed on May 2nd, 2022 is in Appendix A. The order denying petitioners motion for reconsideration is in Appendix B.

C. ISSUES PRESENTED FOR REVIEW

i) Is it the *Palmer* rule, that appellate courts should accept items of damage that are conceded, or is it the rule created by this decision, that a verdict omitting conceded items of damage will stand?

ii) Is it the *Palmer* rule, that damages endured and evidenced deserve compensation, or is it the rule created here that they're not?

iii) Is disfigurement compensable in civil cases, as the Washington Pattern Jury Instructions illustrate, or only in criminal cases, as this opinion holds?

iv) Are noneconomic damages distinguishable as held in *Kirk*, and if so, should they be delineated in the verdict? Or, is it as this decision holds, that pain and suffering is synonymous with noneconomic damages?

v) Is it the *Bitzan* rule, that a case should be governed by the applicable case law, or does someone need to announce the law to activate it, as the appellate courts here hold?

vi) Do findings still need to be entered on all material issues, and must they have a reasonable basis in the evidence and law? Or not, as Division One holds here?

vii) Is it the *Harris* rule, that it's improper to incorporate asymptomatic, preexisting conditions, or are issues that have been dormant for years relevant and reliable, as Division One holds?

viii) Is it the *Vangemert* rule, that entrepreneurs are allowed to recover for lost earnings? Or is it as this decision affirms, that lost earnings is either synonymous with or contingent on lost profits?

ix) Is it the *Bitzan* rule; does the continued existence of elements of damage at trial equate to an award for future damages, or are future damages left with injured parties now, as held here?

x) Is it the *Leak* rule, that evidence of the need for future medical care is sufficient, without specifying the cost; or, is it as these courts hold, that future medical care is contingent on costs?

D. STATEMENT OF THE CASE

This matter initiated when Respondent drove into the drivers side of Petitioners vehicle, resulting in a T-bone collision (RP 62, 188, 197, 202, 379, 361, 380). Petitioner sustained serious spinal injury to all areas of her spine, injury to her hands, wrists and more. (Appendix D). She received treatment for two years, before planing out. (RP p.215, p.202). She brought this matter before the courts to recover damages suffered: injuries, pain and suffering, disfigurement, loss of enjoyment of life, mental & emotional anguish, lost earnings, disability, medical costs, and future damages (CP 5, 19, 23, AOB p.36).

By the time of trial, witnesses testified that it seemed like she was getting worse, more crooked, and was now visibly handicapped. (Appendix D) Her doctor testifying to the fact that she was still having really high levels of pain when they ended treatment, has seriously exacerbated since, and is in need of more (RP p.382 - p.383, p.403). Employees and investors testified to the fact she was having difficulty keeping up with work demands. (RP 360-61, NRP 74, CP 86-92, CP 106, Appendix D). She'd been anticipating a salary of 3,000/mos. but instead had to shut her doors for lack of physical ability to continue. (Appendix D)

It was a bench trial where the courts found Stone negligent and 100% liable for damages, finding Taylor suffered pain and suffering and loss of enjoyment of life, then awarding for pain and suffering only (CP 28)(Appendix C). Taylor filed several post-trial motions, these were denied. (CP 33-146, 163-166). She filed an appeal (CP 152-162). Stone conceded suffered

pain, disability, disfigurement, mental anguish & loss of enjoyment of life (ROB p.21-22)(ARB p.11). The appellate courts decide there's no exhibits in the record on review, and that no NIED claim was ever made, then don't review the facts and most of the law; they affirm the trial courts (Appendix A). Taylor filed a motion for reconsideration, apologized for not making the exhibits in the record on review more apparent, and showed where they were and where she'd asserted an NIED claim at trial (NRP p.131, APPENDIX E). It was denied (Appendix B). She petitions this Court for review.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

I. Summary of Argument

The decision in this case creates an unprecedented reduction of damage recovery and conflicts with several of this Courts decisions, requiring review under 13.4(b).

II. Standard of Review

Facts found by courts are reviewed under the clearly erroneous standard. This Courts stated standard for mixed questions of law and fact is de novo. *Rasmussen* Conclusions of law are reviewed de novo.

III. THE BREACH OF VERTICAL STARE DECISIS CREATED BY THE COURT OF APPEALS OPINION MANDATES REVIEW UNDER RAP 13.4(b).

"vertical stare decisis" requires that lower courts "follow decisions handed down by higher courts ... adherence is mandatory" *Schulz, Gore*

i, ii)

Stare Decisis requires review under RAP 13.4(b) because much like in *Palmer*, the fact that petitioner suffered disability, disfigurement, mental anguish & loss of enjoyment of life, is

uncontested. Yet, only pain and suffering were included in the verdict. The Court of Appeals' opinion affirming the trial courts award of none, is in direct contrast to this Court's holdings. The appellate courts should also accept items of damage that are conceded and undertake an independent review of the record to determine whether the verdict is contrary to the evidence, as held in *Palmer*; neither happened here.

In *Fahndrich*, Division Two of the appellate courts followed the *Palmer* precedent, remanding on the sole issue of damages. More recently in *Robinson*, Division Three followed suit, ruling that the evidence did not support the conclusion that no pain or disability were suffered. The departure of Division One in this case breaches the *Palmer* rule that damages endured and evidenced deserve compensation and requires review under RAP 13.4(b).

iii)

Is disfigurement only compensable in criminal cases? This opinion seems contrary to the Washington Pattern Jury Instructions, which list ‘disfigurement’ as one of many elements of compensable damage in civil cases. In criminal cases, bruises from a shoe lasting a few days is enough to qualify as ‘disfigurement’. In this case, it’s substantially worse and has lasted years longer. Should only injured parties in criminal matters be compensated for being disfigured? It is only compensable then, and in much lesser circumstances? Do we need a different definition of disfigurement for criminal and civil cases, or are the dominoes indistinguishable? The decision here conflicts with the WPI’s put out in partnership with theses Courts, so who is correct? The answers will effect all civil injury cases, of which there are many, and the questions above and created by the appellate courts difference in opinion can only be answered by these Courts.

iv)

Are noneconomic damages distinguishable?

If so, should they be delineated in the verdict?

These are questions that are ripe for review.

There is a deeply divided debate on the proper method of awarding and distinguishing noneconomic damages. This division amongst our courts is a cry for clearer boundaries, and it is one only these Courts can respond to. Do we treat noneconomic damages as separate categories that lead to separate awards, or does it all get lumped together?

The majority of courts agree that these are separate and distinct types of damages, to be delineated in the verdict.

(American Law Reports, 1984/2000; Hermes, 1987).

Since (the 1960's), loss of enjoyment of life was more often awarded independently from pain and suffering, and nearly half of the states in the U.S. have acknowledged this metamorphosis. *(research gate)*

The trend in recent years has been for courts increasingly to allow LEL as a separate element of damages *(American Law Reports, 1984/2000).*

Damage awards 'started out historically as just for pain and suffering, but as society has grown, so has it's demand for protecting the things it holds dear'
(researchgate)

The appellate courts' opinion that pain and suffering is synonymous with noneconomic damages, that they are one and the same, is outdated and without regard to these *Kirk* Courts who determined that a plaintiff may recover for loss of

enjoyment of life as a distinct item of damages in a personal injury action. Those courts distinguished between pain and suffering, disability, and LEL, as separate elements of noneconomic damage. This is in line what the WPI's communicate, also listing them as separate elements of noneconomic damage and not using the terms synonymously.

As other courts have agreed: 'this is not just a semantic bifurcation of non-economic loss, (they) seek to redress different losses'. In 1980, the U.S. Court of Appeals for the Sixth Circuit conceived loss of enjoyment of life as entirely independent from pain and suffering, denying any risk of duplicate recovery in cases of personal injury. The court explaining that they compensate for different things. They make it clear the LEL and disability are not merely a component of pain and suffering; they are indeed distinguishable.

(R.Gate).

The research paper also lists an incredible amount of courts that share this sentiment, these citations have been omitted. While the minority of courts argue that distinguishing and delineating damage awards would result in over-compensation, research actually shows that on the whole, plaintiffs are substantially under-compensated. *Sloan*

While these Courts seem pretty clear on the issue, and the WPI's seem to mirror the fact that they are distinguishable elements of damage, and the trend since the 1960's has been towards separating them, the appellate courts in this case disagree, and believe that pain and suffering is synonymous with noneconomic damages; using the terms interchangeably.

Verdict - $35,000.00 for pain and suffering.

Opinion - $35,000.00 for noneconomic damages only.

The confusion surrounding noneconomic damage awards must not be allowed to percolate. There is a trend towards clearly identifying and distinguishing these awards. Will Washington will follow this trend or go against the grain? A clear answer from these courts is needed to establish uniformity, guidelines and cohesive decisions.

It becomes difficult to parse out the award otherwise, and this confusion is only breeding more confusion. It doesn't need to be confusing though, and this case presents the perfect vehicle for these Courts to provide lower courts with much needed clarity, since it is undisputed that Taylor suffered several elements of noneconomic damage, yet looking at the verdict, only one was compensated for.

The sheer aftermath that would ensue, if this wasn't reviewed, and all of a sudden we were transported back to the 1950's when pain and suffering was synonymous with noneconomic

damages. The opinion in this case is contrary to the holdings in *Leak*, the WPI's, goes against the trend, is outdated and creates confusion that can only be cleared by these Courts, warranting review under RAP 13.4(b).

v)

The appellate courts have also asserted that petitioner had not cited any authority saying damages were distinguishable - which is either them saying they're not distinguishable, or asserting that one must stand up and declare the law, the law, in order to activate the protection it offers. So 1, she did; but even if she hadn't; 2, does one need to announce the law, to make the law, the law; or is the law just the law; does it not permeate into proceedings all on its own? As held in *Bitzan*, 'Courts are created to ascertain the facts in a controversy and to determine the rights of the parties according to justice. Courts should not be confined by the issues framed or theories advanced by the

parties if the parties ignore the mandate of a statute or an established precedent. A case brought before this court should be governed by the applicable law even though the attorneys representing the parties are unable or unwilling to argue it. This rule may be applied to reverse the trial court.'

Similarly, the opinion justifies the lack of reciprocity for the mental and emotional anguish suffered, with the idea that she hadn't asserted that damage in her complaint, or argued for it at trial, so doesn't deserve compensation. This opinion is contrary to the evidence and the *Bitzan* rule, that states that even though parties are unable to argue it, the law should still apply. When presented with where she had asserted this mental and emotional damage in her complaint, and where she had argued the NIED claim specifically at trial in her Motion for Reconsideration, the courts still denied recovery and affirmed the verdict not reciprocating her for this damage.

This holding is in disregard of the stare decisis of P*almer, Fahndrich, Robinson* and merits review under RAP 13.4(b)

vi)

Then, the confusion surrounding the distinguishability of damage awards seems to be partly to blame for findings not being entered on all material issues. The lower courts are describing elements of both the noneconomic and economic damages, all distinct in their own definitions, interchangeably; this will naturally result in missing or messy findings. The sheer amount of speculation and preventable proceedings that result from this.

As these courts held in another bench trial: “A trial court must enter findings of fact on all material issues in order to inform the appellate court of what questions were decided and the manner in which they were decided.” *Federal*

“when a ‘judge is the trier of fact, he, unlike a jury, is required to explain the grounds of his decision” adding that while sympathetic with the judges inability to say more than he did in justification of the damages he assessed, the figures were ‘plucked out of the air’ and that procedure cannot be squared with the duty imposed by the rule.

Arpin v. United States, 521 F.3d 7 69 (7th Cir. 2008)

As these courts ruled in *Federal*, “the trial court's conclusion regarding the issue was legally and factually incorrect…given the evidence in the record and the trial court's erroneous conclusion regarding the burden of proof…we remand” The case was also remanded in part for missing findings. The same factors are present here, and many of the findings are either missing or have zero basis in the record/law. When the above factors are present, the appellate courts affirmation is without regard to state and federal holdings which state that findings

must be entered on all material issues, and that those findings have a reasonable basis in the evidence and law.

As the *Robinson* Courts also decided 'because the trial court did not make specific findings as to past and future noneconomic damages, both should be considered anew' on remand. The contrary decision of the appellate courts in this case requires review to prevent this common occurrence from happening again. This issue notably touches all litigants and courts, not just injury cases, and it's resolution will only result in clarity and cohesion and less court time for all; but, only these courts can provide it for the lower courts, and litigants that follow, by accepting review and clearing it up once and for all.

vii)

The doctrine of vertical stare decisis also requires the lower courts to follow these courts holdings in *Harris*, and not

incorporate asymptomatic preexisting conditions. Instead, the lower courts have insisted on focusing on long resolved items and chosen to stay silent on *Harris*. In this case while petitioner had been injured in the past, she had healed years prior. Are issues that have been dormant for now, nearly a decade — and more proximately, not active in the years prior to the injury, all of a sudden relevant and reliable or do they still have a prejudicial impact on the verdict and result in an improper reduction of damages?

viii)

Has the rule created by the *Vangemert* Court that a self-employed person needn't show loss of profits in order to support a claim for lost earnings, been overruled, or are entrepreneurs still allowed to recover for this lost time? In this case, many spoke to the fact that Taylor lost time from her businesses, and otherwise was unable to perform basic work

duties, let alone basic movements, as she had before. She had been anticipating a salary of $3,000 per month at just one of her businesses, as was scheduled, but following the injuries sustained in this collision she was unable to move enough to work and never made that money, eventually having to shut the doors to all of her businesses for lack of physical ability to continue. The trial courts here use the terms lost profits and lost earnings interchangeably, having seemingly decided they are one and the same or contingent upon the other, then decide that the business made $3,000 per month, not awarding lost earnings, respectively. The appellate courts silence on *Vangemert* and affirmation of the verdict not reciprocating for this lost time, is contrary to these Courts holdings and warrants review under RAP 13.4(b). This damage alone is substantially greater than the verdict; the inequity created by throwing less than one years worth of wages at someone who has sustained over 6 years worth of damages and will continue to is insurmountable and unsustainable. (Appendix A, C, D)

ix)

Similarly, unless the rule created by the *Bitzan* Courts that the continued existence of elements of damage at the time of trial will permit a reasonable inference of future damages, has been overruled, review is warranted under RAP 13.4(b). Here too, the fact that Taylor 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. The *Bitzan* rule permits a reasonable inference that these damages will continue for at least some time after trial and the appellate courts affirmation of the verdict providing for none of these living, breathing, present and future damages, is contrary to the evidence and ignores the vertical stare decisis of *Bitzan* and *Johnson*, each of which went unaddressed in the opinion. When it is conceded suffered most of these elements of damage, and

there is no evidence of these damages in the years proximately prior to this collision, and no evidence to suggest any of these damages somehow, spontaneously ceased; the appellate courts affirmation of the verdict providing for no future damages, warrants review and in the end, reciprocity.

IV. THE BREACH OF HORIZONTAL STARE DECISIS CREATED BY THE COURT OF APPEALS OPINION MANDATES REVIEW UNDER RAP 13.4(b).

"The various panels of the Court of Appeals strive not to be in conflict with each other because, like all courts, we respect the doctrine of stare decisis." *In re Arnold*

These courts rejected any kind of horizontal stare decisis in re Arnold, noting that prior holdings compelled a contrary conclusion:

We recognize when there are conflicts in the Court of Appeals. We resolve them by granting review; where the decision of the

Court of Appeals is in conflict with another decision of the Court of Appeals, a basis exists for a petition for discretionary review by the Supreme Court. The Supreme Court settles the law when Court of Appeals decisions are in conflict.

In re Arnold

x)

Here, the opinion that recovery of future medical is contingent upon concrete bills, is a breach of stare decisis that requires review under RAP 13.4(b). As the *Leak* Courts held, evidence of the necessity of future medical care is sufficient, without specifying the cost of such care, to support an award for future medical expenses. In that case, no costs were given, but there was evidence of medical conditions that had not been recovered from and would persist for at least some time after trial, if not on a permanent basis. When it was shown that they a) were in need of medical attendance b) had employed physicians c)

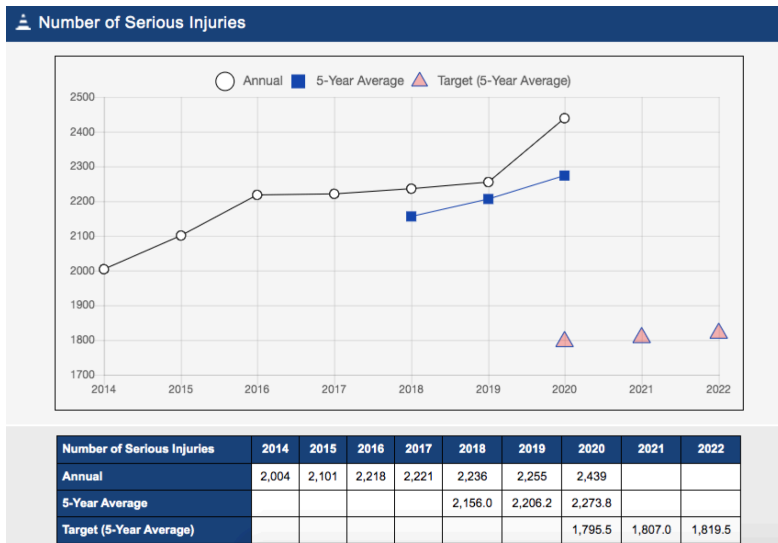
would also suffer in the future; d) the presumption followed there was some expense attached e) this evidence was sufficient to support an award. The same conditions are evidenced here and as the *Leak* Courts held, this is enough to substantiate some award for medical, and in conjunction with the rest of the evidence, also future disability, future pain and suffering, and impairment of earnings capacity. The opinion 'that there was no evidence as to future need for medical' is not supported by the evidence and is contrary to the holdings in *Leak*. Stare decisis requires a resolution of the aforementioned conflicting opinions pursuant to RAP 13.4(b).

V. THESE ISSUES ARE OF SIGNIFICANT PUBLIC INTEREST

Criteria for determining the presence of a requisite degree of public interest include the public or private nature of the question, the desirability of an authoritative determination for future guidance of public officers, and the likelihood of future recurrence of the question. *Sorenson*

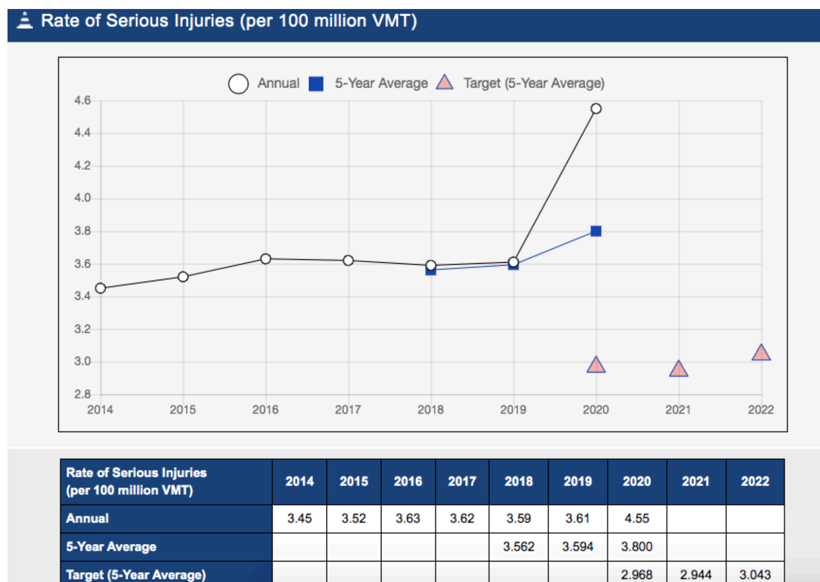
The laws of damages effects all Washington citizens, no one is completely impervious to their consequences, since injury can strike at any time - one needn't even put themselves necessarily in harms way, it can happen when you're on your way to lunch, as it did here, that fateful day. An incredible number of people are injured every year in Washington and King County. The questions involved directly concern the welfare of countless numbers of Washingtonians, as these laws help protect their personal health and interests. This issue is a reoccurring one and Washington courts need clearer guidelines; what is also certain is that it will continue to reoccur and be a source of contention until resolved and clarified by these courts.

This issue is prevalent and will effect increasing numbers of Washingtonians. The Number of Serious Injuries Sustained in Motor Vehicle Crashes in Washington State is Increasing:



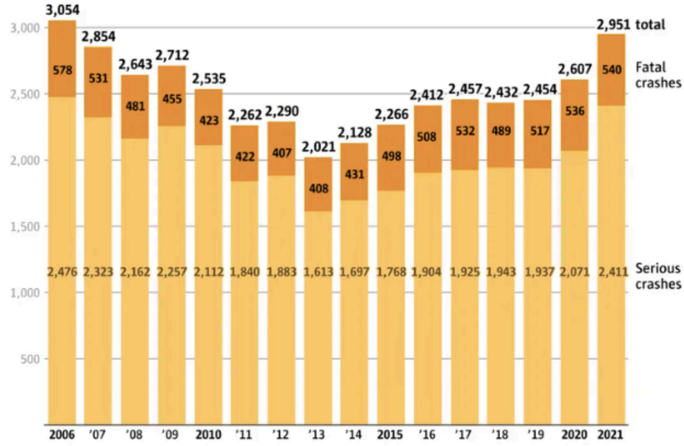
Number of Serious Injuries	2014	2015	2016	2017	2018	2019	2020	2021	2022
Annual	2,004	2,101	2,218	2,221	2,236	2,255	2,439		
5-Year Average					2,156.0	2,206.2	2,273.8		
Target (5-Year Average)							1,795.5	1,807.0	1,819.5

The rate at which Washingtonians sustain serious injuries in motor vehicle crashes is increasing at an even greater rate:

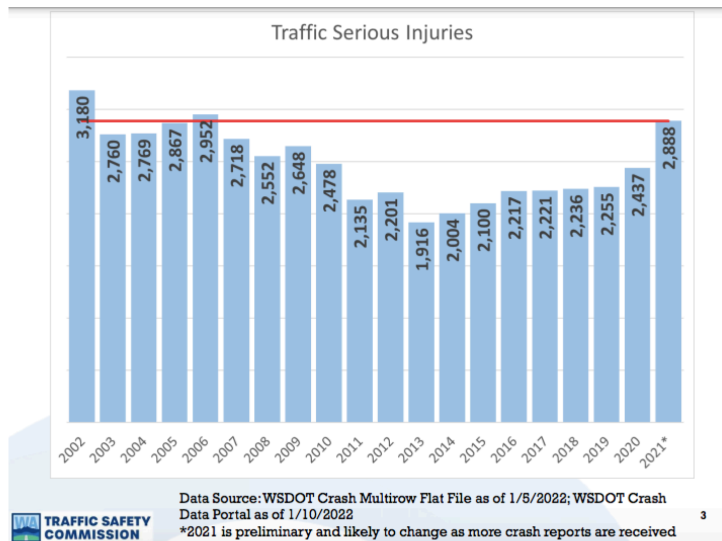


Rate of Serious Injuries (per 100 million VMT)	2014	2015	2016	2017	2018	2019	2020	2021	2022
Annual	3.45	3.52	3.63	3.62	3.59	3.61	4.55		
5-Year Average					3.562	3.594	3.800		
Target (5-Year Average)							2.968	2.944	3.043

https://www.fhwa.dot.gov/tpm/reporting/state/safety.cfm?state=Washington



https://www.seattletimes.com/seattle-news/transportation/2021-was-the-deadliest-on-washington-roads-in-15-years-puzzling-experts/



http://wtsc.wa.gov/wp-content/uploads/dlm_uploads/2022/01/Data-Overview-1-20-2022-Hoff-Roberts.pdf

“2,411 crashes in 2021 resulted in likely serious injury — also the most since 2006 and 16% more than in 2020. The alarming trend in Washington state really highlights the fact that we need to think about how we ensure … it’s survivable”

https://www.seattletimes.com/seattle-news/transportation/2021-was-the-deadliest-on-washington-roads-in-15-years-puzzling-experts/

The survivability of an injury though, is directly dependent on the laws and system designed to protect; which is why the laws surrounding damages are so important - people turn to the courts, and then what. This opinion only brings more confusion and inconsistency to these damage laws that so many rely on. Damages have a domino effect that can only be made survivable by these Courts. Otherwise, we’re just knocking our Washington state citizens off the chessboard of life; injured? *flick* or, we can take easy and necessary steps to protect our people; and in this case, with one full swoop addressing most elements of damage.

More than 13,000 people are injured every year in King County alone. Nearly 125K people were injured and sought hospital care between the years 2004 and 2013, from a variety of causes. https://doh.wa.gov/sites/default/files/legacy/Documents/Pubs//689144.pdf?uid=62e2138a8b9bb

This study recounts Suzy's story, who also was injured in a collision in Washington which left her disabled, without an income, indigent, then homeless. Taylor's story is not unique, this is a trend in Washington state and one that can be prevented here and now so injured parties have a chance at becoming whole or at least not homeless. There are two roads, one = unclear; the other; already paved, (should have, had precedent) but; need clearer guidelines and more recent case to accomplish the goals these damage awards set out to provide. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8059708/

This cause and effect is likely why "The global epidemic of road crash fatalities and disabilities is gradually being recognized as a major public health concern." 20–50 million suffer non-fatal injuries each year, often resulting in disabilities, with 4.4 million in the U.S. each year being injured seriously enough to require medical attention.

https://www.asirt.org/safe-travel/road-safety-facts/

Injuries often lead to homelessness, a major cause of homelessness being injuries and illness. https://nhchc.org/wp-content/uploads/2019/08/homelessness-and-health.pdf As they share, an injury starts out a a health condition, but quickly leads to an employment problem due to missing time from work or not being able to perform work functions. The loss of employment due to poor health then becomes a vicious cycle: without funds to pay for health care, one cannot heal to work again, without income from work, an injury quickly becomes a housing problem. One can't ignore the first domino, flicked by

the negligent party, or the ones that follow -the opinion here, ensuring they all stay with the injured party.

The laws surrounding damages protect the most basic of human rights; the right to health, to work, to an adequate standard of living. These rights are legally protected, by the International Covenant on Civil and Political Rights (ICCPR). It is the "supreme law of the land" under the supremacy clause of the U.S. Constitution, and as a party to this treaty, the U.S. is under legal and moral obligations to promote, protect and realize these rights, and must ensure that any person whose rights or freedoms are violated shall have an effective remedy.
https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

The confusion surrounding damage law and perpetuated by this opinion must be resolved now. The number and rate of serious injuries sustained isn't going down, it's going up. Substantially

more Washington state citizens will be looking to these courts for their right to redress, litigants will be looking to decisions to ascertain burdens, the lower courts will be looking for guidelines that at present leave too many wondering, and too many undercompensated.

As the *Harvard Law Review* explains, ‘damage awards are similar to insurance: they provide compensation for injuries. If you damage my crops or injure my person, I can ask a court to force you to compensate me for my loss. Absent this power, I might hesitate to do things like plant crops or walk about on the street’ . . . ’Primary duty transforms at the moment of injury to duty to repair . . . of course, the payment of damages is not identical to the performance of the original duty. . . rather, it is the “next-best thing . . . to performance.’ . . . The damages rules instruct courts what to do when citizens come to them complaining of a wrong. (https://cdn.harvardlawreview.org/wp-content/uploads/pdfs/vol125_%20ssmith.pdf)

But wrongs cannot be retroactively undone. No sum of money can make the world as if the wrong never happened. In every case where a civil wrong has been proven, plaintiffs have at a minimum a right to an award of damages equal to such pecuniary losses as can reasonably be attributed to the wrongful act. Thus, wrongdoers are required to compensate victims for actual and anticipated expenses … such sums might plausibly be regarded as an attempt … to make the world as if the wrong had never happened … they can also be interpreted as an obvious and straightforward way to vindicate the plaintiff's rights. By holding the defendant liable for the tangible consequences of his wrongdoing, the law makes clear that these consequences should not have happened. By shifting the cost of the rights infringement from the victim to the wrongdoer, the law holds the wrongdoer responsible for his wrongdoing as wrongdoing. . . wrongdoers should pay damages for the same reason that they should comply with their primary legal duties. .

. because the original duty transforms itself, at the moment of injury, into a duty to pay damages. . . the original right that was breached lives on, albeit in a different form. . . committing a wrongful injury gives rise, to a new and different “duty to repair.”https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1008&context=faculty_articles

Then, while unpublished in the traditional sense, this opinion comes up third in Google when searching for Palmer, and it’s all contrary holdings. The conflicts created in this decision won’t go away on their own; they’ll be relied upon, muddying the waters of damage recovery, leaving citizens in it’s wake. The sheer mess that will ensue, unless these courts review. These Courts have already concluded the issue was sufficiently important to merit it’s review, and this case is the right vehicle to revisit and resolve in one full swoop.

F. CONCLUSION

This Court should accept review for the reasons indicated in Part E and later reverse and remand on the issue of damages in accordance with Washington State holdings.

Respectfully submitted on this 1st day of August, 2022 by:

Avi Taylor

Avi Taylor, Petitioner

This document contains 4,903 words, excluding the parts exempted from the word count by RAP 18.17.

AVI TAYLOR - FILING PRO SE

August 01, 2022 - 4:41 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	82680-8
Appellate Court Case Title:	Avi Taylor, Appellant v. Mirina Stone, Respondent

The following documents have been uploaded:

- 826808_Petition_for_Review_20220801163852D1848070_0284.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Petition for Review 826808 Taylor v Stone.pdf

A copy of the uploaded files will be sent to:

- cheryl.frost@farmersinsurance.com
- mark.miller@farmersinsurance.com

Comments:

Sender Name: Avi Taylor - Email: ombience.om@gmail.com
Address:
PO BOX 1014
Monroe, WA, 98272
Phone: (206) 715-6161

Note: The Filing Id is 20220801163852D1848070

Appendix A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

AVI LEANNE TAYLOR, Appellant, v. MIRINA STONE, Respondent.	No. 82680-8-I DIVISION ONE UNPUBLISHED OPINION

SMITH, A.C.J. — Following a bench trial, the trial court found Mirina Stone at fault for a car accident she had with Avi Taylor and awarded Taylor $35,000.00 for noneconomic damages only. On appeal, Taylor challenges the trial court's award of noneconomic damages and the failure to award economic damages. Because the award was within the range of the evidence in this case, we find no error and affirm.

FACTS

On February 23, 2016, Stone's Toyota Prius sideswiped Taylor's Fiat 500 at an intersection in West Seattle. None of the cars' airbags deployed and neither vehicle sustained substantial damage.

Immediately after the collision, Taylor sought treatment from her naturopathic physician Dr. Sari Gallegos. Dr. Gallegos examined her and noted that Taylor had sprains and strains to her back, neck, ribs, and pelvis, headaches, and pain in both wrists. "Due to the severity of [her] pain levels,"

Citations and pin cites are based on the Westlaw online version of the cited material.

Dr. Gallegos prescribed Taylor ibuprofen and “a naturopathic anti-inflammatory and nervine to help with the pain and to bring down the inflammation.”

Three days later, Taylor returned to Dr. Gallegos and reported increased pain over the prior two days, along with difficulty doing many activities. “She reported pain in her neck, upper and lower back, arms, legs and ribcage.” That same day, Taylor obtained a set of x-rays from chiropractic physician Dr. John Miller. The x-rays did not reveal any spinal or rib fractures. Taylor “continued to seek acupuncture, chiropractic, and ultrasound therapy treatment over the next two years.”

In February 2019, Taylor initiated this tort action claiming that Stone’s negligent driving caused her personal injuries. Her complaint alleged that she suffered “lasting bodily injuries, physical pain, mental anguish, emotional distress, and loss of enjoyment of life” and sought judgment against Stone for all economic and noneconomic damages.

At the bench trial in November 2020, Taylor represented herself.[1] She called several lay witnesses to testify, including Mysti Green, Joe Basco, Iris Milligan, Howard Hammond, Lisa Leon-Guerrero, and Daniel Blue. They all testified in similar fashion. Before 2016, they knew Taylor to be very active, “happy,” “full of energy,” not in “any pain or suffering,” and “buoyant and joyful.”

[1] The trial was conducted via Zoom because of the COVID-19 pandemic and emergency court orders designed to minimize its risk. “Zoom” is a cloud-based peer-to-peer video software platform that is used for teleconferencing, telecommuting, distance education, and social relations. “COVID-19” is the World Health Organization’s official name for “coronarvirus disease 2019,” a severe, highly contagious respiratory illness that quickly spread throughout the world after being discovered in December 2019.

None of them witnessed the February 2016 collision or knew exactly what injuries Taylor had sustained from that accident. As to their observations of her after the collision: Green testified Taylor was "on her couch" and "not able to move around;" Bacso said Taylor "seemed kind of hunched over and" had a "painful look on [her] face"; Milligan noted that she rarely saw Taylor after 2016 but that it was "apparent that she was managing pain"; Hammond stated that he could tell Taylor "was physically handicapped" upon seeing her after August 2016; Leon-Guerrero noticed "complaint[s] about headaches"; and Blue testified that Taylor seemed "stressed and . . . sad and depressed."

Taylor also testified, but did so in narrative fashion. She described herself as "a healer, energy medicine practitioner, clarity coach, trauma removal" and teacher of "astro travel, and other things." Taylor spoke of launching her company, Northwest Wonderland, about a month before the 2016 collision. Through Northwest Wonderland, Taylor created and sold wellness products with cannabis as an ingredient. Taylor testified:

> [T]he business, Northwest Wonderland, had projected for me nothing in the first year of operation. So I would have no income the first year and then start[ing] the second year I was going to earn $3,000 a month. And that's just what we had to the length of the business we had it tiered up toward[ ] the end so I got up to 4 but I just accounted for 3 because it was easier math.
>
> But, yeah, so I was never able to pay myself as projected because I was never able to work enough to bring enough money in.

Despite her efforts, Taylor claimed, she was not physically able to keep up with the demands of operating Northwest Wonderland. She thus alleged that in

December 2019, she "had to shut the doors to Northwest Wonderland in hopes of picking it back up once [she] reached pre this accident status."

Taylor also testified to being physically assaulted in 2005, to representing herself in federal court proceedings in 2010 to acquire a permanent disability award, and to suffering back, rib, hip, and other pains in a March 2012 "T-bone" car accident.

During cross-examination, defense counsel confronted Taylor about some of her damage claims, some of which included these exchanges:

> Q. Do you recall at your deposition when I asked you about wage loss and you said you really didn't have, this was not about lost wages?
>
> A. Right, because I didn't know how to quantify that, yeah, completely.
>
> . . .
>
> Q. So right before the lunch break, Ms. Taylor, I'd asked you about your answer that you weren't working at the time of the accident. You said you didn't know which accident. I just want to go to the deposition where we talked about which accident—
>
> A. Awesome. And then if I could just clarify your—my answer to your question. Yeah, I wasn't technically gainfully employed because I wasn't making money. I wasn't technically working as per the state's language; but I did have a business I was doing my best to run.

Additionally, Taylor agreed that despite any physical struggles she suffered as a result of the 2016 collision, she actually did quite a bit of work for Northwest Wonderland inclusive of developing, marketing, and delivering products every year until she closed the business.

Dr. Gallegos testified Taylor was a long-established patient before the 2016 accident. On average, before 2016, Taylor reported pain of 4 out of 10 whereas after the accident, she averaged pain levels of 6 out of 10.

Taylor did not call an economist or provide any expert testimony about either past or future lost wages, lost profits, or limited earning capacity. Nor did she call any additional medical witnesses, treating providers, or other experts.

After Taylor rested her case-in-chief, Stone moved for a directed verdict contending that Taylor failed to prove that the 2016 collision proximately caused her injuries. The trial court denied Stone's motion based in part on Dr. Gallegos's testimony. It also ruled that because no medical bills were admitted into evidence and there was no testimony about costs of treatments, Stone was correct that Taylor was precluded from requesting damages "with respect to medical bills."

The defense called Dr. James Blue, a neurosurgeon, who performed a CR 35 orthopedic examination of Taylor and reviewed her medical records. Dr. Blue opined that he could not "find any evidence of a physical or structural injury [to Taylor] as a result of this accident."

Bradley Probst, a biomechanical forensics expert, also testified for the defense. He was asked to address the forces involved in this collision as opposed to any potential injuries that could have arisen from the accident. Probst opined that the forces involved were akin to "hitting a pothole or a speed bump or a variety of things like that."

Stone testified that the collision “seemed to be quite a gentle thing because [she] never went to [her] doctor or anything,” and “[i]f I had been jerked around hard in the car, I was 7 months pregnant, I would have wanted to go to my doctor and check that the baby was fine.”

After considering the testimony and evidence admitted, the trial court entered findings of fact. It concluded that Stone was liable for this collision, Taylor had proven she was injured and suffered damages as a proximate cause of the collision, and awarded Taylor $35,000.00 in noneconomic damages. It did not award any economic damages because Taylor (1) “failed to offer any medical bills or produce any testimony regarding her medical expenses,” (2) “failed to offer any cost of vehicle repairs,” and (3) “did not meet her burden to demonstrate that her loss of business profits or future earnings was proximately caused by the collision.” The trial court later entered judgment in her favor.

Taylor appeals pro se.[2]

ANALYSIS

Taylor challenges the trial court’s findings and conclusions. She also claims that the court should have awarded her more in noneconomic damages and awarded her economic damages.

---

[2] A pro se litigant is bound by the same rules of procedure and substantive law as an attorney. In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). Failure to act accordingly may preclude review. Olson, 69 Wn. App. at 626.

Standard of Review

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).

"[I]t is not the function of an appellate court to substitute its judgment for that of the trial court or to weigh the evidence or the credibility of witnesses." Davis v. Dep't of Labor & Indus., 94 Wn.2d 119, 124, 615 P.2d 1279 (1980). We will not disturb findings of fact that are supported by substantial evidence, even if conflicting evidence exists. Merriman v. Cokeley, 168 Wn.2d 627, 631, 230 P.3d 162 (2010). Unchallenged findings are verities on appeal. Merriman, 168 Wn.2d at 631.

Sufficiency of the Record

As an initial matter, in 20 of the 31 assignments of error scattered throughout her brief,[3] Taylor contends that the evidence does not support the trial

[3] Taylor fails to provide a "separate concise statement of each error" that she "contends was made by the trial court" contrary to RAP 10.3(a)(5).

court's various findings and related conclusions. But we cannot consider these assignments of error because of an incomplete record on appeal.

An appellant bears the burden of providing a sufficient record to review the issues raised on appeal. Story v. Shelter Bay Co., 52 Wn. App. 334, 345, 760 P.2d 368 (1988). By not designating for review any of the 16 exhibits admitted at trial, some of which are referenced in her brief, Taylor fails to provide a sufficient record to enable our consideration of her appeal. RAP 9.2(b) ("If the party seeking review intends to urge that a verdict or finding of fact is not supported by the evidence, the party should include in the record all evidence relevant to the disputed verdict or finding"); RAP 9.6(a). Without the trial exhibits, we cannot fully review the evidence before the trial court or discern whether substantial evidence supports its findings. Accordingly, the findings that Taylor seeks to challenge must stand. Story, 52 Wn. App. at 345.

Application of Damages

Taylor first broadly contends that the trial court "erred in applying the evidence to the law for the damage awards," but she fails cite any evidence in the record that relates to a specific claim for damages. We generally will not consider arguments that are unsupported by pertinent legal authority, references to the record, or meaningful analysis. RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments not supported by authority); Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (issues unsupported by adequate argument and authority);

State v. Camarillo, 54 Wn. App. 821, 829, 776 P.2d 176 (1989) (no references to the record).

Because Taylor fails to reference the record, cite to any evidence or provide substantive argument to support her claim of general error, we do not consider it further.

Noneconomic Damages

Taylor alleges that the trial court erred by failing to award her any damages for past or future "devastating disfigurement," disability, and "mental and emotional anguish." We disagree.

Disfigurement, disability, and mental anguish are types of noneconomic damages. RCW 4.56.250(1)(b) defines "noneconomic damages" as "subjective, nonmonetary losses, including but not limited to pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation, and destruction of the parent-child relationship."[4]

The question of whether a plaintiff is entitled to noneconomic damages turns on the *evidence*. Palmer v. Jensen, 132 Wn.2d 193, 201, 937 P.2d 597 (1997). "Although there is no per se rule that [noneconomic] damages must be awarded to every plaintiff who sustains an injury, a plaintiff who substantiates her

[4] In Sofie v. Fibreboard Corporation, 112 Wn.2d 636, 669, 771 P.2d 711 (1989), the court held that the limit on noneconomic damages in RCW 4.56.250 is unconstitutional. This does not affect definitions contained within that provision. See Segura v. Cabrera, 184 Wn.2d 587, 596 n.4, 362 P.3d 1278 (2015) (Gordon McCloud, J., concurring) (citing RCW 4.56.250(1)(b) for definitional purposes).

pain and suffering with evidence is entitled to [noneconomic] damages." Palmer, 132 Wn.2d at 201; Estes v. Bevan, 64 Wn.2d 869, 871, 395 P.2d 44 (1964) ("The determination of the proper amount of [noneconomic] damages which reasonably compensate a party for his personal injuries is a difficult question. There is no precise formula for making an award of such damages."). If damages are within the range of evidence, they will not be disturbed. Wooldridge v. Woolett, 96 Wn.2d 659, 668, 638 P.2d 566 (1981).

Taylor claims that the trial court's award does not adequately compensate her for the various types of noneconomic damages she suffered. But the trial court found: "Prior to this collision, [Taylor] had enjoyed tending to her garden, planning events, and working to launch her company. She testified that it is too painful now to garden, she is often too tired to socialize and she suffered too much pain to continue with her company." It also found that a "variety of witnesses testified that she needed help with her business because she was in too much pain and did not go out as much as before."

Based on these findings, the trial court concluded that Taylor "showed by a preponderance of evidence that she was injured and suffered damages as a proximate cause of the collision" and "suffered pain and loss of capacity for enjoyment of life." The trial court's award addressed all of Taylor's noneconomic damages.

Taylor has not cited any authority to suggest that the trial court was required to itemize her award by amount and type of noneconomic damage. Relying on State v. Ashcraft, 71 Wn. App. 444, 859 P.2d 60 (1993) and State v.

Atkinson, 113 Wn. App. 661, 54 P.3d 702 (2002), Taylor claims that she is entitled to recover damages specifically for disfigurement. Her reliance is misplaced. Ashcraft and Atkinson are criminal cases where the defendants were convicted of second degree assault under RCW 9A.36.021(1)(a) and the State had the burden of proving substantial bodily harm. Neither case applies to this civil action for personal injury damages.

Citing Parris v. Johnson, 3 Wn. App. 853, 859-60, 479 P.2d 91 (1970), for the proposition that an impairment to a person's work, sleep, or leisure "constitute[s] a disability," Taylor states that she was clearly disabled as a result of this collision. Then she points to Kirk v. Washington State University, 109 Wn.2d 448, 461, 746 P.2d 285 (1987), to say that "[r]ecovery for disability compensates for inability to lead a 'normal life' " and can be demonstrated by pointing to activities or interest an injured person will no longer be able to enjoy. While both Parris and Kirk say disability damages are recoverable, they do not require that such damages be delineated as subparts of a noneconomic damages award. Here, the fact remains that the trial court considered Taylor's activity limitations in its award.

Next, though she alleges that the trial court failed to award her damages for mental and emotional anguish, Taylor argues for damages in her brief based on a negligent infliction of emotional distress (NIED) claim. But she neither asserted a NIED claim in her complaint nor argued for recovery for such damages at trial. The trial court did not err by refusing to award damages that Taylor never sought.

In sum, Taylor fails to establish that the trial court's award of damages was outside the range of the evidence presented at trial. She has not presented a basis for appellate relief as to her noneconomic damages claims.

Economic Damages

Next, Taylor says that the trial court erred by failing to award any economic damages. " 'Economic damages' are "objectively verifiable monetary losses." RCW 4.56.250(1)(a).[5]

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.

Taylor also failed to establish a factual basis to recover any past or future lost wages, lost profits, or lost earning capacity. And though she testified about potentially earning $3,000.00 and up to $4,000.00 per month while operating Northwest Wonderland, Taylor also testified that she never mentioned operating

[5] Economic damages include "medical expenses, loss of earnings, burial costs, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, loss of employment, and loss of business or employment opportunities." RCW 4.56.250(1)(a).

Northwest Wonderland at her deposition and "hadn't accounted for lost wages and future lost income because [she] didn't know how to account for it." And even though she was in pain as a result of this collision, Taylor conceded that she did "quite a bit" for Northwest Wonderland including "developing products, marketing [her] products, delivering [her] products, advertising [her] products" until she shut the business down. The trial court weighed Taylor's testimony and credibility as to her economic damages claim and we will not disturb that determination on appeal. Accordingly, we cannot say that it was error for the trial court to conclude that no economic damages should be awarded based on Taylor's failure to establish that such damages were proximately caused by this collision.

Post-Trial Motions

Finally, Taylor asserts that the trial court erred by denying her post-trial motions. In May 2021, the trial court denied Taylor's motion for reconsideration, motion for partial new trial, and motion to amend findings of fact and conclusions of law. Taylor did not appeal from the order denying her post-trial motions, so it is not properly before us on review. RAP 5.3(a); In re Marriage of Grigsby, 112 Wn. App. 1, 17, 57 P.3d 1166 (2002).

Appellate Costs

Stone requests costs on appeal. Her request should be directed to the commissioner or court clerk pursuant to RAP 14.2, which provides: "A commissioner or clerk of the appellate court will award costs to the party that

substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review."

Affirmed.

WE CONCUR:

Appendix B

FILED
6/3/2022
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

AVI LEANNE TAYLOR, Appellant, v. MIRINA STONE, Respondent.	No. 82680-8-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Avi Taylor has moved for reconsideration of the opinion filed on May 2, 2022. The panel has considered the motion pursuant to RAP 12.4 and has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Judge

Appendix C

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

AVI LEANNE TAYLOR, Plaintiff, vs. MIRINA STONE, Defendant.	Case No. 19-2-05264-3 SEA **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter came before the Court for a bench trial, which was held on November 2, 2020 to November 5, 2020. Pursuant to Emergency Orders of this court, the trial was conducted virtually due to the COVID-19 pandemic.

Plaintiff Avi Taylor asserted a negligence claim that Defendant Mirina Stone caused a motor vehicle accident on February 23, 2016 and she suffered injuries as a result. Defendant Mirina Stone denied liability or damage.

The court hereby makes the following Findings of fact and conclusions of law.[1]

FINDINGS OF FACT

1. On February 23, 2016 at 10:30 am, plaintiff and defendant were involved in a motor vehicle collision at the intersection of 38th Avenue SW and SW Alaska, West Seattle.

[1] If any of these Findings of Fact contains any legal conclusions, such conclusions shall be deemed Conclusions of Law. Similarly, if any Conclusions of Law contain any factual findings, such findings shall be deemed Findings of Fact.

Judge Regina Cahan
King County Superior Court
516 Third Avenue
Seattle, WA 98104

2. Plaintiff was driving a light green Fiat 500 eastbound on SW Alaska with her turn signal on.
3. Defendant Stone was driving a blue Toyota Prius C southbound on 38th Avenue SW. She approached the intersection with her left turn indicator on and stopped. Looking to the right she noted the plaintiff driving down the road; however, she testified that she did not see Plaintiff's turn signal. She assumed the plaintiff was going to drive straight through the intersection.
4. From where the stop line is on 38th Ave SW, there is a telephone pole and shrubs/trees which obscured visibility to the west. Looking left (eastbound) defendant inched forward into the intersection to see down the street to her left.
5. Meanwhile, plaintiff saw the defendant's car at the intersection. As she had the right of way she began making a left hand turn onto 38th Ave and was surprised when the defendant started pulling into the intersection while looking left, away from her. She started honking and yelling to get defendant's attention and try to have her stop her car.
6. As defendant turned her head back to the right, she saw plaintiff honking her horn and yelling at her.
7. Defendant swiped Plaintiff's car as the plaintiff made the turn onto 38th Ave. S.W.
8. The impact was between the left front corner of defendant's car and above the back tire of the driver's side of plaintiff's vehicle. It appears the impact was minimal.
9. Neither cars' air bags inflated, nor was there substantial damage to either car.
10. Defendant had admittedly noticed plaintiff's vehicle, and also admittedly looked away, prior to proceeding into the intersection. She could have prevented the accident by waiting for plaintiff's car to pass before entering the intersection. The collision was caused by defendant's negligence. She is liable for the collision.
11. The defendant was 7 months pregnant at the time of the accident. She testified there was minimal impact. She didn't feel the need to go to her physician to check on her baby.
12. After the collision, Plaintiff immediately sought medical treatment from her doctor, Dr. Gallegos, ND, a naturopathic physician. Her doctor examined her and noted sprains of ligaments of the cervical, thoracic, and lumbar spine, strain of muscle, fascia and tendon at neck level, lower back, and back wall of thorax, sprain of ribs and sacroiliac joint, segmental and somatic dysfunction of head, cervical, thoracic, lumbar, sacral, and pelvic regions,

Judge Regina Cahan
King County Superior Court
516 Third Avenue
Seattle, WA 98104

segmental and somatic dysfunction of upper and lower extremities as well as rib cage, tension-type headaches, and pain in both wrists.

13. Three days after the collision on February 26, 2016 plaintiff returned to Dr. Gallegos and reported 10/10 pain the last two days. She reported difficulty doing many activities. She reported pain in her neck, upper and lower back, arms, legs and ribcage. She was sent for x-rays.

14. Plaintiff saw John S. Miller, DC (doctor of chiropractic), DACBR (Diplomate, American Chiropractic Board of Radiology), for x-rays the same day. She reported pain on the right front of her chest, right side of her neck, low back pain and right shoulder pain. There were no spinal or rib fractures found.

15. Plaintiff continued to seek acupuncture, chiropractic, and ultrasound therapy treatment over the next two years.

16. Dr. Gallegos testified regarding the pain that plaintiff reported to her over the years. On average, before the accident, plaintiff reported pain of 4 out of ten whereas after the accident, plaintiff reported pain of 6 out of ten on average.

17. It appears from reviewing Dr. Gallegos's medical records admitted in evidence that plaintiff has suffered from high levels of pain periodically over the years from a variety of incidents in the past.

18. Defense called Dr. Bue, a neurosurgeon, who testified that plaintiff was evasive in responding to his questions. When he observed her in the waiting room, her movements were less restricted than when he saw her in his office. He testified that plaintiff had long-term chronic pain that waxed and waned. After reviewing the medical records and conducting a physical examination of the plaintiff, he did not find any objective evidence of injury, no explanation for the longevity of the pain complaints.

19. Plaintiff testified that she had spent the 3 years prior to this collision preparing her company, Northwest Wonderland, for launch. Northwest Wonderland sold skincare and wellness products with cannabis as an ingredient. She testified that although she tried to keep up with the demands of the company, it was very painful. She testified that her company had been featured in local and international publications.

20. With respect to the income of Northwest Wonderland, plaintiff testified that she made nothing the first year and then approximately $3,000 per month. She did not provide specific

Judge Regina Cahan
King County Superior Court
516 Third Avenue
Seattle, WA 98104

detail for the court to ascertain how long she made that amount and whether that would have continued. Plaintiff did not retain an economist or provide an expert opinion regarding future profits.

21. There was simply insufficient evidence for the court to conclude that the company would have been successful but for the collision. Plaintiff has failed to meet her burden of proof that the loss of profits from the company was proximately caused by the collision.

22. Plaintiff testified that she was somehow disabled at some point in the past and she was about to get "off disability" but for this collision. It remains unclear to this court how plaintiff was disabled before and how this collision impacted any benefits she may or may not receive. The plaintiff failed to submit sufficient evidence for this court to draw any conclusions regarding this topic.

23. Prior to this collision, Plaintiff had enjoyed tending to her garden, planning events, and working to launch her company. She testified that it is too painful now to garden, she is often too tired to socialize and she suffered too much pain to continue with her company.

24. A variety of witnesses testified that she needed help with her business because she was in too much pain and did not go out as much as before.

25. 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.

26. Plaintiff failed to submit into evidence any bills regarding the cost of damage to her vehicle.

27. Plaintiff failed to submit into evidence any bills regarding the cost of medical care.

CONCLUSIONS OF LAW

1) The court has jurisdiction over the parties and the subject matter.

2) The court finds that the plaintiff demonstrated by a preponderance of evidence that the defendant is liable because she failed to operate a vehicle in a safe and reasonable manner, failed to yield the right-of-way while making a left-hand turn, and failed to avoid a collision with the plaintiff's vehicle. Defendant could have prevented the accident by waiting for plaintiff's car to pass before entering the intersection. The collision was caused by defendant's negligence. She is liable for the collision.

3) The plaintiff also showed by a preponderance of evidence that she was injured and suffered damages as a proximate cause of the collision.

Judge Regina Cahan
King County Superior Court
516 Third Avenue
Seattle, WA 98104

4) As a direct, foreseeable, and proximate result of defendant's negligence, plaintiff suffered pain and loss of capacity for enjoyment of life.
5) Non-economic damages are not susceptible to precise measurement, and evidence that assigns an actual dollar value to the injury or that fixes the amount of damages with mathematical certainty is not required. The court awards Plaintiff Avi Taylor $35,000 for her pain and suffering.
6) The court has considered economic damage of past and future medical expenses. The burden of proving the reasonableness and necessity of medical expenses rests with the plaintiff. The plaintiff failed to offer any medical bills or produce any testimony regarding her medical expenses. Therefore, none are awarded.
7) Similarly, the plaintiff failed to offer any cost of vehicle repairs. Hence, plaintiff did not meet her burden and there is no award for any alleged damage to the vehicle.
8) The court has considered the value of earnings lost to the present time, and future economic damage elements. Plaintiff did not meet her burden to demonstrate that her loss of business profits or future earnings was proximately caused by the collision. Therefore, this court does not award any economic loss, past or future.
9) The defendant did not meet her burden to prove her affirmative defenses.

DATED this 4th Day of December, 2020.

Electronic Signature Attached

____

The Honorable Regina S. Cahan

Judge Regina Cahan
King County Superior Court
516 Third Avenue
Seattle, WA 98104

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

King County Superior Court
Judicial Electronic Signature Page

Case Number: 19-2-05264-3
Case Title: TAYLOR vs STONE

Document Title: FINDINGS OF FACT AND CONCLUSIONS OF LAW

Signed by: Regina Cahan
Date: 12/7/2020 9:00:00 AM

Judge/Commissioner/ProTem: Regina Cahan

This document is signed in accordance with the provisions in GR 30.
Certificate Hash: AB8C2D4446EBEB4BB439ECF0CC0EE090B63DC727
Certificate effective date: 7/16/2018 1:46:58 PM
Certificate expiry date: 7/16/2023 1:46:58 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA, O=KCDJA, CN="Regina Cahan: GoGvw4r95BGhF7dmHl1GsA=="

Miss Taylor was first seen by her treating physician, Dr. Sari Gallegos, just hours after the impact. RP Vol. 1 p.325 lines 8-9 Having palpably felt the damage done to each vertebrae, she then referred her to specialized radiologist, Dr. John Miller, for a closer look. RP Vol. 1 p.326 line 20 - p.328 line 24 The radiologist, who took a series of films just three days following the collision and noted the measurable, quantifiable impact to Miss Taylor's spine in his radiology report. CP 91-92, Ex. 112. The differences were detailed at trial: RP Vol. 1 p.360 lines 13 - p.361 line 25

The left side impact caused Miss Taylor's upper ribs to jet into her right neck and shoulder area, and forced her hips, pubic bone and tailbone out and also to the right. RP p.328 lines 23-24, p.566 lines 22-25, p.329 lines 10-11, NRP p.69 line 20 Other ribs dislocated and pushed into her lungs, making every breath that would follow, excruciatingly painful. RP Vol. 1 p.349 line 24, p.368 lines 2-5 Individual vertebrae were flung from their prior peaceful positions, with some now jetting left, others right, with many of the remaining stuck in position. RP Vol. 1 p.328 line 18 - p.329 line 7. 73% of Miss Taylor's vertebrae were damaged in this collision, in every single area of her spine. CP 86. The base of her head was now frozen and stuck; the curve of her neck, forcibly taken away. RP Vol. 1 p.361 lines 17-20, NRP

p.74 lines 8-20 She had normal cervical range of motion before, but following this impact, could barely move her head. RP Vol. 1 p.334 lines 10-23, p.320 - p.321 line 7 The pre-existing, dormant curves in her back, each worsened and now marked as 'severe'; the bump in her back now 'sharp and well visualized'. CP 91-92, Ex. 112. In addition to a new uncommon retrolithesis that causes bone displacement. RP Vol. 1 p.360 lines 17-19 Amongst other strains, sprains, injury to her hands and wrists and more, that now limited her movement, and blanketed every single area of her life and livelihood. CP 40-45, 47-50, 87-90, Ex. 41 & 42. Despite this, Defense called Dr. James Blue, who testified that there were no injuries and no objective medical findings. RP Vol. 1 p.496 line 12 - p.497 line 12

Dr. Gallegos continued to treat her for two years, administering acupuncture, non-force manipulations and more, until they stopped seeing noticeable improvement, with Miss Taylor feeling 40% better. RP Vol. 1 p.215 lines 3-5, p.202 lines 6-8

She's always been an athletic and active woman, so while she's had scoliosis since she was 12 years old, it's never limited her life, livelihood, mobility, or caused her any pain or suffering. Despite this, Dr. Blue testified that there had been no

Dr. Blue also initially testified that there was no structural or skeletal explanation for this injury, either. RP Vol. 1 p.479 lines 2-9, RP Vol. 1 p.392 lines 6-11 He later admitted that the radiology reports did indeed indicate skeletal and structural changes as a result of this collision. RP Vol. 1 p.489 line 8 - RP Vol. 1 p.490 line 20

Testimonial Evidence - Disfigurement

The differences to Miss Taylor's spine were noticeable to many, with witnesses testifying that she seemed more crooked now, and that following this impact, she was visibly handicapped. RP Vol. 1 p.66 lines 2-4, RP Vol. 1 p.105 lines 11-23 They had vivid memories of finding her hunched over and stuck following this impact, unable to straighten out or stand up. RP Vol. 1 p.62 lines 3-7, RP Vol. 1 p. 64 lines 3-10 They spoke about how this new structural instability now had her constantly relocating dislocating bones. RP Vol. 1 p.71 lines 2-11, RP Vol. 1 p.106 lines 1-4 None of the friends, investors or employees had ever witnessed any of the aforementioned, ever before. The instances recounted span from immediately following the collision, to this very day. CP 47-50

16-17, p.41 lines 2-11, p.108 lines 1-7 She loved gardening and making things with her hands. RP V1, p.80 lines 19-20, RP V1, p.94 lines 10-19, p.191

Hosting events also made her heart sing, and she produced annual events at venues around town. RP V1, p.196 lines 6-25 She was the guiding force behind these events; they were 10-14hr event days and she loved every minute. RP V1, p.99 line 15 - p.100 line 15, RP V1, p.59 line 2 - p.60 line 23

She loved creating community and 2016 was scheduled to be no different, with long anticipated events on the books, that were both perpetually postponed due to pain and immobility following this collision. RP V1, p.209 lines 3-25, RP V1, p. 290 lines 2-12 She later tried to host a small, trial halloween party, but found herself unable to move at the party, with bones dislocating during and a piercing migraine due to them touching. RP V1, p.289 lines 3-10 She tried again the following year but had to refund ticket sales due to a long stretch of not being able to move. RP V1, p.209 lines 1-3 Scheduling things and keeping engagements was hard. RP V1, p.267 lines 3-25

The year before, she'd spent preparing her commercial kitchen, training and managing four full time employees, hosting focus groups, attending networking events, ramping up sales and more. RP V1, p.189 lines 9-22, p.125 line 9 - p.126 line 2 Northwest Wonderland officially opened it's doors in January of 2016; they were open just over a month when Miss Stone came crashing in. RP V1, p.209 lines 22-24 The injuries she sustained made making products, doing paperwork, typing, talking, getting up the stairs to work, and more, all of a sudden, painful and precarious. RP V1, p.109 line 22 - p.113 line 10, RP V1, p.139 line 16 - p.140 line 18, RP V1, p.145 lines 6 p.166 line 5, RP V1, p.350 lines 11-12 She just didn't have enough functional time following this collision though, and they eventually had to be closed, requesting a hold so she could focus solely on healing. RP V1, p. 195 lines 3-25, RP V1, p.271 line 7 - p.272 line 23

Witnesses testified to the fact that they have not been able to go on hikes together since this collision, speaking to the difficulty they witnessed as Miss Taylor now strained to simply stand or walk a few feet, in drastic comparison to the miles they saw her cover prior. RP V1, p.60 line 9 - p.66 line 16, p.46 lines17-22, p.52 lines 7-9 Even yoga was off the list. RP V1, p.43 lines 4-23 They went on adventures

Assignment of Error #13 : The trial court erred in finding that Miss Taylor had testified she couldn't keep up with the demands of her company because "it was very painful".
(Finding of Fact #19)

Assignment of Error #14 : The trial court erred in applying the law when not compensating Miss Taylor for the income she lost due to these injuries.

STATEMENT OF THE CASE

Miss Taylor was unable to carry out her usual work activities following the injuries sustained in this impact. RP V1, p.195 lines 4-10, RP V1, p.193 lines 3-11 She had to construct a cot area in her commercial space and in her car to lay down from bones dislocating and sticking and the intractable pain that followed. RP V2, p.28 lines 3-17 She would work as much as her body would now allow, lay down for lack of physical ability to go on, and repeat. Ex.24, CP 64-65.

Investors testified to this change, noting that before, she'd been able to carry out all work tasks by herself, but following this collision, needed assistance with the

basics, like lifting and carrying. RP V1 p.108 p.9 - p.114 line 14, RP V1 p.125 line 9-22. It wasn't an issue in the years prior, which is why she was able to go bigger. RP V1, p.189 lines 13-22 Except now, "attempting to be active made it worse" RP V1, p.364 line 9

Employees adding that there were many days that Miss Taylor was unable to make it into work at all. RP V1, p.139 16 - p.140 line 18 lines 3-25 Even office work, like organizing receipts, was physically challenging. RP V1, p.145 line 20 - p.146 line 5 + p.350 lines 1-18 She'd been doing bookkeeping and taxes since she was 14 without issue. RP V1, p.192 lines 19-20 p.253 lines 14-18 Just fine before. RP V1 p.189 lines 18-22

Miss Taylor had owned many business centered around her crafts, creations and ability to use her hands and wrists. RP V1, p.80 lines 19-20, p.192 lines 19-20, p. 94 5-19 Injury to her hands and wrists in this collision compromised her ability to craft. RP V1, p.65 lines 6-7, RP V1, p.350 lines 7-14, Ex.41, 42 RP V1, p.194 9 - p. 195 line 2 She had to drive for work, and had before, but now all of a sudden, even

this was painful and precarious. RP V1, p.131 lines 20-25, p.349 lines 20-25, p.113 lines 3-10, p.293 line 15 - p.294 line 20

She testified that she could no longer keep up with the demands of the business, that it was harder and harder the more pain she was in. RP V1, 271 line 17 - p.272 line 23, RP V1, p.279 lines 16-20 She was losing a lot of time due to bone displacement and the resulting immobility. Ex. 32, CP 62-63, RP V1, p.202 lines 13 - p.205 line 5. She was having difficulty making it up the stairs to work; her back was hunching and sticking, her hands as well. RP V1, p.194 line 16 - p.195 line 7 She eventually and very reluctantly had to request a hold on her license, so that she could fully focus on healing from these injuries, in the hopes of reaching pre-accident status and one day being able to pick her baby back up again. RP V1, p.195 lines 8-10, CP 65. Orders were still pouring in, but she was physically unable to fulfill demand. RP V1, p.194 lines 7-8, p.195 lines 11-13.

Miss Taylor also produced a wide range of annual events, offered healing sessions and more, and has been unable to resume any of these activities; she kept trying to

but kept having to cancel because she couldn't move. RP V1, p.193 lines 3-7 The same was true with events. RP V1, p.209 lines 1-7

With Northwest Wonderland alone, Miss Taylor was schedule to receive paychecks that started at $3,000/month, later increasing to $4,000/month. RP V1, p.212 line 22 - p.213 line 4 She wasn't physically able to work enough following the injuries sustained in this collision, and these impending paychecks never came. RP V1, p. 213 lines 5 - p.214 line 15. Courts calculate these lost earnings from the time the injured party is 'prevented from carrying out their usual work activities due to injuries'. CP 61-66. In this case, the date of the collision to the date of trial is 56 months at $3,000/month which is $168,000.

ARGUMENT

As the Supreme Court of Washington held in Vangemert v. McCalmon 414 P.2d 617, 618 (Wash. 1966), a self-employed person need not show loss of profits in order to support a claim for loss of earnings, as the two are distinguishable. They noted the case of Shewry v. Heuer, 255 Iowa 147, 157, 121 n.W.2d 529 (1963), where a self-employed man was injured in an automobile collision. That court said:

engage in her prior vocational pursuits, as held in Johnson v. Howard and Bitzan v. Parisi. (Conclusion of Law #8)

STATEMENT OF THE CASE

It's gotten worse, not better. RP V1, p.403 line 20 Science says it will continue to. CP 106.

The injuries sustained have precluded Miss Taylor from working as well as she did before the collision. CP 61-70. The medical records revealed that she now had pain and difficulty standing, rotating, lifting, sitting, driving, bending, moving, and more. RP V1, p.349 line 20 - p.350 line 14, Ex.41, Ex.42, CP 87-90. She does not have the same structural integrity as she did prior to this collision. CP 86.

She has been unable to reopen the doors to Northwest Wonderland as she'd hoped, despite significant demand. RP V1, p.196 lines 8-13 She's been unable to schedule any healing sessions. RP V1, p.193 lines 3-5 She's been unable to host her annual events or launch and golden ticket parties. RP V1, p.209 lines 1-7

Yet, she is far from her pre-accident self, as she and many others testified to. RP V1, p.215 lines 1-8, RP V1, p.65 line 21 - p.66 line 4, RP V1, p.202 lines 6-17, RP V1, p.208 lines 4-6 She presented pain logs and diaries to provide a window into what her world looked like now; before, she was working full time, but her full time job now is healing from these injuries. Ex.32

The Plaintiff originally provided two calculations for the courts when considering Future Lost Income, or her Impaired Earnings Capacity: NRP p.132 lines 10-18 The first is going off her promised paychecks of $3,000/month ($36,000/year x 40.54 years life expectancy) for a total of $1,512,000.

The second is standard in Washington State, using the average annual wage of $69,700 x 40.54 years life expectancy) for a total of $2,825,638.

The trial courts awarded $0

STATEMENT OF THE CASE

“She was a pretty different creature” lamented friend Daniel Blue, describing the girl he knew before as “happy, buoyant” and after, “sad, stressed, depressed”. RP V2, p.511- line 24 - p.517 line 1, RP V2, p.524 line 24 - p.525 line 2 Others had never noticed any mental or emotional distress before either. RP V1, p.68 line 19 - p.69 line 15 These injuries had changed the course and contents of her life though, as Miss Taylor attested at trial, she’s lost nearly everything since then; her home, business, car, ability to stand, move around, lift things, care for her home and animals, social life, and more. RP V1, p.205 lines 4-18, p.206 line 15 - p.207 line 3, RP V1, p.216 lines 1 - p.219 line 12, p.221 line 13 - p.223 line 11 It’s been more than a little devestating. RP V1, p.204 lines 2-19 RP V1, p.27 lines 13-25 CP 80 RP V1, p.41 line 15 - p.42 line 24, p.46 lines 8-16 She’s less able to participate, and has a hard time following along, the physical and mental connection all too strong. RP V1, p.202 lines 18 - p.203 line 5, CP 39, 74

ARGUMENT

The general rule seems to be, as stated in 8 R.C.L., § 78, p. 523, as follows:

Assignment of Error #19 : The trial court erred in applying the law by basing their lack of award for future medical expenses on the fact that Miss Taylor had failed to properly submit the medical bills for past medical expenses.
(Conclusion of Law #6)

Assignment of Error #20 : The trial court erred in denying Miss Taylor's motion for a partial new trial so that she could admit these medical bills from sharefile, when doing so deprives her from ever recovering these expenses that are a proximate cause of the collision.
(Conclusion of Law #6)

STATEMENT OF THE CASE - MEDICAL

Miss Taylor spoke to the 63 treatment visits she had received from Dr. Gallegos over the course of the two years that followed the collision. They ended treatment when they stopped seeing noticeable improvement, with Miss Taylor reportedly feeling 40% better. RP V1, p.202 lines 6-9 Dr. Gallegos lamenting at trial how she would have recommended more had she known how much Miss Taylor had exacerbated since ending treatment. RP V1, p.403 lines 6-21 On Miss Taylor's end,

she was having difficulty making and keeping appointments, due to this intractable pain. RP V1, p.209 lines 6-7, RP V1, p.202 lines 18-25, RP V1, p.81 line 22 -p.82 line 5, RP V1, p.251 lines 11-17, RP V1, p.89 line 2-11, RP V1, p.406 lines 23-24

They were intending on admitting all the medical records, but were told by the courts that this didn't usually happen; they were able to get the first two in though. RP V1, p.321 line 19 - p.348 line 20 It was messy, with zoom technical issues and more. (throughout) They were able to speak to all of the 63 visits though. RP V1, p. 336 lines 1-7, RP V1, p.559 lines 23-24

The defense admitted past medical records dating back several years; as Dr. Gallegos explained though, those weren't injury related visits, she was treating for "acute pain, that cleared really quickly" for things like food allergies, a foot infection, menstrual cramps, and a bump on her head. RP V1, p.405 lines 13-19, RP V1, p.415 lines 8-14, p.426 lines 12-22, p.428 lines 7-14, p.431 lines 11 p.432 line 10

Unfortunately, the medical bills did not end up getting admitted from sharefile. RP V1, p.556 line 24 - p.558 line 25 Miss Taylor submitted a motion for a partial new trial so she could admit these bills, and present quantifiable details with regards to the medical tools and equipment she needed in order to get to a place where she could again make and keep appointments; this motion was denied. CP 96-110.

ARGUMENT

There is a growing gap between this woman's pre and post accident statuses, that must be mitigated with an award for future medical expenses. This gap was spoken to by many at trial, and necessitates present and future medical attention.

As held in Leak v. United States Rubber Co., 9 Wn. App. 98, (Wash. Ct. App. 1973), evidence of the necessity of future medical care is sufficient, without specifying the cost of such care, to support an award for future medical expenses. As the courts said:

No evidence of the cost of medical care was given, but there was evidence of medical conditions from which the plaintiff had not yet recovered and which could be considered permanent.

(Finding of Fact #25)

(Conclusion of Law #4)

(Conclusion of Law #5)

Assignment of Error #30 : The trial court erred in finding that Miss Taylor had only sustained pain and loss of enjoyment of life "for a period of time" and integrating that into the damage award when there is not substantial evidence to support a finding that suggests resolution of either element.

(Finding of Fact #25)

(Conclusion of Law #5)

Assignment of Error #31 : The trial court erred in applying the law when denying Miss Taylor's post-trial motions.

STATEMENT OF THE CASE - PAIN AND SUFFERING

Medical Evidence & Testimony

"The first thing she said was it hurt to breathe following this accident" said her treating physician, Dr. Gallegos, who saw her just hours after the impact. RP V1, p.

368 line 2-5 Her pain presented at a 7/10, then that evening jumped up to a 10/10, staying that way for days. RP V1, p.349 lines 20-21, RP V1, p.330 line 15 These were higher levels of pain than she'd ever experienced. RP V1, p.365 line 22-25, RP V1, p.367 lines 8-13 The medical records also noted intense pain in her hand, arm, shoulder, neck and ribs. She was unable to lay on her left side. CP 87.

"Hurts to talk in her chest and diaphragm", notes the second treatment visit. "Sitting, barely moving, hurts to breathe…engaging core hurts" it reads on. RP V1, p.349 line 20 - 25, CP 89. Notations revealed pain and difficulty cooking, walking, lifting things, turning, twisting, leaning forwards and backwards, sitting, standing, driving and typing. RP V1, p.350 line 1-18 Her "chest, core and sides felt like an entangled, pulled, twisted, angry core/center, ready to snap at any minute". "Extends from neck, shoulder and ribcage down to legs". "Whole of back is sore, worst is right side related to ribs". CP 89.

As Dr. Gallegos testified, she was "not experiencing high levels of pain" between the last collision and this one. RP V1, p.556 lines 19-20 In fact, at the treatment visit just before this, she was at a 2/10. RP V1, p.416 line 2 Further explaining that

she had never before experienced any pain in some areas; these were respectively 0/10 :

Cervical pain went from 2/10 to 10/10. RP V1, p.363 lines 1-4, RP V1, p.364 line 1-14, RP V1, p.415 lines 8-14, Thoracic pain went from 2/10 to 10/10. RP V1, p. 365 lines 14 & 23 Lumbar pain went from 2/10 to 10/10. RP V1, p.369 lines 14-17 Sacral pain went from 0/10 to 10/10. RP V1, p.334 lines 11-14

The doctor also noted that any pain symptoms before this was “acute pain, (that) cleared really quickly” that she’d “responded really quickly to” following treatment. RP V1, p.428 line 7-14, RP V1, p.431 lines 21-23, RP V1, p.365 lines 10-15 She further revealed that these acute incidents were not injury-related at all, they were in fact due to food allergies, a foot infection, menstrual pain, or the like, and were primarily resolved. RP V1, p.382 line 2-5, RP V1, p.440 lines 5-23, RP V1, p.389 lines 17-22 The defense called Dr. Blue, a neurosurgeon, who testified she’d had a long history of chronic pain that had never cleared. RP V1, p.450 lines. 10-20, p.494 line 23 - p.495 line 13 Dr. Gallegos further clarified that it was always to a much lesser severity and duration, with only 4 reports of sacral pain ever that

only lasted a day, and none proximately prior, or zero/10; p.344 lines 1-5, 11-16. Lumbar pain had only ever gone up to 6/10, and only on two visits prior to dropping p.346 lines 1-3

So it used to be one occasional day of pain in one region, and proximately prior all regions were 0's - 2's, and now it was 10/10 in *all of them*, at once. So sure, she'd 'had pain before' but nothing remotely on this level. RP V1, p.367 lines 8-13 It was more intense, more frequent, the molehill was now a mountain; and she was now in "extreme, extreme pain". RP V1, p.439 line 6 - p.440 line 23

They had "only seen sustained pain like that after a major injury" but Miss Taylor was "still having these really high levels of pain" as they ended treatment two years following the impact. RP V1, p.382 line 6 - p.383 line 7 Dr. Gallegos had been able to successfully bring her back to pre-accident status every single time before, but nothing they did was working anymore. RP V1, p.490 lines 10-11 It only got worse from there. RP V1, p.403 line 20, p.383 lines 6-7

Testimonial Evidence

In fact, many had never witnessed any pain or suffering before: Mysti Green, friend and yoga instructor, had memories of yoga, hiking, event production and more, but afterwards she remembers Avi being on her couch and not being able to move around, could see that it was hard for her to even walk up and down her stairs. They had done yoga together, but following this they "would have to stop, she was in so much pain". RP V1, p.40 line 18 - p.43 line 22, p.46 lines 6-25

Mr. Bacso, who had managed sound at Miss Taylor's events and later invested with Northwest Wonderland, had never witnessed any pain or suffering prior to 2016. RP V1, p.61 He shared that she was on her feet, constantly moving around at these events, setting up, loading in, for 8-10 hours at a time, and over thousands of feet. RP V1, p.59 & 60 In drastic comparison to following, when she "seemed kind of hunched over", and needed to take a minute to "put herself back in position" before she was able to walk to the door. She "wrings her hands a lot like they hurt". RP V1, p.62 - p.66 line 15

Lisa, who had done an intense form of martial arts training with Miss Taylor years prior, had never witnessed the pain or suffering she saw following this collision, ever before. RP V1, p.137 line 1 - p.139 line 9

Daniel Blue had known she was "in recovery, didn't seem like lasted very long; buoyant and joyful, going on lots of adventures together". RP V2, p.511 - 512 line 21, NRP p.99 - p.102 He'd never witnessed any migraines or anxiety before. RP V2, p.521 lines 19-25 He compared this to following when she was couch bound, in a lot of pain and needing help. RP V2, p.514 line 3 - p.517 line 1

There was "very definitely" a difference in the pain and suffering witnessed before and after, stated Randy Hammond, friend and investor. RP V1, p.105 line 5 - p.106 line 10 The "frequency of the pain was elevated afterwards" adding that "the intensity, it seems like there was not a time without pain afterwards" whereas, "before she was fairly energetic most of the time". RP V1, p.105 line 11-16

Miss Milligan sharing that in the few years prior, she'd been doing really well. Afterwards though, "It was very apparent that she was managing pain" following

this collision. This pain was not on a similar level to prior, stating seemed to be in much, much, much more pain now. She has not seen Miss Taylor pain-free, since before this collision. RP V1, p.80 line 19 - p.85 line 19, p.87 line 18 - p,91 line 8

The fact that the pain and suffering from this collision is still dominating her world was testified to by Miss Taylor as well. RP V1, p.202 line 11 - p.203 line 21 She offered pain logs and diaries as an offering of proof to give a window into what this looked like, even today. RP V1, p.203 line 22 - p.207 line 3 Bones dislocate and touch, it hurts to talk, to move her eyes, to breathe. RP V1, p.288 lines 7-8. One month : 23 excruciatingly painful days over an 8/10, and only 7 days below an 8/10, and zero days, at anywhere near pre-accident status, when it was 0-2's. CP 73

Miss Taylor requested a partial new trial, to mitigate the gap between the evidence, the law and the verdict, with regards to pain and suffering findings and conclusions. She asked to be able to present 'day in the life of' videos to better illustrate what was already spoken to in the record. This motion was denied.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

AVI LEANNE TAYLOR, Appellant, vs. MIRINA STONE, Respondent	No. 19-2-05264-3 SEA No. 826808 APPELLANT'S MOTION FOR RECONSIDERATION

THE RECORD ON REVIEW IS COMPLETE

Miss Taylor first would like to apologize for not making the exhibits relevant to the issues on review and the information contained therein more apparent for the courts. She had not meant to inconvenience the courts in any way or ask them to set out on a quest to locate them.

All exhibits relevant to the issues on review and otherwise information contained therein is included in the record on review. As RAP 9.6(a) states, parties are to designate only that which is needed for issues on review. This is why they're not all included.

1. Admitted to reprove liability (not an issue on review)

11. Admitted to reprove liability (not an issue on review)

24. In the record on review： CP 94-95, 72-74, AOB 55

41. In the record on review： CP 86-88, AOB 7

42. In the record on review： CP 86, 89-90, AOB 7

112. In the record on review：CP 86, 91, 92, AOB 7

502-508. Didn't meet burden for loss of profits (not issue on review)

511. Proximate cause already established (not an issue on review)

Then, as RAP 9.1(d) further specifies, material appearing in one part of the record should not be duplicated in another part of the record on review.

Miss Taylor interpreted duplicating them in the list of exhibits to be a willful violation of the rules, since they were already present in the clerk's papers and record. She took every sentence seriously, but RAP 1.2(b) seemed to state that she should - reading in part: "should" is used when referring to an act a party or counsel for a party is under an obligation to perform. So, it didn't seem optional to then duplicate the exhibits in an exhibit list when all the information was already in the clerks papers, which is why they're only in one place.

Appellant had imagined both citing to the exhibit and where it was contained in the record on review was sufficient, as she did here:

> "The radiologist, who took a series of films just three days following the collision and noted the measurable, quantifiable impact to Miss Taylor's spine in his radiology report. CP 91-92, Ex. 112. The pre-existing, dormant curves in her back, each worsened and now marked as 'severe'; the bump in her back now 'sharp and well visualized'. CP 91-92, Ex. 112" (AOB 7-8)

> "She would work as much as her body would now allow, lay down for lack of physical ability to go on, and repeat. Ex.24, CP 64-65" (AOB 23)

> "The medical records revealed that she now had pain and difficulty standing, walking, rotating, lifting, driving, bending, using her hands, and more. RP V1, p.349 line 20 - p.350 line 14, Ex.41, Ex.42, CP 87-90" (AOB 31)

She did accidentally cite to random non-admitted exhibit number twice though, this was in error. She is talking about the pain logs, and had meant to cite to the pain logs:

> "She presented pain logs and diaries to provide a window into what her world looked like now; before, she was working full time, but her full time job now is healing from these injuries. Ex.32"

> "She was losing a lot of time due to bone displacement and the resulting immobility. Ex. 32, CP 62-63"

It is Ex. 24 in CP 62-63 that she is referring to.

So while these courts assert that the exhibits have not been included, this is not true, though they were definitely not as clear as they could and should have been. My apologies! Please review.

the brief, just below that. The statements made in the damages section, apply to those sections:

> The trial courts omission of these (the following) damages is not supported by the evidence and there has been a failure to apply the proper legal measure of damages. (See AOB p.4 Damages)

Then, underneath the umbrella of damages, live each of the distinguishable damage claims, each with it's own law and evidence.

The umbrella that is (1) Damages:

1(a) Disfigurement (See AOB p. 5-12) (Evidence & law, p.11)

1(b) Disability (See AOB p. 5-12) (Evidence & law, p.18)

1(c) Lost Earnings (See AOB p. 5-12) (Evidence & law, p.26)

1(d) Impairment of Earnings Capacity (See AOB p. 5-12) (E & L, p.33)

1(e) Mental and Emotional Anguish (See AOB p. 5-12) (E & L, p.35)

1(f) Medical (See AOB p. 5-12) (Evidence & law, p.40)

1(g) Future (See AOB p. 5-12) (Evidence & law, p.44)

substantial disfigurement", it's not the case she's relying on, but the courts definition of this noneconomic damage. Once she found WPI 30.05 and realized she could recover from this disfiguring damage, she went looking for the courts definition of disfigurement to see if the bar was met, and it turns out, the injuries she sustained surpass it.

INJURIES SUSTAINED IN THIS COLLISION

Objective Medical Findings from Dr. Gallegos & Dr. Miller:

1. Significantly worsened both curves in spine
2. Bringing them to 51 and 54 degrees
3. New "severe" classification
4. That requires surgery
5. Right angle is now "sharp and well visualized"
6. New vertebral rotary component in each area of spine
7. New degenerative disc thinning
8. New retrolithesis (disc slippage) in multiple vertebrae
9. Injury to hands and wrists

AND

Cervical (Head) Injuries:

10. Loss of cervical lordosis (straightened curve of neck)

11. Obliterated cervical range of motion (could barely move head)

12. Reversal of curve of neck at C4, C5

13. L occiput, out - down

14. C2, new severe hyper mobility

15. C3, out - right

16. C4, out - right

17. C6, out - left

So already, thats a lot - but let's keep going; Stone did.

Ribcage:

18. Sternum, out - down

19. Moved upper rib into shoulder

20. Other ribs out - down, down and back (into lungs)

"the first thing she said . . . was that it hurt to breathe"

Thoracic:

21. T1 out - left

22. T3 out - right

23. T5 out - left

24. T8 out - right

25. T12 out - left

Lumbar:

26. L1 out - left

27. L2 out - left

28. L4 out - right

Lower extremities:

29. Pelvis out — up and to the front

30. Iliac spine - medially rotated

31. Pubic bone out - right

32. Tailbone out - right

33. SI joints stuck (x3)

34. Right femur/hip out

35. Right knee out

Upper extremities:

36. Right shoulder blade (acromion) out - front

37. Left shoulder blade out - down

So already we've covered 37 different injuries, that were noted in the objective medical findings and at trial, that are mountains above just the sprains and strains noted in the findings and accounted for in the verdict and opinion. It's true, there wasn't one thing way out, there were lots of things out, *and* moving in different directions, *and* this is in addition to two substantially worsened and now severe curves in Taylors back, that in the radiologists words is now "sharp and well visualized" *in addition to* reversing and straightening the curve of her neck - the xrays did reveal a lot, and it's a lot - to happen all at once, and it was well above what Taylors body could handle.

Taking all the injuries sustained into account, it's clearer why doctors notes relay that it:

> "hurts to breathe, doing any movement or engaging her core hurts, hurts to turn, to move, to drive. Bumps while driving are awful…hard to cook, walk, lift things, turn, twist, lean forward, back, sit, stand…causing sharp stabbing pains…trying to get up causes a lot of pain. Typing hurts, lifting a glass, using right hand to move papers…hurts to talk in her chest and diaphragm…whole of back is sore…ribs"

It makes sense she then had difficulty engaging in work, let alone the most basic of tasks. She does not have the same structural stability. RP 360-61, NRP 74, CP 86-92, CP 106

Miss Taylor is entitled to recover for this debilitating damage that often leaves her "crooked, hunched over, unable to straighten out, clearly handicapped" with daily bone displacement, as evidenced at trial and recoverable as an element of noneconomic damages under Washington State law; and this was not considered in the verdict. CP 47-50, AOB 5-11

MENTAL ANGUISH / EMOTIONAL DISTRESS

These courts then opine that the appellant:

> "neither asserted a NIED claim in her complaint nor argued for recovery for such damages at trial. The trial court did not err by refusing to award damages that Taylor never sought." (Opinion p.11)

This is incorrect. In her closing argument, Miss Taylor reviewed the Washington Pattern Jury Instructions, reading from them:

> "Mental anguish and emotional distress damages can be recovered under two theories; the second is the one that applies in this case; *negligent infliction of emotional distress. . .*"

(See AOB p.36) (See NRP p.131) (AOB 'v' Appendix B)

The trial court erred by refusing to compensate Miss Taylor for these damages incurred that were sought and evidenced by many.

DISABILITY

> "While both Parris and Kirk say disability damages are recoverable, they do not require that such damages be delineated as subparts of a noneconomic damages award. Here, the fact remains that the trial court considered Taylor's activity limitations in its award."

Except, as set forth in the Washington Pattern Jury Instructions:

> "disability" includes not only the incapacity to work but also impairment of the injured person's ability to lead a normal life. . . in this latter sense for purposes of noneconomic damages . . . <u>it is not error to include the loss of enjoyment of life as an element of damage separate</u>

CONCLUSION

1. The record on review is complete

2. Respondent agrees suffered pain, disability, disfigurement, mental anguish & loss of enjoyment of life

3. Yet the trial court found for only two of these elements

4. The verdict only compensates Taylor for one element endured

5. Damages are distinguishable

6. Appellant also entitled to the full record

7. The trial court must enter findings on each material claim

8. Taylor asserted her NIED claim at trial

9. Standard of review for mixed issues of law and fact is de novo

Appellant stands humbly before these courts and very much at their mercy, and asks them to please use their powers of impartiality to initiate a fair and full review on the merits. Pursuant with the case law laid out here and in Appellants Briefs, this case must be remanded on the issue of damages.

AVI TAYLOR - FILING PRO SE

August 01, 2022 - 4:42 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	82680-8
Appellate Court Case Title:	Avi Taylor, Appellant v. Mirina Stone, Respondent

The following documents have been uploaded:

- 826808_Other_20220801164200D1218951_1416.pdf
  This File Contains:
  Other - Appendices Petition for Review
  The Original File Name was Appendices Petition for Review 826808 Taylor v Stone.pdf

A copy of the uploaded files will be sent to:

- cheryl.frost@farmersinsurance.com
- mark.miller@farmersinsurance.com

Comments:

Sender Name: Avi Taylor - Email: ombience.om@gmail.com
Address:
PO BOX 1014
Monroe, WA, 98272
Phone: (206) 715-6161

Note: The Filing Id is 20220801164200D1218951