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No. 63061-0-1

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

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JUAN RAMIREZ, et al., Appellants

v.

JAMES EASLEY, et ux., Respondents

BRIEF OF RESPONDENTS

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BRIEF OF RESPONDENT

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A. Summary of Argument

The primary issue in this case is whether Juan Ramirez, Sr. should be bound by the stipulation of the total medical billing in the amount of \$5,715.50. (CP 308-309, 314-315) All other concerns fall by the wayside once this has been determined.

Because \$5,715.50 is the total amount of the uncontroverted economic damages¹, the \$1,000 awarded by the jury can only logically be construed as an award for non-economic damages.

Because the uncontroverted economic damages and additional non-economic damages were awarded, Palmer v. Jensen, 132 Wn.2d 193, 937 P.2d 597 (1997) and its progeny do not apply and Juan Ramirez, Sr. is not entitled to a new trial, or to an additur.

The secondary issue in this case is whether \$6,715.50, the total compensatory damages awarded, is less than \$7,500, Juan Ramirez, Sr.'s offer of compromise.

Finally, the arguments of Juan Ramirez, Jr. and Rosie Ramirez are without merit as the verdicts returned were as defense verdicts in favor of James Easley. The jury did not find causation between their injuries and

¹ For the purposes of this brief, James Easley will refer to economic and non-economic damages instead of special and general damages because of the language of the jury instructions and the relevant RCW. WPIC 30.01, and RCW 4.56.250(1)(a) and (b).

the subject motor vehicle accident, and there is no lawful basis for overturning the jury's determination.

B. Argument

1. The Trial Court did not err when it denied Appellants' motion for a new trial or additur.

“It is axiomatic that jury verdicts are invested with a degree of sanctity and are not to be easily impugned, especially when they have become final.” Butler v. State, 34 Wn.App. 835, 837, 663 P.2d 1390 (1983, Division 2) (citations omitted). In reviewing the jury's determination of damages, the courts “start with the established premise that the determination of damages by the jury is a constitutional function of the jury.” Washburn v. Beatt Equipment Co., 120 Wn.2d 246, 269, 840 P.2d 860 (1992). The determination of the amount of damages, particularly in claims for pain and suffering, is “primarily and peculiarly within the province of the jury.” Id. Therefore, “courts should be and are reluctant to interfere with the conclusion of the jury when fairly made.” Id.

Before passion or prejudice can justify modification of jury verdict, it must be of such manifest clarity as to make it unmistakable. Delahunty v. Cahoon, 66 Wn.App. 829, 832 P.2d 1378 (1992, Division 3); Thompson v. Berta Enterprises, Inc., 72 Wn.App. 531, 864 P.2d 983, reconsideration denied, review denied 124 Wn.2d 1028, 883 P.2d 327

(1994, Division 1) (superseded by amendment of statute on other grounds, 42 USC s 2000e-5(g)).

The final judgment entered against James Easley was comprised of the following elements:

\$5,715.50 in stipulated medical bills – economic damages;

\$1,000.00 from the jury verdict – non-economic damages;

\$ 693.13 in taxable costs; and

\$ 200.00 in statutory attorney’s fees.

These total the amount of \$7,608.63. (CP 20, 23-24).

When the entire judgment, is reviewed, it cannot be said that the result of this trial was unmistakably due to “passion or prejudice”, nor was it outside of the range of proven damages. The trial court did not err in denying Juan Ramirez, Sr.’s motion for new trial or additur.

- a. The stipulated amount of \$5,715.50 is the amount of uncontroverted economic damages.

On December 10, 2008, Juan Ramirez, Sr. stipulated as follows “The medical expenses for chiropractic and massage treatment for Juan Ramirez, Sr., totaling \$5715.50 as set forth in the agreed stipulation are reasonable and necessary.”² (CP 308-309). The only issues remaining for the jury to determine were 1)

² The stipulation has been referred to from time-to-time as a “directed verdict”, which did cause the Trial Court some consternation. (RP 2/23/2009 p.5).

causation of the injuries alleged, and if causation be found, 2) the extent of the non-economic damages.

General principles of contract law bind a party to their written agreements. Restatement 2nd of Contracts §1. CR2A further provides for protocol with which to bind parties and to assist the courts in removing issues from contention. Juan Ramirez, Sr. should be bound by his signed stipulation, and precluded from suggesting that his medical bills amounted to anything other than \$5,715.50. Judge Lucas took this same view on February 23, 2009 when he ruled that “The operative effect of that stipulation is to take that issue away from the jury. If they had awarded \$20,000 in medical expenses [Juan Ramirez, Sr.] wouldn’t get it...” (RP 2/23/2009 p. 13). To hold otherwise would be prejudicial to James Easley, and would discourage parties from ever stipulating to anything.

Therefore, the uncontroverted medical bills submitted in the present matter total \$5,715.50 – as evidenced by Juan Ramirez, Sr.’s stipulation to the same.

- b. The jury verdict of \$1,000 constitutes non-economic damages.

A jury's role in determining non-economic damages is essential, and appellate review must be narrow and restrained. Stevens v. Gordon, 118 Wn.App. 43, 74 P.3d 653 (2003, Division 3).

With economic damages determined by stipulation, the jury was left to determine whether the economic damages were proximately caused by James Easley's admitted negligence, and if so, to what extent should the Ramirez family be compensated for their non-economic damages.

Under the case of Palmer v. Jensen, 132 Wn.2d at 201; and subsequent cases, the court can assume that a jury has failed to award non-economic damages where the verdict is equal to or less than the uncontroverted medical economic damages. *Id.* At 200. Logically then, the reverse must also be true – where the total compensatory award is greater than the uncontroverted medical economic damages (absent other economic damages), the courts will assume that the award does included non-economic damages. Therefore, the \$1,000 as awarded must constitute non-economic damages.

Juan Ramirez, Sr.'s desire for greater non-economic damages is not a legal basis for a new trial or additur.

Where the uncontroverted economic damages and additional non-economic damages are awarded, the judgment is neither the result of passion or prejudice, and is clearly within the range of the evidence presented at trial.

2. James Easley did improve his position over Juan Ramirez, Sr.'s offer of compromise.

The arbitrator awarded Juan Ramirez, Sr. \$4,000 for his medical specials, and \$8,000 for his general damages – for a gross compensatory award of \$12,000. The issue of statutory costs and fees was never before the arbitrator, and was therefore not a part of his award. (CP 411) Prior to the trial de novo, the Ramirez family propounded offers of compromise – the offer presently at issue was for Juan Ramirez, Sr. in the amount of \$7,500. (CP 582) The offers of compromise specifically indicated that “[t]hese offers are intended to replace the Arbitrator’s award.” (CP 582) Furthermore, the language of the offers of compromise never suggested that they were meant to be inclusive of costs and fees.

Juan Ramirez, Sr. contends that his offer was inclusive of all costs in fees, yet there is no such indication in his letter. (CP 582) In fact, Juan Ramirez, Sr. clearly meant for his offer of compromise to “replace the Arbitrator’s award.” (CP 582) Because the arbitrator’s award never contemplated fees and costs, the correct comparison is between the

compensatory damages as awarded at judgment and the offer of compromise meant to replace the arbitrator's award. Therefore, the only issue before the Court presently is whether the judgment for compensatory damages of \$6,715.50 is less than \$7,500.

Juan Ramirez, Sr. cites to Hutson v. Costco Wholesale Corp., 119 Wn.App. 332, and Cormar, Ltd. v. Sauro, 60 Wn.App. 622, 623, 806 P.2d 253 (1991) outlining the Court's rule for what happens should a party fail to better its position at trial *de novo*. While it is important to note what befalls a party who fails to better their position at trial, these cases are not instructive as to the measure of what a party must do to improve their position. To determine whether or not a party has bettered its position, the Court need look no further than the directly analogous case of Tran v. Yu, 118 Wn.App. 607, 75 P.3d 970, Wn.App. Div. 1, 2003.

In Tran, an arbitrator in an MAR proceeding awarded \$14,675 in damages to the Plaintiff. The Defendant requested a trial *de novo*. After deliberating, the jury awarded the Plaintiff \$13,375 in compensatory damages. Tran moved for entry of judgment and also sought statutory costs and fees. Tran also moved the Court for CR37 sanctions due to issues not at issue in the present matter. The Tran Court entered the judgment and included the requested costs, fees and sanctions. Once the costs, fees and sanctions had been added to the jury verdict, the total

amount owing to Tran was \$17,535.80. Tran then moved for a supplemental award under MAR 7.3 for attorneys fees because, Tran argued, the defendant had not bettered its position.

Tran, just like Mr. Ramirez, advanced the theory that the Court should compare the entire judgment at trial, including costs, and statutory fees with the arbitration award in order to determine if the party who requested the trial de novo failed to improve its position. This Court unanimously rejected Tran's theory. This Court in Tran held that the only logical interpretation of MAR 7.3 is that the court should "compare comparables" to determine whether a party failed to improve its position. Thus, here, like in Tran, the Court should compare the compensatory damages awarded by the arbitrator (here, superceded by Plaintiff's offer of compromise), and the compensatory damages awarded at the trial de novo.

The Washington Supreme Court has also agreed on this issue, stating in the case of Haley v. Highland, 142 Wn.2d 135, 12 P.3d 119 (2000) that "[w]e generally agree with the Court of Appeals' view that only comparables are to be compared". Comparing the comparable compensatory damages awarded by the jury in the present case and the offers of compromise intended to replace the arbitrator's award leads to the only logical conclusion that \$6,715.50 is less than \$7,500 – and therefore James Easley improved his position.

C. Conclusion

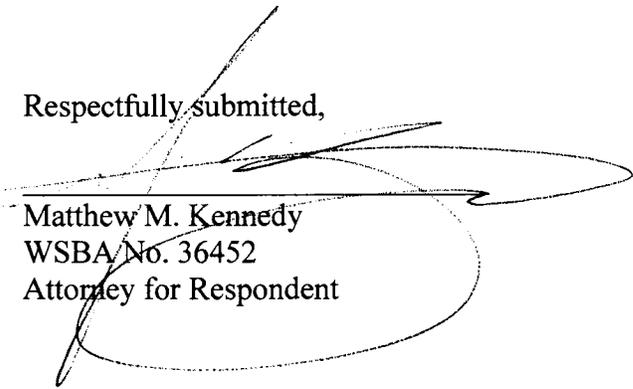
Respondent James Easley respectfully moves this court to uphold the trial court's prior rulings.

Juan Ramirez, Sr. can point to nothing amounting an abuse of discretion to warrant further review of this matter by the trial court. Specifically, the judgment entered by the trial court for \$5,715.50 in uncontroverted economic damages and \$1,000 in non-economic damages is fully within the scope of the evidence heard at trial, and is entirely distinguishable from the case law as cited.

Additionally, when comparing the comparable compensatory portion of the judgment with Juan Ramirez, Sr.'s offer of compromise it can only be said that \$6,715.50 is less than \$7,500.00 and James Easley did improve his position at trial.

June 27, 2009

Respectfully submitted,



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CERTIFICATE OF SERVICE

I am employed in the County of King, State of Washington. I am over the age of eighteen and not a party to the within action. My business address is 600 University Street, Suite 400, Seattle, Washington 98101.

On June 29th, 2009, I served the foregoing documents on the interested parties in this action by depositing a true copy with a messenger and/or placing it for collection, mailing, and deposit with the United States Postal Service following ordinary business practices, addressed as follows:

1. Brief of Respondents

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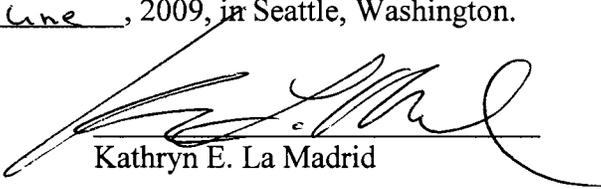
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I am readily aware that the business practice for collection and processing of correspondence for mailing with the United States Postal Service and that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

I declare that I am employed in the office of a member of the bar of this Court at whose direction that service was made. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 29th day of June, 2009, in Seattle, Washington.


Kathryn E. La Madrid