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COURT OF APPEALS
DIVISION II

No. 49667-4-II

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COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

BY 
DEPUTY

ERNST MEINHART and CHRISTINE MEINHART,

Plaintiffs-Appellants,

v.

MONICA ANAYA,

Defendant-Respondent.

RESPONDENT'S BRIEF

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ORIGINAL

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I. NATURE OF THE CASE

Plaintiffs /Appellants Ernst and Christine Meinhart (“Meinhart”) claimed injuries as a result of a minor rear end automobile accident that occurred on October 23, 2013.¹ This admitted liability case went to trial and the jury reached its verdict on August 18, 2016.² The jury found past economic damages for Christine Meinhart in the amount of \$5,065 and for Ernst Meinhart in the amount of \$4,975. The jury did not find in favor of Christine and Ernst Meinhart on their claims for noneconomic damages.³ Meinhart filed a motion for additur and/or for a new trial which the Honorable Jack Nevin denied on September 1, 2016.⁴ Judgment was entered on the jury verdict on September 1, 2016 and Meinhart timely appealed.⁵

“[T]here is no per se rule that general damages must be awarded to every plaintiff who sustains an injury.” *Palmer v. Jensen*, 132 Wn.2d 193, 201, 937 P.2d 597 (1997) Rather, the adequacy of a verdict on general damages “turns on the evidence.” *Id.* The facts of this case are in accord with *Lopez v. Salgado-Guadarama*, 130 Wn. App. 87, 122 P.3d 733 (2005) and other cases where noneconomic damages were not awarded by

¹ CP 2, lmes 10-14.

² CP 24-25.

³ CP 35.

⁴ CP 114-115.

⁵ CP 116-118.

a jury based upon a lack of evidence at trial. The jury verdict should be affirmed by this court.

II. ISSUES PRESENTED

1. Did the trial court abuse its discretion in denying Christine and Ernst Meinhart a new trial?

Answer: No.

2. Did the jury properly determine that the weight of the evidence did not support a finding of noneconomic damages for Christine and Ernst Meinhart?

Answer: Yes.

III. STATEMENT OF THE CASE

On October 23, 2013 Ernst Meinhart was driving southbound on 21st Avenue in Federal Way intending to turn right onto S. 356th Street. His wife Christine Meinhart was a passenger in his vehicle. The Meinhart vehicle was struck from behind by a vehicle driven by Defendant Monica Anaya (“Anaya”).⁶ Ernst Meinhart did not recall whether the impact from behind knocked him forward or backward.⁷ Ernst and Christine Meinhart went straight home after the accident.⁸ Ernst Meinhart did not

⁶ CP 2, lines 10-14 RP Vol. I, P. 28, lines 5-17.

⁷ RP Vol. I, P. 29, lines 13-17.

⁸ RP Vol. I, P. 30, lines 14-15.

feel pain immediately after the accident and the police were not called.⁹ Ernst Meinhart did not feel any pain until the next day and he did not seek treatment with a chiropractor until a week after the accident.¹⁰

By June of 2014 Ernst Meinhart testified his pain was about as good as it was going to get.¹¹ Mr. Meinhart was not disabled or did not lose any time from work due to his injuries.¹² Ernst Meinhart testified the first day of the trial and during his testimony there was no evidence presented that his injuries caused him problems with his job, with his activities around the home, with his leisure activities, or with his relationship with his wife Christine Meinhart.¹³

On cross-examination it was brought out that Mr. Meinhart's had no recollection as to whether his vehicle was pushed forward, that his airbags did not deploy, that he was wearing his seat belt, that the head restraint in his vehicle was adjusted to his head, that he told Ms. Anaya that he was fine, that police were not called, that they stayed at the accident scene for about fifteen to twenty minutes after the accident, and that emergency personnel did not respond to the accident scene.¹⁴ Mr.

⁹ RP Vol. I, P. 30, lines 18-24.

¹⁰ RP Vol. I, P. 31, lines 16-24. RP Vol. I, p. 44, lines 9-14.

¹¹ RP Vol. I, P. 36, lines 3-21.

¹² RP Vol. I, P. 50, lines 3-11.

¹³ RP Vol. I, P. 26, line 11 through P. 54, line 13.

¹⁴ RP Vol. I, P. 41, line 8 through P. 42, line 25.

Meinhart admitted that his pain complaints by the time he was discharged from his chiropractor in June of 2014 were 100% improved.¹⁵

Christine Meinhart testified on the second day of the trial and during her questioning on direct examination there was there was no evidence presented that her injuries caused her problems with her job, with her activities around the home, with her leisure activities, or with her relationship with her husband Ernst Meinhart. Christine Meinhart testified her symptoms essentially resolved after completing care in June of 2014.¹⁶

IV. SUMMARY OF ARGUMENT

The testimony reflects that Christine and Ernst Meinhart were involved in a rear end motor vehicle accident on October 23, 2013. Liability for the accident was admitted. The Meinharts did not call the police and no medical aid was called to the scene. Christine and Ernst Meinhart commenced treatment with a chiropractor one week after the accident on October 30, 2013 and their treatment was completed by early June, 2014¹⁷. Mark Sutton, DC testified that plaintiffs' chiropractic treatment and massage should have concluded by early March 2014.¹⁸ By this date, Dr. Sutton testified that Christine and Ernst Meinhart were both reporting pain complaints as minimal or zero to two on a scale of one to

¹⁵ RP Vol I, P. 45, line 10 through P. 50, line 16.

¹⁶ RP Vol II, P. 120, line 18 through P. 127, line 12

¹⁷ Exhibit 8 (M000001-M000006) and Exhibit 9 (M000168-M000170).

¹⁸ RP Vol. II, P. 87, line 16 through P. 88, line 1, P. 102, line 22 through P. 103 line 12).

ten.¹⁹ As stated above, there was no testimony as to how Christine and Ernst Meinhart's injuries impacted their work, activities of daily living, leisure activities, recreational activities, and/or their relationship with each other. There was a complete lack of evidence presented through trial testimony from which the jury could have reached an award for noneconomic damages for either Christine or Ernst Meinhart.

V. ARGUMENT

The Meinharts are before this Court requesting that it set aside the jury's verdict. The Honorable Jack Nevin did not abuse his discretion by denying Meinhart's motion for a new trial. Doing so would have eviscerated defendants' constitutional right to a jury trial. Except in cases which fall peculiarly within equitable jurisdiction, or where remedies and defenses are made available by statute without a jury, the right to a trial by jury shall be inviolate. Const. art. 1, §21. Accordingly, the law gives a strong presumption that the verdict is adequate. *Singleton v. Jimmerson*, 12 Wn. App. 203, 207, 529 P.2d 17 (1974). The Supreme Court is reluctant to interfere with the conclusion of the jury when fairly made as to the amount of damages. *Anderson v. Dalton*, 40 Wn.2d 894, 246 P.2d 853 (1952).

¹⁹ RP Vol. II, P. 100, line 24 through P. 101, line 8, P. 87, line 19 through P. 88, line 1.

It is well-settled that the courts may not substitute their judgment for that of the jury on the amount of damages unless no substantial evidence supports it. *Green v. McAllister*, 103 Wn. App. 452, 14 P.3d 795 (2000). Unwarranted exercise of a trial court's authority under the statute may violate the right to a jury trial, and the court has no discretion if the verdict is "within the range" of credible evidence. *Id.* The jury verdict must be upheld unless the court finds from the record that the damages are outside the range of substantial evidence in the record, shock the conscience of the court, or appear to have resulted from passion or prejudice. *Id.*

The award should be overturned only in the most extraordinary circumstances. *Hill v. GTE Directories Sales Corp.*, 71 Wn. App. 132, 856 P.2d 746 (1993); *Miller v. Yates*, 67 Wn. App. 120, 834 P.2d 36 (1992). In determining whether a jury verdict on damages should be reduced, the trial court may consider untoward incidents of such extreme and inflammatory nature that the court's admonitions and instructions could not cure or neutralize them. *Himango v. Prime Time Broadcasting, Inc.*, 37 Wn. App. 259, 680 P.2d 432 (1984). A trial court operating under RCW 4.76.030, which authorizes the court to fix a greater or lesser amount than that returned by a jury in its verdict, may not consider alleged

trial errors which do not relate to the issue of passion or prejudice. *Allen v. Union Pac. R. Co.*, 8 Wn. App. 743, 509 P.2d 99 (1973).

The decision in *Lopez* is instructive. Lopez sued for injuries allegedly sustained in an automobile accident and presented evidence of a hospital visit, extended care from a chiropractor, an orthopedist, a physical therapist, and three days of lost wages. The jury awarded all of the economic damages in the amount of \$3,536.80, but awarded nothing for alleged pain and suffering. In denying Lopez's motion for additur or a new trial, the court concluded that Lopez "failed to sustain his burden in proving that the collision and injuries, if any, were of such consequence to award any damages for pain and suffering." *Id.* at 90. The evidence allowed the jury "to conclude that any pain Mr. Lopez felt as a direct result of the accident was short-lived." *Id.* at 93. "[T]he jury was entitled to conclude that the plaintiff incurred reasonable medical expenses as a result of the accident, while at the same time concluding he failed to carry his burden of proving general damages." *Id.* at 93 (emphasis added). The court affirmed the denial of Lopez's motion for a new trial because "the jury's failure to award damages for pain and suffering was consistent with the evidence." *Id.* at 92.

In *Benjamin v. Randell*, 2 Wn. App. 50, 467 P.2d 196 (1970), the trial court did not abuse its discretion in denying additur where the award

of \$244 in general damages was given for a broken jaw, loss of ten teeth, and injury to glandular area underneath the tongue was so inadequate as to reflect a failure of substantial justice.. In *Geston v. Scott*, 116 Wn. App. 616, 621, 67 P.3d 496 (2003), the jury was entitled to deny noneconomic damages relating to an emergency room visit because the plaintiff had simply “presented no evidence of pain, suffering, or inconvenience” associated with that visit.

In the present case, the jury awarded Meinhart less than the total amount of medical special damages claimed after deliberation and upon instruction of the Court. The Court instructed the jury upon agreement of counsel to rely upon the instructions given to them prior to deliberations. The jury awarded no noneconomic damages. There is no indication in the record that this decision was “unmistakably” based on passion or prejudice.

The testimonial evidence presented by Meinhart at trial supports an award of no noneconomic damages, especially given Meinharts’ failure to seek chiropractic care for a week after the accident. There was little, if any, testimony that their injuries impacted their jobs, their activities of daily living, their relationship, or their recreational activities. By March of 2014 there complaints were a zero to two on a scale of one to ten.

The jury was entitled to determine the Meinharts' credibility, evaluate their alleged pain and suffering, and the jury reached a logical conclusion that it did not have substantial evidence to make an award of noneconomic damages for either plaintiff. Credible evidence supports the jury's refusal to award noneconomic damages in this case.

The grounds for a new trial are set forth in CR 59:

(a) Grounds for New Trial or Reconsideration. On the motion of a party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties: ... (5) Damages so excessive or *inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice*; ... (7) That there is *no evidence reasonable inference from the evidence to justify the verdict or the decision*, or that it *is contrary to law*; (9) That *substantial justice has not been done*. CR 59 (emphasis added).

In reviewing the record upon motion for new trial, the jury verdict is presumed correct unless the award is so excessive as to unmistakably indicate that it resulted from passion or prejudice. *Herriman v. May*, 142

Wn. App. 226, 174 P.3d 156 (2007); *Manzanares v. Playhouse Corp.*, 25 Wn. App. 905, 611 P.2d 797 (1980). Juries have considerable latitude in assessing damages, and a damage award will not be lightly overturned. *Palmer*, 132 Wn.2d at 197; *Wash. State Physicians Ins. Exch. v. Fisons Corp.*, 122 Wn.2d 299, 329–30, 858 P.2d 1054 (1993); *Cox v. Charles Wright Academy, Inc.*, 70 Wn.2d 173, 176, 422 P.2d 515 (1967) (“[T]he law gives a strong presumption of adequacy to the verdict.”).

Although courts have discretion to grant a motion for a new trial if a damage award is not based on, or is at odds with, the evidence, the motion must be denied if the verdict is within the range of the credible evidence. *Robinson v. Safeway Stores, Inc.*, 113 Wn.2d 154, 161–62, 776 P.2d 676 (1989); *Wooldridge v. Woolett*, 96 Wn.2d 659, 668, 638 P.2d 566 (1981); *Herriman*, 142 Wn. App. at 232. In reviewing a court's exercise of discretion on such motions, the evidence is reviewed in the light most favorable to the verdict. *See Palmer*, 132 Wn.2d at 197–98. “[T]here is no per se rule that general damages must be awarded to every plaintiff who sustains an injury.” *Palmer*, 132 Wn.2d at 201. Rather, the adequacy of a verdict on general damages “turns on the evidence.” *Id.*

The amount of general damages is not governed by the economic damages at trial, and the jury may omit general damages even after awarding economic losses. *Geston*, 116 Wn. App. 616, (quoting *Palmer*,

132 Wn.2d at 202). In *Geston*, the trial court erred in ruling that passion or prejudice compelled the jurors to award no general damages despite awarding special damages of \$458.34 for one emergency room visit. *Id.* In *Usher v. Leach*, 3 Wn. App. 344, 474 P.2d 932 (1970), the grant of a new trial was improper where the jury awarded only \$13.00 in general damages because there was no definite act, occurrence or incident which could lead a jury to err for which immediate action was timely requested or against which remedial action would have been futile.

In *Richards v. Sicks' Rainier Moving Co.*, 64 Wn.2d 357, 391 P.2d 960 (1964), the court properly denied a new trial where the verdict approximated the claimed special damages because the jury had a right to disbelieve testimony favorable to the plaintiff.

The jury determined that the Meinharts did not meet their burden of proof as to noneconomic damages taking into account the delay in treatment, quick resolution of symptoms as testified to by Dr. Sutton, and the lack of testimony as to how their alleged injuries impacted their work and lives. The jury award should not be revisited simply because the Meinharts are unsatisfied with the jury's determination that they did not meet their burden of proof on noneconomic damages.

VI. CONCLUSION

The Honorable Jack Nevin did not abuse his discretion in denying Meinharts' motion for a new trial. As in *Lopez*, the jury's failure to award noneconomic damages in this case was consistent with the evidence presented at trial and the jury verdict should be affirmed.

Dated this 1st day of March 2017.

Respectfully submitted,



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DECLARATION OF SERVICE

I hereby certify that on said date below, I served a true and accurate copy of Respondents' Brief to the following by the manner described:
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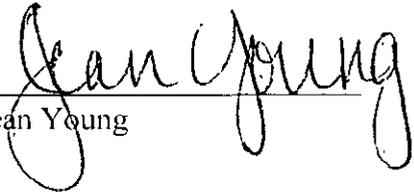
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: March 1, 2017, at Seattle, Washington.



Jean Young