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

KELLIE SLATER, Appellant, v. NORTHGATE MALL PARTNERSHIP, a Delaware general partnership, Respondent.	)	No. 77607-0-I UNPUBLISHED OPINION FILED: January 22, 2019

VERELLEN, J. — Kellie Slater filed a lawsuit seeking damages for personal injuries she suffered after she fell and injured herself in a shopping mall parking lot. A jury awarded damages to Slater equivalent to the amount of medical expenses she claimed at trial. Slater filed a motion for a new trial on the issue of noneconomic damages, or in the alternative, for additur. The court granted Slater's motion for additur and increased the jury's verdict by $20,000. Slater appeals, arguing that the trial court's award of noneconomic damages is inadequate in light of the evidence. We affirm.

FACTS

On August 25, 2012, Kellie Slater fell while attempting to cross what she believed to be a median strip in the Northgate Mall parking lot in Seattle. Slater sustained injuries to her foot and the ligaments in her right ankle.

In June 2015, Slater sued the Northgate Mall Partnership, the owner and operator of the shopping mall, for negligence based on premises liability.[1]

In September 2017, following a trial, the jury found that Northgate was negligent and that its negligence was the proximate cause of Slater's injuries. The jury determined Slater was entitled to damages of $97,436, an amount that was exactly equivalent to the amount of medical expenses she claimed. The jury was instructed it should consider both economic and noneconomic damages in determining the total damage amount, but the verdict form did not segregate special damages and general damages. The jury also found Slater was contributorily negligent and that 50 percent of the damages were attributable to her negligence.

Slater filed a motion for a new trial, or in alternative, for additur, pursuant to RCW 4.76.030. Slater argued that the jury failed to award general damages despite "undisputed" evidence of pain and suffering and disability resulting from her injury. Northgate opposed the motion, arguing that the jury's verdict was within the range of credible evidence and therefore should not be disturbed.

The court granted Slater's motion for additur and increased the jury's verdict by $20,000 to represent an award of general damages. The court's order states:

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[1] Slater's initial complaint included the claims of two other individuals who had similar accidents at the same location. The court dismissed the claim asserted by one of those plaintiffs. The record does not indicate whether the other plaintiff's claim proceeded separately.

> Although this court is reluctant to disturb a jury verdict, justice is not served by the verdict and an award that does not even acknowledge any pain and suffering based on the uncontroverted evidence at trial is inconsistent with the damages which were awarded in the amount of $97,436.28 (prior to contributory negligence reduction). The court specifically finds that the jury awarded damages exactly equal to the special damages claimed at trial. Although there is no way to know with absolute certainty whether the jury failed to award general damages given that the verdict form did not itemize the damage award, such a result can be reasonably inferred given that the verdict was exactly the same as the plaintiff's unconverted medical expenses for her foot/ankle injury. The court notes in this regard that the Defendant did not offer any medical testimony to rebut the medical testimony on causation and reasonableness of medical expenses offered by plaintiff.[2]

Slater appeals.

ANALYSIS

Representing herself on appeal, Slater challenges the court's order granting additur and awarding her $20,000 for general damages before the contributory negligence deduction.

An award of additur is made pursuant to RCW 4.76.030. That statute provides:

> If the trial court shall, upon a motion for new trial, find the damages awarded by a jury to be so excessive or inadequate as unmistakably to indicate that the amount thereof must have been the result of passion or prejudice, the trial court may order a new trial or may enter an order providing for a new trial unless the party adversely affected shall consent to a reduction or increase of such verdict.

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[2] Clerk's Papers (CP) at 336.

The question of whether a plaintiff is entitled to general damages turns on the evidence.[3] "Although there is no per se rule that general damages must be awarded to every plaintiff who sustains an injury, a plaintiff who substantiates her pain and suffering with evidence is entitled to general damages."[4]

Slater claims that the court's award upon granting additur is inadequate to compensate her for pain and suffering and other noneconomic damages in view of the uncontroverted medical evidence she presented at trial.

But Slater failed to designate on appeal any of the evidence presented at trial. The party presenting an issue for review has the burden of providing an adequate record to establish the asserted error.[5] The failure to provide such a record precludes appellate review.[6] Pro se litigants are held to the same standards as attorneys and are bound by the same rules of procedure and substantive law.[7]

Slater has not provided any part of the verbatim report of proceedings of the trial, or any of the numerous admitted trial exhibits.[8] Therefore, it is impossible to

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[3] Palmer v. Jensen, 132 Wn.2d 193, 201, 937 P.2d 597 (1997).

[4] Id.

[5] RAP 9.2(b); State v. Sisouvanh, 175 Wn.2d 607, 619, 290 P.3d 942 (2012); Stevens County v. Loon Lake Prop. Owners Ass'n, 146 Wn. App. 124, 131, P.3d 846 (2008).

[6] Stiles v. Kearney, 168 Wn. App. 250, 259, 277 P.3d 9 (2012).

[7] In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993); Westberg v. All-Purpose Structures, Inc., 86 Wn. App. 405, 411, 936 P.2d 1175 (1997).

[8] Slater has provided only a transcription of the deposition testimony of an orthopedic surgeon who treated her.

evaluate her claim that the general damages awarded by the court are inconsistent with the evidence.

Slater relies primarily on this court's unpublished opinion in Nelson v. Erickson.[9] Nelson is neither precedential nor persuasive as to the issue she raises.[10] In Nelson, after the jury awarded $10,000 for future medical expenses but expressly declined to award future noneconomic damages, the trial court granted additur and awarded $3,000 for future noneconomic damages. The defendant appealed. Upon a review of the evidence presented at trial, this court upheld the trial court's decision to grant the plaintiff's motion for additur. The court's analysis focused on whether the jury's omission of noneconomic damages was contrary to the evidence, therefore allowing the court to interfere with the verdict. The decision does not address the sufficiency of the amount of damages awarded by the trial court. Here, of course, Slater was the party who requested additur. And as explained, without reviewing all of the evidence, we are unable to assess her claim that the trial court failed to award an "appropriate amount" of damages.[11]

Despite having requested additur as an alternative to a new trial, Slater now asserts that the trial court was required to order a new trial on damages. She cites Meinhart v. Anya.[12] In that case, after the jury awarded the Meinharts almost all of

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[9] No. 71709-0-I (Wash. App. Ct. Sept. 14, 2015) (unpublished).

[10] See GR 14.1.

[11] App Br. at 16.

[12] 1 Wn. App. 2d 59, 403 P.3d 973 (2017).

their claimed medical expenses but omitted an award of noneconomic damages, the trial court denied the Meinharts' motion for a new trial. Division Two of this court reversed, concluding there was no evidence that contradicted or called into question the plaintiffs' evidence of pain and suffering.[13] Unlike Slater, it does not appear that the Meinharts requested or consented to additur. And again, the conclusion that the trial court abused its discretion in denying the motion for a new trial was based on the appellate court's review of the entirety of the evidence.[14]

Slater also appears to challenge the trial court's pretrial ruling denying her motion to compel Northgate to produce incident reports and its ruling limiting the number of witnesses who were permitted to testify about similar accidents that occurred in the Northgate parking lot before Slater's August 2012 fall. In the absence of the underlying motions and arguments made to the trial court, we cannot conclude that the trial court abused its discretion. In any event, the jury found that Northgate was negligent and liable for Slater's injuries. Accordingly,

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[13] Id. at 71.

[14] Slater also refers to cases resolved by trial court order or by settlement to support her position that the injury she sustained warranted damages beyond the amount awarded by the trial court. Reference to these matters is unhelpful for several reasons but chiefly because the damages awarded in other cases were based on the specific evidence presented in those cases and are not relevant to the amount of damages supported by the evidence in Slater's case. Furthermore, we do not consider any material in Slater's appendices that is not included in the record on appeal. See RAP 10.3(a)(8).

even if Slater could establish error, the rulings were not prejudicial and provide no basis for reversal.[15]

Finally, to the extent that Slater alleges judicial bias, there is nothing in the record to support her claim. It does not appear that Slater sought recusal. She does not point to any specific evidence of bias and merely suggests that some of the court's legal rulings reflect bias. But judicial rulings alone almost never constitute a valid showing of bias.[16] Slater's "[c]asual and unspecific allegations of judicial bias provide no basis for appellate review."[17]

Slater fails to establish that the award of damages was outside the range of the evidence.

Affirmed.

WE CONCUR:

[15] See Mut. of Enumclaw Ins. Co. v. Gregg Roofing, Inc., 178 Wn. App. 702, 728-29, 315 P.3d 1143 (2013) ("When a trial court makes an erroneous evidentiary ruling, the question on appeal becomes 'whether the error was prejudicial, for error without prejudice is not grounds for reversal.'") (quoting Brown v. Spokane County Fire Prot. Dist. No. 1, 100 Wn.2d 188, 196, 668 P.2d 571 (1983)).

[16] In re Pers. Restraint of Davis, 152 Wn.2d 647, 692, 101 P.3d 1 (2004).

[17] Rich v. Starczewski, 29 Wn. App. 244, 246, 628 P.2d 831 (1981).