

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH WEISEL and	:	CIVIL ACTION
MARLENE WEISEL, h/w,	:	
Plaintiffs	:	
	:	
v.	:	
	:	
MAUDE W. HATTENBACH,	:	
Defendant.	:	NO. 98-2542

MEMORANDUM OF DECISION

THOMAS J. RUETER
United States Magistrate Judge

July , 1999

On May 18, 1999, this court conducted a jury trial between plaintiffs, Kenneth and Marlene Weisel, husband and wife, and defendant Maude Hattenbach. On May 20, 1999, a jury returned a verdict in favor of defendant and against plaintiffs. Plaintiffs then filed the present: (1) motion for judgment as a matter of law pursuant to Rule 50(b) (Doc. No. 31); and (2) motion for a new trial pursuant to Federal Rule of Civil Procedure 59 (Doc. No. 32). For the reasons set forth below, the court denies both motions.

I. BACKGROUND

Plaintiffs were involved in an automobile accident with defendant. Plaintiffs sued for damages. Defendant stipulated as to liability for the accident. Therefore, the trial was solely to determine plaintiffs' damages. At trial, plaintiffs presented evidence that Marlene Weisel suffered a neck injury and Kenneth Weisel suffered a back injury. The jury, after submitting written questions to this court, returned a verdict in favor of defendant and against plaintiffs.

Plaintiffs now assert that, based on the written questions to this court and the verdict form, the verdict was contrary to the weight of the evidence. Based on these allegations, plaintiffs submitted post-trial motions requesting this court to enter judgment as a matter of law pursuant to Fed. R. Civ. P. 50(b) or, alternatively, to grant a new trial pursuant to Fed. R. Civ. P. 59.

II. DISCUSSION

A. JUDGMENT AS A MATTER OF LAW

A court may grant a motion for judgment as a matter of law if “a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue.” Fed. R. Civ. P. 50(a). If the court does not grant the motion at the close of evidence, the court is considered to have submitted the action to the jury subject to the court’s later deciding the legal issues raised by the motion. Id. If the party renews its motion for judgment as a matter of law after the jury has returned a verdict, the court may: (1) allow the judgment to stand; (2) order a new trial; or (3) direct entry of judgment as a matter of law. Fed. R. Civ. P. 50(b)(1).

The standard for granting a motion for judgment as a matter of law for the claimant is similar to the standard for granting a motion against the claimant. 9A Wright and Miller Federal Practice and Procedure, Civil 2d, § 2535 (1995). In both instances, the court must consider whether reasonable minds could differ as to the dispositive issues. Id. However, entering judgment as a matter of law for the party who bears the burden of proof is rare and should be reserved for extreme circumstances. Fireman’s Fund Ins. Co. v. Videfreeze Corp., 540 F.2d 1171, 1177 (3d Cir. 1976), cert. denied, 429 U.S. 1053 (1977) (citations omitted). The court is not to test the evidence for its insufficiency to support the verdict, but rather for its overwhelming

effect. Id. The court must be able to say not only that there is sufficient evidence to support a judgment as a matter of law, but also that there is insufficient evidence for permitting any different finding. Id. “It is not sufficient that the facts be undisputed; there must also be no sufficient ground for inconsistent inferences to be drawn therefrom.” Fireman’s Fund Ins. Co., 540 F.2d at 1177 (citations omitted).

Plaintiffs allege that they proved they suffered injuries from the automobile accident with defendant. Specifically, they identify the testimony of their expert witness, Dr. Richard Kaplan, M.D., that Marlene Weisel sustained a cervical injury and Kenneth Weisel sustained a lumbar injury. (Pl.’s Mem. Supp. Mot. for J. as a Matter of Law at 1.) Additionally, plaintiffs point to the testimony of defendant’s expert witnesses, Drs. Andrew Shaer, M.D. and Richard Bennett, M.D., who stated that the plaintiffs may have been injured from the automobile accident. Id.

In response, defendant argues that the jury was presented with conflicting evidence regarding plaintiffs’ injuries. (Def.’s Mem. at 3.) Defendant asserts that the jury correctly concluded that plaintiffs suffered no injuries and that the evidence presented at trial supports such a conclusion. Id. at 3-5. Therefore, defendant claims that the jury’s decision not to believe plaintiffs’ evidence is an inappropriate basis to overturn the verdict. Id. at 5.

This court must review the evidence in the “strongest light favorable to the party against whom the motion is made and give him the advantage of every fair and reasonable inference.” Fireman’s Fund Ins. Co., 540 F.2d at 1178 (citations omitted). This court may not review the credibility or the weight of the evidence. Id. Finally, “conflicting evidence which could reasonably lead to inconsistent conclusions will not justify a judgment notwithstanding the verdict or a directed verdict.” Id. The jury alone is to evaluate contradictory evidence. Id.

1. Expert witness testimony

At trial, both parties presented expert witnesses who testified as to the cause of plaintiffs' injuries. Dr. Kaplan testified in support of the plaintiffs and Drs. Shaer and Bennett testified in support of the defendant. All expert testimony was presented to the jury by way of videotaped depositions.

Dr. Kaplan testified that he examined Mrs. Weisel and diagnosed her with cervical radiculopathy secondary to cervical disc herniation and cervical sprain and strain. Dr. Kaplan believed that Mrs. Weisel's cervical injuries were caused by the automobile accident. Additionally, Dr. Kaplan examined and diagnosed Mr. Weisel with lumbosacral radiculopathy caused by a herniated disc. While Dr. Kaplan admitted that Mr. Weisel may have had some degenerative disc disease and that Mr. Weisel had a prior history of back problems, Dr. Kaplan believed the injury was caused by the automobile accident.

In contrast to plaintiffs' expert witness, defendant's experts testified that plaintiffs' injuries were not caused by the automobile accident. Specifically, Dr. Shaer testified that from a review of Mr. Weisel's imaging studies, Mr. Weisel's herniated disc was present prior to the accident and was caused by degenerative disc disease. Dr. Shaer also reviewed Mrs. Weisel's imaging studies. Dr. Shaer did not identify any evidence of a cervical injury in these studies. Dr. Shaer did identify evidence of disc herniation in Mrs. Weisel's cervical spine, but he believed this to be a pre-existing condition. Defendant also presented the testimony of Dr. Bennett who examined both plaintiffs. Dr. Bennett believed that Mrs. Weisel's cervical spine problems were not attributed to the automobile accident, but rather were caused by degenerative changes in her spine. Dr. Bennett noted that Mr. Weisel had a history of lower back pain and that any problems

with his back were due to degenerative changes and not to the automobile accident.

Viewing the evidence in the light most favorable to defendant, the court concludes that plaintiffs are not entitled to judgment as a matter of law based on the evidence presented at trial. The issue of whether plaintiffs were injured from the accident was equally disputed and both parties presented expert witness testimony to support their position. The evidence was simply conflicting; it was not overwhelming in support of the plaintiffs.

2. Jury questions to the court

Plaintiffs also cite to the following written question from the jury to the court as support for their motion:

1. We think there may have been some minor injury at time of impact. Does this really mean [plaintiffs] suffered injuries that were proximately caused by the negligence [sic] defendant?

Are the injuries in question neck and back or possibly just soft tissue at the time,

i.e.

stiff neck for couple of days or cervical/lumbar? What injuries are we talking about? Must we be considering permanent? Must we award financial damages for plaintiff?

(Pl.'s Mem. Supp. Mot. for J. as a Matter of Law Ex. A.) The court answered the jury by stating that if it found the plaintiffs sustained injuries caused by the negligence of the defendant, whether they be minor or serious, permanent or temporary, the jury must award monetary damages to the plaintiffs. The jury then continued deliberating. Later, the jury returned the verdict in favor of the defendant. Plaintiffs appear to argue that the question establishes that the jury found the plaintiffs did sustain injuries from the automobile accident, and ignored the court's instructions when it returned its verdict against the plaintiffs. However, when viewed in the light most favorable to

the defendant, the question does not unequivocally support a conclusion that the jury found the defendant caused plaintiffs' injuries. The question simply states that at a point in its deliberations, the jury "thought" that plaintiffs "may have been" injured by the impact with defendant's automobile. Eventually, after the jury further deliberated, it unanimously concluded that plaintiffs were not injured by the defendant, and thus not entitled to monetary damages. To read anything more into the jury's question would amount to pure speculation about the jury's deliberations. The jury's question alone does not justify the granting of plaintiffs' request to overturn the verdict. See Howard D. Jury, Inc. v. R & G Sloane Manufacturing Co., 666 F.2d 1348, 1351 (10th Cir. 1981) ("Plaintiff's argument is constructed out of speculation, and a verdict will not be upset on the basis of speculation."). Accordingly, the motion for judgment as a matter of law is denied.

B. NEW TRIAL

A new trial may be granted where there is legally sufficient evidence to support the verdict, but the verdict is contrary to the great weight of the evidence, that is, "where a miscarriage of justice would result if the verdict were to stand." Olefins Trading, Inc. v. Han Yang Chem Corp., 9 F.3d 282, 289 (3d Cir. 1993) (citations and internal quotations omitted). While the trial court is given great discretion in deciding whether to grant a new trial, Blancha v. Raymark Industries, Inc., 972 F.2d 507, 512 (3d Cir. 1992), the trial court may not substitute its own judgment of the facts and the credibility of the witnesses over that of the jury, Lind v. Schenley Industries, Inc., 278 F.2d 79, 90 (3d Cir.) (en banc), cert. denied, 364 U.S. 835 (1960). Additionally, a jury verdict may not be overturned as against the weight of the evidence unless the verdict shocks the conscience. Williamson v. Consolidated Rail Corp., 926 F.2d 1344, 1353

(3d Cir. 1991).

From the previous discussion of the evidence presented at trial and the jury question presented to the court, this court concludes that the jury verdict is not against the great weight of the evidence such that it would be a miscarriage of justice to let it stand. Therefore, plaintiffs are not entitled to a new trial. Plaintiffs' motion for a new trial pursuant to Fed. R. Civ. P. 59 is denied. An appropriate order follows.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge

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ORDER

AND NOW, this day of July, 1999, plaintiffs motion for judgment as a matter of law pursuant to Fed. R. Civ. P. 50(b) and alternative motion for new trial pursuant to Fed. R. Civ. P. 59 is DENIED.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge