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DISTRICT IV

November 15, 2017

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You are hereby notified that the Court has entered the following opinion and order:

2016AP1594 Nathan Craig v. Gehan Yin (L.C. # 2014CV2644)

Before Sherman, Blanchard and Kloppenburg, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Gehan Yin, Progressive Classic Insurance Company, and Artisan and Truckers Casualty Company (collectively "Defendants") appeal a judgment awarding Nathan Craig $24,000 in damages, including future medical expenses, following a jury trial on Craig's claim of negligence. Specifically, Defendants argue that the circuit court should have dismissed Craig's claim for future medical expenses on the ground that it was not sufficiently supported by expert medical testimony. Based upon our review of the briefs and record, we conclude at conference

that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).[1] Because we conclude that there was sufficient expert testimony to support the jury's award, we reject Defendants' arguments and affirm.

After being injured in a collision with a car driven by Yin, Craig sued Yin and her insurers for negligence. Craig sought a variety of compensatory damages, including an award for ongoing medical expenses. At trial, Yin presented expert testimony from Dr. Kevin Triggs, who testified that Craig did not require any future medical care as a result of the collision. However, Dr. Triggs also testified on cross-examination that Craig probably had waxing and waning neck pain, which he attributed to age. Craig presented the testimony of Dr. Leonard and Dr. Khalsa. Dr. Leonard testified that Craig would probably suffer permanent pain as a result of the collision and that it was reasonable for him to receive chiropractic care if it provided relief. Dr. Khalsa testified that Craig's injury was probably permanent and that continued chiropractic treatment was reasonable and necessary for Craig's pain. Dr. Khalsa further recommended a frequency of between one and four treatment sessions per month as needed, at a cost of $70 per session. The jury found that Yin was negligent and awarded Craig $30,000 in damages,

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

including $21,200 in future medical expenses.[2] Defendants appeal the award of future medical expenses.[3]

In reviewing a challenge to a jury verdict based on sufficiency of the evidence, we must determine whether there is any credible evidence to sustain the verdict. *See* WIS. STAT. § 805.14(1) ("No motion challenging the sufficiency of the evidence as a matter of law to support a verdict ... shall be granted unless the court is satisfied that, considering all credible evidence and reasonable inferences therefrom in the light most favorable to the party against whom the motion is made, there is no credible evidence to sustain a finding in favor of such party."). The parties agree that our review is de novo. *See* ***Dalka v. Wisconsin Cent., Ltd.***, 2012 WI App 22, ¶15, 339 Wis. 2d 361, 811 N.W.2d 834 (whether the evidence is sufficient to support a finding is a question of law reviewed de novo).

An award of future medical expenses will be sustained based on two criteria: "(1) there must be expert testimony of permanent injuries, requiring future medical treatment and the incurring of future medical expenses; and (2) an expert must establish the cost of such medical expenses." *See* ***Weber v. White***, 2004 WI 63, ¶20, 272 Wis. 2d 121, 681 N.W.2d 137. We conclude that the expert medical testimony discussed above is credible evidence to support the

[2] The jury found that Craig's negligence contributed 20% to the accident, so the circuit court entered judgment for $24,000 plus costs.

[3] Defendants preserved this issue for appeal by objecting to the inclusion of future health care expenses on the special verdict form. The circuit court reserved ruling on this objection and allowed the claim to be submitted to the jury. After the verdict, Defendants renewed their objection through a motion to dismiss. The circuit court did not address this motion within ninety days, so it is deemed denied. WIS. STAT. § 805.16(3) ("If within 90 days after the verdict is rendered the court does not decide a motion after verdict on the record or the judge, or the clerk at the judge's written direction, does not sign an order deciding the motion, the motion is considered denied and judgment shall be entered on the verdict.").

jury's determination that Craig would incur $21,200 in future medical expenses. Specifically, as explained above, there was expert testimony that Craig suffered permanent injury as a result of the collision and that it was reasonable for Craig to receive chiropractic treatment between one and four times per month as needed to alleviate the pain caused by this injury, at a cost of $70 per session.

Defendants argue that this expert testimony did not allow jurors to satisfy their obligation to determine the amount of money that will "reasonably and necessarily be incurred in the future to care for [plaintiff]." *See* WIS JI—CIVIL 1758. They point out that neither of Craig's experts stated that they were testifying to a reasonable degree of medical probability. However, this argument falls flat in light of our case law, which makes clear that experts do not need to use these specific words but rather can satisfy the requisite standard through the assertion of professional opinions. *See* ***Powers v. Allstate Ins. Co.***, 10 Wis. 2d 78, 86, 102 N.W.2d 393 (1960) (explaining that an expert might express a professional opinion using the words "I feel" or "I believe"). Here, Dr. Leonard testified that ongoing chiropractic treatment was reasonable if it provided Craig relief, while Dr. Khalsa testified that further chiropractic treatment was "reasonable and necessary." We conclude that these professional opinions were sufficient evidence from which jurors could make the determination required by the relevant jury instruction.

Defendants further argue that there was insufficient expert testimony to support the amount of future medical expenses assessed by the jury. Specifically, they contend that the award of $21,200 allows Craig to receive slightly more than seven treatments per year for the

rest of his life,[4] but nothing in the medical testimony supports such a precise determination about Craig's future medical needs. They also contend that a long-term award is inconsistent with Dr. Khalsa's testimony that it was likely (but not certain) that Craig's pain would improve over time.

Defendants' argument relies on both the relevant jury instructions and decisional law. Specifically, they contend that the jurors could only have arrived at the specific award through guessing and speculation, whereas the jury instructions require a "reasonable certainty." *See* WIS JI—CIVIL 200 ("'Reasonable certainty' means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof."). Moreover, they argue that the jury's award is out of step with our Supreme Court's decisions, which have upheld awards that are within the parameters established by expert testimony. *See, e.g.*, ***Weber***, 272 Wis. 2d 121, ¶¶7-10, 31 (upholding a jury award that was within the parameters for the upper and lower range of estimates); ***Bleyer v. Gross***, 19 Wis. 2d 305, 312-13, 120 N.W.2d 156 (1963) (upholding a jury award based on testimony that the plaintiff would probably incur medical expenses of $200 to $250 per year for her permanent injury).

These arguments do not help Defendants satisfy the high standard for vacating the jury verdict. *See* WIS. STAT. § 805.14(1) (we must view all credible evidence and reasonable inferences in the light most favorable to the non-moving party). As discussed above, all three expert witnesses agreed that Craig would likely experience ongoing pain, and both of Craig's expert witnesses testified that it was reasonable for Craig to seek chiropractic treatment as

[4] The circuit court instructed the jury that Craig's life expectancy was forty-three more years.

needed for his ongoing pain. Further, Dr. Khalsa's testimony established that it would be reasonable for Craig to seek treatment one to four times per month, as needed. At $70 per visit, Dr. Khalsa's testimony therefore establishes that Craig is likely to incur between $840 and $3,360 per year for future treatment. As far as the duration of future treatment, the testimony was mixed. Dr. Leonard testified that Craig's pain was likely permanent, while Dr. Khalsa testified that it was possible he would improve.

The jury's decision to award Craig $21,200 is well within the parameters of the future medical costs supported by this expert testimony. Contrary to Defendants' assumption, it is clear that the jury did not give Craig a lifetime award, because an award of $21,200 would not enable Craig to receive one to four monthly treatments for his expected lifespan of forty-three more years. Instead, the total award enables Craig to receive treatment at the low end of the recommended range (one monthly visit) for approximately twenty-five years, or at the high end of the recommended range (four monthly visits) for just over six years. This range is supported by expert testimony establishing that Craig has a permanent injury that could possibly improve over time. We therefore reject Defendants' argument that the award was not supported by testimony establishing the parameters for the upper and lower ends of the range of Craig's likely future medical costs.

We also reject the Defendants' argument that the jury engaged in guessing or speculation when it awarded $21,200. Instead, the award strikes us as a rational way to balance competing testimony regarding Craig's likely need for ongoing treatment to alleviate the pain of a permanent injury, as well as the possibility that ongoing treatment might improve Craig's condition. As such, it is consistent with the jury's instruction to determine the amount of money that will "reasonably and necessarily be incurred in the future to care for [plaintiff]." *See* WIS

JI—CIVIL 1758. It is also consistent with the jury's instruction to make its determination "based upon a rational consideration of the evidence." *See* WIS JI—CIVIL 200.

In sum, we conclude that there is credible evidence to support the jury's award of $21,200 for Craig's future medical expenses. We therefore affirm the judgment of the circuit court.

Upon the foregoing reasons,

IT IS ORDERED that the circuit court's judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals