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**DISTRICT II**

August 26, 2020

To:

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

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2019AP418

Peter Tamuzian v. Matthew L. Reber and Allstate Property and  
Casualty Ins. Co. (L.C. #2017CV5)

Before Reilly, P.J., Gundrum and Davis, 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).**

Matthew L. Reber and Allstate Property and Casualty Ins. Co. appeal from a judgment entered in favor of Peter Tamuzian. They contend that there was insufficient evidence to support the jury's award of past medical expenses for Tamuzian. They further contend that the circuit court erred in denying their various motions for relief. 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 (2017-18).<sup>1</sup> We affirm.

This case arises from an automobile accident involving Reber and Tamuzian. Reber rear-ended Tamuzian while Tamuzian was yielding to traffic, causing him to suffer a neck injury. Tamuzian filed suit against Reber and his insurer, Allstate.

At the time of the accident, Tamuzian was 74 years old and suffering from multiple ailments (e.g., gait, posture, leg weakness, and drop foot). He was treated for some of those ailments at the same physical therapist’s office that treated his neck injury—sometimes on the same day.

One of the issues at trial concerned Tamuzian’s ability to prove what treatment expenses related to his neck injury versus his other ailments. Reber and Allstate argued that the physical therapy records could not be interpreted and moved to dismiss the damages claim for insufficient evidence. The circuit court denied that motion.

During rebuttal closing argument, Tamuzian’s counsel presented, over objection, a document detailing each date of service for treatment of the neck injury and the corresponding charge. As the circuit court explained, “[counsel] simply went through the records and he put it in [a chart] and he used that chart as a tool, a demonstrative aid to assist the jury.” After submission of the case, Reber and Allstate moved for a mistrial based on the rebuttal closing argument. The court took the motion under advisement.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version.

Ultimately, the jury awarded \$13,225 to Tamuzian for past medical expenses. Reber and Allstate filed motions after verdict, reiterating their requests to dismiss the damages claim or order a mistrial. Alternatively, they sought a reduction in damages, a new trial in the interests of justice, or a directed verdict/judgment notwithstanding the verdict. After a hearing on the matter, the circuit court denied the motions. This appeal follows.

Our review of a jury's verdict is narrow, and we will sustain it if there is any credible evidence to support it. *Betterman v. Fleming Cos.*, 2004 WI App 44, ¶15, 271 Wis. 2d 193, 677 N.W.2d 673. Our standard of review is even more stringent where, as in this case, the circuit court upheld the verdict on postverdict motions. *Id.*, ¶16.

Here, we are satisfied that there was sufficient credible evidence to support the jury's award of past medical expenses. At trial, Tamuzian testified to the accident, his neck injury, and the length of time that he was treated for it. His doctor, Dr. Dennis Mannino, also testified via deposition and provided a report detailing the injury and prescribed treatment. Tamuzian estimated his medical bills for the neck injury to be around \$12,800. His counsel, meanwhile, estimated the amount to be around \$13,748 based upon a review of the admitted records. In the end, the jury arrived at a figure between those two numbers.

Likewise, we are satisfied that the circuit court properly denied Reber and Allstate's various motions for relief. Most of their motions were premised on a claim of insufficient evidence, which we have already rejected. To the extent that their motions concerned the rebuttal closing argument, we note that decisions over the use of demonstrative evidence at trial are committed to the circuit court's sound discretion. *James v. Heintz*, 165 Wis. 2d 572, 580, 478 N.W.2d 31 (Ct. App. 1991). So too are decisions over whether to grant a mistrial or order a

new trial in the interest of justice. *State v. Ford*, 2007 WI 138, ¶28, 306 Wis. 2d 1, 742 N.W.2d 61; *Markey v. Hauck*, 73 Wis. 2d 165, 171-72, 242 N.W.2d 914 (1976). Here, the court thoroughly addressed these issues at the hearing on the motions after verdict, explaining why the actions of Tamuzian’s counsel were appropriate and why the jury’s verdict should stand. On this record, we perceive no erroneous exercise of discretion.<sup>2</sup>

Upon the foregoing reasons,

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

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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<sup>2</sup> To the extent we have not addressed any other argument raised by Reber and Allstate on appeal, the argument is deemed rejected. See *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).