STATE OF MICHIGAN

COURT OF APPEALS

EDNA J. MEDLEY and SCOTT MEDLEY,

Plaintiffs-Appellants,

v

BEN BERGMAN and ENTERPRISE LEASING COMPANY OF DETROIT, INC.,

Defendants-Appellees,

and

CRYSTAL K. FISH, RONALD EBY, JR., and FARMERS INSURANCE EXCHANGE,

Defendants.

UNPUBLISHED
October 5, 2006

No. 259286
Monroe Circuit Court
LC No. 02-014269-NI

EDNA J. MEDLEY and SCOTT MEDLEY,

Plaintiffs-Appellants,

v

BEN BERGMAN and ENTERPRISE LEASING COMPANY OF DETROIT, INC., a/k/a ENTERPRISE RENT A CAR, INC.,

Defendants-Appellees,

and

FARMERS INSURANCE COMPANY, CRYSTAL K. FISH, RONALD EBY, JR., and ANTHEM BLUE CROSS & BLUE SHIELD,

Defendants.

No. 261087
Monroe Circuit Court
LC No. 02-014269-NI

Before: Jansen, P.J., and Murphy and Fort Hood, JJ.

PER CURIAM.

In Docket No. 259286, plaintiffs, Edna J. Medley (plaintiff)[1] and Scott Medley (Scott), appeal as of right an order of judgment in their favor in this automobile accident case. In Docket No. 261087, they appeal as of right an order granting case evaluation sanctions to defendants Ben Bergman (Bergman) and Enterprise Leasing Company of Detroit, Inc., a/k/a Enterprise Rent A Car, Inc. (Enterprise). We affirm the judgment in plaintiffs' favor in Docket No. 259286, but reverse the imposition of case evaluation sanctions in Docket No. 261087.

Plaintiff was involved in three automobile accidents. The first (accident I) occurred on August 24, 2001. The second (accident II) occurred on September 20, 2001. The third (accident II), occurred on April 30, 2004. Defendants were involved only in accident II.

Plaintiff first argues that the trial court abused its discretion in denying her motion for a new trial or additur because the jury's failure to award plaintiff future noneconomic damages for pain and suffering was against the great weight of the evidence. We disagree.

A trial court's ruling on a motion for new trial, based on the great weight of the evidence, is reviewed for an abuse of discretion. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 261; 617 NW2d 777 (2000). "Substantial deference is given to the trial court's conclusion that the verdict was not against the great weight of the evidence." *Id*. "An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

In *Kelly v Builders Square*, 465 Mich 29, 38; 632 NW2d 912 (2001), the Supreme Court considered whether a trial court abused its discretion in granting a new trial where the jury award was inconsistent insofar as it awarded medical expenses, but did not award noneconomic damages. The Court held that granting a new trial on that basis was an error of law because no legal principle required a jury to award pain and suffering when it awarded another type of damages. *Id*. at 39. "In short, the jury is free to credit or discredit any testimony. It may evaluate the evidence on pain and suffering differently from the proof of other damages." *Id*. The Court held that a party seeking to set aside a jury verdict must show one of the listed bases set forth in MCR 2.611(A)(1), in order to establish a claim to a new trial. *Id.* at 38.

Pursuant to *Kelly*, plaintiff's argument that a new trial should be granted, because of an inconsistency in the verdict attributed to the absence of an award for future pain and suffering, must be rejected. "No legal principle requires the jury to award one item of damages merely because it has awarded another item." *Kelly, supra* at 39.

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[1] Because Scott Medley's claims are derivative of Edna J. Medley's claims, we refer to Edna only as "plaintiff."

MCR 2.611(A) provides: "A new trial may be granted . . . for any of the following reasons: . . . . (e) A verdict or decision against the great weight of the evidence . . . ." Here, the failure to award future noneconomic damages was not against the great weight of the evidence. There was conflicting testimony regarding the severity of plaintiff's injuries, whether they were caused by accident II, and whether they should have persisted. In light of this conflicting testimony, the jury's conclusion that plaintiff would not suffer future noneconomic damages was not against the great weight of the evidence. The trial court did not abuse its discretion in denying plaintiff's motion for a new trial or additur based on the jury's failure to award future noneconomic damages.

Plaintiff next argues that the trial court abused its discretion in denying her motion for a new trial or additur because the jury's assignment of twenty percent fault to the other driver involved in accident III was against the great weight of the evidence. We disagree.

There was conflicting testimony regarding the causes of plaintiff's injuries. Plaintiff testified that she experienced neck pain as a result of accident III, that she sought medical treatment after accident III, and that as a result of accident III, she had a lot of neck pain, the stiffness returned, and she suffered back pain. This evidence tended to support the jury's conclusion that accident III was part of the cause of plaintiff's neck and back problems. Accordingly, the jury's conclusion that the unidentified driver's negligence in accident III was twenty percent of the cause of plaintiff's injuries was not against the great weight of the evidence. The trial court did not abuse its discretion in denying plaintiff's motion for a new trial or additur on this basis.

Plaintiffs next argue that the trial court abused its discretion in denying her motion for a new trial or additur because the jury's failure to award Scott loss of consortium damages was influenced by passion or prejudice. Plaintiffs essentially argue that it was improper for the jury to consider evidence of a preaccident extramarital affair in determining whether Scott suffered a loss of consortium. We disagree.

MCR 2.611(A)(1) provides: "A new trial may be granted . . . for any of the following reasons: . . . . (c) Excessive or inadequate damages appearing to have been influenced by passion or prejudice." Loss of consortium is a derivative action. *Wilson v Alpena Co Rd Comm*, 474 Mich 161, 163 n 1; 713 NW2d 717 (2006). "Loss of consortium technically means the loss of conjugal fellowship. This encompasses loss of society, companionship, affection, services, and all other incidents of the marriage relationship." *Abraham v Jackson*, 102 Mich App 567, 571; 302 NW2d 235 (1980). "To support such a claim, evidence must be presented concerning the marital relationship before and after the accident." *Id*.

In *Abraham*, the jury found "that there was no cause of action as to the plaintiff wife's loss of consortium claim . . . ." *Id*. This Court held that that finding was not against the great weight of the evidence where the plaintiffs had experienced serious matrimonial difficulties both before and after the accident that included a separation. *Id*. at 571-572. This Court held: "On this record, we conclude that there was ample evidence to support the jury's finding that the accident did not cause a loss of consortium." *Id*. at 572.

We hold that plaintiffs' argument is unpersuasive. Evidence regarding the nature of the marital relationship before the accident is relevant with regard to a claim of loss of consortium,

Abraham, supra, and consideration of an extramarital affair is a relevant factor to determine whether a loss of consortium is established. Moreover, there is no evidence that the extramarital affair prejudiced the jury in any manner. In fact, the reference to the affair was short in duration and did not provide any specific details. Here, as in *Abraham*, the jury reasonably considered the state of plaintiffs' marital relationship before and after the accidents and found that there was no loss of consortium. This finding was based on the jury's assessment of the evidence and the credibility of the witnesses, and there is no evidence that this finding was the result of passion or prejudice. Accordingly, the trial court did not abuse its discretion in denying plaintiff's motion for a new trial or additur regarding the loss of consortium claim.

Plaintiff next argues that the trial court erred in granting case evaluation sanctions to defendants because case evaluation sanctions are not available in this multiple party situation under MCR 2.403(O)(4)(a). We agree. Interpretation of a court rule is a question of law reviewed de novo. *Marketos v American Employers Ins Co,* 465 Mich 407, 412; 633 NW2d 371 (2001). Court rules are construed in the same manner as statutes. *Id*. at 413. That is, the plain language of the court rule is examined, and if unambiguous, we enforce the meaning plainly expressed, without further construction or interpretation. *Id*. Common words are understood based on their everyday, plain meaning. *Id*.

MCR 2.403(O)(4) governs a rejecting party's liability for costs when multiple parties are involved and provides:

> (4) In cases involving multiple parties, the following rules apply:
>
> > (a) Except as provided in subrule (O)(4)(b), in determining whether the verdict is more favorable to a party than the case evaluation, the court shall consider only the amount of the evaluation and verdict as to the particular pair of parties, rather than the aggregate evaluation or verdict as to all parties. However, costs may not be imposed on a plaintiff who obtains an aggregate verdict more favorable to the plaintiff than the aggregate evaluation.
> >
> > (b) If the verdict against more than one defendant is based on their joint and several liability, the plaintiff may not recover costs unless the verdict is more favorable to the plaintiff than the total case evaluation as to those defendants, and a defendant may not recover costs unless the verdict is more favorable to that defendant than the case evaluation as to that defendant.

In the present case, there was an assessment of fault against multiple parties.[2] Therefore, MCR 2.403(O)(4) applies.[3]

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[2] The plain language of the court rule does not distinguish between parties who are actively involved in the litigation as opposed to those who have settled the case, but remain relevant because of the need to apportion fault.

[3] Neither party suggests that MCR 2.403(O)(4)(b) applies, therefore we decline to explore it.

The plain language of the court rule at issue initially addresses whether the verdict is more favorable to a party than the case evaluation with regard to a particular pair of parties. MCR 2.403(O)(4)(a) then proceeds to provide that costs may not be imposed "on a plaintiff who obtains an aggregate verdict more favorable to the plaintiff than the aggregate evaluation." Although the term "aggregate" is not defined in the court rule, the term "aggregate" has been defined as "formed by the conjunction or collection of particulars into a whole mass or sum; total combined …" or "a sum, mass, or assemblage of particulars; a total or gross amount…" Random House Webster's College Dictionary (2000) at 25. Applying the plain language of the court rule to the factual scenario at bar, the aggregate verdict was more favorable to plaintiff than the aggregate evaluation. Therefore, the trial court erred in imposing costs. MCR 2.403(O)(4)(a).

Affirmed in Docket No. 259286, and reversed in Docket No. 261087. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ William B. Murphy
/s/ Karen M. Fort Hood