SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

KRISTA RHODES — APPELLANT

VERSUS — CASE NO. No. 2010-TS-00855

RONNIE RAFFEO — APPELLEE

BRIEF OF APPELLEE

APPEAL FROM THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI

(Oral Argument is Not Requested)

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Ronnie Raffeo, Appellee

2. Krista Rhodes Goff, Appellant

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5. Honorable Lawrence P. Bourgeois, Jr., Trial Judge
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STATEMENT OF THE ISSUES

1. WHETHER THE JURY'S VERDICT OF $5,000.00 IS AGAINST THE OVERWWHELMING WEIGHT OF THE EVIDENCE?

2. WHETHER THE CIRCUIT COURT JUDGE'S DECISION DENYING RHODES' MOTION FOR AN ADDITUR, OR IN THE ALTERNATIVE, A NEW TRIAL ON DAMAGES, WAS AN ABUSE OF DISCRETION?

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This case arises from an automobile accident that occurred on July 18, 2007, when the Defendant, Ronnie Raffeo ("Raffeo"), rear-ended the vehicle in which the Plaintiff, Krista Rhodes ("Rhodes") was a passenger. (Rec. at 8-10). The Defendant stipulated that his negligence was the sole proximate cause of the accident. (Rec. at 24). The only issue submitted to the jury for resolution was the amount of compensation to which Rhodes was entitled as a result of the injuries she sustained. (Rec. at 59).

B. COURSE OF PROCEEDINGS AND DISPOSITION BELOW

Trial of this matter went forward on November 12-13, 2009. As stated above, Raffeo admitted that his negligence was the sole proximate cause of the accident in question. Therefore, Rhodes' claim was submitted to the jury to determine the amount of damages to which the Plaintiff was entitled to compensate her as a result of the accident in question. The jury returned a verdict of $5,000.00 for Rhodes. (Rec. at 64). Judgment was entered in that amount on November 24, 2009. (RE at 00000005) (Rec. at 65). The Plaintiff timely filed her Motion for a New Trial, or in the Alternative for an Additur. (Rec. at 67-68). After a hearing, the trial court entered its order denying the Plaintiff's motion. (Rec. at 76) (RE 000007).

C. STATEMENT OF FACTS

On July 18, 2007, the Plaintiff was a passenger in a Toyota Tacoma pickup truck being driven by her then husband. (T. at 19, 31). While stopped at a red light, the vehicle in which the Plaintiff was a passenger was struck from the rear by a Pontiac Grand Am driven by the Defendant. (T. at 19, 31). Photographs of the truck which the Plaintiff occupied were introduced

into evidence, which showed minor damage to the bumper and a broken taillight; the Plaintiff did not dispute that the photographs accurately depicted the damage done to the truck as a result of the accident. (T. at 32-34) (Ex.'s D-22, P-3, P-4). At that time of the accident, the Plaintiff was six (6) months pregnant. (T. at 19). The Plaintiff testified that immediately following the accident, other than some abdominal cramping, she did not have any pain to her back or anywhere else. (T. at 34-35). The Plaintiff was taken by ambulance to the Ocean Springs Hospital emergency room. (Rec. at 21). She testified that the only reason she went to the emergency room was because she was worried about her baby. (T. at 35). The Ocean Springs Hospital emergency room records introduced into evidence at trial, stated: "She denies any neck pain, chest pain, shortness of breath, or other problems." (T. at 35-36) (EX P-6 at p. 78). The Plaintiff never had any follow-up visit to the emergency room after the accident. (T. at 36). The only medical treatment that the Plaintiff received between the date of the accident and the date her baby was born on November 8, 2007, was from her OB-GYN. (T. at 36). The only reference in the OB-GYN's records to the accident in question was the day following it. (Ex. D-4) (T. at 36). On November 19, 2007, after delivering her baby, the Plaintiff saw her OB-GYN and reported "musculoskeletal pain from epidural site and extending down leg." (T. at 36) (Ex. D-4 at p. 41). The Plaintiff did not seek any additional treatment until she saw a chiropractor until ten (10) months after the accident, reporting to the chiropractor that she had back pain and pain going down her leg. (T. at 38). The Plaintiff admitted on cross-examination that the back pain she had, which she claimed left her unable to walk, resulted only after she delivered her baby with the benefit of an epidural injection. (Rec. at 39). After completing her chiropractic treatment in August of 2008, the Plaintiff received no medical treatment for any condition she

related to the accident. (T. at 39).[1]

Further, on direct examination, the Plaintiff denied that she had ever had any back problems before the accident in question. (T. at 29). However, on cross-examination, the Plaintiff was presented with a medical record from Dr. Paul Pavlov, a general practitioner, dated October 9, 2001, which stated: "back hurting, seen at UrgiCare Thursday with pulled muscle, gave meds, went to school yesterday had to be picked up." (T. at 40) (Ex. D-3 at p. 63). On cross-examination, the Plaintiff was also presented with a radiology report contained in her general practitioner's records regarding x-rays done on September 24, 2004; the radiology report listed a history of "neck and back pain." (T. at 40-41). (Ex. D-3 p. 65).

The Plaintiff's treating chiropractor, Dr. Bradley Johnson, testified by deposition. (Rec. at 46-47) (Ex. P-7 for ID).[2] Although Dr. Johnson testified that the accident in question "had something to do" with the back pain and radiating leg pain he treated. (Ex. P-7 for ID at p. 17-18), on cross-examination, he testified as follows:

> Q. Based upon a reasonable degree of medical and/or chiropractic probability, can a patient like Ms. Rhodes Goff, whatever we're calling her today, who has been pregnant and had an epidural steroid injection, gone through the pregnancy and delivery, can that cause back pain?
>
> A. Yes.

(T. at 47)(Ex. P-7 marked for ID at p. 23-24).

The bill for the charges for the ambulance that transported the Plaintiff to the emergency room the day of the accident was $715.00. (T. at 29) (Ex. P-1). The Ocean Springs Hospital bill

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[1]The Plaintiff also testified that she did not have to give up any hobbies or activities as a result of the accident. (T. at 39).

[2]The trial transcript does not contain the chiropractor's testimony.

for the emergency room treatment was $909.01. (T. at 29) (Ex. P-1).[3]

At the conclusion of the evidence, the jury returned a verdict in the Plaintiff's favor in the amount of $5,000.00, the amount of the emergency room and ambulance bills, plus $3,375.99. (Rec. at 64). The Plaintiff argues that this verdict is against the overwhelming weight of the evidence, entitling her to an additur or a new trial.

C. STANDARD OF REVIEW

It is well-settled that when considering a trial judge's denial of a motion for additur this Court's standard of review is that of an abuse of discretion. *McClatchy Planning Co. v. Harris*, 807 So. 2dd 1266 (Miss. 2001). "The party seeking the additur bears the burden of proving his injuries, loss of income and other damages." *Maddox v. Muirhead*, 738 So. 2d 742 ¶ 5 (Miss. 1999). Stated otherwise, jury awards will only be set aside if they are "so unreasonable in amount as to strike mankind at first blush as being beyond all measure, unreasonable in amount and outrageous." *Rodgers v. Pascagoula Public School District*, 611 So. 2d at 945.

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[3]The Plaintiff submitted medical bills totaling $4,962.01; this total included the chiropractor's charges. (T. at 29) (Ex. P-1).

SUMMARY OF ARGUMENT

The trial judge did not abuse his discretion in denying the Plaintiff's motion for an additur. The Defendant challenged the causal relationship of the Plaintiff's chiropractic care to the accident in question. The Defendant also called the Plaintiff's credibility into question. It was up to the jury to decide whether the chiropractic care was related. The reasonable inference is that the jury answered that question in the negative and awarded the Plaintiff her ambulance and emergency room charges of $1,624.01, plus $3,375.99 for her general damages. There was ample basis for the jury to return a verdict of $5,000.00. As such, the jury's verdict was not so unreasonable in amount to strike mankind at first blush as being beyond all measure, unreasonable in amount and outrageous. *See, Rogers v. Pascagoula Pub. Sch. Dist.*, 611 So. 2d 942, 945 (Miss. 1992).

A. ARGUMENT

First and foremost, the Plaintiff's argument assumes that the jury did not accept any of the defense's case presented at trial of this cause, i.e., was the chiropractic treatment, which the Plaintiff sought ten (10) months after the accident, related to the accident giving rise to this cause of action?

The Defendant cross-examined the Plaintiff, presenting her with photographs of the minimal damage to the pick-up truck in which she was a passenger. The Defendant presented proof via the Ocean Springs Hospital (OSH) emergency room records that, other than abdominal cramping due to the Plaintiff's pregnancy, she had no other complaints of pain. Further, the Plaintiff did not present to her chiropractor until ten (10) months after the accident. This was only after she had reported to her treating OB-GYN that she was having back pain at her epidural

site, which radiated down her leg, after the delivery of her baby. These were the same complaints she made to her chiropractor on her first visit. Last, but not least, the Plaintiff's treating chiropractor testified that a woman who took a baby full term and delivered it with the benefit of an epidural injection could suffer from back pain.

The Plaintiff's motion is premised on the fact that the Plaintiff was only awarded damages for pain and suffering in the amount of $36.99. Rather, the reasonable inference is that the jury did not believe that the chiropractor's care, resulting in charges of $3,214.00, was related to the accident, and only awarded the Plaintiff her ambulance bill and emergency room bill in the amount of $ 1,624.01 plus $ 3,375.99 for the pain and suffering.

In *Rodgers v. Pascagoula Sch. Pub. Sch. Dist.*, 611 So. 2d 942 (Miss. 1992), cited by the Plaintiff, causation was not an issue. In *Rodgers*, the plaintiff was injured when the car in which he was a passenger was sideswiped by a school bus. *Rodgers*, 611 So.2d at 943. The vehicle that the plaintiff occupied suffered $4,800 in damages. *Id.* In the accident, the plaintiff's body and head were thrown against the front window of the vehicle. *Id.* X-rays and physical examination found that the plaintiff suffered a contusion on the right side of his head. *Id.* The plaintiff also suffered headaches and pain in his neck and back for a week following the accident. *Id.* The plaintiff was diagnosed with post-traumatic headaches and an acute lumbar spine strain. *Id.* at 944. The plaintiff was also diagnosed by a psychiatrist with a 40% vocational impairment. *Id.* In *Rodgers*, the jury only awarded the plaintiff his past medical bills of $11,765.50. *Id.* The *Rodgers* Court held as follows in affirming an additur of $11,765.50:

> While there is dispute as to the extent of injuries that Rogers (sic) received, there is no dispute in the record that Rodgers did suffer from some pain, even if only headaches, and that Rogers (sic) did experience some type of headache, even if

> only a contusion. A jury verdict awarding damages for medical expenses alone is against the overwhelming weight of evidence. Rodgers put on proof that his damages included not only medical expenses but also some pain and suffering.

Id. at 945-46 (emphasis added).

So, the *Rodgers* case is a red herring. At the trial in this matter, causation of the Plaintiff's complaints of back pain and radiating leg pain were challenged. The defense not only challenged causation of the back pain, but also the Plaintiff's credibility. The Plaintiff denied any prior back problems. The defense presented the jury with medical records which unrefutably established that the Plaintiff had at least two (2) incidents where she presented to medical providers with back problems. So, where are we left? Did the jury believe the Defendant's or the Plaintiff's case? It is submitted by the Defendant that his case was accepted by the jury.

Providing guidance is the case of *Dobbins v. Vann*, 981 So. 2d 1041 (Miss. 2008). In *Dobbins*, the plaintiff presented proof that the plaintiff experienced headaches and pain in his ankle, left knee, back, neck and right shoulder pain after the accident in question. *Id.* The Court found although the plaintiff incurred medical expenses of $38,627.85, he did not seek immediate medical attention after the accident, when the air bag in his vehicle did not deploy, and he did not initially complaint of shoulder pain until eight (8) months after the accident. *Id.* Further, the plaintiff in *Dobbins* had prior injuries from a subsequent accident. *Id.* The Court affirmed the jury's award of $50,000 and the trial court's denial of an additur in light of the forgoing. *Id.* Although the plaintiff's claimed injuries were much worse than those of the Plaintiff herein, the facts of *Dobbins* are very similar to the facts that were presented to the jury in this matter.

The Plaintiff relies upon *Cortez v. Brown*, 408 So. 2d 464 (Miss. 1981) in support of her argument. However, what the Plaintiff fails to point out is that in *Cortez*, the plaintiff was not

seeking appellate relief from a denial of a motion for an additur. Rather, the issue before the Mississippi Supreme Court was whether the trial court abused its discretion in awarding an additur. *Cortez*, 404 So. 2d at 475. As such, the *Cortez* decision really provides no guidance at all for the Court in this matter. Further, in *Brown v. Cuccia*, 576 So. 2d 1265 (Miss. 1991), relied upon by the Plaintiff, there was no real issue regarding causation, when the court awarded an additur to the plaintiff. *Brown*, 576 So. 2d at 1265. In the case sub judice, the defendants entire defense was based upon the nature and extent of the severity of the accident and causation.

The standard for an additur is that the award by the jury evidenced prejudice, bias, or passion on the part of the jury or is manifestly against the weight of the credible evidence. *See Crews v. Mahaffy*, 986 So. 2d 987 (Miss. 2007). Further, the evidence must be viewed in the light most favorable to the defendant. *Id.*

In the case at bar, the jury was free to accept the Defendant's case, which apparently was, based upon the evidence, the jury did. There is no indication that the jury's verdict was based on prejudice, bias or passion. Looking at all the evidence in the light most favorable to the defendant, it cannot be said that the trial judge abused his discretion in denying the Plaintiff's motion for an additur.

CONCLUSION

The Plaintiff correctly notes that this Court stated in *Dunn v. Butler*, 252 Miss. 40, 172 So. 2d 430 (1965):

> In order to insure the preservation, integrity and vitality of the right to trial by jury, this court has throughout its history exercised its constitutionally ordained duty to set aside verdicts whenever the jury manifestly failed to respond to reason. This power must be exercised with conscious self-restraint and caution, but it must be exercised in a proper case for trial by a jury that will not respond to reason is a denial of the right itself.

172 So. 2d at 431.

The jury was shown photographs of the vehicle in which the Plaintiff was a passenger, which showed only minor damage; the jury heard the cross-examination of the Plaintiff; they jury saw the Plaintiff's medical records; and they jury heard the chiropractor's testimony. Finally, the Plaintiff's credibility was called into question. After considering this evidence, the jury returned a verdict of $5,000.00. There was ample evidence upon which it was reasonable for the jury to decide that the Plaintiff's treatment with the chiropractor, which resulted in bills of $3,214.00, was not causally related to the accident. So, the reasonable inference, which is all the parties can do because they were not in the jury room during deliberations, is that, rather than only award the Plaintiff $36.99 for pain and suffering, the jury awarded the Plaintiff $3,375.99 for her general damages. It simply cannot be said that the jury failed to respond to reason.