

2011 IL App (1st) 100537-U

No. 1-10-0537

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

SIXTH DIVISION
November 10, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANDRZEJ CHRACA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	Nos. 04 L 9461
)	05 L 7603
STEVEN MILES,)	
)	Honorable
Defendant-Appellant.)	William J. Haddad,
)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Robert E. Gordon and Justice Cahill concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not abuse its discretion and properly instructed the jury on the applicable law; and (2) defendant is not entitled to a remittitur or a new trial based on the jury's award of \$18 million for plaintiff's past and future loss of a normal life.

¶ 2 Defendant Steven Miles appeals a jury award for plaintiff Andrzej Chraca in a personal injury action. Miles argues: (1) the trial court failed to instruct the jury on all four possible

1-10-0537

verdicts in this matter; and (2) the \$18 million award for past and future loss of a normal life is outside the range of fair and reasonable compensation.

¶ 3 For the reasons that follow, we affirm the judgment of the trial court.

¶ 4 I. BACKGROUND

¶ 5 This appeal involves a collision in April 2004 at an intersection controlled by traffic lights in Schaumburg, Illinois between vehicles driven by Chraca and Miles. Chraca, who was 33 years old and working for United Woodworking, was driving his GMC Suburban southbound to a job site. Miles, who was working for the Illinois Department of Transportation, was driving a work truck eastbound. Both Chraca and Miles suffered severe physical injuries as a result of the collision. Chraca filed a negligence lawsuit against Miles, who later filed a separate negligence lawsuit against Chraca and United Woodworking. The trial court subsequently consolidated the two actions.

¶ 6 Prior to the start of the trial, the trial court ruled on numerous motions *in limine* filed by the parties. Relevant to this appeal, Miles asked the court to bar Chraca from presenting any evidence regarding any claim for lost wages because he withdrew his lost wages claim. Specifically, Miles wanted to bar any evidence that Chraca could not work in the future, had not worked or earned any income since the collision, "or any similar testimony." Chraca agreed that he was not making a lost wages claim; however, he intended to introduce testimony that he had not worked and could not work in support of his loss of a normal life claim because his work was part of the things he enjoyed doing before the collision. The trial court barred any testimony about lost earnings, benefits and salaries but allowed Chraca to present evidence about his ability

1-10-0537

to work so the jury would understand that lost aspect of his life.

¶ 7 At the jury trial in August 2009, Chraca, Miles, and several eyewitnesses testified concerning which driver had the green light just prior to and at the time of the collision. An accident investigator, accident reconstruction experts, and a traffic-light expert also testified. Moreover, various doctors and medical experts testified concerning the extent of the parties' injuries. Expert economists estimated the value of the costs of the parties' future medical care. In addition, family members testified concerning how the parties' lives had changed since the collision.

¶ 8 Pertinent to this appeal, the testimony established that Chraca had a spinal cord injury, paraplegia, chronic pain, leg spasms, loss of bowel and bladder control, carpal tunnel from pushing his wheelchair, and sexual dysfunction. His disability was permanent. He did not sleep well at night because of incontinence. He had to wake up two to three times overnight to catheterize himself. Each morning, he catheterized himself, ate breakfast and then began his bowel program, which lasted between 45 minutes to one hour and 15 minutes. If his bowel program was unsuccessful, he did not want to leave the house because he likely would have an accident. He had changed or cancelled plans when his program was unsuccessful.

¶ 9 He was not a functional ambulator. With his leg, feet and ankle braces on and a walker, he could move a short distance. He could not work because he suffered from chronic pain and took medication that was sedating. He could drive with hand controls, but did not like to because of his medication.

1-10-0537

¶ 10 Before the collision, Chraca was engaged to be married. After the collision, he married his fiancée, and they had a son through *in vitro* fertilization. At the time of the trial, Chraca's son was two years old, and Chraca's ability to physically play with his son was very limited. Chraca continued to engage in physical therapy after the collision and up through the time of trial. His therapy varied from three to five times per week, and sometimes for as long as two hours per day. In addition, he performed home exercises every day and used a muscle stimulator to contract his muscles with electronic pulses for an hour and a half every day. He lived part of the year in Arizona at his parents' ranch-style home. He attempted to modify his multi-story townhouse, which he purchased before the collision, to accommodate his disability.

¶ 11 After the collision, he had trouble accepting what had happened to him. He felt isolated, experienced depression, and worried what his son would think of him. He missed being active and feeling healthy and strong. He was very athletic ever since he was in school and missed all the activities he used to perform prior to the collision, like traveling, hockey, golf, swimming, hiking day trips with his father, mountain hiking, horseback riding and snow skiing. He had an interest in restoring automobiles, and spent three to five years restoring a 1969 Camaro. He always had an interest in woodworking, both for a living and in his free time. He built a three-piece bedroom set, which included a bed, cabinet and credenza. He also built a coffee table, an entertainment center and renovated his basement.

¶ 12 He learned woodworking from his father, who founded United Woodworking, a woodworking business. He began working at his father's business when he was about 14 years old, doing janitorial work. After high school, he did some drafting work, but preferred to work

1-10-0537

with his hands and learned to use every piece of machinery in the shop. Later, he went into sales and project management, which involved taking measurements, climbing ladders and scaffolding, and making templates and models. He and his father had agreed that when his father turned 65, he would retire and Chraca would run the business.

¶ 13 The evidence at trial included a day-in-the-life video, which depicted Chraca navigating around his town home, including attempting to go up and down stairs, and attending physical therapy.

¶ 14 At the jury instructions conference, Miles submitted, *inter alia*, Illinois Pattern Jury Instruction (IPI) No. B21.04 (Illinois Pattern Jury Instructions, Civil, No. B21.04 (2009)) (hereinafter IPI Civil (2009)), regarding the burden of proof. He also submitted IPI No. B45.02 (IPI Civil (2009) No. B45.02), for instructions on the use of the verdict forms and six verdict forms (IPI Civil (2009) Nos. B45.02A-F). Miles' tendered instructions and verdict forms erroneously referred to his separate lawsuit against Chraca and United Woodworking as a counterclaim.

¶ 15 After a very lengthy discussion, the trial court refused these particular instructions submitted by Miles. The trial court was concerned that Miles' proposed instructions, which referenced counterclaims, would confuse the jury. The trial court wanted to ensure that the jury understood it must give separate consideration to the plaintiffs and defendants in their respective cases. The trial court also stated that most of the language in Miles' proposed IPI No. B21.04 was covered by other instructions that would be given to the jury. Specifically, the language in Miles' IPI No. B21.04 concerning the four ways the jury could rule (*i.e.*, for Chraca and against

1-10-0537

Miles, or for Miles and against Chraca, or against both Miles and Chraca, or for both Chraca and Miles) was superfluous because the trial court's modified instructions on the use of the verdict forms (IPI Civil (2009) Nos. B45.01 and B45.03) told the jury very clearly about those same four possible rulings. In addition, the trial court's modified instructions directed the jury to the particular verdict form that corresponded with the various rulings and explained how the jury should account for any finding of a party's contributory negligence. Moreover, the trial court did not want to confuse the jury with long and tedious repetition, so two verdict forms addressing contributory negligence were rendered superfluous by modifying the language of some of the remaining verdict forms to cover the issue of contributory negligence. After the parties took a short break to discuss the matter, the trial court found that the parties "pretty much agreed" to give four instead of six verdict forms. Miles, however, maintained his position that his proposed IPI No. B21.04 was proper and should be given to the jury.

¶ 16 As to Chraca's lawsuit, the jury found for Chraca and against Miles and assessed \$23,838,668 in total damages, itemized as: \$593,335 for past medical expenses; \$3,500,000 for future medical expenses; \$500,000 for the disfigurement; \$2,500,000 for past and future pain and suffering; and \$18,000,000 for past and future loss of a normal life. The award reflected a 5% reduction of damages due to the negligence attributable solely to Chraca. Thereafter, the trial court entered a judgment on the jury's verdict for \$23,838,668.

¶ 17 Miles moved for a remittitur, judgment notwithstanding the verdict, or a new trial. Miles argued, *inter alia*, that the damage award was excessive and unsupported by the evidence, and the trial court improperly instructed the jury and should have been given the instructions

1-10-0537

tendered by Miles. The trial court denied the motion, and Miles appealed.

¶ 18 As to Miles' lawsuit, the jury found against Miles and for Chraca and United Woodworking. Miles did not file a posttrial motion or appeal that verdict.

¶ 19

II. ANALYSIS

¶ 20

A. Jury Instructions

¶ 21 Miles argues the trial court erred when it refused his tendered jury instructions.

According to Miles, the trial court's jury instructions improperly led the jury to think it was allowed to reach only two out of four possible outcomes. Specifically, Miles contends the jury, without the benefit of his proposed IPI No. B21.04 (IPI Civil (2009) No. B21.04), was limited to ruling either for or against Chraca, and was not properly instructed that it could have ruled for both Chraca and Miles simultaneously on their respective consolidated lawsuits or against both simultaneously.

¶ 22 Chraca responds, without citation to any relevant authority, that Miles lacks standing to raise this particular challenge to the jury instructions where Miles, as the plaintiff in his lawsuit, did not appeal the verdict in favor of defendants Chraca and United Woodworking. Chraca also argues that Miles failed to preserve this issue for review. We reject Chraca's assertions regarding lack of standing and forfeiture. Miles, as the defendant, timely appealed the judgment in favor of Chraca and had a right to a fair trial before a fully and fairly instructed jury. Moreover, the record establishes that Miles preserved this issue for appeal where he maintained at the end of the jury instruction conference that his proposed IPI No. B21.04 was proper and included that issue in his posttrial motion.

1-10-0537

¶ 23 The decision to give or refuse a tendered jury instruction is within the sound discretion of the trial court. *Schultz v. N.E. Illinois Regional Commuter R.R. Corp.*, 201 Ill. 2d 260, 273 (2002); *Colella v. JMS Trucking Co. of Illinois, Inc.*, 403 Ill. App. 3d 82, 95 (2010) (the issue of whether the jury was fully and fairly instructed is reviewed for an abuse of discretion). A trial court does not abuse its discretion as long as the instructions as a whole fairly, fully and comprehensively apprised the jury of the relevant legal principles. *Schultz*, 201 Ill. 2d at 273-74. A new trial will be warranted only where a party shows it suffered serious prejudice to its right to a fair trial due to the court's failure to give a tendered jury instruction. *Truszewski v. Outboard Motor Marine Corp.*, 292 Ill. App. 3d 558, 560 (1997). A court will not presume that reversal is warranted because the jury was misled by the court's instructions unless there is some indication that the jury was improperly influenced. See *Foley v. Fletcher*, 361 Ill. App. 3d 39, 50 (2005).

¶ 24 We find that the jury was fully instructed in the applicable law. The record refutes Miles' assertion that the instructions might have led the jury to think it was limited to just two possible outcomes—*i.e.*, for or against Chraca. The trial judge instructed the jury that it was dealing with two consolidated cases and must give separate consideration to the parties in each case. The jury was instructed to decide each plaintiff's case as a separate lawsuit, and decide each defendant's case as a separate lawsuit. Moreover, the jury was given written instructions and a total of four verdict forms, which informed the jury that it could rule: either for or against Chraca in his case as plaintiff; either for or against Miles in his case as plaintiff; for both Chraca and Miles simultaneously on their respective cases; or against both simultaneously. In addition, the jury

1-10-0537

was instructed concerning how to account for any finding of contributory negligence by either plaintiff Chraca or plaintiff Miles. The jury also was instructed that if it found both plaintiff Chraca and plaintiff Miles were entitled to recover, the jury should assess the damages of each separately and return a verdict in a separate amount for each.

¶ 25 Our review of all the instructions given to the jury eliminates any question that the jury was improperly restricted in its possible outcomes. The trial court properly exercised its discretion to refuse Miles' proffered series of jury instructions, which addressed counterclaims, as potentially confusing to the jury given the elements of this consolidated case involving multiple parties and multiple claims. Instead, the trial court instructed the jury with modifications to IPI Nos. B21.05, B45.01 and B45.03 (IPI Civil (2009) Nos. B21.05, B45.01, B45.03) to ensure that the jury considered all the parties' claims in this consolidated lawsuit. The language in Miles' IPI No. B21.04 concerning four possible verdicts was unnecessary because the trial court's modified instructions on the use of the verdict forms clearly and completely instructed the jury concerning those same four possible verdicts, plus any modifications to damage awards due to contributory negligence. Consequently, the trial court did not abuse its discretion by refusing Miles' erroneous and confusing jury instructions.

¶ 26 Miles cites *Redmond v. Socha*, 216 Ill. 2d 622 (2005), to support his claim that IPI B21.04 was the correct instruction that applied here and the trial court erred in refusing it. Miles' reliance on *Redmond*, however, is misplaced. In *Redmond*, the court found that jury verdicts against both the plaintiff and counter-plaintiff were not legally inconsistent. *Id.* at 646. Because a plaintiff must "meet the burden of proving every necessary element of his claim by a

1-10-0537

preponderance of the evidence, a jury may find against both the plaintiff and counter-plaintiff in a negligence action, even when the evidence suggests that the sole cause of the accident was the negligence of either or both parties." *Id.* at 646. The court never addressed the applicability of IPI B21.04(5) in that case because that issue was forfeited by the plaintiff. *Id.* at 637-39.

¶ 27 B. Loss of a Normal Life Award

¶ 28 Miles argues that he is entitled to remittitur or a new trial because the jury was improperly permitted to hear evidence of economic loss and the \$18 million award to Chraca for past and future loss of a normal life was excessive. Specifically, Miles complains that even though Chraca formally disclaimed lost wages, he was allowed to introduce substantial evidence of economic loss concerning his work history, career progression and goals, and ambition to take over the family business. Miles contends allowing the jury to consider such economic loss evidence under the guise of loss of a normal life damages prejudiced the jury and mandates reversal.

¶ 29 Chraca responds that Miles failed to preserve this issue for review. We, however, reject Chraca's assertion of forfeiture because the record establishes that Miles raised this issue in a motion *in limine*, objected to various instances of this complained-of testimony during the course of the trial, and raised this issue in his posttrial motion.

¶ 30 The denial of a motion for a remittitur or new trial on damages is reviewed under the abuse of discretion standard. *Martinez v. Elias*, 397 Ill. App. 3d 460, 474 (2009). A trial court abuses its discretion only when no reasonable person would take the view adopted by the trial court. *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177 (2003).

1-10-0537

¶ 31 Loss of a normal life is a broad element or category of damage. It includes an individual's diminished ability to pursue and enjoy the pleasurable aspects of life and compensates for a change in the individual's lifestyle. *Stift v. Lizzadro*, 362 Ill. App. 3d 1019, 1028-29 (2005) (the jury's finding that the plaintiff involved in an automobile collision suffered no loss of a normal life was reasonable where, *inter alia*, she provided only her subjective testimony regarding her ongoing pain, missed only a single day of work and was able to work as a pool attendant prior to her neck surgery); *Smith v. City of Evanston*, 260 Ill. App. 3d 925, 937-38 (1994) (recommending "loss of a normal life" as a category of damages instead of "disability" to avoid an overlap with other categories of damages and an increased likelihood of overcompensation or under compensation).

¶ 32 Miles contends the complained-of evidence went beyond showing that Chraca enjoyed working before the collision and was unable to work as a result of the collision. For example, the jury learned that Chraca began working in his father's shop as a teenager, his responsibilities and expertise increased after high school, his management role entailed going to job sites and climbing ladders and scaffolding, and he hoped to take over the family business when his father retired. According to Miles, this "extensive evidence" of Chraca's work history, career progression and thwarted ambition inferred a lost stream of income. We disagree.

¶ 33 The complained-of testimony was not evidence of economic loss under the guise of loss of a normal life. The jury never heard any evidence about Chraca's salary before the collision or what he expected to earn once he took over United Woodworking. Moreover, the focus of the

1-10-0537

testimony concerning Chraca's inability to work was not his lost stream of income. Rather, the complained-of testimony concerned the major loss Chraca suffered to his creative activity, which he had been fortunate enough—up until the time of the collision—to turn into a livelihood. The evidence showed that Chraca enjoyed woodworking and took pleasure and pride in remodeling his basement and crafting his own furniture. Chraca evidently achieved a high level of skill in this pursuit, which also entailed a strong family connection. Specifically, Chraca learned woodworking from his father, who had started his own woodworking business and hoped that Chraca would one day carry on that family business. Miles' attempt to characterize this testimony as merely Chraca's work history, thwarted career ambition, and an inference to a lost stream of income is disingenuous.

¶ 34 We reject Miles' argument that Chraca improperly injected evidence of economic loss into the jury's consideration after he had ostensibly disclaimed such damages. The jury was specifically and repeatedly instructed that Chraca did not make a wage-loss claim and to only consider evidence of his inability to work as it related to his claim of loss of a normal life. We will not presume that the jury failed to follow a proper instruction of the trial court absent clear evidence to the contrary. *Carlson v. Dorsey Trailers, Inc.*, 50 Ill. App. 3d 748, 756 (1977).

¶ 35 Miles also argues that the \$18 million loss of a normal life award is so excessive as to shock the conscience. Miles concedes that Chraca was an active individual but asserts that his activities were not extraordinary. Miles also notes that Chraca married, had a child, could drive, and traveled between his Illinois home and Arizona. Miles asserts that although Chraca suffered a serious loss, the \$18 million award for loss of a normal life is out of proportion to the rest of

1-10-0537

his damages.

¶ 36 The amount of a verdict is not subject to scientific computation and is generally at the discretion of the jury. *Velarde v. Illinois Central R.R. Co.*, 354 Ill. App. 3d 523, 540 (2004). A jury's verdict will not be reversed unless it falls outside the range of fair and reasonable compensation, appears to be the result of passion or prejudice, or is so large that it shocks the judicial conscience. *Carroll v. Preston Trucking Co., Inc.*, 349 Ill. App. 3d 562, 570-71 (2004). A jury verdict must be examined in light of the particular injury involved, with humble deference to the discretion of the jury and the judgment of the trial court. *Id.* at 572. The jurors use their combined wisdom and experience to reach fair and reasonable judgments, and the reviewing court should not pretend it is trained or equipped to second-guess those judgments. *Id.*

¶ 37 The jury heard extensive evidence detailing Chraca's isolated and restrictive life for the first several months after his injury, his daily routine at the time of the trial, and the prognosis of his future deterioration over his 39.5 year life expectancy. The evidence included his significant depression, sense of hopelessness and sexual dysfunction. Chraca's marital relationship was severely impacted by his injury, and his physical ability to interact with his young son was minimal. Moreover, the jury heard testimony about Chraca's rigorous daily routine of therapy and exercise, and his bladder and bowel programs. In addition, the jury viewed his day-in-the-life video. Miles' assertion that Chraca's loss of a normal life award is out of proportion with the other damages awarded by the jury lacks merit because Illinois does not require any particular ratio between economic loss and non-economic loss awards. See *Donnellan v. First Student, Inc.*, 383 Ill. App. 3d 1040, 1064 (2008). Even if we were to agree with Miles that Chraca's

1-10-0537

activities before the collision were not extraordinary, his inability to pursue them any longer is an extraordinary limitation on his life.

¶ 38 We conclude that the trial court did not abuse its discretion in denying Miles' motion for remittitur or a new trial.

¶ 39

III. CONCLUSION

¶ 40 We affirm the judgment of the circuit court.

¶ 41 Affirmed.