

2012 IL App (1st) 110324-U

FIFTH DIVISION  
February 10, 2012

No. 1-11-0324

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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PATRICIA WILLIAMSON,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
	)	Cook County.
v.	)	
	)	No. 08 M1 303098
	)	
LUIS MORALES,	)	The Honorable
	)	Thomas M. Donnelly,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE JOSEPH GORDON delivered the judgment of the court.  
Presiding Justice Epstein and Justice McBride concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in allowing photographs of vehicular damage into evidence in a personal injury case to correlate the property damage to the personal injuries without expert testimony.

¶ 2 This appeal arises out of an October 31, 2006, automobile accident between plaintiff Patricia Williamson and defendant Luis Morales. Defendant admitted negligence prior to selection of a jury. During the jury trial, the trial court allowed photographs of the damaged vehicles into evidence. Photocopies of the photographs appear in the supplemental record on appeal. The jury returned a verdict in the amount of \$9,512 in favor of plaintiff and against defendant.

¶ 3 On appeal, defendant contends that the trial court should not have allowed the photographs into evidence because there was no expert testimony that there was any correlation between the depicted damages to the vehicles and the extent of plaintiff's injuries.

¶ 4 Plaintiff responds that the decision to allow the photographs into evidence was within the discretion of the trial court. Plaintiff maintains that the photographic evidence was relevant to the extent of her injuries and to her testimony concerning the extent of the impact.

¶ 5 The parties stipulated to a bystander's report of the proceedings which reflects the following. On the morning of the trial and before the jury was selected, the defense admitted negligence but continued to dispute causation and plaintiff's injuries. Plaintiff's attorney then informed defense counsel and the court that he planned to question plaintiff with the help of photographs taken at the scene immediately after the collision of the vehicles involved.

Plaintiff's attorney said that he planned to introduce those photographs into evidence. Defense counsel objected on the grounds of relevancy and the lack of expert testimony. The trial court sustained the objection and ruled that the photographs would not be admissible into evidence

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unless defense counsel opened the door during the trial.

¶ 6 According to the bystander's report, the only witnesses to testify at trial were plaintiff and her chiropractor, Dr. Assem Jaber.

¶ 7 The bystander's report reflects the following about Dr. Jaber's testimony. Dr. Jaber had little independent recollection of his care and treatment of plaintiff and needed to rely on his records during the entire time he testified. Plaintiff first came to Dr. Jaber's office on November 1, 2006, the day after the accident, and complained of pain in her neck, upper and lower back, and left shoulder, as well as headaches, from the rear-end automobile collision that occurred on October 31, 2006. Dr. Jaber examined plaintiff and diagnosed her with cervical sprain and strain, lumbar sprain and strain, and severe muscle spasm. Dr. Jaber prescribed a course of therapy to be performed in his office, and he treated plaintiff for her injuries from November 1, 2006, through December 6, 2006. On February 19, 2007, plaintiff returned to Dr. Jaber's office, complaining that her pain and symptoms had returned. Dr. Jaber again treated plaintiff and provided therapy until April 9, 2007, when he discharged her from his care. In Dr. Jaber's opinion, plaintiff's injuries were causally related to the October 31, 2006, rear end collision, he considered all of the care and treatment to be necessary, and his charges were fair, reasonable, and customary. Nothing indicated that any of plaintiff's injuries existed prior to the October 31, 2006, collision. Dr. Jaber was not shown the photographic evidence.

¶ 8 Plaintiff then testified as follows. At approximately 6 p.m. on October 31, 2006, she was involved in a rear end automobile collision with defendant. Plaintiff's vehicle was

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stopped at a stop sign at an intersection. The normal traffic light was out. Defendant's vehicle struck her vehicle from behind. The impact was "medium." Approximately one hour after the collision, plaintiff sought medical attention at the Christ Hospital emergency room. She had x-rays and an examination, and then went home. Her pain did not lessen, and she sought further care from Dr. Jaber the next day. He examined her and prescribed therapy, which she underwent from November 1, 2006, through December 6, 2006. On December 6, plaintiff felt well enough to discontinue therapy, but her neck and back pain returned before and during the holidays. After the holidays, plaintiff returned to Dr. Jaber's office and he prescribed and continued more therapy for her until April 9, 2007, when she felt almost 100% better. Dr. Jaber then discharged her from further care. Plaintiff lost wages as a result of her injuries.

¶ 9 During cross-examination, defense counsel asked plaintiff why she had refused attention at the scene and why an ambulance had not transported her to the emergency room. Defense counsel also asked her about her description of the impact as medium. Plaintiff responded that her opinion concerning the extent of the impact was based on the fact that she had been involved in collisions in the past and consequently was competent to characterize a collision as light, medium, or heavy. Defense counsel did not cross-examine plaintiff about the photographs.

¶ 10 During redirect examination, plaintiff's attorney tried to question her, using the photographs of the damage to the vehicles. Defense counsel objected and requested a side bar. During the side bar, defense counsel objected to the photographs on the grounds of relevancy,

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foundation, and lack of expert testimony. Plaintiff's attorney argued that defense counsel had opened the door during cross-examination. The trial court overruled the objections and allowed plaintiff's attorney to use the photographs and question plaintiff about the extent of the impact, the vehicular damage depicted in the photographs, and the relationship to her alleged injuries. Plaintiff testified that she took the photographs of the vehicles at the scene immediately after the collision, and that they fairly and accurately depicted the vehicular damage to both vehicles after the collision.

¶ 11 Over the objections of defense counsel, the court allowed the photographs into evidence. The court also allowed plaintiff's medical bills into evidence. Plaintiff then rested her case in chief.

¶ 12 Defense counsel did not call any witnesses.

¶ 13 During closing arguments, plaintiff's attorney argued that all of the evidence indicated that plaintiff was injured to the extent alleged, and that her injuries were proximately caused by defendant's negligence. Plaintiff's attorney asked the jury to award the following damages to plaintiff: \$6,396 for past medical bills, \$7,500 for pain and suffering, \$3,500 for loss of a normal life, and \$416 for lost wages.

¶ 14 Defense counsel argued that plaintiff had not met her burden to prove that she was injured and that defendant's negligence was a proximate cause of her injuries. Defense counsel argued that plaintiff did not travel from the scene to the emergency room by ambulance, and that that constituted further evidence that she was not injured. Defense counsel argued that

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contemporary vehicles are designed to "absorb impact" and that plaintiff had not presented any proof of injury, pain and suffering, or loss of a normal life.

¶ 15 The jury returned a verdict in favor of plaintiff in the amount of \$9,512.

¶ 16 On appeal, defendant contends that the trial court abused its discretion in allowing the photographs into evidence. He indicates that the case law is divided over whether photographs of vehicular damage can be allowed into evidence without expert testimony that there is a correlation between the extent of property damage to the vehicles and the extent of the personal injuries to the plaintiff, but he maintains that this court should follow *DiCosola v. Bowman*, 342 Ill. App. 3d 530, 537 (2003) a first district case.

¶ 17 The admissibility of photographs into evidence normally is within the trial court's discretion. *Williams v. City of Evanston*, 378 Ill. App. 3d 590, 599 (2007) (trial court did not err in disallowing photographs of damaged vehicles as evidence of the speed of an ambulance); *Ferro v. Griffiths*, 361 Ill. App. 3d 738, 742 (2005); *DiCosola*, 342 Ill. App. 3d at 534. A court of review will not disturb the decision of the trial court unless it resulted from "a clear abuse of that discretion," meaning that no reasonable person would agree with the trial court's position. *Ferro*, 361 Ill. App. 3d at 742.

¶ 18 In *DiCosola*, 342 Ill. App. 3d at 534-38, the trial did not abuse its discretion in dismissing photographs of the property damage to the plaintiff's vehicle because there was no expert testimony correlating the extent of the vehicular damage to the extent of the plaintiff's personal injuries. However, the appellate court carefully observed that it was not creating a

bright line rule that such evidence was always inadmissible, but rather held that the trial court did not abuse its discretion because it could not be said that no reasonable person would take the trial court's position. *DiCosola*, 342 Ill. App. 3d at 538. Thus, *DiCosola* was based on the trial court's discretion to determine relevance (*id.*), and cited a decision that upheld a trial court's allowance of such photographs into evidence (see *Cancio v. White*, 297 Ill. App. 3d 422, 433 (1998)). Relevant evidence tends to make the proof of a fact more or less probable than it would be absent the evidence. *DiCosola*, 342 Ill. App. 3d at 535. The photographs need not always be allowed, and when they are allowed, expert testimony is not always necessary. *Ferro*, 361 Ill. App. 3d at 743; *DiCosola*, 342 Ill. App. 3d at 537.

"The critical question in admitting these photographs is whether the jury can properly relate the vehicular damage depicted in the pictures to the injury without the aid of an expert. This is an evidentiary question that the trial judge must resolve." *Ferro*, 361 Ill. App. 3d at 743; see also *Ford v. Grizzle*, 398 Ill. App. 3d 639, 648 (2010) (declining to adopt a rigid rule that photographs are always admissible or that expert testimony is always required).

¶ 19 Here, the trial court could have found that the photographs were relevant to show that plaintiff's injuries were more or less probable. The jury could assess the relationship between the vehicular damage and the plaintiff's personal injuries without the aid of an expert witness. Therefore, the trial court did not abuse its discretion in allowing the photographs into evidence.

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¶ 20           The judgment of the circuit court is affirmed.

¶ 21           Affirmed.