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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MARYZA ALEXANDRA HANSON, Plaintiff and Appellant, v. JOHN THOMAS MURRAH, Defendant and Respondent.	B292327 (Los Angeles County Super. Ct. No. BC600290)

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles F. Palmer, Judge. Affirmed.

Wilshire Law Firm, Bobby Saadian and Jonathan C. Teller for Plaintiff and Appellant.

Law Offices of Cleidin Z. Atanous and Cleidin Z. Atanous; Raffalow, Bretoi & Adams and Emily K. Rockwell for Defendant and Respondent.

Plaintiff and appellant Maryza Hanson appeals from a judgment following a jury trial of her personal injury action. The jury found both plaintiff and defendant negligent, and awarded plaintiff $39,000 in damages. Plaintiff moved for a new trial or additur, and argues that both defense counsel and jurors had engaged in misconduct. She further argues that insufficient evidence supported the verdict, and the damages awarded were inadequate. The trial court denied the motion, and we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Accident*

On the morning of October 31, 2014, plaintiff, age 20, was riding her bike on a sidewalk as she headed toward a Metro station. Defendant was driving his car through a Metro parking lot and stopped at a red light at an intersection as he exited the lot. As he attempted to turn right onto Campo De Cahuenga Boulevard, plaintiff rode her bike through the crosswalk at the intersection. Defendant struck plaintiff with his car as he drove through the crosswalk. She injured her left knee in the collision.

2. *The Complaint*

On November 6, 2015, plaintiff filed a complaint against defendant alleging he was negligent in failing to yield the right of way to plaintiff. Defendant filed an answer alleging plaintiff's negligence was the sole cause of the accident.

3. *Trial*

At trial, defendant testified that he never saw plaintiff prior to the collision. A cement barrier limited his ability to see the sidewalk to his right. He had stopped at a red light at the intersection and looked both ways before slowly entering the

intersection. He collided with plaintiff as he attempted to turn right.

A pedestrian who had witnessed the accident testified that he had been walking on the sidewalk in the same direction as plaintiff when she passed him on her bike. The pedestrian could see defendant's vehicle stopped at the intersection ahead. Plaintiff did not slow down or look to either side before entering the crosswalk. Defendant's vehicle moved a few feet forward as plaintiff entered the crosswalk and struck the side of plaintiff's bicycle, causing her to fall to the ground.

Plaintiff testified that she had no recollection of braking as she rode down the hill at 8 to 15 miles per hour approaching the intersection. She saw defendant's car stopped at the intersection and believed it would turn right at some point. When she rode into the crosswalk, defendant's vehicle hit her left knee and she also fell onto her knee when she landed on the ground.

Plaintiff was taken to the emergency room, where she was given an immobilizer and crutches. She used these for approximately two weeks, and participated in physical therapy. One year later, Dr. Babak Samimi performed surgery on her left knee. Although the surgery was successful, plaintiff claimed her knee still hurt, and she limited her physical activities out of fear.

Dr. Samimi testified he performed surgery on plaintiff to repair her anterior cruciate ligament (ACL). After the surgery, she regained her range of motion and the knee returned to normal stability and function. Dr. Samimi opined that plaintiff would have a higher likelihood of developing arthritis in 20 to 30 years. Treating any arthritis would involve physical therapy, bracing, and injections. If plaintiff developed arthritis, she would need physical therapy and might need another surgery.

Dr. Rajan Mahendra Patel, an orthopedic surgeon, testified as an expert for plaintiff. He opined that the arthroscopy was successful in repairing her torn ACL. After the surgery, she participated in 6 to 12 weeks of physical therapy. The surgery and therapy improved her instability and pain, and her incisions healed well. On cross-examination, he stated that the ACL had been sprained. Patel testified plaintiff may need to undergo another surgery.

Dr. Irwin Bliss testified as an orthopedic surgeon for the defense. He opined that the surgery performed was unnecessary because there was no indication plaintiff's knee was unstable or that her ACL was injured prior to Dr. Samimi's evaluation.

Dr. Stephen Rothman, a radiologist, also testified for the defense. He opined that plaintiff's MRI showed no abnormality or evidence of laxity in her ACL.

Dr. Henricus Jansen testified for the defense as an expert on accident reconstruction. Using measurements of the accident scene, he employed computer software to recreate the collision. Jansen estimated that plaintiff was traveling at 12 miles per hour and defendant's speed at under 5 miles per hour at impact. He concluded that had defendant looked right the entire time, he still would not have been able to observe plaintiff until 1.5 seconds before the collision, while plaintiff would have been able to observe defendant's vehicle for the four to five seconds before impact.

In closing, plaintiff's counsel asked the jury for approximately $90,000 in past medical expenses, up to $216,100 in future medical damages, and half a million dollars for future pain and suffering. The jury found both parties negligent and that their negligence was a substantial factor in causing the

accident. The jury found plaintiff was half at fault, and awarded her $60,000 for past economic damages and $18,000 for past noneconomic damages. Judgment was entered on June 27, 2018 in plaintiff's favor in the amount of $39,000. After awarding costs to both parties, the judgment was reduced to $7,058.93.

4. *Motion for New Trial*

Plaintiff moved for a new trial or in the alternative additur based on defense and juror misconduct. She also argued no evidence supported the finding she was negligent and all the evidence supported an award for future medical treatment.

The trial court denied the motion and addressed plaintiff's principal asserted errors individually. As to the alleged misconduct by defense counsel in eliciting inadmissible hearsay from an expert, the court found that "both counsel" elicited hearsay from their experts "at times and that not all objections to such testimony w[ere] meritorious." As to the claim that defense counsel introduced surprise testimony at trial, the court concluded that "[w]ith respect to much of the testimony of which [plaintiff] complains, her counsel objected at the time and the objection was sustained or the witness responded and there was a motion to strike which was ultimately granted and the jury was admonished to disregard the testimony . . . ."

On the issue of jury misconduct, the court struck both of plaintiff's supporting declarations on the ground that the declarant jurors did not state that their allegations were "based on personal knowledge . . . ." The court concluded that "[i]n light of the fact that [plaintiff] has submitted no admissible evidence of juror misconduct, it cannot serve as ground for ordering a new trial."

Lastly, plaintiff argued that insufficient evidence supported the jury's decision not to award future medical damages because even defendant's expert agreed plaintiff needed future medical care. The court concluded that plaintiff's "assertion that . . . Dr. [Bliss] agreed with [her] orthopedic experts that [she] would require future medical treatments is substantially undermined by the clearly speculative nature of Dr. [Bliss's] actual testimony that pain in her knee 'could be' a result of the mesh and she 'may' need to remove the mesh, that she 'may' need future surgery to remove the mesh 'if it turns out that that's what's causing pain.' This is not only far short of testimony that surgery or other medical treatment would be 'required,' it is far short of the requirement in CACI [No.] 3905A that to recover for future pain and suffering plaintiff must prove that she is reasonably certain to suffer that harm.' "

On these grounds, the court denied the new trial motion. Plaintiff appealed.

DISCUSSION

Plaintiff contends she is entitled to a new trial because (1) insufficient evidence supports the judgment, (2) the jury awarded inadequate damages, (3) defense counsel committed misconduct, and (4) jurors engaged in misconduct. We conclude the court did not abuse its discretion in denying the new trial motion.

1. *Standard of Review*

We review the trial court's denial of a motion for new trial and request for additur for abuse of discretion. (See *Haskins v. Holmes* (1967) 252 Cal.App.2d 580, 584.) " 'In determining whether there has been an abuse of discretion, the facts on the issue of damage most favorable to the respondent must be

considered.' " (*Miller v. San Diego Gas & Electric Co.* (1963) 212 Cal.App.2d 555, 559.) "A new trial shall not be granted upon the ground of . . . inadequate damages, unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision." (Code Civ. Proc., § 657.)

2. *Inadequacy of Plaintiff's Brief*

Plaintiff first argues the evidence did not support a finding of comparative fault, because "[a]ll the evidence showed defendant was solely at fault for this collision." She also contends that insufficient evidence supported the jury's decision not to award damages for future damages because "there was overwhelming evidence by all of the witnesses that plaintiff . . . will continue to suffer in the future with the necessity of future medical treatment costs." Defendant argues that plaintiff has forfeited her claim for insufficiency of the evidence by only summarizing the evidence in her favor. We agree with defendant.

When an appellant argues insufficiency of the evidence, she is " ' "required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed to be waived." ' [Citation.]" (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 749.) Here, plaintiff has not set forth all the material evidence, but only evidence in her favor. She has thus waived her argument that insufficiency of the evidence supported the jury's verdict.

Even if we were to reach the merits of plaintiff's arguments on insufficiency of the evidence, we would conclude that the trial court did not err in rejecting them. As to plaintiff's argument

that there was no evidence she was negligent, a reasonable fact finder could have concluded plaintiff was negligent in not slowing down or trying to get the driver's attention as she approached the crosswalk.

As to the jury's decision not to award future damages, the record shows that plaintiff's own experts were equivocal as to whether plaintiff needed future medical treatment: Dr. Patel testified he did not know whether she would need another surgery and Dr. Samimi opined that plaintiff might develop arthritis in decades to come.

3. *Alleged Attorney Misconduct*

Plaintiff argues defense counsel committed misconduct by (1) eliciting inadmissible hearsay, (2) allowing an expert to testify to new opinions, (3) presenting an expert whose opinions lacked foundation, (4) questioning a witness about insurance and billing rates, and (5) misrepresenting trial testimony in closing argument. Whether characterized as attorney misconduct or an erroneous evidentiary ruling, we conclude that plaintiff was not prejudiced by any error and the trial court, therefore, did not err in denying a new trial.

a. Inadmissible Hearsay

Plaintiff argues that defense counsel solicited inadmissible hearsay from Dr. Bliss regarding other doctor's reports and opinions, and this testimony caused the jury to award "a significantly lower amount." In support of this argument, plaintiff cites to several excerpts from defense counsel's examination of Dr. Bliss. We address each in turn.

In one excerpt, plaintiff's counsel did not raise an objection to the testimony that she now argues was inadmissible hearsay. She has therefore, waived this argument. (See *K.C. Multimedia,*

Inc. v. Bank of America Technology & Operations, Inc. (2009) 171 Cal.App.4th 939, 948–949 [a party must raise a contemporaneous objection at trial to present the issue for appellate review].)

In another excerpt, the court sustained plaintiff's objection. The court later instructed the jury, "If I sustained an objection, you must ignore the question. . . . If the witness has already answered, you must ignore the answer." In another excerpt, the court sua sponte struck the subject testimony, and then instructed the jury to disregard it. "Ordinarily, a curative instruction to disregard improper testimony is sufficient to protect a defendant from the injury of such testimony, and, ordinarily, we presume a jury is capable of following such an instruction. [Citation.]" (*People v. Navarrete* (2010) 181 Cal.App.4th 828, 834.) Here, plaintiff does not explain how the court's rulings were insufficient and caused her prejudice. She has not overcome the presumption that the jury followed the court's curative instruction.

Lastly, plaintiff objects to Dr. Bliss's testimony that a radiologist had "found bursitis" in "different ligaments" than the ACL, and that another doctor had reported swelling. The court overruled plaintiff's objections to this testimony. Even if the court erred in doing so, plaintiff does not explain how she was prejudiced by this hearsay. Plaintiff's experts opined that plaintiff had torn her ACL. Dr. Bliss's opinion was that she had not torn her ACL. He opined that a torn ACL would cause swelling and plaintiff's records showed no evidence of significant swelling. Dr. Bliss's testimony that other doctors found swelling undercut his opinion and supported that of plaintiff's experts.

Accordingly, the trial court did not abuse its discretion in concluding any error was not prejudicial.

b. Alleged Surprise Testimony by Experts

Plaintiff argues that she was prejudiced by defense counsel's surprise introduction of "new opinions and new reports" by Dr. Bliss at trial. She contends that the late disclosure of this evidence prevented her counsel from questioning her experts on this evidence or preparing to cross-examine Dr. Bliss on these matters. Plaintiff also contends that Jansen testified to new opinions that were never disclosed at deposition, and this "severely prejudiced" her.

When Dr. Bliss was on the witness stand, he reviewed "typed up summaries" of his records. Upon plaintiff's counsel's request, Dr. Bliss shared these notes which consisted of a copy of a four-page report dated April 30, 2018 and a five-page report dated May 7, 2018. Plaintiff's counsel said he had never received copies of these reports. The court responded, "Object to what you wish to object to . . . [and] I'll rule on the objections." Dr. Bliss proceeded to testify, and plaintiff's counsel did not raise any objections based on unexpected testimony.

Plaintiff now argues that Dr. Bliss's use of these reports at trial violated defendant's duty of pretrial discovery for expert witnesses. (See *Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 919 [a party must disclose "at his expert's deposition, if the expert is asked, the substance of the facts and the opinions by which the expert will testify to at trial"].) Even if plaintiff had not waived this argument through her failure to object below, she has not explained how she was prejudiced by this alleged improper testimony.

Plaintiff does not describe the content of Dr. Bliss's "new opinions and new reports" to which she is objecting. Further, the record shows only that Dr. Bliss used these two reports to refresh his recollection, not that he testified to their contents or that Dr. Bliss testified to opinions that had not previously been disclosed. Nor does plaintiff explain how her experts would have testified differently in response to the new reports or how her counsel would have changed his cross-examination of Dr. Bliss.

With respect to Jansen, plaintiff makes the general argument this expert improperly testified to "new documents and opinions." Plaintiff's citations to the record do not support this contention. Plaintiff also argues that Jansen's testimony that "stopping distances contributed to the collision" was a new opinion that was never disclosed at deposition. Again, plaintiff cites to only four lines in the record which do not establish that this testimony was newly disclosed. Assuming it was, plaintiff has again failed to explain how this prejudiced her: she does not argue what she would have done differently at trial had she received advance notice of this opinion. She has not shown prejudice.

c. Jansen's Testimony About Plaintiff's Speed

Plaintiff argues Jansen's testimony about plaintiff's speed prior to the collision lacked foundation, and warranted a new trial. When plaintiff moved to exclude the entirety of Jansen's testimony, the trial court granted the motion only as to testimony about "human factors" but allowed Jansen to testify about "accident reconstruction . . . ." We find no abuse of discretion.

At trial, Jansen testified he used photos of the accident site in conjunction with testimony about how the accident occurred to recreate the accident and calculate the relative speeds of

defendant's car and plaintiff's bike prior to collision. Based on plaintiff's testimony that she was traveling between 8 and 15 miles per hour and Jansen's calculation as to how fast a bicyclist would coast down the hill without brakes—20 miles per hour—Jansen estimated plaintiff was traveling at 12 miles per hour at the time of the accident.

Jansen ran software to render the accident with plaintiff's speed at 12 miles an hour. Assuming defendant started to move 1.5 seconds before impact and plaintiff was traveling at 12 miles per hour, Jansen opined she could not stop in time to avoid the collision. However, had plaintiff been traveling at only six miles per hour, she could have stopped 10 feet short of the collision. On cross-examination, Jansen testified he had never examined plaintiff's bicycle, and had not ridden a bicycle down the sidewalk "like" plaintiff.

Plaintiff argues that Jansen's opinion about her speed lacked foundation because he (1) had not inspected her bicycle, (2) had not "used a bicycle down the sidewalk like plaintiff," and (3) did not "attempt to use an alternative speed of plaintiff in his software system to evaluate plaintiff's speed." Plaintiff does not support this argument with any citation to authority.

" 'The trial court has broad discretion in deciding whether to admit or exclude expert testimony [citation] . . . .' [Citation.]" (*David v. Hernandez* (2017) 13 Cal.App.5th 692, 698.) In the trial court's preliminary determination as to whether an expert opinion is admissible, "the court must simply determine whether the matter relied on can provide a reasonable basis for the opinion or whether that opinion is based on a leap of logic or conjecture. The court does not resolve scientific controversies. Rather, it conducts a 'circumscribed inquiry' to 'determine

whether, as a matter of logic, the studies and other information cited by experts adequately support the conclusion that the expert's general theory or technique is valid.' [Citation.] The goal of trial court gatekeeping is simply to exclude 'clearly invalid and unreliable' expert opinion. [Citation.]" (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 772.)

Here, plaintiff has not shown that the court abused its discretion in allowing Jansen to estimate plaintiff's speed prior to the collision. First, Jansen's testimony was based on plaintiff's own estimate of her speed. Second, plaintiff has not explained why it was unreasonable for Jansen to calculate the speed of a vehicle based on computer modeling and data from the accident scene instead of physically recreating the accident. Lastly, it is unclear how using an unspecified "alternative" speed in Jansen's accident reconstruction software would have provided a foundation for his opinion that she was traveling at 12 miles per hour.[1]

d. References to Insurance and Medical Bills

Plaintiff argues defense counsel improperly referred to insurance when questioning experts Dr. Bliss and Dr. Samimi. According to plaintiff, Dr. Bliss and Dr. Samimi's testimony

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[1] Plaintiff also argues that the court should have precluded Jansen from testifying pursuant to *Fairfax v. Lords* (2006) 138 Cal.App.4th 1019 because of defendant's "improper supplemental expert designation" of Jansen. As plaintiff does not set forth or cite to the procedural background for the alleged improper designation or support this argument with an explanation, we do not reach this argument. (See *Supervalu, Inc. v. Wexford Underwriting Managers, Inc.* (2009) 175 Cal.App.4th 64, 84 (*Supervalu*).)

about insurance violated the collateral source rule and "affected the jury's verdict of damages." Plaintiff has not shown that the collateral source rule was violated.[2]

With respect to Dr. Samimi's testimony, plaintiff argues defense counsel should not have asked him whether Medicare "reimburse[s] for PRP injections." Dr. Samimi answered in the negative. Plaintiff now argues this testimony "violates the collateral source rule," citing to *Pebley v. Santa Clara Organics, LLC* (2018) 22 Cal.App.5th 1266. That case summarizes the collateral source rule as follows: " ' "if an injured party receives some compensation for his injuries from a source wholly independent of the tortfeasor, such payment should not be deducted from the damages which the plaintiff would otherwise collect from the tortfeasor." ' [Citation.]" (*Id.* at p. 1273.) Here, Dr. Samimi testified that Medicare did *not* reimburse plaintiff for PRP injections. Therefore, plaintiff has not shown that this testimony violated the collateral source rule.

As for Dr. Bliss, plaintiff cites to the following statements in the record: Dr. Bliss's testimony that (1) he was familiar with "billing practices in Southern California area," (2) he knows "what the insurance companies pay," (3) Dr. Samimi's surgery fee was excessive and insurance would only pay for approximately five percent of this bill, (4) "no insurance company[]" would pay

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[2] Plaintiff also argues defense counsel committed misconduct by soliciting testimony by Dr. Bliss on the reasonableness of plaintiff's medical bills because Dr. Bliss was not a "medical billing expert." She does not cite to any authority for this argument. Moreover, her selective citation to the record ignores Dr. Bliss's testimony establishing his qualifications. We, therefore, do not address this argument further. (*Supervalu*, *supra*, 175 Cal.App.4th at p. 84.)

for Dr. Samimi's charge for a report, and (5) "no insurance company or Medicare will pay for" platelet rich plasma. Again, testimony that insurance companies would *not* pay for a health provider's charges does not violate the collateral source rule's prohibition on reducing a plaintiff's damages by payments received by insurance.

Further, the experts' testimony on reimbursement rates was relevant to the actual value of the services rendered. (*Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541, 561–562.) Lastly, the trial court instructed the jury that they must not consider whether any party has insurance as the issue was "totally irrelevant." We presume the jury followed those instructions. (*People v. Navarrete, supra*, 181 Cal.App.4th at pp. 828, 834.)

e. Defense Counsel's Closing Argument

Plaintiff argues defense counsel engaged in misconduct by misrepresenting trial testimony during closing argument, and that a new trial should have been granted on this ground. However, plaintiff never objected to these claimed misrepresentations during closing argument. Plaintiff argues generally in her reply that any failure to object at trial was excused because any objection would have proved futile and admonitions would not have cured the harm. This general argument—encompassing the entire trial—is insufficient to show an exception to the general rule of forfeiture.

Further, attorneys have wide latitude in closing argument (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 795), and the jury was properly instructed that counsel's argument was not evidence (*People v. Hill* (1998) 17 Cal.4th 800, 845). Plaintiff also does not include record citations to support her argument that

defendant's closing misrepresented earlier testimony, but only cites to the counsel's argument. She has not met her burden on appeal of establishing error. (See *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979.)

4. *Jury Misconduct and Voir Dire*

Plaintiff argues the trial court erred in denying a new trial based on jury misconduct. In support of this argument, she cites to evidence in the two juror declarations stricken by the trial court. However, she does not argue the trial court erred in striking the declarations, and therefore, has not shown the trial court erred in concluding she "submitted no admissible evidence of juror misconduct."

Plaintiff also contends that the trial court erred in denying her request for additional time to conduct voir dire but does not explain why the court's limitation was "unreasonable or arbitrary." (See Code Civ. Proc., § 222.5, subd. (b)(2) ["The trial judge shall not impose specific unreasonable or arbitrary time limits or establish an inflexible time limit policy for voir dire."].) Plaintiff also does not explain what she would have done differently with more time. Her argument that she was "not able to fully find out all biases the jury had" is insufficient to show prejudice, especially in light of the trial court's order striking the juror declarations.

DISPOSITION

The judgment is affirmed. Defendant is awarded his costs on appeal.

RUBIN, P. J.

WE CONCUR:

MOOR, J.

KIM, J.