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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

KRISTIN HARRIS,

Plaintiff and Appellant,

v.

VICTOR MANUEL OLIVA
et al.,

Defendants and
Respondents.

2d Civil No. B281080
(Super. Ct. No. 56-2014-
00458980-CU-PA-VTA)
(Ventura County)

The trial court denied plaintiff's motion for a new trial based on the inadequacy of damages. We affirm.

FACTS

Kristin Harris, 54 years old, was riding in the back of a van driven by Victor Oliva in the course of his employment with Simi Valley Ford. Oliva ran a red light and collided with a pickup truck. Harris sued Oliva and Simi Valley Ford (collectively Ford), claiming the accident caused her severe neck injury, brain

damage and an injury to her vocal cord. Ford admitted liability and the matter proceeded on the question of damages.

Harris underwent two surgeries on her neck. She claimed one of her vocal cords was injured during surgery and she would need further treatment. She also claimed she suffered from brain damage resulting in loss of memory, diminished intelligence and diminished frontal lobe function. She claimed the diminished frontal lobe function resulted in her inability to make proper choices and respond appropriately when faced with new situations.

The evidence showed that Harris never lost consciousness after the accident. The emergency room doctor diagnosed her only with a cervical neck sprain. The doctor thought it unusual that Harris's companion asked for X-rays after she was cleared to go home.

An accident reconstruction expert testified Harris did not hit her head as she had claimed. Forces in the accident were not sufficient to cause brain injury. A neuropsychologist testified that testing on Harris did not show brain damage.

Shortly after the accident, Harris moved to a ranch in Clovis to work as a caregiver for an elderly man suffering from dementia. Employment records show she worked there continuously for three years leading up to the time of trial.

A defense expert testified the reasonable value of the medical expenses Harris incurred was \$233,401.10.

The jury awarded Harris \$250,000 in medical specials, \$30,000 in future medical specials, \$50,000 for past noneconomic damages, and \$25,000 for future noneconomic damages.

Harris moved for a new trial on the ground the damages were inadequate. The trial court found the damages awarded by the jury are not clearly inadequate, and denied the motion.

DISCUSSION

I

Ford points out that Harris is attempting to appeal a nonappealable order.

Harris's notice of appeal is from the order denying her motion for a new trial. The order denying a motion for a new trial is not appealable; it may only be reviewed on appeal from the underlying judgment. (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 19.) But where, as here, it is reasonably clear the appellant was attempting to appeal from the judgment, and respondent is not prejudiced, we construe the notice of appeal as being from the judgment. (*Id.* at p. 22.)

II

Harris contends the trial court applied the wrong standard in denying her motion for a new trial.

Harris argues that in considering a motion for a new trial based on inadequacy of damages, the trial court acts as the "thirteenth juror," independently assessing the evidence. (Citing *Barrese v. Murray* (2011) 198 Cal.App.4th 494, 503.) Harris believes the trial court here felt compelled to defer to the jury.

Code of Civil Procedure section 657, subdivision 5 authorizes the trial court to grant a new trial on the ground of excessive or inadequate damages. The section provides: "A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision, nor upon the ground of excessive or 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.” (*Id.*, § 657.)

Although the trial court must reweigh the evidence, it must give some deference to the jury’s verdict. The court may grant a new trial only if it finds the damages are “clearly inadequate.” (*Jehl v. Southern Pacific Co.* (1967) 66 Cal.2d 821, 832.) The court may not grant a new trial simply because it disagrees with the amount of damages awarded by the jury. (*Reilley v. McIntire* (1938) 29 Cal.App.2d 559, 563.)

Here the trial court’s minute order denying Harris’s motion correctly acknowledged the court’s duty to weigh the evidence and determine in light of the whole record whether the jury’s award of damages is “clearly inadequate.” The court expressly found the jury’s award of damages was not clearly inadequate. Thus, the record shows the court understood and applied the correct standard.

Harris attacks the trial court’s order by selecting a portion of the minute order and the court’s comments at the hearing on the motion.

Harris cites a portion of the minute order in which the trial court stated in discussing the jury’s award of noneconomic damages: “Substantial evidence was presented which supported and corroborated Plaintiff’s damage claim. But there was also evidence adduced at trial, which if credited by the jury, supported an inference that Plaintiff’s physical limitation and discomfort was less than that represented in her testimony and the arguments of her counsel. The jury appears to have found the defense evidence more credible and persuasive.”

This is simply a statement of the obvious. The trial court found that the jury's award of noneconomic damages was "appreciable" and not "clearly inadequate." The statement does not show the trial court failed to independently assess the evidence.

Nor does the trial court's use of the term "substantial evidence" in referring to the plaintiff's evidence mean the court found the plaintiff's evidence to be credible. In context, the court was referring to evidence the jury could have found credible.

Harris's reliance on statements made by the trial court during the hearing on the motion is equally unavailing. The trial court stated:

"I'll share these observations in addition to the tentative, that as professionals that participate in the jury trial system and presumably defenders of the jury trial system we frequently talk about the value of having the community make decisions like this, as opposed to placing decisions like this in the hands of judges. Sometimes as a person that sees a lot of jury trials, as I know all of you do as well, we see results that might be different than what judges would do. Ultimately we value the input of the community, even though there may be times when we ourselves might do something different.

"That's particularly true in the process of placing money value on something as amorphous and personal as pain and suffering. Unless the award is shown to be clearly inadequate, the law compels the court to embrace it. I do. So the court does adopt its tentative ruling. The motion for new trial is denied."

Nothing in the trial court's statement shows it did not independently assess the evidence or that it applied the wrong standard. It is true, the court showed some deference to the

jury's verdict, as it is required to. If anything, the trial court's comments show it agreed with the jury's verdict. It is unlikely the court would make laudatory comments about the jury's role in civil cases if it believed the jury made a mistake in this one.

III

Harris contends the jury's award of \$50,000 for pain and suffering is inadequate as a matter of law.

Harris relies on *Dodson v. J. Pacific, Inc.* (2007) 154 Cal.App.4th 931. In *Dodson*, plaintiff suffered a fall due to defendant's negligence. The jury awarded \$8,339.50 in medical expenses but no noneconomic damages. On appeal, the court concluded the award of no damages for pain and suffering is inadequate as a matter of law. In so deciding, the court relied on *Miller v. San Diego Gas & Elec. Co.* (1963) 212 Cal.App.2d 555, 558, for the proposition that where the plaintiff proves medical expenses were incurred because of the defendant's act, a judgment for no more than the medical expenses would be inadequate. (*Dodson*, at p. 937.)

Here Harris was awarded \$50,000 more than the medical expenses she incurred. That is not inadequate as a matter of law.

The judgment is affirmed. Costs are awarded to respondents.

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GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Mark S. Borrell, Judge

Superior Court County of Ventura

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