NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 1494

BEVERLY THOMPSON

VERSUS

ALLSTATE INSURANCE COMPANY AND MICHELLE ARCENEAUX

Judgment Rendered: March 25, 2011

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number C565,209

Honorable Wilson E. Fields, Presiding

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Dennis A. Pennington Michael J. Harig Baton Rouge, LA	Counsel for Plaintiff/Appellant Beverly Thompson
Jeff S. Valliere Eddie L. Anderson Baton Rouge, LA	Counsel for Defendants/Appellees Allstate Insurance Company and Michelle Arceneaux

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

GUIDRY, J.

In this personal injury action, Beverly Thompson appeals from a trial court judgment awarding her $30,000 in general damages, $11,613 in past medical expenses, and $5,500 in future medical expenses. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On March 21, 2007, Beverly Thompson was involved in an automobile accident when the passenger side of the vehicle she was driving was struck by a vehicle driven by Michelle Arceneaux. On March 18, 2008, Ms. Thompson filed a petition for damages, naming Arceneaux and her insurer, Allstate Insurance Company (Allstate), as defendants. At the trial of this matter on January 11, 2010, the parties stipulated to liability, to the fact that Ms. Thompson's damages did not exceed policy limits of $100,000, and to a non-jury trial. The matter proceeded on the issues of causation and damages. Three witnesses testified at trial, including Ms. Thompson, her sister, Melody Schexnaydre, and a chiropractor, Dr. Catherine Caillouet. The deposition testimony of Ms. Thompson's treating neurosurgeon, Dr. Kelly Scrantz, was also admitted into evidence.

At the conclusion of the trial, the trial court entered judgment in favor of Ms. Thompson, awarding her $30,000 in general damages, $11,613 in past medical expenses, and $5,500 in future medical expenses. Ms. Thompson now appeals from this judgment, asserting that the trial court abused its discretion in awarding only $30,000 in general damages and $5,500 in future medical expenses.

DISCUSSION

General Damages

The trier of fact is accorded much discretion in fixing general damage awards. La. C.C. art. 2324.1; Cheramie v. Horst, 93-1168, p. 6 (La. App. 1st Cir. 5/20/94), 637 So. 2d 720, 723. The discretion vested in the trier of fact is great,

even vast, so that an appellate court should rarely disturb an award of general damages. Youn v. Maritime Overseas Corp., 623 So. 2d 1257, 1261 (La. 1993), cert. denied, 510 U.S. 1114, 114 S. Ct. 1059, 127 L. Ed. 2d 379 (1994).

The role of an appellate court in reviewing a general damage award is not to decide what it considers to be an appropriate award, but rather, to review the exercise of discretion by the trier of fact. Bouquet v. Wal-Mart Stores, Inc., 08-0309, p. 5 (La. 4/4/08), 979 So. 2d 456, 459. It is only when the award is, in either direction, beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the particular plaintiff under the particular circumstances that the appellate court should increase or decrease the award. Youn, 623 So. 2d at 1261.

At trial, Ms. Thompson, an administrative officer with the United States Transportation Security Administration, testified that she did not notice any injury at the time of the accident, but later that day, she started getting sore, and a week or so later, the right side of her neck started to bother her, with pain radiating down the right side of her neck into her shoulder and down her right arm. Ms. Thompson stated that she went to see a chiropractor, Dr. Derek Oakley, one to one and one-half weeks after the accident, and treated with him for ten to twelve visits until the end of June or beginning of July 2007, when apparently Dr. Oakley disappeared.

In August 2007, Ms. Thompson started treatment with another chiropractor, Dr. Cathy Caillouet. Dr. Caillouet testified that because of the severity of pain reported by Ms. Thompson, she ordered an MRI and, ultimately, referred Ms. Thomspon to a neurosurgeon, Dr. Kelly Scrantz. Dr. Caillouet stated that she continued to treat Ms. Thompson until August 2008, when she told Ms. Thompson to return on an "as needed" basis. According to Dr. Caillouet, Ms. Thompson did not return until March 2009.

In his deposition testimony, Dr. Scrantz stated that he first saw Ms. Thompson on September 10, 2007. At that time, Ms. Thompson indicated that she had been involved in an automobile accident in March 2007, and had had increasing right-sided neck pain since that time. Ms. Thompson indicated that the pain was constant and described it as a tingling or crawling type sensation that began at the base of her skull and radiated down the right side of her neck into her right shoulder and arm. Dr. Scrantz, thereafter, reviewed Ms. Thompson's MRI and stated that he felt she had multi-level degenerative changes and agreed with the radiologists' finding of a disc herniation at C4-5. According to Dr. Scrantz, Ms. Thompson had degenerative changes prior to the March 2007 accident, and that the disc herniation at C4-5 more than likely also predated the auto accident. However, Dr. Scrantz agreed that it was more probable than not that whatever the condition of the spine was, it became symptomatic as a result of the accident.

When Ms. Thompson returned in November 2007 for follow-up, she indicated that she was still having some symptoms into the arm. Because these symptoms had been ongoing for seven to eight months, Dr. Scrantz stated that he recommended that Ms. Thompson undergo a series of epidural steroid injections (ESI). Ms. Thompson subsequently underwent an ESI, and when she returned to Dr. Scrantz in January 2008, her arm symptoms were largely improved, though she was still experiencing some neck pain. Dr. Scrantz stated that in March 2008, Ms. Thompson underwent her second ESI, and when she returned to his office in May 2008, her right arm symptoms had completely gone away, and she was only having some shoulder and neck issues. Dr. Scrantz stated that the last time he saw Ms. Thompson was in September 2008, and at that time, she was still gaining benefit from the ESI, she was doing some cervical traction at home, which was helping her quite a bit, and at that point, he left an open appointment for her to return if her symptoms worsened.

Ms. Thompson stated that following the first ESI, she felt quite a bit better, and that after the second ESI, she was basically pain free. However, Ms. Thompson stated that in March 2009, she returned to Dr. Caillouet, and by August 2009, she was seeing Dr. Caillouet for relief of neck pain that was radiating down into her arm. According to Ms. Thompson, the recurrence of pain was gradual. Ms. Thompson stated that she last treated with Dr. Caillouet in October 2009, because the treatment was no longer affording her any relief, and she wanted to hold off on further treatment until she could meet with Dr. Scrantz. As of the date of trial, Ms. Thompson had not yet seen Dr. Scrantz, but according to her testimony, she had an appointment with him scheduled for January 22, 2010.

According to Ms. Thompson, other than the chiropractic treatments and ESIs, she took only Advil for pain, despite the fact that Dr. Scrantz had prescribed pain medication for her, because she received just about the same benefit from the Advil, but without the negative side effects. Further, when asked the effect her pain has had on her life, Ms. Thompson stated that she is still able to engage in the activities that she did before, but has to modify them. However, she did state that she had to sell a classic automobile that she was restoring, because she could no longer operate the manual steering and transmission. Additionally, Ms. Thompson stated that though she is able to set her own pace at work, just holding the steering wheel and checking traffic when driving to and from work can cause pain, as well as activities such as talking on the phone and clerical work.

Finally, Ms. Thompson's sister, Melody Schexnaydre, testified that Ms. Thompson occasionally had to cancel their girls' day out that they did once a month because she was in too much pain. Additionally, Ms. Schexnaydre stated that she occasionally cleaned Ms. Thompson's house because of the pain vacuuming and mopping caused Ms. Thompson. However, Ms. Schexnaydre

stated that Ms. Thompson bounced back almost one hundred percent following her second ESI, and that she was doing everything for herself again.

Under these circumstances, considering the testimony, evidence, and jurisprudence, we do not find that the award of $30,000 is unreasonable. Contrary to Ms. Thompson's assertions on appeal that the March 2007 accident caused a herniated disc, Dr. Scrantz clearly determined that Ms. Thompson's degenerative disc disease and disc herniation at C4-5 predated the March 2007 accident, and that these conditions became symptomatic following the March 2007 accident. Ms. Thompson admitted receiving substantial benefit from the ESIs, so much so that she was "pain free" for almost a year; the evidence indicates she was capable of resuming her regular activities during that time, though she had been experiencing gradual recurrent pain in the months leading up to trial. Accordingly, we find no abuse of discretion in the trial court's award of $30,000 in general damages.

Future Medical Expenses

An award of future medical expenses is justified if there is medical testimony that they are indicated and setting out their probable cost. Hanks v. Seale, 04-1485, p. 16 (La. 6/17/05), 904 So. 2d 662, 672. Nevertheless, when the record establishes that future medical expenses will be necessary and inevitable, courts should not reject the award because the record does not provide the exact value, if the court can determine from the record, past medical expenses, and other evidence a minimum amount that reasonable minds could not disagree would be required. Levy v. Bayou Indus. Maintenance Services, Inc., 03-0037, p. 9 (La. App. 1st Cir. 9/26/03), 855 So. 2d 968, 975, writs denied, 03-3161 and 03-3200 (La. 2/6/04), 865 So. 2d 724 and 727. In such a case, the trial court should award all future medical expenses that the medical evidence establishes that the plaintiff, more probably than not, will be required to incur. Hymel v. HMO of Louisiana, Inc., 06-0042, pp. 26-27 (La. App. 1st Cir. 11/15/06), 951 So. 2d 187, 206, writ

denied, 06-2938 (La. 2/16/07), 949 So. 2d 425. Although future medical expenses must be established with some degree of certainty, they do not have to be established with absolute certainty, as an award for future medical expenses is by nature somewhat speculative. Grayson v. R.B. Ammon and Associates, Inc., 99-2597, p. 35 (La. App. 1st Cir. 11/3/00), 778 So. 2d 1, 23, writs denied, 00-3270 and 00-3311 (La. 1/26/01), 782 So. 2d 1026 and 1027.

As with general damages, much discretion is left to the judge or jury in its assessment of quantum of special damages. La. C.C. art. 2324.1; Menard v. Lafayette Insurance Co., 09-1869, p. 13 (La. 3/16/10), 31 So. 3d 996, 1006-1007. As a determination of fact, a judge or jury's assessment of quantum is one entitled to great deference on review. Menard, 09-1869 at p. 13, 31 So. 3d at 1007. In reviewing a jury's factual conclusions with regard to special damages, an appellate court must satisfy a two-step process based on the record as a whole in order to modify or reverse the judgment: there must be no reasonable factual basis for the trial court's conclusion, and the finding must be clearly wrong. See Menard, 09-1869 at p. 14, 31 So. 3d at 1007. This test requires a reviewing court to do more than simply review the record for some evidence, which supports or controverts the trial court's findings. The court must review the entire record to determine whether the trial court's finding was clearly wrong or manifestly erroneous. The issue to be resolved on review is not whether the jury was right or wrong, but whether the jury's fact finding conclusion was a reasonable one. Menard, 09-1869 at pp. 14-15, 31 So. 3d at 1007.

At the time of his deposition, Dr. Scrantz had not seen Ms. Thompson since September 2008. Dr. Scrantz stated that he was not aware that Ms. Thompson had an appointment to see him on January 22, 2010, but that if his exam justified it, he would probably encourage an ESI, because Ms. Thompson had received a very good result with the first two. According to Dr. Scrantz, if a patient's symptoms

last for more than one year, it is really hard to just make them go away. Therefore, in Ms. Thompson's case, Dr. Scrantz stated that it is likely she has a chronic course. However, because Ms. Thompson did so well with two ESIs over a year's period, Dr. Scrantz stated that he would encourage her to do that again, and if one to two ESIs a year hold her, that is not a bad course of treatment for the long term. Dr. Scrantz acknowledged, however, that Ms. Thompson's future prognosis ultimately is hard to predict and depends greatly on how she does in the future. Accordingly, Dr. Scrantz could not definitively say if Ms. Thompson would need a lifetime of treatments, or if her condition could resolve in just a few years. However, he did state that there is no serious indication that she will need to undergo surgery.

Additionally, when questioned by the trial court, Ms. Thompson acknowledged that no one had told her that she would need to have one to two ESIs every year for the remainder of her life.

Ms. Thompson's medical records from the NeuroMedical Center indicate that the average cost of an ESI is approximately $1,100. The trial court awarded $5,500 in future medical expenses, which amounts to five ESIs. Given the uncertainty expressed by Dr. Scrantz of Ms. Thompson's future need for ESIs, her previous positive responses to ESIs lasting at least one year, and her significant gaps in treatment with both Dr. Caillouet and Dr. Scrantz, we cannot say that an award of $5,500 was an unreasonable amount. Accordingly, we find no manifest error in the trial court's award of $5,500 in future medical expenses.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court awarding Ms. Thompson $30,000 in general damages and $5,500 in future medical expenses. All costs of this appeal are assessed to Beverly Thompson.

AFFIRMED.