NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CA 1505

JANICE C. JOHNSON AND WILLIAM O. JOHNSON, INDIVIDUALLY AND ON BEHALF OF THEIR MINOR CHILDREN, WILLIAM EVAN JOHNSON, II, GEORGE F. JOHNSON AND YVONNE F. FREDERICK

VERSUS

STATE OF LOUISIANA THROUGH THE DEPARTMENT OF TRANSPORTATION & DEVELOPMENT AND UNITED STATES FIDELITY AND GUARANTY COMPANY

Judgment Rendered: March 26, 2008

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Docket Number 97-12565

Honorable Patricia Hedges, Judge Presiding

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BEFORE: WHIPPLE, GUIDRY AND HUGHES, JJ.

Guidry, J. concurs in the result.

WHIPPLE, J.

The State of Louisiana, through the Department of Transportation and Development ("the DOTD") appeals the trial court's judgment rendered in conformity with a jury verdict that awarded plaintiffs damages as the result of an automobile accident and assessed the DOTD with 70% fault in causing the accident. For the following reasons, we amend and affirm, as amended.

FACTS AND PROCEDURAL HISTORY

On the night of June 7, 1996, Joelle Grasso was traveling eastbound on Harrison Avenue in St. Tammany Parish, when she failed to stop at a stop sign at the intersection of Harrison Avenue and Louisiana Highway 59. As she entered the intersection, her vehicle collided with the Chevrolet Surburban owned and operated by William O. Johnson. The passengers in the Johnson vehicle were Janis Johnson, William's wife; William E. Johnson, II, ("Bill") and George F. Johnson, William and Janis's minor children; and Yvonne Frederick, Janis's mother.[1] The Johnson vehicle skidded off the roadway and flipped, causing injury to all the occupants.

Thereafter, William and Janis, individually and on behalf of Bill and George, and Yvonne filed suit against the State of Louisiana through the DOTD; United States Fidelity and Guaranty Company ("USF&G"), the Johnsons' uninsured/underinsured motorist carrier; and State Farm Insurance Company ("State Farm"), Yvonne's uninsured/underinsured motorist carrier. Prior to trial, plaintiffs settled and dismissed, with prejudice, their claims against USF&G and State Farm. Thus, the matter proceeded to trial against the DOTD.

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[1]While the caption of the petition lists Mrs. Johnson as "Janice Johnson," a review of the medical records indicates that her first name is actually spelled "Janis."

At trial, the parties stipulated that Grasso, who was travelling on Harrison Avenue, had failed to stop at the stop sign at the intersection of Harrison Avenue and Louisiana Highway 59. They further stipulated that the intersection of Highway 59 and Harrison Avenue is maintained by the DOTD. Plaintiffs contended at trial that the DOTD was liable for the accident because the stop sign at the intersection of Harrison Avenue and Louisiana Highway 59 was damaged and because the delineators, striped black and yellow signs placed at this "T" intersection of Highway 59 and Harrison Avenue to mark the end of Harrison Avenue, had all been knocked down prior to the accident in question. According to plaintiffs, the damaged stop sign and fallen delineators resulted in Grasso failing to stop at the intersection.

At the conclusion of the trial, the jury returned a verdict, finding as fact that the DOTD was 70% at fault in causing the accident and that Grasso was 30% at fault. The jury awarded damages to the plaintiffs totaling $200,000.00 for William; $320,000.00 for Janis; $285,000.00 for Bill; $8,000.00 for George; and $317,500.00 for Yvonne. In accordance with the jury's verdict, the trial court rendered judgment in favor of plaintiffs and against the DOTD, after reducing the damages awarded by 30% to account for the comparative fault of Grasso.

From this judgment, the DOTD appeals, contending that: (1) the jury erred in finding the DOTD 70% at fault and Grasso 30% at fault; (2) the trial court erred in denying the DOTD's motion for new trial; and (3) the trial court erred in denying the DOTD's motion for remittitur.

APPORTIONMENT OF FAULT
(Assignment of Error No. 1)

In this assignment of error, the DOTD contends that Grasso's violation of LSA-R.S. 32:123(B), by running the stop sign and failing to yield the right-of-way, was the legal, actual, and proximate cause of the accident in question. The DOTD further contends that, in light of the parties' stipulation that Grasso failed to stop at the stop sign, the jury manifestly erred in assessing any fault to the DOTD.[2] Thus, the DOTD contends that the jury was clearly wrong in assigning it a higher percentage of fault in this accident where "Grasso was the legal and actual cause of the accident."

At the outset, we note that the DOTD does not challenge the precept that it has a duty to maintain the public highways in a reasonably safe condition.[3] Toston v. Pardon, 2003-1747 (La. 4/23/04), 874 So. 2d 791, 799. As stated above, the DOTD stipulated that it maintains the intersection of Highway 59 and Harrison Avenue. Rather, the DOTD contends only that because Grasso admitted that she ran the stop sign, a violation of LSA-R.S. 32:123(B), the jury erred in assessing any fault to the DOTD.

In determining percentages of fault, the trier of fact must consider both the nature of the conduct of each party at fault and the extent of the causal relationship between the conduct and the damages. The factors to be considered in assessing the nature of the conduct of the parties include: (1) whether the conduct resulted from inadvertence or involved an awareness of the danger; (2) how great a risk was created by the conduct; (3) the

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[2]The DOTD contends that, as a matter of fact, it "in a sense need not prove its defense" given the stipulation that Grasso ran the stop sign.

[3]Indeed, a high degree of care is imposed upon those responsible for maintaining traffic control devices. Bernard v. Campbell, 303 So. 2d 884, 887 (La. App. 1st Cir. 1974); Reaux v. City of New Orleans, 2001-1585 (La. App. 4th Cir. 3/20/02), 815 So. 2d 191, 195, writ denied, 2002-1068 (La. 6/14/02), 817 So. 2d 1158.

significance of what was sought by the conduct; (4) the capacities of the actor, whether superior or inferior; and (5) any extenuating circumstances that might require the actor to proceed in haste without proper thought. Watson v. State Farm Fire and Casualty Insurance Co., 469 So. 2d 967, 974 (La. 1985).

The allocation of fault is a factual matter within the sound discretion of the trier of fact and will not be disturbed on appeal in the absence of manifest error. Adams v. Parish of East Baton Rouge, 2000-0424, 2000-0425, 2000-0426, 2000-0427 (La. App. 1st Cir. 11/14/01), 804 So. 2d 679, 698, writ denied, 2002-0448 (La. 4/19/02), 813 So. 2d 1090. In reviewing a jury's assessment of percentages of fault, the appellate court must be mindful that the fact finder has a duty to assess the demeanor and credibility of all witnesses. Where there is a conflict in testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel its own evaluations and inferences are as reasonable. Magee v. Pittman, 98-1164 (La. App. 1st Cir. 5/12/00), 761 So. 2d 731, 742, writs denied, 2000-1694 , 2000-1684 (La. 9/22/00), 768 So. 2d 31, 602

If, however, an appellate court finds a clearly wrong apportionment of fault, it should adjust the award, but then only to the extent of lowering or raising it to the highest or lowest point respectively that is reasonably within the trier of fact's discretion. Clement v. Frey, 95-1119, 95-1163 (La. 1/16/96), 666 So. 2d 607, 611.

In the instant case, Grasso was travelling eastbound on Harrison Avenue, a road on which she had never travelled before, on a dark, rainy night. The record establishes that the intersection of Harrison Avenue and Louisiana Highway 59 is a "T" intersection, with Harrison Avenue coming

to an end at the intersection. Photographs of the scene demonstrate that the intersection was surrounded by wooded areas.

Nonetheless, the delineators, striped yellow and black signs placed along the shoulder of Highway 59 at the intersection to warn motorists that the intersection was a "T" intersection and that Harrison Avenue was coming to an end, were not visible to drivers because they had been previously knocked down and not repaired. Moreover, the record further reveals that the stop sign on Harrison Avenue was damaged such that it was leaning to the right, away from the roadway, and was also twisted at an angle away from the driver's view.

Grasso testified that, because of these conditions, she did not see the stop sign and was, in fact, unaware of the "T" intersection and that the road on which she was travelling was coming to an end. As she approached the intersection, a passenger in the right, front passenger seat of her vehicle spotted the damaged stop sign and yelled to Grasso to stop. However, by the time her passenger detected the stop sign, Grasso was not able to stop and entered the intersection, striking the Johnsons' vehicle. According to Grasso, the condition of the stop sign was that it had been bent to such a degree that she could not see the red portion of the sign as she approached the intersection.

Dr. Olin Dart, Jr., a traffic engineer accepted as an expert in the fields of traffic engineering, highway design, traffic safety, and accident reconstruction, was called to testify on behalf of the Johnsons. Dart reviewed photographs of the intersection, damaged stop sign and delineators in question, taken the day after the accident, as well as the police report, pleadings, and depositions. Based on his evaluation of this information, he opined that there were insufficient traffic control devices to enable Grasso to

determine that Harrison Avenue stopped at Louisiana Highway 59. Specifically, Dart testified that the lack of any type of delineation at the intersection gave Grasso no points of reference regarding the intersection and the ending of Harrison Avenue and that given the angle of the bent stop sign combined with the dark, rainy conditions, the stop sign, which was "badly out of line," would have been "impossible to see." Based on his review of the photographs, Dart estimated that the sign was bent at a forty-five degree angle. He testified that at that angle or divergence, the reflectivity of the stop sign would be affected and the stop sign itself, in dark, rainy conditions, would be "virtually impossible to see."[4]

Francis Wyble, the DOTD's expert traffic engineer, testified, on the other hand, that, in his opinion, the cause of the accident was the fact that Grasso "just blew the stop sign." Wyble further testified that the photographs of the intersection provided for his review showed that there was also a "Stop Ahead" sign on Harrison Avenue, which the photographs show was positioned some distance before the stop sign. According to Wyble, in reaching his opinion as to the cause of the accident, he reviewed photographs provided to him, which were attached to his deposition as Exhibit "D1-In Globo"; the police report; Grasso's deposition; correspondence relating to this intersection; and the Manual of Uniform Traffic Control Devices.

However, with regard to the photographs provided to Wyble for his review, we note that these photographs depicted an undamaged stop sign on Harrison Avenue at the intersection in question, which sign was not bent or

[4]It is not entirely clear from Dart's testimony whether he was referring to the bending of the entire sign and pole to the right or to the twisting of the sign itself away from the driver when he indicated that the sign was bent at a forty-five-degree angle. However, it is clear from the photographs taken the day after the accident that it was in fact bent in both ways.

twisted. Dart reviewed Wyble's deposition and the photographs attached thereto and noted that the photographs appeared to be of a different stop sign altogether. Specifically, he noted that the markings on the back of the stop sign indicated that the sign had been replaced on August 30, 1996, about two months after the accident in question. Thus, Dart opined that Wyble's testimony was flawed because it was based on photographs that did not depict the actual stop sign in its bent and twisted state. Wyble testified that he did not know who took the photographs that were provided to him or when they were taken. He acknowledged that he had no way of knowing whether those photographs were illustrative of the intersection at the time of the accident.

Moreover, with regard to the "Stop Ahead" sign depicted in the photographs attached to Wyble's deposition, Dart noted that based on his examination of the photographs taken the day after the accident in question, he did not see any evidence that a "Stop Ahead" sign was present at the time of the accident.[5]

Clearly, the jury was faced with conflicting testimony by expert witnesses and some questions about the basis and soundness of Wyble's testimony, given that the photographs provided to him for review do not appear to depict the signage in place at the time of the accident. We cannot say herein that the jury was clearly wrong in choosing to credit plaintiffs' expert rather than the DOTD's, especially in light of the challenges raised concerning the photographs. See Mitchell v. State Farm, 94-0548, 94-0549 (La. App. 1st Cir. 3/3/95), 652 So. 2d 652, 657, writs denied, 95-0767, 95-

[5]We further note that the photographs attached to Wyble's deposition depict a yellow and black sign with directional arrows on the shoulder of Highway 59, warning of the T-intersection and of the ending of Harrison Avenue. This sign was not present in the photographs taken the day after the accident.

0770 (La. 4/28/95), 653 So. 2d 1180.

The DOTD also contends that the testimony of Johnson establishes that Grasso was speeding when she failed to stop at the stop sign. However, we note that when questioned about Grasso's speed, Johnson responded, "The car was moving – it's a judgment call. When I saw the car, I knew the car was not stopping. It was going too fast **to make a turn**, you know. So my impression was that we were going to hit because she's coming and can't stop, you know." (Emphasis added). The fact that Johnson believed that Grasso was driving too fast **to make a turn** does not indicate that she was in fact travelling at a speed higher than the posted speed limit.[6] Moreover, as discussed above, Grasso had not slowed to make a stop given the fact that she did not see the damaged stop sign.

Freddie Johnson, a witness who was traveling on Louisiana Highway 59 two or three car lengths behind the Johnson vehicle, also testified at trial. Johnson initially stated that Grasso was speeding.[7] However, when asked to explain what he meant by this statement, Freddie Johnson stated, "It happened so fast, I don't know that I could – well, I saw the vehicle coming down Harrison Road and I saw a van approaching or – and I could see that there was going to be a collision." Again, this testimony, while possibly indicating that Grasso may have been travelling too fast to stop at the intersection, does not indicate that Grasso was in fact speeding on Harrison Avenue. Her diminished ability to see the damaged stop sign and fallen

[6]The Abita Springs sheriff's deputy who investigated the accident did not have any special training in traffic safety, and while he testified that he saw skid marks, he apparently did not measure them. With regard to Grasso's speed, he merely testified that he "guesstimate[d] that she was going at a high rate of speed." However, this opinion was contradicted by the testimony and opinion of Dr. Dart, who noted that Grasso's car came to a stop almost immediately after the impact, which, in his opinion, indicated that Grasso was not travelling very fast.

[7]Freddie Johnson did not know the Johnsons involved in the accident.

delineators clearly would account for her failure to slow down as she approached the intersection.

Considering the foregoing and based upon our review of the entire record, we cannot conclude that the jury was manifestly erroneous in its allocation of fault between Grasso and the DOTD. Grasso, an unsuspecting motorist, was unaware of the unreasonably dangerous condition created by the fallen delineators and the damaged stop sign. The DOTD, on the other hand, was clearly in a superior position to detect and take steps to eliminate the danger created by the fallen delineators and the damaged stop sign.[8] See Reaux v. City of New Orleans, 2001-1585 (La. App. 4th Cir. 3/20/02), 815 So. 2d 191, 196, writ denied, 2002-1068 (La. 6/14/02), 817 So. 2d 1158. Accordingly, we find no merit to this assignment of error.

DENIAL OF MOTION FOR NEW TRIAL
(Assignment of Error No. 2)

In its motion for new trial filed in the trial court below, the DOTD contended that the jury's apportionment of fault was clearly contrary to the law and evidence. After contradictory hearing, the trial court denied the DOTD's motion for new trial. On appeal, the DOTD argues that the trial court erred in denying its motion for new trial, given the parties' stipulation that Grasso failed to stop at the stop sign; the testimony to the effect that a passenger in Grasso's vehicle tried to warn her of the stop sign; the alleged fact that there was a "Stop Ahead" sign on Harrison Avenue to alert drivers;

[8]The record indicates that the delineators had been lying on the ground for such a period that weeds had grown over them.

and the alleged fact that Grasso was speeding.

At the outset, we note that while the denial of a motion for new trial is generally a non-appealable interlocutory judgment, LSA-C.C.P. art. 2083, the court may consider interlocutory rulings as part of an unrestricted appeal from a final judgment.[9] Bailey v. Robert V. Neuhoff Limited Partnership, 95-0616 (La. App. 1st Cir. 11/9/95), 665 So. 2d 16, 18, writ denied, 95-2962 (La. 2/9/96), 667 So. 2d 534. Accordingly, the propriety of the trial court's denial of the DOTD's motion for new trial is properly before us.

Pursuant to LSA-C.C.P. art. 1972(1), a motion for new trial shall be granted when the verdict or judgment appears clearly contrary to the law and the evidence. In deciding a motion for new trial, the trial judge is free to evaluate the evidence without favoring either party; he may draw inferences and conclusions and may evaluate credibility of the witnesses to determine if the jury has erred in giving too much credence to an unreliable witness. Wright v. Bennett, 2004-1944 (La. App. 1st Cir. 9/28/05), 924 So. 2d 178, 190. The trial court has much discretion in determining whether to grant a motion for new trial. Wright, 924 So. 2d at 191.

However, a motion for new trial solely on the basis of being contrary to the evidence is directed squarely at the accuracy of the jury's factual determinations and must be viewed in that light. Thus, the jury's verdict should not be set aside if it is supportable by any fair interpretation of the evidence. Wright, 924 So. 2d at 191.

Considering our analysis as set forth in our discussion of assignment

[9]In its motion for appeal, the DOTD erroneously referred to the judgment denying its motion for new trial as the judgment entered on March 5, 2007, which was the date of the trial court's written reasons for judgment regarding the denial of the motion for new trial. However, it is clear from the record that the DOTD intended to appeal from both the judgment on the merits and the April 11, 2007 judgment denying its motion for new trial, motion for JNOV, and motion for remittitur.

of error number one above and because we agree with the trial court's implicit finding that the jury's apportionment of fault was not contrary to the law and evidence, we cannot conclude that the trial court abused its discretion in denying the DOTD's motion for new trial on the basis of the allocation of fault.

DENIAL OF MOTION FOR REMITTITUR
(Assignment of Error No. 3)

In this assignment of error, the DOTD contends that the trial court erred in failing to grant its motion for remittitur with regard to the future medical expenses awarded to plaintiffs. The DOTD contends that given the absence of supportive evidence by medical providers, the awards of future medical expenses to plaintiffs were excessive and, thus, subject to a remittitur.

Louisiana Code of Civil Procedure article 1814 provides for remittitur or additur as an alternative to a new trial as follows:

> If the trial court is of the opinion that the verdict is so excessive or inadequate that a new trial should be granted for that reason only, it may indicate to the party or his attorney within what time he may enter a remittitur or additur. This remittitur or additur is to be entered only with the consent of the plaintiff or the defendant as the case may be, as an alternative to a new trial, and is to be entered only if the issue of quantum is clearly and fairly separable from other issues in the case. If a remittitur or additur is entered, then the court shall reform the jury verdict or judgment in accordance therewith.

Comment (b) to the above-quoted article states that the purpose of this legislation is to serve judicial efficiency by allowing the parties to avoid a possibly unnecessary new trial and then to seek appellate review of the correctness of the judgment reformed by additur or remittitur. The procedure is thus connected with the procedures concerning new trials. Guidry v. Millers Casualty Insurance Company, 2001-0001 (La. App. 1st Cir. 6/21/02), 822 So. 2d 675, 680.

The Louisiana statutory scheme requires the consent of the party adversely affected by an additur or remittitur. That party is offered an opportunity, when asked by the trial judge, to agree to a change in judgment, thereby avoiding the expense and delay of a new trial. The order of additur or remittitur is therefore contingent; if the party does not agree to the change, he elects to submit to a new trial. Accardo v. Cenac, 97-2320 (La. App. 1st Cir. 11/6/98), 722 So. 2d 302, 306.

In the instant case, the trial court did not find that the awards of medical expenses were so excessive as to warrant remittitur, and, thus, the record does not indicate that plaintiffs were ever asked if they would agree to such a change in the judgment. Accordingly, because there is no mechanism for the use of remittitur in the appellate court, this assignment of error truly presents to this court a challenge to the jury's award of future medical expenses. See generally Ritter v. Willis, 425 So. 2d 1001, 1003-1004 (La. App. 5th Cir. 1983).

Future medical expenses are a legitimate form of recovery, even though they are not susceptible of precise mathematical calculations. However, awards for future medical expenses will not be supported in the absence of medical evidence establishing that they are indicated and setting out the probable cost. Weston v. Bayou Sale Contractors, Inc., 506 So. 2d 818, 820 (La. App. 1st Cir. 1987). Nonetheless, when the record establishes that future medical care 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. Domangue v. Mr. Gatti's, Inc., 93-2392 (La. App. 1st Cir. 6/23/95), 657 So. 2d 689, 695.

In our review of the future medical expense awards, we will separately address the awards made to each plaintiff. [10]

William O. Johnson

The record reveals that after the accident, William was transported by ambulance to the St. Tammany Parish Hospital emergency room, where he was observed to have deep bruises on the chest and an irregular heartbeat. He was diagnosed with a chest wall contusion and a cardiac contusion and remained hospitalized overnight for observation and to undergo an echocardiogram and x-rays of the ribs and sternum. The impression of the cardiologist who conducted the echocardiogram was that William was suffering from "mild left ventricular hypertrophy." William was discharged from the hospital on June 8, 1996.

Thereafter, he was treated by Dr. Robert Lewis, the Johnsons' treating physician who practices in the areas of internal medicine and general family practice. Dr. Lewis noted in a January 7, 1998 medical summary that William was still occasionally suffering from chest pain and rapid pulse rate and that he had been taking medication for those problems. While William did suffer from mild hypertension or high blood pressure before the accident, following the accident, Dr. Lewis treated him for chest pain, irregular heartbeat, and rapid pulse rate, problems that he had not experienced before. According to William, who was 47 years old at the time of the accident and 57 years old at the time of trial, he has continued to have cardiac and arrhythmia problems since the accident. Further, since the accident, William has undergone various tests, including a 2001 cardiac catheterization for fluttering in the chest and tightness and discomfort with

[10]George was not awarded any damages for future medical expenses. Thus, his injuries and medical treatment will not be discussed.

strenuous physical activity. The last medical treatment or testing documented in the medical evidence for William's cardiac condition was in June of 2002, approximately four years before trial.

Dr. Lewis also detailed other problems William continued to experience after the accident, including right knee joint pain with walking or exercising, left shoulder and arm pain and soreness, and intermittent back pain and soreness. Dr. Lewis testified that he had occasionally prescribed anti-inflammatory medication to William for his pain.

With regard to his back pain, William was examined by neurological surgeon, Dr. Jack Hurst, in December 1997. Based on lumbar MRI results, Dr. Hurst noted that William had minor desiccation at "4-5 and 5-1," and concluded that while he had "no doubt" that William was in pain, William was not a surgical candidate. Thus, Dr. Hurst recommended that William begin an aggressive regimen of self-directed physical therapy and avoid activities that caused him pain to the extent possible.

Notably, when questioned about William's prognosis, Dr. Lewis opined that William's spinal problems will never completely resolve and that he will probably continue to have occasional irregular heartbeats. With regard to medical expenses, the parties stipulated at trial that William had incurred $5,669.15 in past medical expenses through the time of trial. This amount included the expenses associated with his emergency room visit and hospitalization following the accident, but did not appear to include all of William's subsequent medical expenses, such as charges for testing performed by Dr. Harold Clausen, Jr. of Baton Rouge Cardiology and

examination by Dr. Hurst.[11] The jury awarded William $5,700.00 in past medicals and also awarded him $50,000.00 in future medical expenses.

While the record supports the jury's apparent finding that William will need some future medical care, no specific evidence was introduced as to the precise cost of the care William will require in the future. Nevertheless, as stated above, 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. See Richard v. St. Paul Fire and Marine Insurance Company, 94-2112 (La. App. 1st Cir. 6/23/95), 657 So. 2d 1087, 1093. Based on our review of the record as a whole, we conclude that the minimum amount that reasonable minds could not disagree upon for future medical expenses for William would be $20,000.00.

Janis Johnson

Janis was also taken by ambulance to the St. Tammany Parish Hospital emergency room following the accident, where she was treated for multiple contusions and had lacerations to the forehead and nose sutured. The laceration near her right eyebrow, which required fourteen stitches, also caused nerve damage in that area. Since the accident, Janis had experienced problems in focusing with the right eye and blurred vision.

Importantly, Janis was also diagnosed with a herniated disc at the C5-

[11]While Joint Exhibit 1, which includes the stipulations as to past medical expenses of the parties, includes a notation that the medical expenses of "Dr. Jack Hurst, Rivet, Leoni & Hurst" would be "forthcoming," indicating that these medical expenses were not included in the stipulated amount, the record does not separately identify the amount of these past expenses, which apparently were not included in computing his total past expenses.

6 level in her cervical spine causing minor spinal cord displacement. The herniated cervical disc has caused problems with her right forearm and elbow pain and has impaired her ability to grip and grasp. The radiologist who diagnosed the herniated disc noted that correction of this problem usually requires surgery. Similarly, Dr. John Cobb of the Lafayette Bone and Joint Clinic examined Janis in March 1999, and concluded that cervical disc fusion surgery will be an option when Janis's pain becomes unmanageable. As of the time of trial, Janis was still attempting to manage her pain and had not undergone the cervical disc fusion.

Janis has also suffered from lower back problems with sciatic pain since the accident. However, despite the recommendation that she have an assessment of her lower back, Janis has not yet had that evaluation.

Janis also sustained two fractured teeth, including one broken to the point that it needed restoration, and luxation injuries to five teeth. A luxation injury results from the tooth being moved within its boney socket, which causes a compressing or moving of the tooth within its position in the mouth. Dr. T. Delton Moore, Janis's treating dentist, testified with regard to future treatment and stated that there was still some risk that the five teeth that suffered from a luxation injury will suffer nerve injury, requiring additional treatment. He further testified that the broken or fractured teeth could also need additional treatment in the future. Dr. Moore outlined the cost of such future treatment, with the total cost of future repairs being $3,575.00.

As a result of her numerous injuries, Janis has suffered from frequent, severe positional vertigo and migraine headaches since the accident. Dr. Lewis has prescribed anti-inflammatory medications for symptomatic treatment of her muscle pain, medication for vertigo, and muscle relaxers.

He testified that in his opinion, Janis would probably never completely recover from the vertigo and axial or spinal pain.

Although not entirely clear from the record, with regard to Janis's medical expenses, the parties stipulated at trial that she had incurred at least $5,433.15 in past medical expenses as of the time of trial. The jury awarded Janis $5,500.00 in past medical expenses and $120,000.00 in future medical expenses.

On review, we find the record supports the jury's obvious finding that Janis will need significant future medical care, even though no evidence was introduced as to the specific cost of such care, with the exception of the dental treatment. However, based on our review of the medical evidence and her past care and treatment, we are unable to say the jury's award of $120,000.00 for future medical expenses, including any orthopedic care, was excessive or an abuse of the jury's discretion. Based on our review of the record as a whole, and the stipulation as to Janis's past medical expenses, we agree with the trial court that a remittitur was not warranted with respect to this item of special damages. See Richard, 657 So. 2d at 1092-1093.

William (Bill) E. Johnson, II

Bill, who was sixteen years old at the time of the accident, was also transported to the St. Tammany Parish Hospital emergency room following the accident, with his most immediate injury being a severe laceration to the forehead that required 28 stitches to repair. Dr. Lewis reported that Bill would need cosmetic surgery to correct the large, rough scar on his forehead because of his early baldness. No evidence was presented as to the estimated cost of this surgery.

An MRI of the cervical spine revealed that Bill had sustained a large right lateral focal herniation at C3-4 with probable compromise of the right

C4 nerve root. As a result of this injury, Bill experienced tension along the side of the neck, decreased range of motion, and radiating pain across the shoulders.

Dr. Cobb, who examined Bill on March 22, 1999, discussed "definitively removing" the herniation with Bill. Dr. Cobb was concerned that because of the magnitude of the herniation and the fact that it was causing significant cord compression, Bill could develop "myelomalacia or an insidious onset of cord syndrome with myelopathy." Dr. Lewis, Bill's treating physician, opined that Bill will probably have more problems with his spine in the future. He noted that Bill was trying to postpone surgery as long as he could, but stated that, especially given Bill's young age, "he will certainly have to have surgery on that neck" in the future. Thus, the record clearly supports the conclusion that Bill will require long-term treatment and eventual surgery for his cervical injury.

With regard to Bill's medical expenses, the parties stipulated at trial that he had incurred $5,442.05 in past medical expenses through the time of trial.[12] The jury awarded Bill $6,000.00 in past medical expenses and $150,000.00 in future medical expenses.

Based on our review of the record as a whole and the stipulation as to Bill's past medical expenses, we are unable to find the jury abused its discretion in the amount awarded.

Yvonne Frederick

The record reveals that, as a result of the accident, Yvonne suffered multiple facial lacerations, a left clavicle fracture, fractures to two or three

[12]As with the medical expenses of William, Joint Exhibit 1 includes a notation that the medical expenses of "Dr. Robert Lewis, Catchings Clinic" with regard to Bill would be "forthcoming," indicating that these medical expenses likewise were not included in the stipulated amount.

ribs, and confusion from the injury. A CT scan of her head revealed that she also sustained a focal right parietal lobe contusion. Following the accident, Yvonne, who was sixty-four years old at the time of the accident, complained of short-term memory dysfunction, which did not resolve. She was diagnosed with pre-existing Alzheimer's Disease with aggravation of her short-term memory problem, causally related to the head trauma she suffered in the accident.

When questioned about whether such an aggravation of her short-term memory dysfunction would likely resolve in weeks or months after the accident, Dr. Srinivas, Yvonne's treating neurologist, testified that while a normal human brain could recuperate from injury, patients with Alzheimer's do not do very well. Thus, he explained that the idea that the patient would improve in six months or a year would not apply to an Alzheimer's patient.

At trial, Janis, Yvonne's daughter, testified that Yvonne began displaying memory problems immediately after the accident. Janis further testified that her mother's memory loss was significant immediately after the accident, and it continued to progress at a fairly fast pace for a few years thereafter. As of the time of trial, Yvonne had been bedridden since the summer and had severe memory loss. Janis testified that Yvonne now requires a sitter around the clock, at a cost of $10.00 per hour. The DOTD did not offer any evidence to rebut this testimony.

With regard to Yvonne's medical expenses, the parties stipulated at trial that she had incurred $7,241.99 in past medical expenses through the time of trial. The jury awarded Yvonne $7,500.00 in past medical expenses and $210,000.00 in future medical expenses. Given the medical testimony herein, the uncontradicted evidence regarding Yvonne's need for a sitter around the clock, and the testimony regarding the cost of such care, we are

unable to find an abuse of discretion in the jury's decision to award the sum of $210,000.00 for her continuing and future medical expenses.

Thus, these portions of the assignment lack merit.

CONCLUSION

For the above and foregoing reasons, the October 9, 2006 judgment of the trial court is amended to reduce the damages awarded to William O. Johnson from $140,000.00 (which was computed after a 30% reduction of his entire $200,000.00 damage award to account for the comparative fault of Joelle Grasso) to $119,000.00 (based on a 30% reduction of the amended damage award of $170,000.00). In all other respects, the judgment is affirmed. Costs of appeal in the amount of $1,338.63 are assessed against the DOTD.

AMENDED AND, AS AMENDED, AFFIRMED.