

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1756

JEFFREY STREVA AND NICOLE D. STREVA

VERSUS

BRADY O'CALLAGHAN, ECONOMY PREMIER ASSURANCE
COMPANY AND LOUISIANA FARM BUREAU CASUALTY
INSURANCE COMPANY

DATE OF JUDGMENT: June 8, 2007

ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
(NUMBER 79,095 DIV. E), PARISH OF ASCENSION
STATE OF LOUISIANA

HONORABLE ALVIN TURNER, JUDGE

Lloyd A. Capello, Jr.
Gonzales, Louisiana

Counsel for Plaintiffs/Appellees
Jeffrey and Nicole Streva

Kimberly E. Tracey
Dennis J. Phayer
Metairie, Louisiana

Counsel for Defendants/Appellants
Brady O'Callaghan and Economy
Premier Assurance Company

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: AFFIRMED.

Kuhn, J.

This appeal arises from a personal injury suit involving an automobile collision. On November 25, 2003, Jeffrey Streva's vehicle was struck in the rear by Brady O'Callaghan's vehicle. Mr. Streva allegedly sustained injury due to the collision, and he and his wife, Nicole Streva, filed suit against O'Callaghan and his liability insurer, Economy Premier Assurance Company ("Economy").¹ After a bench trial on April 21, 2006, the trial court, in oral reasons for judgment concluded:

The court after reviewing the deposition [of one of the physical therapists that treated plaintiff after the accident] and considering the medical testimony [of plaintiff's treating physician] and also considering the testimony of the plaintiff, the court will note that the plaintiff was quite credible in his testimony as to how the accident happened and the pain that he sustained and the duration of the pain as a result of this accident.

In that the parties have already stipulated to liability, the court finds the defendant 100 percent liable for this accident; and in regards to the damages for pain and suffering, the court finds that the plaintiff has suffered a 10-month injury being from November 2003 through September 2004, the first five months of treatment and the court's award for pain and suffering, the amount will be for \$2,500 for the first five months.

The next four months which will be from May to August, the Court will award the plaintiff the sum of \$1,500 per month and for the last month that being September, the court will award the defendant the sum of \$750 plus the medical specials that have been stipulated to and in addition the \$300 deposition fee.

Thereafter, the trial court signed a judgment, ordering defendants, O'Callaghan and Economy, to pay general damages to Mr. Streva in the amount of \$19,250, plus special damages in the amount of \$2,917.00, plus legal interest from

¹ Prior to trial, the Strevas dismissed a claim against their insurer, Louisiana Farm Bureau Casualty Insurance Company. Also, during the trial, Mr. Streva testified that Mrs. Streva was not present and that she was dismissing her loss of consortium claim.

date of judicial demand until paid. Further, the judgment ordered Economy to pay all costs of the trial court proceedings.² Defendants have appealed, asserting that the trial court's general damage award of \$19,250.00 is excessive for "a three month soft tissue injury."

After reviewing the record in its entirety, we find no manifest error in the trial court's determinations that the November 2003 accident caused Mr. Streva's neck injury and that he suffered pain resulting from that injury for approximately ten months. Mr. Streva's testimony chronicles the emergence of his symptoms within a couple of days after the accident, the medical treatment that followed within the next ten months, and the limitations on his activities resulting from his neck pain. Although Mr. Streva described that his neck pain increased when he engaged in physical activity, particularly yard work, he also explained that his pain never completely went away during the ten months following the accident. He described his pain as "moderate" throughout the first several months of the 10-month period in question.

Mr. Streva's treating physician, Dr. Benoit Hu, prescribed pain medications, muscle relaxers, and two rounds of physical therapy. Upon completion of his second round of physical therapy in mid-July 2004, Mr. Streva described his pain as "low to moderate" and "bearable," and Mr. Streva indicated he was finally "pain free" in September 2004. Mr. Streva also testified that he was not involved in any other accidents and that he had not sustained any other injuries during the 10-month period in question.

² The trial court's April 28, 2006 judgment failed to name the defendant against whom the judgment was rendered. In response to this court's April 30, 2007 show cause order, the trial court signed a May 3, 2007 judgment that cast both defendants in judgment.

Dr. Hu first treated Mr. Streva in December 2003 for persistent soreness in his neck, and Dr. Hu diagnosed cervical sprain, which he attributed to the November 2003 automobile accident. According to Dr. Hu, Mr. Streva reported intermittent pain in January 2004. In April 2004, Mr. Streva reported right-sided neck pain and a dull constant pain that was worse with activity. Mr. Streva also mentioned that he had performed yard work the previous weekend, and Dr. Hu determined that Mr. Streva's neck pain had been exacerbated by the yard work. Dr. Hu stated he found Mr. Streva's complaints of pain were credible, and he did not think that Mr. Streva was a malingerer.

During trial when Dr. Hu was questioned regarding the cause of Mr. Streva's continuing pain, Dr. Hu acknowledged that although the car accident probably caused the pain experienced in January and February, it was difficult to determine what percentage of his subsequent neck pain was attributable to the car accident versus Mr. Streva's physical activity. Dr. Hu further testified as follows:

I can't say ... his pain was definitely was or wasn't caused from the car accident. I think definitely in January and February ... it was probably from the most acute ... the most recent thing, the car accident, but, you know, the yard work or increase in yard work ..., I don't know if that – I mean, based on his testimony he's saying that he's been having pain all the way through, so I don't know....

Dr. Hu ultimately acknowledged that Mr. Streva was probably in the best position to testify regarding what caused his pain.

Accordingly, we find the trial court's factual findings regarding causation are supported by the record and are not manifestly erroneous. Further, the record also supports the amount awarded for general damages; we find no abuse of discretion in the award. Accordingly, we affirm the trial court's May 3, 2007

judgment pursuant to Uniform Court of Appeal Rule 2-16.1.B. The appeal costs are assessed against defendants-appellants.

AFFIRMED.