NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 0573

TERRI SHOATS

VERSUS

BEN MCKENZIE, WASHINGTON-ST. TAMMANY ELECTRIC COOPERATIVE, INC. AND FEDERATED RURAL ELECTRIC INSURANCE EXCHANGE

Judgment Rendered: November 9, 2011

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Appealed from the
Twenty-second Judicial District Court
In and for the Parish of Washington
State of Louisiana
Docket Number 98,693

The Honorable William J. Burris, Judge Presiding

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

WHIPPLE, J.

This matter is before us on appeal by plaintiff, Terri Shoats, from a judgment of the trial court rendered in conformity with a jury's verdict. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On September 17, 2008, at approximately 2:30 p.m., plaintiff was traveling north on Lee Road near Franklinton, Louisiana, to pick up her children from Enon Elementary School, when she turned right onto Highway 16 to stop at a local convenience store. Plaintiff turned her blinker on at Highway 16 to signal her turn into the store parking lot. However, she encountered a large Washington-St. Tammany Electric Cooperative (hereinafter "WST") white auger truck, bearing a WST emblem and pulling a trailer with a long pole on the trailer, facing Highway 16. At the pertinent time, Ben McKenzie, an employee of WST and the driver of the truck, was using his cell phone with a passenger in the front seat with him. Because the truck, trailer, and pole were blocking the parking spots at the store, plaintiff was unable to immediately park. Thus, she stopped her vehicle twenty to twenty-five feet away from the truck and waited for McKenzie to pull out onto the highway so that she could then pull into one of the parking spots the WST rig had blocked.

Defendant's truck began to pull out onto Highway 16, and within an instant, the driver's side window of plaintiff's vehicle exploded as the pole carried in the WST truck crashed through it. As the pole entered her car, plaintiff was forced to quickly move to the right in her vehicle to get away from the pole. However, splinters from the pole scratched her face and neck and, as a result of the impact, she was sprayed with glass from the window. Plaintiff carefully exited he car as she was covered in glass. However, the WST truck continued down Highway 16 toward Franklinton.

After the accident, plaintiff was treated in the emergency room at Riverside Medical Center for minor cuts on her arms and legs, as well as removal of glass shards from her ear. She was given a prescription for non-narcotic medication for her nerves and muscle relaxers for muscle strain resulting from her having to violently jerk away from the explosion of the glass. Thereafter, plaintiff began treatment with a chiropractor, a clinical psychologist, and a psychiatrist for conditions she contended were causally related to the accident.

On March 5, 2009, she filed the instant suit for damages naming Ben McKenzie, WST, and their insurer, Federated Rural Electric Insurance Exchange, as defendants. After a three-day jury trial on August 16, 17, and 18, 2010, the jury returned a verdict in her favor on liability, finding that Ben McKenzie and WST were 100% at fault in causing the accident. Although the jury found that plaintiff was negligent, the jury also expressly found that her negligence was not a legal cause of the accident. Instead, the jury also found that the negligence of Ben McKenzie and his employer, WST, was the legal cause of the accident.[1] The jury also found that plaintiff had sustained injuries as a result of the accident and awarded damages, as follows:

Past, present and future physical pain and suffering	$ 750.00
Past, present and future mental pain and suffering	$ 3,000.00
Past medical expenses	$ 8,473.76
Future medical expenses	$ 3,000.00
Loss of enjoyment of life	$ 0.00

[1]When the jury returned its initial verdict, the court immediately noted and advised the parties that the jury verdict was internally inconsistent. Specifically, after finding that plaintiff was negligent, but that her negligence was not a legal cause, the jury nonetheless included a figure of (15%) as her fault when expressing on the jury form the total degree of fault attributable for the accident. After recharging the jury, the jury returned the verdict at issue on appeal, which did not alter any of the quantum awarded, but found that defendants were 100% at fault for the accident. Notably, none of the parties expressed any objection to the procedure used by the trial court to resolve the obvious inconsistency in the initial verdict form regarding liability and fault.

A judgment in accordance with the jury verdict was rendered in favor of plaintiff on August 18, 2010, ordering defendants to pay unto plaintiff a total of $15,223.76 in damages, plus interest and court costs. Plaintiff then filed alternate motions for JNOV, new trial, and additur on the issue of damages, which were denied by the trial court on January 3, 2011. This appeal followed.

On appeal, plaintiff assigns the following as error:

1. The quantum awarded in general damages for Plaintiff's physical injuries is contrary to the law and evidence;

2. The quantum awarded in general damages for Plaintiff's mental injuries is contrary to the law and evidence;

3. The quantum awarded for Plaintiff's enumerated special damages is contrary to the law and evidence;

4. The Trial Court committed reversible legal error in failing to grant a JNOV on damages.

REVIEW OF THE JURY'S DAMAGE AWARDS
(Assignments of Error Numbers One, Two, and Three)

In these related assignments of error, plaintiff contends that the amounts awarded as general damages for plaintiff's past and future physical and mental injuries, as well as the amounts awarded for plaintiff's enumerated special damages are contrary to the law and evidence presented at trial. Specifically, plaintiff contends that the jury abused its discretion by awarding inadequate general damages for these claims and by awarding an inadequate amount for her documented past medical expenses. With regard to her claim for medical expenses, plaintiff contends that the jury erred in reducing her past medical expenses to $8,473.76 where: (1) she incurred $11,436.81 in past medical expenses; (2) the jury specifically found that her negligence was not a legal cause of the accident; and (3) all medical experts agreed that plaintiff's recurrence of post traumatic stress disorder (PTSD) was triggered by the pole truck accident.

Plaintiff further contends that the jury committed legal error overall when it raised the fault allocation of McKenzie and WST from 85% to 100%, yet failed to raise the various verdict damage awards by an additional 15%. Otherwise stated, plaintiff argues that although the jury in its subsequent verdict assessed 100% fault for the accident to the defendants, the jury failed or refused to adjust the original quantum awards after reassessment of fault. Plaintiff further contends that the jury committed clear legal error in failing to award any damages whatsoever for her demonstrated loss of enjoyment of life. As such, plaintiff contends that these alleged errors by the jury constitute legal error warranting a *de novo* assessment of **all** of the general and special damages she claims.

At the outset, we reject plaintiff's contention that the jury's findings and awards for plaintiff's quantum of damages were interdicted by the jury's ultimate assessment of fault, and, thus, mandate *de novo* review herein. Plaintiff has provided no legal support, nor do we find any, for her contention that this recalculation of fault by the jury after further deliberation automatically required that the jury alter its findings and awards for quantum. Nor do we find that the jury's failure to do so *ab initio* renders its ultimate verdict on quantum improper. It is well-settled that a judge or jury is given great discretion in its assessment of quantum, as to both general and special damages. Guillory v. Lee, 2009-0075 (La. 6/26/09), 16 So. 3d 1104, 1116. As set forth in LSA-C.C. article 2324.1: "In the assessment of damages in cases of offenses, quasi offenses, and quasi contracts, much discretion must be left to the judge or jury." The assessment of quantum, or the appropriate amount of damages, by a jury is a determination of fact entitled to great deference on review. Wainwright v. Fontenot, 2000-0492 (La. 10/17/00), 774 So. 2d 70, 74. Furthermore, in the absence of manifest error, credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and

inferences are as reasonable. Rosell v. ESCO, 549 So. 2d 840, 844 (La. 1989). Thus, we conclude that our review of the jury's failure to award damages for loss of enjoyment of life is not subject to *de novo* review. Likewise, our review of the amounts awarded by the jury herein for general and special damages is subject to the "abuse of discretion" standard of review, rather than the "legal error" standard of review. See Leighow v. Crump, 2006-0642 (La. App. 1st Cir. 3/23/07), 960 So. 2d 122, 128-129, writs denied, 2007-1195 & 1218 (La. 9/21/07), 964 So. 2d 337, 341; Harris v. Delta Development Partnership, 2007-2418 (La. App. 1st Cir. 8/21/08), 994 So. 2d 69, 82-83 (quoting Coco v. Winston Industries, Inc., 341 So. 2d 332, 335 (La. 1976)).

Past and Future Physical Pain and Suffering
(Assignment of Error Number One)

Plaintiff first asserts that the jury erred in awarding plaintiff $750.00 for her past, present, and future physical pain and suffering. Specifically, plaintiff contends that this award is abusively low given that plaintiff was treated by Dr. Fred Miller, a chiropractor in Mandeville, Louisiana, for approximately three months for headaches, neck and back pain, and a constant "crick" in her neck that she contends started after the accident herein. In response, defendants counter that plaintiff's credibility regarding the nature, duration, and extent of all of her injuries, including the pain and suffering she attributed to this accident, was directly at issue at trial. Defendants contend that the jury was entitled to and, in fact, properly rejected plaintiff's testimony regarding her physical pain and suffering given that she was less than honest with Dr. Miller about having prior neck injuries.

The record reflects that Dr. Miller treated plaintiff for approximately three months, commencing October 23, 2008. Dr. Miller noted that upon physical examination plaintiff had visible muscle spasm and splinting through the mid-

thoracic level, as well as swelling and spasm on her neck, which was painful to the touch. Dr. Miller felt that plaintiff exhibited objective symptoms of injury that could not be manufactured or feigned. He diagnosed plaintiff's condition as cervical, thoracic, and sterna sprains, and a non-allopathic lesion of the lumbar spine.

However, as defendants note, at trial, when asked in front of the jury if she had experienced any prior neck problems before this accident, plaintiff answered "No." Plaintiff was then confronted with her medical records from a visit to the Veteran's Administration (VA) on June 4, 2008, three months before the instant accident, at which she reported to Dr. Roy Marrero that her neck had been injured in another motor vehicle accident and subsequently reinjured in a 2004 fall. When confronted with this documentary evidence of her prior injuries, plaintiff then admitted to the jury that on June 4, 2008, she had complaints of neck pain which according to Dr. Marrero's medical notes were getting progressively worse at that time. Thus, defendants argue, when presented with plaintiff's own testimony and medical records, which showed that plaintiff had been experiencing neck pain prior to the instant accident, the jury rejected her testimony regarding the extent and duration of her past and future physical pain and suffering arising from this accident as incredible and unworthy of belief.

As further support for the amount awarded by the jury, defendants point out that plaintiff failed to advise Dr. Miller about being involved in a car accident in 2006, which resulted in a back injury; being involved in a car accident in 2007, which resulted in frequent and severe headaches and back pain; that she fell nine feet from an attic and was diagnosed with neck strain in 2005; and that she had been in a car accident in the early 1990s. Although Dr. Miller felt plaintiff was honest and credible in her complaints during his treatment of her, the jury obviously was aware of the conflicts between plaintiff's testimony and the

medical records documenting that she had injuries and complaints prior to this accident.

As set forth above, a jury is given great discretion in making its factual determinations and assessments of quantum. As noted by the Louisiana Supreme Court in Perkins v. Entergy Corporation, 2000-1372 (La. 3/23/01), 782 So. 2d 606, 612-613, (quoting Canter v. Koehring Company, 283 So. 2d 716, 724 (La. 1973):

> [T]he reviewing court must give great weight to factual conclusions of the trier of fact; where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. The reason for this well-settled principle of review is based not only upon the trial court's better capacity to evaluate live witnesses (as compared with the appellate court's access only to a cold record), but also upon the proper allocation of trial and appellate functions between the respective courts.

Further, as cautioned by the Supreme Court, because the discretion vested in the trier of fact is so "great," even vast, an appellate court should rarely disturb an award of general damages on review. Youn v. Maritime Overseas Corporation, 623 So. 2d 1257, 1261 (La. 1993), cert. denied, 510 U.S. 1114, 114 S. Ct. 1059, 127 L.Ed.2d 379 (1994).

Herein, the jury was faced with two permissible views of the evidence concerning the origin of plaintiff's neck pain, as well as the duration and extent of her past, present and future physical pain and suffering. Considering the record before us, we are unable to say the jury was manifestly erroneous or clearly wrong in rejecting plaintiff's claims in this regard. See Rosell v. ESCO, 549 So. 2d at 844 and Perkins v. Entergy Corporation, 782 So. 2d at 612. Moreover, considering the evidence of record, we find no abuse of discretion by the jury in the amount awarded as quantum for this claim, which we are unable to say was abusively low. Youn, 623 So. 2d at 1261.

This assignment of error lacks merit.

Past and Future Mental Pain and Suffering
(Assignment of Error Number Two)

Plaintiff next contends that the jury's award of $3,000.00 for past, present, and future mental pain and suffering was abusively low where the accident herein caused plaintiff to suffer a recurrence of PTSD and major depressive disorder (MDD).

At trial, plaintiff contended that a couple of months after the accident, she began having trouble sleeping, became short-tempered, and eventually became withdrawn. Plaintiff, a retired National Guard Staff Sergeant with twenty years of service, contended that as a result of the accident, she began to suffer from a recurrence of her prior PTSD and MDD, conditions which she had developed and been diagnosed with after her national guard service during the aftermath of Hurricane Katrina.[2]

The parties do not dispute that plaintiff was diagnosed with PTSD in connection with her national guard service prior to this accident. However, plaintiff contended at trial that all of her symptoms of PTSD and MDD were resolved several months before the instant accident and that she was not being treated for or taking medication for either condition when the accident occurred. Thus, she contends the jury's award for her past, present, and future mental pain and suffering was abusively low.

The record reflects that in June of 2009 plaintiff sought treatment with Dr. John Robert Russell, a clinical psychologist at the VA in Hammond, Louisiana for

[2]According to plaintiff, in addition to the personal losses she and her family sustained as a result of the storm, she was called to active duty and ordered to secure and retrieve weapons at Jackson Barracks three days after the storm. In doing so, plaintiff and her fellow guardsmen traveled on two-and-a-half-ton trucks through New Orleans, crossed the St. Claude Avenue Bridge, and descended into the Ninth Ward, which was flooded. Plaintiff described witnessing horrific scenes while attempting to complete her mission. Plaintiff explained that she was greatly affected by these events, as she and her fellow guardsmen were forced to ignore pleas for help by civilians while completing their mission and orders to first secure the weapons at Jackson Barracks.

increased anxiety and depression, which she felt were similar to the symptoms and episodes she had experienced when earlier diagnosed with PTSD and MDD. However, due to the VA's limited resources, plaintiff sought treatment with Dr. John MacGregor, a psychiatrist in Mandeville, Louisiana, who likewise concluded that she was suffering from PTSD and MDD. Dr. MacGregor set up a treatment plan to address plaintiff's problems, which included a prescription of 10 milligrams of Lexapro three times a day. Although plaintiff experienced improvement with her MDD symptoms as a result of the medication, she began to cancel therapy appointments, which she claimed was the result of her becoming increasingly afraid to leave her home. Dr. MacGregor felt that her symptoms indicated she was developing agoraphobia, wherein she experienced panic attacks when she left her home. Dr. MacGregor believed that she was credible in her complaints and was not malingering. He also felt that based on plaintiff's symptoms and history, the therapy she was receiving was not sufficient to relieve her symptoms entirely, given her panic attacks and agoraphobia.

Dr. Kevin Bianchini, a psychologist and neuropsychologist, conducted an independent medical examination of plaintiff at the request of defendants. After evaluating plaintiff, Dr. Bianchini felt that she had a recurrence of her pre-existing PTSD that was exacerbated by the accident herein. Based on his examination, he felt she was exhibiting some PTSD symptoms relating directly from the accident with the WST truck. Dr. Bianchini did not diagnose plaintiff as having MDD at the time of his evaluation, noting that plaintiff was already on medication for MDD that had improved her symptoms. Dr. Bianchini felt that plaintiff was being truthful and did not exaggerate her symptoms on his psychological testing.

However, at trial, when asked by defense counsel whether she had been treated for depression prior to Hurricane Katrina, plaintiff denied having been treated for such. Defense counsel then produced plaintiff's medical records,

which he questioned her about and which established that in June of 2004, she was diagnosed with depression and anxiety and prescribed Prozac. According to the medical records, plaintiff returned for a follow-up visit in July of 2004 and was again prescribed Prozac; she was noted as taking Prozac for depression on a visit in September of 2004; and she returned for refills of Prozac in January of 2005. When confronted with her medical records, plaintiff testified that she did not agree with the assessment that had been made, that the assessment had been made at the Coast Guard Clinic and that it was not made by a psychologist or psychiatrist. She contended that she was required to attend follow-up visits and to pick up the refills or she would have been reprimanded by her commander. She also denied taking the Prozac.

Dr. MacGregor began treating plaintiff in July of 2009, approximately ten months after the instant accident. Although he determined that her PTSD was partially a recurrence of her prior PTSD and was precipitated by the accident, to form two episodes which he felt were now "trapped together," the record reflects that plaintiff also received psychological treatment after a hysterectomy in 2001 and after a family member committed suicide in the early 1990s.

Moreover, cross examination of Dr. MacGregor revealed that he was not aware of plaintiff's June 2004 diagnosis of depression and anxiety or that plaintiff was prescribed Prozac for treatment of her symptoms. Dr. MacGregor further testified that he was also not aware that plaintiff's medical records reflected that she returned for a follow-up visit in July of 2004 and was again prescribed Prozac; that she was taking Prozac for depression on a visit in September of 2004; and that she returned for refills of Prozac in January of 2005. When confronted with these records reflecting her prior treatment, Dr. MacGregor nonetheless maintained that he found that plaintiff was credible, explaining that patients

frequently forget things from their history and that he rarely receives a complete, succinct history from any patient.

Plaintiff's medical records further establish that she reported to the VA for a thirty-minute psychotherapy session eight months after the accident herein on June 1, 2009, and was seen by Mya Thornburgh, LCSW. Plaintiff was noted as suffering from stress and revealed that she was a national guard veteran who was a first responder in New Orleans after Hurricane Katrina. During the session, she reported intrusive distressing thoughts about what she had seen and was diagnosed with "adjustment disorder" with the recommendation that she continue to follow up with individual psychotherapy. Notably, there is no mention of the instant accident or any acceleration of her condition related thereto in the medical notes from this visit.

Plaintiff was next seen at the VA on June 24, 2009, by James T. Russell, Ph.D. During this visit, plaintiff gave a lengthy narrative about her national guard service after Katrina, and the losses she and her immediate family sustained as a result of the storm. Again, the medical records from plaintiff's visit with Dr. Russell contain no mention of the accident herein involving defendants. Dr. Russell diagnosed plaintiff with a full range of PTSD and MDD symptoms and recommended she continue treatment.

On appeal, plaintiff contends that given the overall testimony noted above, the jury erred in failing to render a proper award for her past and future mental pain and suffering, which plaintiff contends was shown to be directly and causally related to the accident. Thus, plaintiff argues, the jury's award of only $3,000.00 for her mental pain and suffering is abusively low. We disagree. As the trier of fact, the jury was charged with assessing the credibility of witnesses and, in doing so, was free to accept or reject, in whole or in part, the testimony of any witness, including the opinions expressed by an expert. As with all other admissible

evidence, expert testimony is subject to being tested by "vigorous cross examination, presentation of contrary evidence, and careful instruction on the burden of proof." Breitenbach v. Stroud, 2006-0918 (La. App. 1st Cir. 2/9/07), 959 So. 2d 926, 936.

Plaintiff argues that her testimony coupled with the experts' testimony establishes that she sustained serious mental injuries as a result of the accident. However, we find on review that the testimony set forth above provided a reasonable basis for the jury to doubt plaintiff's credibility, where plaintiff related her psychological symptoms solely to her service experiences post Katrina when receiving treatment from the VA, yet related her recurrence of PTSD and MDD symptoms to the truck accident when seen by Drs. MacGregor and Bianchini in relation to this litigation. Based upon its weighing of the evidence and credibility determinations, the jury reasonably could have concluded that plaintiff's complaints, including the effect of her agoraphobia, were either exaggerated or not fully related to the accident. Thus, on review, we find no abuse of discretion in the amount awarded by the jury for her past and future mental suffering, given the evidence presented at trial.

This assignment of error also lacks merit.

Special Damages
(Assignment of Error Number Three)

In this assignment of error, plaintiff contends "[t]here was no legitimate reason for the jury to reduce [plaintiff's] past medical expenses to $8,473.76 . . . [from] $11,436.81 . . . because the jury did not find the negligence of [plaintiff] to be a legal cause of this accident." Plaintiff contends that the jury erroneously awarded only 74% of her medical bills and that in doing so, the jury "would have had to ignore all of the expert medical evidence to reach this result." Thus, plaintiff argues, the jury committed legal error when it reassessed 100% fault for

the accident to the defendants, but failed to adjust the award for medical expenses after reassessment.

Generally, special damages have a "ready market value," such that the amount of damages, theoretically may be determined with relative certainty, including medical expenses. Guillory v. Lee, 16 So. 3d at 1117. However, when reviewing a jury's factual conclusions with regard to special damages, including the jury's decision to award an amount less than the medical expenses claimed by a plaintiff, an appellate court must satisfy a two-step process based on the record as a whole: first, there must be no reasonable factual basis for the fact finder's conclusions, and second, the finding must be clearly wrong. Kaiser v. Hardin, 2006-2092 (La. 4/11/07), 953 So. 2d 802, 810 (per curiam).

When determining the appropriate award for past and future medical expenses attributable to this accident, the jury clearly rejected plaintiff's claim that the medical expenses she incurred were wholly related to this accident. In doing so, the jury obviously considered the conflicts in the testimony, including the conflicts between plaintiff's trial testimony and her documented medical history. Considering the record in its entirety, we are unable to say the jury abused its discretion in rendering its awards for past and future medical expenses.

Although plaintiff claimed at trial that she would require extensive medical treatment in the future for her mental condition resulting from the accident, we again note that the jury obviously discounted her testimony in this regard. While plaintiff contends that the award was abusively low given her increasing mental problems and agoraphobia, and claimed that she was only able to leave her home once or twice a week, the jury also heard testimony that plaintiff was able to leave her home in Franklinton, drive to Baton Rouge, transport a friend to a deposition in Covington, and then return her to her home in Baton Rouge. Moreover, the jury also heard testimony that plaintiff

previously suffered from PTSD and MDD after her active duty post Katrina and that her recurrence could have been a spontaneous recurrence. Thus, the record before us provides a reasonable evidentiary basis for the jury to have concluded that plaintiff did not suffer from agoraphobia to the extent claimed, and that her claims for past and future medical expenses included amounts for treatment or symptoms not casually related to the accident herein. Accordingly, we find no error in the jury's determinations and reject this assignment of error as meritless. See Rosell v. ESCO, 549 So. 2d at 844 and Perkins v. Entergy Corporation, 782 So. 2d at 612-613.[3]

Judgment Notwithstanding the Verdict
(Assignment of Error Number Four)

In her fourth assignment of error, plaintiff contends that the trial court erred in denying her motion for judgment notwithstanding the verdict on damages. Louisiana Code of Civil Procedure article 1811 provides the authority for a JNOV. In Davis v. Wal-Mart Stores, Inc., 2000-0445 (La. 11/28/00), 774 So. 2d 84, 89, the Louisiana Supreme Court discussed the standard to be used in determining whether a JNOV is proper, noting as follows:

> A JNOV is warranted when the facts and inferences point so strongly and overwhelmingly in favor of one party that the court believes that reasonable jurors could not arrive at a contrary verdict. The motion should be granted only when the evidence points so strongly in favor of the moving party that reasonable men could not reach different conclusions, not merely when there is a preponderance of evidence for the mover. If there is evidence opposed to the motion which is of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions, the motion should be denied. In making this determination, the court should not evaluate the credibility of the witnesses and all reasonable inferences or factual questions should be resolved in favor of the non-moving party.

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[3]For the same reasons, we find no manifest error in the jury's determination that plaintiff failed to establish that she suffered a compensable loss of enjoyment of life attributable to the accident.

The standard of review for a JNOV on appeal is a two-part inquiry. On review, the appellate court must first determine if the trial court erred in granting or refusing to grant JNOV. Junot v. Morgan, 2001-0237 (La. App. 1st Cir. 2/20/02), 818 So. 2d 152, 157. This determination is made on appeal by using the same criteria the trial court applies in deciding whether or not to grant the motion. Thus, the issue to be resolved on appeal is whether the facts and inferences point so strongly and overwhelmingly in favor of the moving party that reasonable persons could not arrive at a contrary verdict. Junot v. Morgan, 818 So. 2d at 157. If the answer to that question is in the affirmative, then the granting of JNOV was warranted. If, however, reasonable persons in the exercise of impartial judgment might reach a different conclusion, then the trial court correctly denied the motion. Joseph v. Broussard Rice Mill, Inc., 2000-0628 (La. 10/30/00), 772 So. 2d 94, 99. Thus, if the record demonstrates that the trial court applied the correct standard of review to the jury verdict, the appellate court reviews the JNOV using the manifest error standard of review. Davis v. Wal-Mart Stores, Inc., 774 So. 2d at 89.

Applying these precepts, we find no error in the trial court's denial of plaintiff's motion for JNOV. On the record before us, we are unable to say that the facts and inferences point so strongly and overwhelmingly in favor of plaintiff that reasonable persons could not arrive at a contrary verdict. In particular, given the inconsistencies in plaintiff's testimony and the medical records introduced into evidence, the jury was obviously faced with conflicting testimony and credibility issues, which the jury resolved, in part, in plaintiff's favor. Stated differently, given the record before us, we are unable to say that reasonable and fair-minded jurors in the exercise of impartial judgment could only reach the conclusions urged by plaintiff in support of her request for JNOV. As noted above, in making the determination as to whether JNOV

should be granted, the appellate court is not empowered to make credibility determinations. Accordingly, we find no error in the trial court's denial of plaintiff's motion for JNOV.

This assignment of error lacks merit.

CONCLUSION

For the above and foregoing reasons, the August 18, 2010 judgment of the trial court, rendered in accordance with the jury's verdict, is affirmed. The January 3, 2011 judgment of the trial court, denying plaintiff's motion for JNOV and new trial, is also affirmed. Costs of this appeal are assessed against plaintiff/appellant, Terri Shoats.

AFFIRMED.