STATE OF MICHIGAN

COURT OF APPEALS

JEAN BAUMGARD, Plaintiff-Appellant,	UNPUBLISHED March 24, 2009
v	No. 281589 Genesee Circuit Court
FARMERS INSURANCE EXCHANGE, Defendant-Appellee.	LC No. 06-083472-NI

Before: Saad, C.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Plaintiff, Jean Baumgard, appeals from a judgment of no cause of action entered by the trial court after a jury verdict in favor of defendant, Farmers Insurance Exchange. At issue is plaintiff's claim that defendant wrongfully declined to pay no-fault insurance benefits for a stem cell transplant plaintiff received in Beijing, China. For the reasons set forth below, we affirm.

Plaintiff makes various claims of error in her appeal brief, without supporting argument, including that the jury's verdict was against the great weight of the evidence, that she is entitled to relief from judgment, and that the jury erred by failing to find that the expenses associated with the stem cell surgery were reasonably necessary under MCL 500.3107(1)(a). Plaintiff did not move for a new trial in the trial court and did not file a motion for relief from judgment under MCR 2.612(C). We read plaintiff's arguments together as an assertion that the verdict was against the great weight of the evidence, and will review her claims under the plain error doctrine. *Kloian v Schwartz*, 272 Mich App 232; 725 NW2d 671 (2006).

The no-fault statute at issue, MCL 500.3107(1)(a) provides, in pertinent part, as follows:

> (1) Except as provided in subsection (2), personal protection insurance benefits are payable for the following:
>
> (a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation. . . .

"To be reimbursed for an 'allowable expense' under MCL 500.3107(1)(a), a plaintiff bears the burden of proving that (1) the charge for the service was reasonable, (2) the expense was reasonably necessary and (3) the expense was incurred." *Williams v AAA Michigan*, 250 Mich

App 249, 258; 646 NW2d 476 (2002). Consistent with the statutory requirements, the trial court asked the jury to answer the following question: "Was the procedure that the Plaintiff underwent on April 24, 2006 in Beijing China a reasonably necessary product, service and or accommodations [sic] for the Plaintiff's care, recovery and rehabilitation[?]" The jury answered "NO," and the court entered judgment in favor of defendant.

Plaintiff appears to argue that the stem cell surgery was authorized or she reasonably believed the surgery was authorized and, therefore, the surgery should have been an allowable expense for a reasonably necessary service. In support of her argument, plaintiff points out that Farmers paid for rehabilitation she received as a precondition for the stem cell surgery and Farmers failed to respond after she provided Farmers with a letter from her treating physician. However, before Farmers received this letter, Farmers had specifically informed plaintiff that it was not its "practice to preauthorize or pre-guarantee payment for any treatments," and that it did "not view the surgery as an appropriate allowable expense under MCL 500.3107." Clearly, evidence established that defendant had not preauthorized the stem cell treatment. Further, in light of its stated policy and its assertion with regard to the specific surgery at issue, it would not have been reasonable for plaintiff to presume Farmer's consent to this experimental surgery in Beijing.

Plaintiff also maintains that the jury should have found that the stem cell surgery is reasonably necessary based on Dr. Steven Hinderer's testimony. "[T]he question whether expenses are reasonable and reasonably necessary is generally one of fact for the jury." *Nasser v Auto Club Ins Ass'n*, 435 Mich 33, 55; 457 NW2d 637 (1990). "When a party claims that a jury verdict is against the great weight of the evidence, this Court may overturn the verdict only when it is manifestly against the clear weight of the evidence." *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 498; 668 NW2d 402 (2003).

Dr. Hinderer testified that he did not recommend the procedure to plaintiff; rather he only stated that it was "understandable" and that he has "chosen to support individuals who make" the decision to have the stem cell surgery. "I just support whatever they choose to do," he continued. In a letter sent to Farmers, Dr. Hinderer indicated that the benefits of the "experimental" stem cell surgery are "unknown." He also stated that plaintiff was hopeful that the procedure would provide "additional neurologic recovery," but he did not similarly state that he also had such a belief. When asked whether he viewed this type of stem cell surgery as being part of an overall treatment regimen at his institute, Dr. Hinderer stated that his facility is nonjudgmental and supports its patients even "where traditional medicine might dictate that the decision . . . would not be advisable." When asked if the stem cell surgery was "a reasonable form of treatment," Dr. Hinderer responded that it "is theoretically a reasonable approach." However, when asked whether he would advise a patient to undergo a procedure deemed necessary for their "care or recovery," Dr. Hinderer said that he would, but acknowledged that he had not advised plaintiff to have the stem cell surgery.

This evidence does not reflect a reasoned medical opinion based on the potential health benefit of a given medical procedure. Rather, Dr. Hinderer's statements show that he, understandably, provided emotional support to his patient in the decisions that she made regarding her own treatment. Considering the testimonial and documentary evidence and, again, that reasonableness and necessity issues are questions of fact left to the jury, see *Spect Imaging Inc v Allstate Ins Co*, 246 Mich App 568, 575; 633 NW2d 461 (2001), it was not against the

great weight of the evidence for the jury to find that the stem cell surgery was not "a reasonably necessary product, service and/or accommodation[]" for "[p]laintiff's care, recovery or rehabilitation."[1] Accordingly, plaintiff has shown no error requiring reversal.

Plaintiff makes a cursory assertion that the jury was not permitted to hear certain unspecified evidence and she asserts, without supporting argument, that the court mishandled the jury's indication that it could not reach a verdict. Plaintiff has abandoned these issues for failure to provide supporting argument and authority. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Moreover, the record clearly reveals that plaintiff specifically agreed with the process by which the court addressed the jury's initial inability to reach a verdict. *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002). See also *Grant v AAA Michigan/Wisconsin, Inc* (*On Remand*), 272 Mich App 142, 148; 724 NW2d 498 (2006) ("A party who expressly agrees with an issue in the trial court cannot then take a contrary position on appeal."). Therefore, we reject plaintiff's request to overturn the jury verdict.[2]

Affirmed.

/s/ Henry William Saad
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra

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[1] The evidence adduced does not "preponderate[] heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998).

[2] Though we uphold the jury's verdict for the reasons stated in our opinion, we recognize that patients in rehabilitation will quite understandably try experimental methods in a courageous search for improvement in their condition.