

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

EVELYN WILSON,	:	NO. 11 – 01,178
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
KRISTIAN BARGER,	:	
Defendant	:	Post-Trial Motion

**OPINION AND ORDER**

Before the Court is Plaintiff's Motion for Post-Trial Relief, filed November 9, 2012. Argument on the motion was heard January 7, 2013.

A trial on Plaintiff's personal injury claim<sup>1</sup> was held November 2, 2012. Defendant did not dispute negligence but causation was contested. Pursuant to a stipulation of counsel, the jury was instructed to return a verdict in favor of Plaintiff for medical expenses in the amount of \$2,489.20 and lost wages of \$200.00. The only issue submitted to the jury for their decision was Plaintiff's claim for non-economic damages. The jury returned an award of -0-. In her Motion for Post-Trial Relief, Plaintiff contends she is entitled to a new trial on the basis that the verdict is inconsistent and against the weight of the evidence since it was uncontested that Plaintiff received some injury and was awarded damages for medical expenses and lost wages.

While there is indeed case law to support Plaintiff's contention, *see e.g. Neison v. Hines*, 653 A.2d 634 (Pa. 1995)(a jury cannot freely ignore evidence of obvious injury), the court finds most instructive the analysis of *Davis v. Mullen*, 773 A.2d 764 (Pa. 2001). There, the Court reconciled two lines of cases: those where new trials were granted after the jury awarded medical expenses but declined to award damages for pain and suffering, based on a finding that the verdict was "inconsistent", and those where such verdicts were upheld. The Court explained that such a verdict could be "not necessarily inconsistent" because a jury is free to believe, based on evidence of such, that the plaintiff suffered no pain or that any pain

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<sup>1</sup> The claim was filed as a result of a motor vehicle accident that occurred on October 12, 2010. Plaintiff was driving a vehicle on Route 220 in Jersey Shore when she stopped due to traffic congestion. Defendant was driving a vehicle behind Plaintiff's vehicle and struck Plaintiff's vehicle from the rear.

was not caused by the injury for which the defendant is liable. Id. at 768. The Court also harkened back to the well-settled principle that “[a] new trial should be granted only where the verdict is so contrary to the evidence as to shock one's sense of justice [and not] where the evidence is conflicting [or] where the trial judge would have reached a different conclusion on the same facts.” Id. at 766. The court thus held:

[A] jury's award of medical expenses without compensation for pain and suffering should not be disturbed where the trial court had a reasonable basis to believe that: (1) the jury did not believe the plaintiff suffered any pain and suffering, or (2) that a preexisting condition or injury was the sole cause of the alleged pain and suffering.

Id. at 767.

In the instant case, while the court would have been inclined to award a small amount for pain and suffering had the case been tried without a jury, under the Davis standard, the court is constrained to uphold the jury's verdict. The evidence at trial showed that after the accident Plaintiff was not treated at the scene by emergency personnel (who were present) but went to the hospital emergency room later in the day. CT scans and X-rays were negative for any injury, and actually showed arthritis in the back. Plaintiff was diagnosed with “acute cervical and lumbar sprain”; physical therapy and pain medication were prescribed. Later, Plaintiff undertook a course of physical therapy which consisted of heat and massage, but she skipped five of the last six sessions. When she was discharged from physical therapy, the therapist noted that her neck pain was “100% improved”. About a month after discharge from therapy, Plaintiff saw a chiropractor for neck and back pain. The chiropractor performed massage and other chiropractic adjustments and at the close of the sessions stated that Plaintiff was completely healed. The evidence also included a doctor's report which reviewed the scans and confirmed that Plaintiff had pre-existing arthritis and other degenerative conditions in her back. Plaintiff returned to her regular job after two days off work.

Considering all of the evidence, the court believes the jury could reasonably have found that Plaintiff's pre-existing conditions were the sole cause of any alleged pain, or even that she actually did not suffer from any pain. Accordingly, the court will enter the following:

**ORDER**

AND NOW, this 10th day of January 2013, for the foregoing reasons, Plaintiff's Motion for Post-Trial Relief is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Bret Southard, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson