

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BARBARA NIKLAUS and ROBERT O'DELL,	:	NO. 10 – 02,079
Plaintiffs	:	
vs.	:	CIVIL ACTION - LAW
	:	
KRISTIEANN WILD,	:	
Defendant	:	Motion for New Trial

**OPINION AND ORDER**

Before the court is Plaintiff Niklaus'<sup>1</sup> Motion for New Trial, filed June 20, 2014. Argument on the motion was heard September 12, 2014.

This lawsuit arose from an automobile accident on October 15, 2009. Defendant admitted liability and the matter proceeded to trial on the issue of damages. Plaintiff attempted to prove certain injuries resulted from the accident and Defendant attempted to show that those conditions pre-existed the accident. The jury found that Defendant's negligence was not a factual cause of any injury to Plaintiff. In the instant motion, Plaintiff contends the court erred in refusing to allow her to introduce into evidence a Social Security Determination and further, that the verdict was against the weight of the evidence.

After Plaintiff testified to certain injuries which she contended were caused by the accident, defense counsel cross-examined her to reveal that she had filed an application for Social Security Disability two months before the accident in which she had complained of pain and swelling in the same parts of her body she claims to have injured in the accident (her right shoulder, neck, lower back, left leg, left ankle, left knee and right hip), as well as depression, tiredness and fatigue, and that the pain was "all day pain", "everyday" and "constant." Plaintiff then attempted to introduce into evidence the Disability Determination that found that Plaintiff was disabled, had been disabled since the accident and suffered disc herniations as a result of the accident. Defendant's objection to the document was sustained and Plaintiff now claims error in that ruling. Since Plaintiff had also introduced at trial the testimony of Dr. DiSimone, who opined that she suffered from disc herniations which resulted from the accident, the Social Security Determination was cumulative evidence and thus of little probative value. Further,

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<sup>1</sup> Prior to trial, Plaintiff O'Dell reached a settlement with Defendant.

that probative value was determined to be outweighed by its prejudicial effect inasmuch as the determination of causation was made by an administrative law judge, not an expert in the medical field, the determination was not relevant to the matter before the administrative law judge (whether Plaintiff was disabled, not the cause of that disability), and finally, Defendant had not been a participant in the administrative proceeding. Upon further review, the court finds no error in its ruling.

Plaintiff also contends the verdict of the jury was against the weight of the evidence, arguing that Dr. DiSimone's testimony was not rebutted by any other expert. Defense counsel did cross-examine Dr. DiSimone, however, to reveal that he was unaware of Plaintiff's medical problems prior to the accident. The jury was thus free to discredit Dr. DiSimone's opinion if it found that that opinion was based on inaccurate facts. The standard jury instructions regarding expert testimony tell the jury that they "do not have to accept an expert's opinion just because he or she is considered an expert in his or her field" and that in evaluating an expert's testimony, they should consider, inter alia, "whether [they] find that the facts the witness relied upon in reaching his opinion are accurate". Pa. SSJI (Civ) 4.80. Considering that the expert opinion did not take into consideration Plaintiff's prior medical problems, and the evidence that prior to the accident Plaintiff had reported significant pain in the same areas of her body which she claimed to have been injured in the accident, the court finds the verdict was not against the weight of the evidence.

**ORDER**

AND NOW, this            day of September 2014, for the foregoing reasons,  
Plaintiff's Motion for New Trial is hereby DENIED.

BY THE COURT,

cc: Timothy Reitz, Esq.

Joseph Meiss, Esq.

Law Offices of Hubshman, Flood & Bullock

2200 Stafford Avenue, Suite 500, Scranton, PA 18505

Gary Weber, Esq.

Hon. Dudley Anderson

Dudley N. Anderson, Judge