IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LISA M. HAMM,
Plaintiff
vs.

FRANK T. PERANO and GSP
MANAGEMENT COMPANY,
Defendant

: No. 20-00598
:
: CIVIL ACTION – LAW

OPINION AND ORDER

AND NOW, after argument on Defendants' Motion in Limine, the Court hereby issues the following Opinion and Order.

BACKGROUND

Plaintiff commenced this action on June 9, 2020 by filing a Complaint. Plaintiff alleges that on May 23, 2019, while performing yardwork at the mobile home lot she rented from Defendants, she fell through an unsecured manhole cover, causing her to sustain serious bodily injury. Plaintiff claims that as owners of the premises, Defendants negligently failed to secure the cover, inspect the property for dangerous conditions, or take reasonable other affirmative actions to prevent Plaintiff from harm.

MOTION IN LIMINE

On March 8, 2022, Defendants filed four motions in limine; prior to argument, the parties reached an agreement on three of these. Defendants' sole remaining motion in limine is a "Motion in Limine to Preclude Evidence or Argument Regarding Future Prognosis or Medical Care." In this motion, Defendants allege that Plaintiff, rather than presenting expert testimony regarding the specific medical care she will need in the future, instead merely claims that there is a "possibility" she will need medical care in the future. Defendants cite a number of cases for the proposition that

"the possibility of future medical treatment is not admissible evidence." Defendants' Motion asks this Court to "preclud[e] evidence of future medical treatment" in this case.

At argument, Plaintiff agreed that inasmuch as her experts have not established future medical expenses with any certainty, she will not seek to introduce such amounts at trial for direct reimbursement, and will not seek to recover the monetary cost of future doctors' visits. Plaintiff maintains, however, that she is entitled to compensation for the full extent of her pain and suffering, both past and future, and that evidence of her need to continue her current treatment – which her current treating physician will testify to – is relevant to pain and suffering. Given that the parties agree that Plaintiff will not seek to recover the cost of future doctor's visits, Defendant disputes the fact that Plaintiff will continue to attend some doctor's visits is otherwise relevant. Specifically, Plaintiff contends both that this evidence is relevant to her pain and suffering generally because it suggests such pain and suffering will continue into the future, and further contends that the inconvenience, discomfort, and expenditure of time attributable to future doctor's visits is an appropriate component of "pain and suffering" or "loss of enjoyment of life." Defendant disputes both of these contentions.

ANALYSIS

In personal injury cases, Pennsylvania permits recovery for the noneconomic damages of "pain and suffering" and "loss of enjoyment of life," both past and future.[1] Generally,

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[1] Pa. R.C.P. 223.3.

> "For a jury to be permitted to consider future pain and suffering as an element of damages, competent testimony demonstrating a likelihood that the condition will persist in the future must be present, and the jury must reasonably be able to infer from this testimony the probable future consequences of the condition. Expert testimony is not required to predict the exact result anticipated, but more than a mere possibility or fear of future consequences must be shown."

The standard jury instruction concerning noneconomic loss describes "pain and suffering" as "includ[ing] any physical discomfort, mental anxiety, emotional distress, and inconvenience that [the plaintiff] has endured in the past and will endure in the future as a result of" the injury.[2] "Loss of the ability to enjoy the pleasures of life" is defined to include "the past and future loss or diminishment of [the plaintiff's] ability to participate in any hobby, recreational interest, pleasurable pursuit, or other activity that [the plaintiff] previously enjoyed."[3] The instruction advises the jury that, "[i]n determining past and future damages, [they] should consider," among other factors, "the type of medical treatment [the plaintiff] has undergone and how long treatment will be required…." This instruction is based on, and incorporates the language of, Pennsylvania Rule of Civil Procedure 223.3, which provides a mandatory jury instruction in "actions for bodily injury or death." Thus, the Rules of Civil Procedure clearly contemplate the introduction of evidence of the need for future medical treatment as relevant to the question of non-economic damages generally. Because Rule 223.3 allows the jury to consider how long Plaintiff will be required to undergo medical treatment, this information is admissible as generally relevant to her pain and suffering.

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[2] Pa. SSJI (Civ), §7.110 (2020).
[3] *Id.*

The question of whether Plaintiff's inconvenience, discomfort and expenditure of time to attend doctors' visits is an appropriate component of "pain and suffering" or "loss of enjoyment of life" is closer, but the Court concludes that the jury may consider such evidence. The parties have not cited, nor has the Court identified, a case directly addressing the issue. However, Rule 223 requires the court to advise the jury that "[the] plaintiff is entitled to be fairly and adequately compensated for all physical pain, mental anguish, discomfort, inconvenience, and distress... [the plaintiff] will endure in the future...."[4] The rule states further that "[i]n considering plaintiff's claims for damage awards for past and future noneconomic loss, you will consider the following factors: ... (5) the duration and nature of medical treatment...."[5] In the absence of any positive law indicating that the "discomfort, inconvenience, and distress" that may attend ongoing doctor's visits is excepted from this general requirement, the Court will allow Plaintiff to present evidence of the need for future medical treatment to the jury, both to establish this specific component of pain and suffering and as evidence of Plaintiff's future pain and suffering generally. Although it is quite possible the jury could view these as "transient rubs of life" that do not warrant compensation, it is for the jury rather than the Court to make that determination in the first instance.[6]

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[4] Pa. R.C.P. 223.3.

[5] *Id.*

[6] *See Majczyk v. Oesch*, 789 A.2d 717, 724 (Pa. Super. 2001) (citing *Boggavarapu*, 42 A.2d 516, 518 (Pa. 1988)). In *Boggavarapu*, a jury awarded the plaintiff no money for future pain and suffering resulting from a dog bite and subsequent tetanus shot. The Supreme Court of Pennsylvania affirmed despite the commonsense notion that the bite and shot must have caused *some* pain, holding that a jury is entitled to determine that the non-zero pain caused by a brief or transient injury fails to meet a basic threshold of compensability.

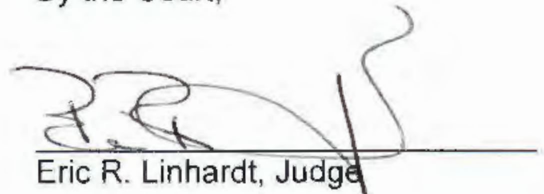
Finally, although Defendants' Motion in Limine was not based on any prejudice or confusion that might arise from the jury being informed of ongoing medical care for a reason other than the cost of that care, the Court will consider any request for a limiting instruction clarifying for the jury how they are permitted to take this evidence into account when fashioning any award of damages.

CONCLUSION

For the foregoing reasons, Defendants' Motion in Limine is DENIED.

IT IS SO ORDERED this 22nd day of June 2022.

By the Court,



Eric R. Linhardt, Judge

ERL/jcr
cc: Robert B. Elion, Esq.
Nicholas J. Indovina, Esq.
600 Grant Street, Suite 4850, Pittsburgh, PA 15219
Gary Weber, Esq. (Lycoming Reporter)