STATE OF MICHIGAN

COURT OF APPEALS

CARVAN WILLIAMS, Plaintiff-Appellant,	UNPUBLISHED March 12, 2002
v	No. 223991, 225901 Wayne Circuit Court
CONTINENTAL INSURANCE COMPANY, Defendant-Appellee.	LC No. 98-803957-NF

Before: Cooper, P.J., and Griffin and Saad, JJ.

PER CURIAM.

In this no-fault automobile insurance case, plaintiff appeals as of right the adequacy of a judgment verdict in his favor and an order denying his posttrial motion for costs, attorney fees, and interest. We affirm.

This case arises out of a February 19, 1997, automobile accident. Five physicians testified at trial that at the time they examined and treated plaintiff he was unable to return to his job as a truck hauler due to his injuries because the job entailed loading and unloading new cars and driving long distances. However, one of plaintiff's treating physicians, Dr. Daniel Ryan, referred him to an aggressive work conditioning program. After plaintiff successfully completed the program, Dr. Ryan opined that plaintiff was able to return to his regular job of securing motor vehicles to ramps and transporting the vehicles.[1] Based on this opinion, defendant insurer

[1] *Q.* (*defense counsel*) Did you have an opinion of whether or not Mr. Williams could return to his job after completion of the work-hardening program?

A. (Dr. Ryan) Yes.

Q. What would that have been?

A. I thought he could return to his regular job duties.

Q. Did you feel that he had any restrictions with regard to household duties such as cooking or cleaning? Did you address that in any way during your examination?

(continued…)

terminated plaintiff's benefits effective July 23, 1998. Defendant's claim specialist testified that defendant had paid plaintiff a total of $52,538 covering wage loss and medical benefits but admitted liability to twenty-three days worth of wage loss benefits between June 30, 1998, and July 23, 1998.

The three issues at trial related to plaintiff's capability to return to work, his entitlement to replacement services, and whether plaintiff submitted certain medical bills to defendant.

I

Plaintiff contends that the jury's award of $3,000 in his favor for wage loss was inadequate and contrary to the great weight of the evidence. He argues that he is entitled to an award of at least $44,312.50 for wage loss benefits because the proof presented at trial showed that plaintiff was unable to return to his pre-accident job as a truck hauler. MCL 500.3107(1)(b) provides that a no-fault insurer must pay benefits for "[w]ork loss consisting of loss of income from work an injured person would have performed during the first three years after the date of the accident if he had not been injured." We hold that the trial court did not abuse its discretion by denying plaintiff's motion for a new trial because there was conflicting credible evidence regarding whether plaintiff's injury affected his return to his former job.

In deciding a motion for a new trial, the trial court's function is to determine whether the overwhelming weight of the evidence favors the losing party. *Phinney v Perlmutter*, 222 Mich App 513, 525; 564 NW2d 532 (1997). This Court determines whether the trial court abused its discretion in making that determination. *Bordeaux v Celotex Corp*, 203 Mich App 158, 170; 511 NW2d 899 (1993). A verdict may be overturned on appeal only if it was manifestly against the great weight of the evidence. *Watkins v Manchester*, 220 Mich App 337, 340; 559 NW2d 81 (1996). This Court gives substantial deference to a trial court's conclusion that the verdict is not against the great weight of the evidence. *Id.*

The record does not support plaintiff's argument that the verdict is against the great weight of the evidence. At trial, the parties presented conflicting evidence regarding whether plaintiff was able to return to his former job after he underwent work conditioning training. Plaintiff's own testimony was contradictory and vague.

While several physicians opined that plaintiff was unable to return to work, the two physicians who continued to treat plaintiff following the termination of his wage loss benefits were not asked and therefore expressed no opinion regarding Dr. Ryan's assessment that the work conditioning program which plaintiff completed had enabled him to return to his work. Dr. Joseph Verdun's testimony was the most supportive of plaintiff's position; however, Dr. Verdun did not rule out the possibility that plaintiff would be able to return to work as a truck hauler and was never questioned regarding Dr. Ryan's prognosis that plaintiff was capable of returning to work following his completion of the work hardening program.

(…continued)

A. I don't believe I specifically made any mention to that but did not feel that he required any attendant care.

Dr. Ryan testified that on July 15, 1998, he issued a written return to work statement for plaintiff. Ryan based his decision on his initial evaluation of plaintiff and on the results of the aggressive work conditioning program that indicated that plaintiff was able to return to his regular job of securing motor vehicles to ramps and transporting the vehicles.

Given this evidence, there were clearly factual issues for the jury. The credibility of a witness is an appropriate subject for the jury's consideration. *Powell v St John Hosp*, 241 Mich App 64, 72; 614 NW2d 666 (2000). A thorough review of the record reveals that the jury's verdict was not manifestly against the weight of the evidence. Instead, it shows that the great weight of the evidence was not in plaintiff's favor. Reasonable jurors could conclude that plaintiff was capable of returning to his former job and that he was entitled only to the wage loss benefits to which defendant admitted liability. Because the jury's verdict was not against the great weight of the evidence, the trial court did not abuse its discretion in denying plaintiff's motion.

II

Plaintiff next argues that the trial court erred in granting defendant's motion for a directed verdict regarding replacement services. We disagree. A review of the record reveals that plaintiff failed to establish a prima facie case for replacement services.

A trial court's ruling on a motion for a directed verdict is reviewed de novo. *Meagher v Wayne State Univ*, 222 Mich App 700, 708; 565 NW2d 401 (1997). In determining whether a motion for directed verdict was erroneously denied, this Court reviews all evidence admitted until the time of the motion to determine whether a question of fact existed. *Lamson v Martin (After Remand)*, 216 Mich App 452, 455; 549 NW2d 878 (1996). This Court considers the evidence in the light most favorable to the nonmoving party. *Id*.

Under MCL 500.3107(1)(a) of the no-fault act, "personal protection insurance benefits are payable for . . . [a]llowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services accommodations for an injured person's care, recovery, or rehabilitation." In *Booth v Auto-Owners Ins Co*, 224 Mich App 724, 727; 569 NW2d 903 (1997), this Court stated that in order for a no-fault insurer to be responsible for personal injury protection benefits, three requirements must be satisfied: "(1) the expense must have been incurred, (2) the expense must have been for a product, service, or accommodation reasonably necessary for the injured person's care, recovery or rehabilitation, and (3) the amount of the expense must have been reasonable."

Here, the evidence supports the trial court's ruling on the issue of replacement services. First, plaintiff failed to sustain his burden of establishing that any product, service, or accommodation was reasonably necessary for his care, recovery, or rehabilitation. He presented no proof regarding the need for a product or accommodation. His testimony was vague with regard to the exact services that he was unable to perform. Without specificity, he testified that there were a number of outside and inside chores that he can no longer perform. However, he named only auto mechanics. Plaintiff indicated that he received daily help from people in cooking and doing his laundry. However, on cross-examination, he admitted that he could perform some cooking, vacuuming, and cleaning.

Plaintiff asserts on appeal that the testimony of his primary physicians established that he was in need of such services. Again, plaintiff misstates the facts. Dr. Verdun testified that plaintiff had difficulty in doing household chores when he walked too much or attempted to bend and clean up. However, he also testified that plaintiff was capable of performing light duties. Like Dr. Verdun, Dr. David Gaston did not specifically testify that plaintiff was in need of replacement services. Instead, Dr. Gaston testified that plaintiff might not be able to use a lawn mower or perform heavy lifting for a *prolonged period of time*, but that plaintiff should be encouraged to do as much as he could around the home. Thus, plaintiff failed to sustain his burden of proving that replacement services were reasonably necessary for his care, recovery, or rehabilitation.

Second, plaintiff failed to establish that replacement services were incurred. Plaintiff's testimony regarding all of "the people" who helped him was vague and evasive. He provided the names of six family members and friends whom he claimed had assisted him since the time of the accident; beyond that, he provided no more. He was evasive regarding the type of services each individual performed, the dates, or duration of the work. Defendant's claims specialist testified that plaintiff had failed to submit any information pertaining to those individuals' social security numbers, the nature of the services provided, or the dates of these services.

In light of the above, the trial court did not clearly err in ruling that plaintiff failed to establish a prima facie case regarding his claim for replacement services.

III

Next, plaintiff argues that the trial court erred in denying his request for additur or remittitur, or in the alternative, for a new trial on the issue of the jury award regarding his wage loss benefits. We disagree.

This Court reviews a trial court's grant or denial of additur and a new trial for an abuse of discretion. MCL 600.6098(4); *Arnold v Darczy by Darczy*, 208 Mich App 638, 640; 528 NW2d 199 (1995).

Here, the jury returned a verdict in favor of plaintiff, which found defendant liable for $3,000 in wage loss benefits.[2] Plaintiff's argument is premised in part on his claim that a new trial was warranted because the jury verdict was influenced by passion or prejudice. MCR 2.611(A)(1)(c). Beyond this statement, plaintiff does not discuss or argue this claim in his brief. Plaintiff may not merely announce his position and leave it to this Court to determine and rationalize the basis for his claim. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *Caldwell v Chapman*, 240 Mich App 124, 132-133; 610 NW2d 264 (2000). This claim, therefore, is not properly presented on appeal and is deemed waived. *Wilson, supra* at 243; *Caldwell, supra* at 132-133.

[2] While plaintiff mentions only in passing the entire jury award, a review of plaintiff's argument on appeal shows that the only issue plaintiff raises is his claim that he was entitled to at least $44,312.50 in wage loss benefits.

Plaintiff's argument is also premised in part on his claim of error that the jury's verdict was against the great weight of the evidence on the issue whether plaintiff was able to return to work. Here, plaintiff presents the same argument that he presented in his first argument on appeal, and it again fails. As previously discussed, the jury verdict was not against the great weight of the evidence and a new trial was not warranted. Accordingly, the trial court did not abuse its discretion by denying a new trial.

Next, plaintiff argues the trial court abused its discretion in denying his request for additur. The proper consideration when reviewing a grant or denial of additur is whether the evidence supports the jury award. *Setterington v Pontiac General Hosp*, 223 Mich App 594, 608-609; 568 NW2d 93 (1997). As previously discussed, the evidence supports the jury award of only the $3,000 which defendant admitted it owed plaintiff. The trial court did not abuse its discretion in denying plaintiff's motion for additur.

IV

Finally, plaintiff argues that the trial court erred in denying plaintiff's motion for costs and attorney fees. We disagree.

Plaintiff argues that he was entitled to the costs of several video depositions and depositions that were read into the trial record. This Court reviews trial court rulings on motions for costs under MCR 2.625 for abuse of discretion. *Klinke v Mitsubishi Motors Corp*, 219 Mich App 500, 518; 556 NW2d 528 (1996), aff'd 458 Mich 582 (1998). This Court reviews questions of statutory interpretation de novo. *In re MCI Telecommunications Complaint*, 460 Mich 396, 413; 596 NW2d 164 (1999).

MCL 600.2549 provides:

> Reasonable and actual fees paid for depositions of witnesses filed in any clerk's office and for the certified copies of documents or papers recorded or filed in any public office shall be allowed in the taxation of costs only if, at the trial or when damages were assessed, the depositions were read in evidence, except for impeachment purposes, or the documents or papers were necessarily used.

On appeal, defendant relies on the plain language of MCL 600.2549 and on this Court's decision in *Elia v Hazen*, 242 Mich App 374; 619 NW2d 1 (2000), and argues that plaintiff failed to show that any of the depositions used at trial were recorded or filed with any official office. In *Elia*, this Court held that although the plaintiffs presented the several deposition transcripts to the trial judge, who eventually passed them to the clerk, the depositions were not filed in any clerk's office and, thus, were not filed in accordance with MCL 600.2549. Consequently, the necessary conclusion, based on the statute's clear language, was that the plaintiffs were not entitled to the costs of those depositions notwithstanding that "logic would indicate that depositions used to resolve a case should be taxable." *Elia, supra* at 381.

With one exception, the facts in the instant case are similar to those in *Elia*. In *Elia*, the transcripts remained with the deputy court clerk. In the instant case, the transcripts were returned to plaintiff, along with plaintiff's trial exhibits. Plaintiff stated in his responding brief to defendant's brief on appeal that the original transcripts of the video depositions were given to the

trial court.[3] Plaintiff states that "the parties" assumed that the trial court filed those transcripts. However, plaintiff has now discovered that the trial court returned all the transcripts "to a representative of plaintiff's counsel when plaintiff's exhibits were returned." Plaintiff argues that the trial court's error in not filing the original transcripts it was given is not the fault of "either party." The plain, unambiguous language of MCL 600.2549 that requires depositions to be "filed in any clerk's office" must be followed, and this Court may not speculate regarding the probable intent of the Legislature beyond that language or otherwise construe the statute's clear language. *Elia, supra* at 382. Therefore, plaintiff is not entitled to costs related to the video and other depositions.

Plaintiff next contends that the trial court clearly erred in refusing to award him attorney fees pursuant to MCL 500.3148, because defendant allegedly unreasonably refused to pay the final no-fault wage loss benefit covering the twenty-three day period previously discussed, and because defendant unreasonably refused to pay medical bills that plaintiff fails to specify on appeal. We disagree.

A trial court's finding of an unreasonable refusal to pay or delay in paying benefits will not be reversed on appeal unless the finding is clearly erroneous. *Attard v Citizens Ins Co of America*, 237 Mich App 311, 316-317; 602 NW2d 633 (1999). MCL 500.3148(1) provides:

> An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits that are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to make the claim or unreasonably delayed in making proper payment.

Our Supreme Court has held that "a refusal or delay in payments by an insurer will not be found 'unreasonable' within the meaning of § 3148 where the delay is the product of a legitimate question of statutory construction, constitutional law, or even a bona fide factual uncertainty." *Gobler v Auto-Owners Ins Co*, 428 Mich 51, 66; 404 NW2d 199 (1987).

In the present case, defendant promptly paid plaintiff a total of $52,538 covering wage loss and medical benefits and admitted that it owed plaintiff an additional twenty-three days of wage loss benefits. The jury awarded plaintiff only $3,000 in wage loss benefits, plus interest, presumably to cover the twenty-three day period to which defendant admitted liability. When defendant's claims specialist was questioned regarding why defendant had not paid the benefit at issue, she explained that she told plaintiff's counsel in a telephone conversation that defendant was in the process of filing its answer to plaintiff's complaint and that defendant would then try to resolve any differences in payments. She testified that the telephone conversation took place when she informed plaintiff's counsel of defendant's decision to terminate the benefits. Furthermore, there is no evidence whatsoever to show that defendant refused to make this payment. Based on the circumstances of this case, defendant did not unreasonably delay or refuse to make that payment.

---

[3] Plaintiff did not assert, or deny, on appeal that any of the other three depositions were filed or recorded.

Regarding the issue of medical expenses, plaintiff failed to specify what medical expenses he raises on appeal. Again, plaintiff may not merely announce his position and leave it to this Court to determine and rationalize the basis for his claim. *Wilson, supra* at 243; *Caldwell, supra* at 132-133. Thus, plaintiff has waived the issue.

Finally, plaintiff argues that the trial court erred in denying his motion for an award of no-fault penalty interest on overdue benefits pursuant to MCL 500.3142 and on the judgment pursuant to MCL 600.6013. Again, plaintiff does not specify the allegedly overdue payments he asserts and therefore, his claim is not properly presented on appeal and is deemed waived. *Wilson, supra* at 243; *Caldwell, supra* at 132-133.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Henry William Saad