# STATE OF MICHIGAN

# COURT OF APPEALS

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| LINDA REAM and TERRY REAM,<br><br>Plaintiff-Appellees, | UNPUBLISHED<br>September 9, 2003 |
| v | No. 238824<br>Ingham Circuit Court |
| BURKE ASPHALT PAVING, JOHN BURKE, and CHAN CULBERT,<br><br>Defendant-Appellants. | LC No. 99-091090-NI |

Before: Meter, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

In this negligence case arising from a motor vehicle accident, defendants appeal as of right from a judgment in favor of plaintiffs, following a jury trial. We affirm.

I

On October 30, 1999, at approximately 3:00 p.m., plaintiff Terry Ream was driving a motorcycle westbound on Catholic Church Road, approaching the intersection of Hermitage Farm Lane, a private gravel road, in Stockbridge, Michigan. His wife, Linda Ream, was a passenger on the motorcycle. They were traveling directly behind defendant Chan Culbert, who was driving a 1996 Ford dump truck owned by defendant John Burke, d/b/a Burke Asphalt Paving. According to plaintiffs, as they attempted to pass the truck on the left, Culbert suddenly began a left turn onto Hermitage Farm Lane, without slowing or signaling. His left front quarter-panel struck plaintiffs' front tire, and then Linda Ream's left leg, causing both plaintiffs to be thrown from the motorcycle Plaintiffs testified that, rather than stop, Culbert pulled his truck into a driveway on Hermitage Farm Lane, backed up, drove past plaintiffs, and then drove westbound on Catholic Church Road. As he passed plaintiffs, Culbert allegedly stuck his head out the truck window, yelled to them that his turn signal was on, and stated that he was going to get his boss.[1]

[1] Although Culbert disputed plaintiffs' version of the events at trial and stated that he slowed down and signaled before he turned, his trial testimony contradicted earlier statements that he (continued…)

After the accident, Culbert proceeded to his job site, but the parties dispute what occurred after that. Evidence was presented that Culbert told defendant Burke about the accident and that Burke told Culbert that he did not think that Culbert was covered on his insurance. Burke then allegedly told Culbert to take the keys to Burke's pickup truck, to leave the area, and to take the truck to Burke's home, while Burke would go to the accident scene and "take care of everything." However, when Burke arrived at the accident scene, he told the police that he did not know the identity of the person who had been driving the truck and misled the police about his knowledge of the accident.[2] Plaintiffs apparently overheard this conversation. The police later determined that Culbert was driving the truck, and Culbert implicated Burke in attempting to deceive the police regarding the identity of the driver.

Defendant Burke, on the other hand, testified that when Culbert arrived at the job site, he immediately drove the dump truck into the rear end of another truck. Culbert told Burke that he had just been in an accident, and left to go home. Burke claimed that he thought Culbert was referring to the accident at the job site, which led him to furnish inaccurate information to the police. He testified that he first became aware that one of his trucks had been involved in the accident with plaintiffs when he was approached by an unidentified person who later arrived at the job site. Burke later admitted, however, that he had intentionally provided false information to the police.

Culbert subsequently pleaded guilty to two misdemeanor offenses, failure to stop at the scene of a personal injury accident, MCL 257.617a, and obstructing an officer's investigation of an accident, MCL 750.479, in return for the dismissal of a more serious charge of leaving the scene of a personal injury accident involving serious injury or death, MCL 257.607.

Both plaintiffs were injured in the accident. Plaintiff Linda Ream suffered a comminuted fracture to her right femur, and comminuted compound fractures to both her right tibia and right fibula, which left her with a condition described by her treating physician as a "floating knee." She also had an open laceration above her right knee, and suffered a comminuted fracture to her right wrist (radius). While the wrist injury was treated with a simple cast, the leg injuries required extensive surgery, which included the insertion of intramedullary rods. Additional surgery was required later because a portion of the tibia bone did not rejoin the rest of the bone. Linda Ream testified that she suffered continued pain, a permanent shortening of her right leg, and extensive scarring. Due to arthritic degeneration in her knee from the accident, her physician thought it was highly likely that she would require further surgery, including a probable total knee replacement, and would likely suffer arthritic degeneration of her hip with later hip replacement also possible.

Terry Burke suffered less serious, but nonetheless extensive soft tissue injuries to his lower right leg and right foot, which required a walking cast. He also suffered a permanent injury to his right arm, consisting of a contusion and rupture of one of the two heads of the right

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(…continued)

gave, including statements made in an affidavit prepared by his attorney.

[2] Burke told police officers that he had hired a driver for the day, that the driver later returned to the job site, told him that he had been involved in an accident, and left in a green pickup truck.

biceps tendon. Although the initial injuries healed, with the exception of the biceps tendon, Terry Ream's physician later observed degenerative arthritic changes in Terry's right ankle and foot. Terry Ream testified that, as a result of the accident, he initially suffered severe pain in his right foot and ankle, back, and right side. He was off work two months, and he complained of continued pain at the time of trial, particularly in his right ankle and right biceps. He maintained that he continues to have some difficulty performing his job, which requires the use of his upper extremities, due to his biceps injury, and that his ankle and foot injuries continued to cause him pain at work. Additionally, because of the biceps injury, he could no longer hunt with a bow because he could not pull back on the bow and hold it, nor could he participate in other activities that he previously enjoyed, such as stream fishing or pheasant hunting, due to his inability to walk over uneven terrain without difficulty and pain.

Plaintiffs filed separate complaints in a single suit, alleging, inter alia, claims for negligence, gross negligence, negligence per se, loss of consortium, reckless infliction of emotional distress, intentional infliction of emotional distress, and civil conspiracy. In addition to compensatory damages, plaintiffs also sought exemplary damages. Before trial, defendants moved for partial summary disposition pursuant to MCR 2.116(C)(8) and (10), seeking dismissal of plaintiffs' claims for emotional distress, gross negligence, exemplary damages, and civil conspiracy. The trial court denied defendants' motion. Further, the court granted Terry Ream's motion for a directed verdict and determined that, as a matter of law, Terry Ream suffered a threshold injury.

At trial, using a special verdict form, the jury found that defendant Culbert was negligent and was eighty percent at fault for the accident, while Terry Ream was twenty percent at fault. It also found that Linda Ream had suffered past damages in the amount of $500,000, and that Terry Ream had suffered past damages in the amount of $200,000. After subtracting twenty percent for Terry Ream's comparative negligence, this resulted in an award of past damages of $400,000 for Linda Ream and $160,000 for Terry Ream. The jury also found that Linda Ream would continue to suffer future damages in the amount of $975,000, and that Terry Ream would continue to suffer future damages in the amount of $56,000. Reduced to present value, and after subtracting Terry Ream's percentage of fault, this resulted in an ultimate award of future damages of $411,530 for Linda Ream, and $27,554 for Terry Ream. Terry Ream was also awarded $50,000 for his loss of consortium claim, which was reduced to $40,000. The jury found no cause of action for plaintiffs' claims of gross negligence, and intentional or reckless infliction of emotional distress. In addition, while the jury found that defendants had conspired to conceal the identity of the driver of the vehicle that struck plaintiffs, it denied plaintiffs' request for exemplary damages attributable to this claim.

II

Defendants first argue that the trial court erroneously denied their motion for partial summary disposition of plaintiffs' claims for intentional infliction of emotional distress, reckless infliction of emotional distress, gross negligence, and civil conspiracy. Defendants assert that dismissal of these claims was warranted because plaintiffs were seeking to recover exemplary damages under these theories, which mirrored the mental distress damages they were seeking for their simple negligence claims. Additionally, they argue that dismissal of plaintiffs' claims for reckless infliction of emotional distress was warranted because plaintiffs failed to present

evidence that they suffered severe emotional distress, and that the trial court used the wrong standard in evaluating this claim below.

We conclude that appellate relief is not warranted in light of the jury's verdicts of no cause of action with respect to plaintiffs' reckless and intentional infliction of emotional distress and gross negligence claims, and its determination that plaintiffs were not entitled to additional damages with respect to the civil conspiracy claim. Moreover, regardless of the differentiation between "exemplary damages" and other allowable damages for mental distress, see, e.g., *Peisner v Detroit Free Press, Inc*, 421 Mich 125, 134-135; 364 NW2d 600 (1984); *McPeak v McPeak*, 233 Mich App 483, 487-489; 593 NW2d 180 (1999); *Ramik v Darling Intern, Inc*, 60 F Supp 2d 680, 685-686 (ED Mich, 1999), defendants cannot show that relief is warranted on the basis that the mental distress damages sought in connection with their negligence claim would mirror those recoverable under these additional theories. A party may attempt to recover on alternate theories, or pursue all available remedies, regardless of legal consistency. MCR 2.111(A)(2); *H J Tucker & Associates, Inc v Allied Chucker and Engineering Company*, 234 Mich App 550; 595 NW2d 176 (1999); *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 91; 443 NW2d 451 (1989); *Walraven v Martin*, 123 Mich App 342, 348; 333 NW2d 569 (1983). Accordingly, plaintiffs were permitted to plead alternate, and even inconsistent, theories. We acknowledge that a party generally may not recover duplicate damages under alternate theories, see *Scholz v Montgomery Ward & Co, Inc*, 437 Mich 83, 93; 468 NW2d 845 (1991); *Jim-Bob Inc*, *supra* at 92; *Walraven*, *supra* at 348. However, the fact that plaintiffs may have sought identical damages under different theories did not preclude them from presenting each claim, and the supporting evidence of defendants' conduct after the accident, to the jury.

Additionally, regardless of the viability of plaintiffs' additional claims, the factual evidence pertaining to those claims would have been admissible at trial, even if the additional claims themselves could not be pursued. Defendants would not concede that Culbert was responsible for the accident. As noted previously, however, Culbert admitted at trial that he pleaded guilty to failure to stop at the scene of a personal injury accident, MCL 257.617a, and obstructing an officer's investigation of an accident, MCL 750.479. Evidence concerning Culbert's failure to stop, as well as his alleged conduct in attempting to conceal the nature of the accident, was relevant to show his consciousness of culpability. MRE 401; *Johnson v Austin*, 406 Mich 420, 438 (Levin, J), 446-447 (Ryan, J); 280 NW2d 9 (1979). Defendant Burke's alleged conduct, showing his complicity with Culbert to mislead police investigators, was also relevant in establishing Culbert's negligence and refuting his credibility. See *Powell v St John Hospital*, 241 Mich App 64, 72; 614 NW2d 666 (2000).

For all of these reasons, this issue does not warrant appellate relief. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000). Furthermore, given the jury's determination that plaintiffs failed to establish their claim of reckless infliction of emotional distress, we need not reach defendants' argument concerning whether the trial court applied an incorrect legal standard in evaluating this claim. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

III

Defendants next argue that the trial court erred when it allowed a legal assistant to point to various exhibits when reading the redacted deposition testimony of Linda Ream's treating

physician. Although defense counsel raised an objection at trial, he waited until after the conclusion of the reading of the deposition to object. "The purpose of the appellate preservation of error requirements is to induce litigants to do what they can in the trial court to prevent error and eliminate its prejudice, or to create a record of the error and its prejudice." *People v Schmitz*, 231 Mich App 521, 527-528; 586 NW2d 766 (1998). In this case, counsel's objection was untimely. By waiting until after the deposition was read, the trial court was deprived of the opportunity to respond appropriately in order to alleviate any perceived prejudice, e.g., by prohibiting the legal assistant from pointing to exhibits, instructing the jury that her movements were only for demonstrative purposes, considering any alleged claim of inaccuracy or other prejudice, or by otherwise fashioning an appropriate remedy. Moreover, defendants do not contend that they were prevented from introducing the entire, or redacted, videotaped deposition, or calling the physician to the stand in order to clarify any alleged inaccuracy or prejudice. Furthermore, defense counsel admitted that he did not evaluate whether the assistant actually acted improperly when pointing to the x-rays and other exhibits while reading the deposition. Counsel cannot simply sit back and harbor error to be used as an appellate parachute in the event of an unfavorable jury verdict, *Taubitz v Grand Trunk Western RR*, 133 Mich App 122, 129-130; 348 NW2d 712 (1984), and we will not reverse based upon an error to which the aggrieved party contributed by plan or negligence. *Farm Credit Services v Weldon*, 232 Mich App 662, 683-684; 591 NW2d 438 (1998). Therefore, this issue does not warrant appellate relief.

IV

We reject defendants' argument that a new trial is required because Linda Ream's attorney allowed intramedullary rods similar to those placed in Linda Ream's leg to be left on counsel's table during the reading of Linda's treating physician's deposition. First, defense counsel waited until after the deposition was read to object that the rods had been left on counsel's table, in view of the jury. A timely objection could have led to their removal, thereby alleviating any prejudice. As noted previously, counsel cannot sit back and harbor error to be used as an appellate parachute in the event of an unfavorable jury verdict. *Taubitz, supra* at 129-130. Defendants' claim that they were unduly prejudiced because the rods remained in view of the jury is also undermined by their failure to request a curative instruction at trial. In consideration of these circumstances, and in light of the properly admitted evidence and testimony describing the rods that were actually placed in Linda Ream's leg, we are satisfied that any error arising from the jury's opportunity to view similar rods on counsel's table was harmless.

V

Defendants next argue that the trial court erred by denying their motion for a new trial based on newly discovered evidence. We disagree. To justify a new trial on the basis of newly discovered evidence, the movant must show: (1) the evidence, not simply its materiality, was newly discovered, (2) the evidence is not merely cumulative, (3) the newly discovered evidence is such that it is likely to change the result, and (4) the moving party was not able to produce the evidence with reasonable diligence. *South Macomb Disposal Authority v American Ins Co*, 243 Mich App 647, 655; 625 NW2d 40 (2000). Newly discovered evidence generally is not a ground for a new trial where the evidence would merely be used for impeachment purposes. *People v Davis*, 199 Mich App 502, 515; 503 NW2d 457 (1993); *Pociopa v Olson*, 13 Mich App 324, 327; 164 NW2d 413 (1968).

Here, defendants presented affidavits from individuals who observed Linda Ream wearing a dress on one occasion and walking short distances without the assistance of crutches. We disagree with defendants' claim that this evidence contradicted Linda Ream's trial testimony. Linda Ream did not testify at trial that she never wore a dress anymore, only that she did not do so as frequently as she had before the accident. Hence, this "newly discovered" evidence was not material. The fact that Linda Ream may have been able to walk without the assistance of a crutch more than a month after trial also had little probative value. This evidence would have been useful only to impeach Linda Ream's credibility concerning her alleged fear of re-injury if she did not walk with a crutch. Linda Ream admitted that there were periods in her recovery where she did not need a crutch, and she did not testify to the continued need of a crutch during trial. The trial court did not abuse its discretion in denying defendant's motion for a new trial based on this evidence.

VI

Defendants next argue that the trial court abused its discretion by refusing to allow them to introduce a photographic exhibit consisting of three photographs that allegedly represented the view that Terry Ream would have had as he passed defendant Culbert's truck. The court directed defendants to remove one of three photographs, which depicted a far left view, before allowing defendants to introduce the exhibit. Defendants' claim of error is without merit.

The photographic exhibit, as altered, comported with the visual representations of defendants' remaining photographic exhibits. The remaining two-photograph combination continued to depict the intersection and allowed the jury to evaluate defendants' contention that Terry Ream had sufficient warning that Culbert was about to turn. In addition, defendants' expert witness was able to testify that, in his opinion, Terry Ream could have had a wider field of view than that shown in the exhibits. We also agree with the trial court's observation that it was highly unlikely that Terry Ream would be looking to his far left as he attempted to pass Culbert. Under the circumstances, we cannot conclude that the trial court abused its discretion by excluding the challenged photograph. Furthermore, even if the trial court's decision could be characterized as erroneous, it is apparent that the error was harmless under the circumstances. MCR 2.613(A); *Miller v Hensley*, 244 Mich App 528, 531; 624 NW2d 582 (2001).

We likewise conclude that the trial court did not err in allowing plaintiffs to present rebuttal evidence of a videotape taken by plaintiffs' expert as he drove past the intersection. Although defendants assert that there were a number of inaccuracies in the videotape, we agree with the trial court that plaintiffs were not required to present an entirely perfect re-creation to help illustrate their expert witness' testimony of Terry Ream's view. MRE 401; *Dep't of Transportation v Van Elslander*, 460 Mich 127, 129; 594 NW2d 841 (1999); *McMiddleton v Otis Elevator Co*, 139 Mich App 418, 423; 362 NW2d 812 (1985), mod 424 Mich 862 (1985); see also *People v Bulmer (After Remand)*, 256 Mich App 33, 35; 662 NW2d 117 (2003), citing *Lopez v General Motors Corp*, 224 Mich App 618, 628 n 13; 569 NW2d 861 (1997).

VII

Next, citing MCR 2.302(B)(4)(d), defendants argue that the trial court erroneously allowed plaintiffs to re-depose Linda Ream's treating physician during trial. Viewing the court's rationale for its decision in conjunction with the reasons presented for why a second deposition

was necessary, defendants' inconsistent and ambiguous objections to the physician's supporting report at the first deposition, the agreement that the latest physician's report would not itself be admitted as evidence, and defendants' failure to show actual prejudice, we conclude that the trial court's decision was not so unreasonable as to constitute an abuse of discretion. MCR 2.306(B)(2); *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001).

We likewise find no merit to defendants' argument that the trial court should have stricken the physician's testimony concerning the possibility that Linda Ream would need a future knee or hip replacement because of her injuries. Defendants' claim is based on their apparent misinterpretation of the premise that, in Michigan, in order to recover damages on the basis of future consequences, it is necessary for a plaintiff to demonstrate with "reasonable certainty" that the future consequences will occur, as opposed to relying on mere conjecture or speculation. *Larson v Johns-Manville Sales Corp*, 427 Mich 301, 317; 399 NW2d 1 (1986). Pursuant to MRE 702, plaintiffs were entitled to present an expert to aid the jury in understanding the evidence or determine a fact in issue, to wit: Linda Ream's future damages, including the possibility of needing a knee or hip replacement. Merely because the physician admitted that the likelihood of a future knee or hip replacement was somewhat speculative did not render the testimony inadmissible. While an award of future damages is dependent upon a plaintiff's demonstration that the future consequences will occur with reasonable certainty, the "'law does not require impossibilities' and does not require a higher degree of certainty than the nature of the case permits." *Body Rustproofing, Inc v Michigan Bell Telephone Co*, 149 Mich App 385, 390; 385 NW2d 797 (1986), quoting *Allison v Chandler*, 11 Mich 542, 554 (1863). Here, the evidence concerning the extent and nature of Linda Ream's injuries, and their degenerative nature, established a sufficient likelihood that a future knee or hip replacement would be necessary to present this issue to the jury. The trial court did not abuse its discretion in refusing to strike the testimony.

VIII

Defendants next argue that the trial court erred when it ruled that Terry Ream had suffered a sufficient injury to sustain an action for damages under the no-fault act. We disagree. Under Michigan's no-fault act, "[a] person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). The act defines "serious impairment of body function" as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." MCL 500.3135(7).

On appeal, defendants focus on only one facet of the test to determine the existence of this threshold injury, namely, whether the injuries affected Terry Ream's general ability to lead a normal life. In this regard, however, defendants only focus on Terry Ream's long term residual effects, ignoring the effects of his injuries to his life immediately after the accident. An injury does not need to be permanent in order to be serious. *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000). Here, as a result of the accident, Terry Ream was in a leg cast and unable to work for two months. He testified at trial that he highly enjoyed his work and that it was an important part of his life. This testimony was corroborated by other witnesses. As this Court observed in *Kreiner v Fischer (On Remand)*, 256 Mich App 680, 688; ___ NW2d ___

(2003), "one's general ability to lead his or her normal life can be affected by an injury that impacts the person's ability to work at a job, where the job plays a significant role in that individual's normal life, such as in the case at bar." Terry Ream also testified that, although he had returned to work, his injuries continued to affect his ability to perform his job at the time of trial. Insofar that Terry Ream was required to show not only that his ability to work, but that multiple facets of his general life were affected by the injury, the testimony showed that he was no longer able to participate in activities as he did before, such as bow hunting, tree stand hunting, playing softball, stream fishing, and walking for long distances. This evidence, considered in conjunction with Terry Ream's past and continuing employment limitations, supports the trial court's determination that Terry Ream suffered a serious impairment of body function under MCL 500.3135(1). *Kreiner (On Remand), supra* at 689; *Kern, supra* at 341.

IX

Lastly, defendants argue that the trial court erred in denying their motion for remittitur. A trial court may grant a new trial when the damage award is excessive. MCR 2.611(A)(1)(c) and (d). If the only error is the excessiveness of the verdict, however, the court may deny a new trial if the nonmoving party consents to entry of judgment in an amount that the trial court finds to be the highest amount supported by the evidence. MCR 2.611(E)(1). A trial court's decision regarding remittitur is reviewed on appeal for an abuse of discretion. *Palenkas v Beaumont Hospital*, 432 Mich 527, 533; 443 NW2d 354 (1989); *Craig v Oakwood Hospital*, 249 Mich App 534, 566-567; 643 NW2d 580 (2002) (Cooper, J, concurring); see also MCL 600.6098(4). In considering this issue, we must view the evidence in the light most favorable to the nonmoving party. *Phillips v Deihm*, 213 Mich App 389, 405; 541 NW2d 566 (1995). Further, because the trial court is in a superior position to evaluate the credibility of the witnesses and make an informed decision, we accord due deference to it decision. *Palenkas, supra* at 534; *Phillips, supra* at 404.

In determining whether remittitur is appropriate, a trial court must decide whether the jury award was supported by the evidence. *Henry v Detroit*, 234 Mich App 405, 415; 594 NW2d 107 (1999). The trial court's inquiry should be limited to objective considerations, such as: (1) whether the verdict was the result of improper methods, prejudice, passion, partiality, sympathy, corruption, or mistake of law or fact; (2) whether the verdict was within the limits of what reasonable minds would deem just compensation for the injury sustained; and (3) whether the amount actually awarded is comparable to awards in similar cases within the state and in other jurisdictions. *Palenkas, supra* at 532-533.

Defendants' argument for remittitur is based in part on their position that the jury's verdict was excessive because it was influenced by "inadmissible" evidence of defendants' conduct after the accident, resulting in an inclination to punish defendants. However, we have already concluded that the evidence of defendants' post-accident conduct was properly admitted.

Defendants' claim that the jury's verdict was influenced by passion and prejudice is undermined by the fact that the jury was instructed to decide the case based on the facts in evidence and that its decision must not be influenced by sympathy or prejudice. The jury is presumed to understand and follow the court's instructions. *Bordeaux v Celotex Corp*, 203 Mich App 158, 164; 511 NW2d 899 (1993). Additionally, Linda Ream's counsel specifically asked the jury not to punish defendants with their verdict and explained that the verdict was intended to

compensate Linda Ream for her injuries. That the jury was not improperly motivated to punish defendants is also reflected in the verdict itself. Specifically, the jury declined to award exemplary damages for civil conspiracy, notwithstanding its determination of liability for that claim, and it determined that plaintiff Terry Ream was partly responsible for the accident. Further, the jury did not award plaintiffs the whole of what they sought in damages. These considerations indicate that the jury's verdict was not the result of passion or bias, but rather a careful consideration of the evidence.

In support of their request for remittitur, defendants also attach for comparison purposes a number of verdicts from other Michigan cases involving allegedly similar injuries. However, in recognition that "no two cases precisely resemble one another" and that "[n]o two persons sustain the same injury or experience the same suffering," our Supreme Court has cautioned that, while a reviewing court may find value in analogous cases for comparison "if research uncovers a sufficient sample of reviewed awards," *Precopio v Detroit*, 415 Mich 457, 471; 330 NW2d 802 (1982), "[a]n appellate court should not attempt to reconcile widely varied past awards for analogous injuries 'which in the abbreviated appellate discussion of them seem somewhat similar.'" *Id.*, quoting *Gaspard v LeMaire*, 245 La 239, 270; 158 So2d 149 (1963). In addition, "Analogous cases cannot serve as the dispositive or controlling criterion for evaluating an award for pain and suffering, but rather as one factor which may provide some sense of a reasonable range of awards." *Precopio*, *supra* at 471-472. Moreover, a court should consider seriously the premise that a dollar amount can never truly be placed on an individual's humiliation or pain and suffering, *Phillips*, *supra* at 405, and the traditional deference inherent in the long-standing recognition that "the authority to measure damages for pain and suffering inheres in the jury's role as trier of fact." *Kelly v Builders Square, Inc*, 465 Mich 29, 34-37; 632 NW2d 912 (2001).

Here, defendants' reliance on verdicts from allegedly analogous cases is deficient in several respects. As defendants recognize, none of their comparison cases involve the type of multiple fractures of the same leg that Linda Ream sustained. To compensate for this, defendants simply submit their own calculations of additional "fair amounts" for the injuries not covered in their "representative" cases, such as an additional leg fracture or the probability of future surgeries, in order to arrive at what they perceive to be an adequate award for the injuries actually sustained by plaintiffs. Defendants also fail to discuss the relevance of the comparison cases in light of any enhanced pain and suffering associated with the multiple, concurrent injuries involved here, or any added mental distress damages associated with the particular circumstances surrounding the accident, such as Terry Ream's ability to observe the extensive injuries of his wife afterward, and defendants' post-accident conduct. We do not view our Supreme Court's discussion concerning the limited value of comparable awards to require a trial court to accept a defendant's attempt to combine average damage awards of different injuries as if from an a' la carte menu. Such a comparison does not adequately take into account the whole of plaintiffs' injuries as they were suffered.

Upon considering the evidence as a whole and the arguments presented, the trial court's denial of defendants' motion for remittitur is not "so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Talbot
/s/ Stephen L. Borrello