

STATE OF MICHIGAN
COURT OF APPEALS

LISA MARGARET NAULT and PAUL J.
NAULT,

UNPUBLISHED
November 2, 2004

Plaintiffs-Appellants,

v

No. 251225
Marquette Circuit Court
LC No. 01-038901-NI

DARREN J. WEBB and ACHATZ PLUMBING
AND HEATING, INC.,

Defendants-Appellees.

Before: Murphy, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial court's denial of their motions for directed verdict, new trial, and judgment notwithstanding the verdict. We affirm.

A trial court's decision on whether to grant a new trial is reviewed for an abuse of discretion. *Kelly v Builders Square, Inc*, 465 Mich 29, 34; 632 NW2d 912 (2001). But, a trial court's decision on either a motion for judgment notwithstanding the verdict or a motion for a directed verdict is reviewed de novo, considering the evidence and all reasonable inferences in a light most favorable to the nonmoving party. *Sniecinski v BCBSM*, 469 Mich 124, 131; 666 NW2d 186 (2003). If reasonable jurors could have reached different conclusions, the jury verdict must stand. *Central Cartage Co v Fewless*, 232 Mich App 517, 524; 591 NW2d 422 (1998). Statutory interpretation is a question of law that this Court reviews de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

Plaintiffs first argue that the jury's finding of serious impairment of bodily function mandates a finding of noneconomic damages under MCL 500.3135. We disagree. The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature as expressed in the statutory language. *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003). If the plain meaning of the language is clear, judicial construction is neither necessary nor permitted. *Eggleston, supra* at 32.

MCL 500.3135(1) provides: "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." Serious impairment of body function "means 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).

Therefore, the plain language of MCL 500.3135 provides only that a defendant is *subject to* liability if a plaintiff shows a serious impairment of bodily function. Proof of a serious impairment is merely a tort threshold that a plaintiff must overcome before he may attempt to prove damages. Even if a person's ability to lead his life has been affected, a plaintiff must nevertheless prove that he suffered non-economic damages as a result. Consequently, the jury's finding that Lisa Nault suffered a serious impairment of bodily function but no noneconomic damages is not logically inconsistent.

Plaintiffs further argue that the verdict was inadequate and against the great weight of the evidence. A jury's determination of the amount to allow for pain and suffering will normally not be disturbed, although this Court may substitute its judgment for that of the jury on a finding that the verdict has been secured by improper methods, prejudice, or sympathy. *Kelly, supra* at 35-36. Plaintiffs have not shown that the verdict was secured by improper methods, prejudice, or sympathy. This Court may also find a jury verdict inadequate when it ignores uncontested damages sustained by a plaintiff. *Moore v Spangler*, 401 Mich 360, 372; 258 NW2d 34 (1977). But, none of the evidence regarding whether Lisa Nault had suffered non-economic damages was uncontested. Moreover, a jury is allowed to weigh the credibility of witnesses and reject or accept all or part of a witness's testimony. *Kelly, supra* at 39-40. Although there was evidence that Lisa Nault suffered noneconomic damages, there was also evidence that she could resume normal functions within weeks after her injury. The jury was entitled to accept the latter version of events. When the evidence is viewed in the light most favorable to defendant, reasonable jurors could have concluded that plaintiffs failed to prove noneconomic damages. Therefore, the trial court did not abuse its discretion by denying both plaintiffs' motion for a new trial and plaintiffs' motion for judgment notwithstanding the verdict.

Because of this ruling, it is unnecessary to determine whether the trial court erred when it denied plaintiffs' motions for a partial directed verdict and for judgment notwithstanding the verdict on the issue of comparative negligence. We note, however, that although no testimony directly showed Lisa Nault to be at fault, the jury could have inferred that she was speeding, and that she proximately caused her own injuries by taking her eyes off the road to look at her speedometer. When the evidence is viewed in the light most favorable to defendant, reasonable jurors could have reached different conclusions whether plaintiff shared responsibility for the collision, so the trial court correctly denied plaintiffs' motions. *Central Cartage Co, supra* at 524.

We affirm.

/s/ David H. Sawyer

/s/ Jane E. Markey