attached a certificate signed by the Court Reporter certifying that the transcript is a true and accurate transcript and that the parties or their counsel have been notified of the lodging in the appropriate office.

Rule 39-5000.16 Objections

(a) The Court Reporter shall notify the respective parties or their attorneys that the transcript has been lodged and that if no objections are made to the transcript within five (5) days after receipt of such notice, the transcript will be marked filed and become a part of the record. If objections are made to the transcript by any party, they shall be submitted to and settled by the trial court. The party filing objections shall serve a copy of the objections on the other parties and notify the other parties of the date when the transcript will be submitted to the Court for settlement.

(b) The Court shall examine any parts of the transcripts to which objections are made pursuant to Rule 39-5000.16 and may examine any other parts of the transcripts. If the trial judge examines any portion of the transcript, he shall certify, by reference to the page and line number or their equivalent, which portions he has read and corrected.

(c) After the differences have been settled or other corrections have been made and certified by the Court, the Court shall return the transcript to the appropriate office where the same shall be marked filed an shall become a part of the offical record.

Rule 39-5000.17 Certification and Filing

If no ojections are made to the text, after five (5) days the appropriate officer shall mark the transcript filed and it shall become a part of the official record.

Rule 39-5000.18 Transcripts to be Available to the Court

After a transcript is lodged, so that it may be available to the Court, it may not be removed from the appropriate office except by the Court or the official court stenographer or to be forwarded to another court for appropriate proceedings.

By the Court,

/s/ George C. Eppinger
P.J.

compensating the plaintiff.

ORDER

AND NOW, July 22, 1983, summary judgment in the amount of $25,211.52 (for services rendered to the defendant, Florence I. Croft, to March 1, 1983) be and is hereby entered in favor of the plaintiff and against the defendant.

FIX V. PLUM, C.P. Franklin County Branch, No. A.D. 1982 0 67

Trespass - No-Fault Insurance - $750.00 Threshold - Proof of Pain and Suffering - Proof of Disability - Lay Testimony

1. Where defendant stipulated that medical services exceeded the $750.00 Threshold of Pennsylvania No-Fault Insurance Act, the Court may refuse to allow plaintiff to show actual costs of medical services to prove pain and suffering.

2. The Pennsylvania Superior Court cases of *Zagari vs. Gralka* and *Martin vs. Soblotney* are in contradiction and a lower court may hold contra to the *Martin* case after concluding *Zagari* better declares the present state of the law.

3. Lay opinion evidence is permitted in an area involving everyday experiences and not in an area requiring special skills.

4. Lay testimony concerning ability to perform secretarial duties is inadmissable where prior expert testimony was given by treating physician.

John N. Keller, Esquire, Attorney for Plaintiff

George F. Douglas, Jr., Esquire, Attorney for Defendant

OPINION

Roy A. Gardner, P.J.,* September 19, 1983:

*Editor's Note: President Judge, 44th Judicial District, Specially Presiding

Rebecca M. Fix (hereinafter referred to as plaintiff) suffered injuries in an automobile collision, which resulted in surgical procedures and loss of work during her subsequent recovery. At trial, there were two essential disputes: (1) whether the plaintiff should be permitted to produce evidence of the cost of her medical services after defendant stipulated that the services exceeded the $750 threshold of the Pennsylvania No-fault Motor Vehicle Insurance Act; and (2) whether the plaintiff's injuries were such as to prevent her from continuing her previous employment as a secretary. The jury returned a verdict against the defendant in the amount of $20,500 - $10,500 designated as compensation for the loss of past and future earnings and $10,000 for past and future pain, suffering, embarrassment, humiliation, loss of life's pleasures and physical disability.

Plaintiff now moves this court for a new trial, citing in support of her effort the following:

1. That the trial court erred in refusing to admit evidence of the cost of medical services in order to prove pain and suffering under the Pennsylvania No-fault Motor Vehicle Insurance Act;

2. That the jury verdict awarding plaintiff $10,500 for past and future loss of earnings was inadequate as a matter of law;

3. That the jury verdict awarding plaintiff $10,000 for past and future pain, suffering, embarrassment, humiliation, loss of life's pleasures, and physical disability was inadequate as a matter of law;

4. That the trial court erred in refusing to permit lay relatives of plaintiff to testify that plaintiff is not capable of doing secretarial work.

Plaintiff's first argument in support of this petition is, in essence, that we erred in refusing to admit the proffer of evidence of the cost of plaintiff's medical services. Defendant contends, in the alternative, that, since the purpose of such admission is to show that plaintiff has met the threshold requirement of the *Pennsylvania No-fault Motor Vehicle Insurance Act,* 1974, July 19, P.L. 489, No. 176, Art. III, Section 301, 40 Pa. C.S.A. Section 1009.301(a)(5)(B), to permit recovery for non-economic injury, upon stipulating that the cost of the medical services exceeded the $750 threshold, such costs could not be admitted into evidence.

The dilemma over this issue confronts us today because of

the conflicting holdings of two unreconciled Superior Court decisions. *Zagari vs. Gralka,* 264 Pa. Super. 239, 399 A.2d 755 (1979), held specifically that damages for non-economic detriment and injury may be recovered if the $750 threshold of the No-fault Act, 40 Pa. C.S.A. Section 1009.301(a)(5)(B), is met. However, these damages are only used to show that the minimum requirement is present. *Id.* at 244, 758. The *Zagari* court found the contention that the cost of medical services and work loss are the best evidence of pain and suffering to be "absurd."

> "One cannot discern how much pain and suffering was endured by considering how much money changed hands between the injured party and those who treated him. It is the nature and extent of the treatment required which is more truly an indication of pain and suffering, and evidence of treatment may be introduced in a tort action for pain and suffering."

Id. at 245, 758. Since the *Zagari* decision, the Superior Court, by panel, considered the same issue in *Martin vs. Soblotney,* 296 Pa. Super. 145, 442 A.2d 700 (1982), and held "that evidence of the reasonable value of reasonable and necessary medical services is admissible at trial of a tort action under Section 301(a)(5)(B) of the No-fault act." *Martin,* at 165, 708.

In reaching this conclusion, the *Martin* court tried to reconcile its decision with *Zagari,* rather than overrule its holding. Therefore, in resolving this dispute we are faced with two conflicting and opposite decisions. If *Zagari* is controlling, then the refusal to admit the costs of the medical services was entirely appropriate. On the other hand, if *Martin* be controlling, we were in error to refuse such admission, as plaintiff contends.

The same dilemma was dealt with in *Shaffer vs. Olsen,* 24 D.&C. 3d 93 (Warren 1982). In that case, Judge Wolfe sustained defendant's preliminary objections and struck from plaintiff's complaint the paragraphs which would have admitted into evidence the costs of plaintiff's medical treatment. The court noted that *Martin* and *Zagari* "are in essence and as a practical matter in contradiction except for a strained interpretation of the application of these holdings." *Shaffer,* at 94. Thus, in sustaining defendant's objections, the court decided "in all due respect for the *Martin* court we believe the holding of *Zagari* more properly and better addresses (the issue as to the admissibility of specific medical costs)." *Shaffer,* at 97.

> Further, in *Taylor vs. Monette,* 564 F. Supp. 1 (E.D. Pa. 1982), the district court specifically rejected and disagreed "with the

Martin court's assertion that the amount of the medical expense is relevant to a determination of the proper amount to award for pain and suffering."

Taylor, at 1. However, the "plaintiffs are entitled to show what hospitalizations and medical procedures they underwent, and what pain and discomfort may have been associated with such treatment. But I have great difficulty in perceiving how the precise cost of such treatment would bear upon the degree of pain and suffering experienced."

Taylor, at 1-2. The court also recognized whatever "marginal" value such evidence would provide was outweighed by the danger of "its tendency for harm" and prejudice. *Taylor,* at 2. Therefore, recognizing that this issue is "developing," the district court rejected and refused to apply *Martin, Id.,* at 2.

Unfortunately, Pennsylvania's No-fault statute fails to address the problem of pleading and proving actual expenses in such cases. States which have adopted No-fault statutes have dealt with the issue in different manners. Some have statutes specifically precluding proof of medical expenses, while others have provided sections allowing such proof. See *Martin,* at 152, footnotes 7 and 8; *Zagari,* at 246, footnotes 9-11. A few No-fault states, including Pennsylvania, have statutes which are silent in this regard. Of those which are silent, only one state has addressed the problem in its courts:

> "In *Murray v. Ferris,* 74 Mich. App. 91, 253 N.W. 2d 365 (1977), the Michigan Court of Appeals, interpreting Sec. 500.3135 of Michigan's no-fault statute which provided that the accident victim may recover from the tort-feasor only for non-economic loss, held that the trial judge involved acted correctly in striking from the victim's pleadings all claims for economic loss."

Zagari, at 246, 759. We find this to be persuasive in and of itself.

However, considering the nature of this case and the confusion resulting from the contrary holdings of *Zagari* and *Martin,* we find it necessary to examine the traditional principles of stare decisis to determine how we should resolve the conflict and which decision we should follow. This doctrine has been defined as follows:

> "Doctrine that, when (the) court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same . . . the doctrine is a salutory one, and should not ordinarily be departed from where decision is of longstanding and rights have been acquired under it."

Black's Law Dictionary, p. 1261 (5th ed., 1979). Nevertheless, "while it should ordinarily be strictly adhered to, there are occasions when departure is rendered necessary." *Black's,* at 1261.

Of necessity, we recognize that until a decision of the Superior Court, whether it be by panel or en banc, is overruled by the Supreme Court of Pennsylvania, that decision is the law of the Commonwealth. *Baker vs. Aetna Casualty & Surety Co.,* Pa. Super. 454 A.2d 1092 (1982). However, we must also recognize that decisions of the courts are not the law in and of themselves but are merely "evidence of the law." So that decisions should not be followed "without regard for the soundness of the conclusions therein expressed. To act otherwise would be merely to perpetuate errors." *In Re Bair,* 49 F.Supp. 56, 60 (1943). See also *Hack vs. Hack,* 495 Pa. 300, 433 A.2d 859 (1981); *Mayhugh vs. Coon,* 460 Pa. 128, 331 A.2d 452 (1975). From this it is clear that stare decisis "is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable." *Helvering vs. Hallock,* 309 U.S. 106, 119, 84 L.Ed. 604, 612 (1940). Therefore, even while following the strictures of stare decisis there is room for correcting a recent decision of questionable authority. *Callender's Adm. vs. Keystone Mutual Life Insurance Co.,* 23 Pa. 471, 475 (1854). See also *Ayala vs. Philadelphia Board of Public Education,* 453 Pa. 584, 305 A.2d 877 (1973); *Mayle vs. Pennsylvania Department of Highways,* 479 Pa. 384, 388 A.2d 709 (1978).

Under these principles, we utilize the discretion afforded this court to decline to follow the exact holding of *Martin,* for we feel that *Zagari* better declares the present state of law of this Commonwealth. This is further evidenced by the two recent decisions in *Shaffer vs. Olsen,* supra, and *Taylor vs. Monette, supra, which chose to follow Zagari* as the more correct statement of law.

We can see no error in refusing to allow plaintiff to present evidence of the actual costs of medical services to prove pain and suffering. The jury received evidence of pain and suffering from those sources provided for in the statute and explained in *Perigo vs. Deegan,* 288 Pa. Super. 93, 431 A.2d 303 (1981), footnote 4, at 100.

Even were we to assume that the refusal to admit the actual cost of medical services was error, plaintiff has failed to demon-

strate that the verdict in his favor did not cure the error complained of and that the error produced an unjust result. A verdict winner complaining of trial errors in order to secure a new trial must convince the court of these facts. *Granowitz vs. Erie Redevelopment Authority,* 432 Pa. 243, 247 A.2d 623 (1968), citing *Siegfried vs. Lehigh Valley Transit Co.,* 334 Pa. 346, 349, 6 A.2d 97, 98 (1939). Whatever that may be "it is well-settled that error in the abstract is not sufficient to warrant a retrial." *Rankin vs. McCurry,* 402 Pa. 494, 166 A.2d 536 (1961).

Accordingly, we find no error in our refusal to admit the actual costs of plaintiff's medical services to prove pain and suffering.

Now we turn our attention to plaintiff's remaining three exceptions. The second and third exceptions claim that as a matter of law the jury verdicts were inadequate. We fail to so find.

For a new trial to be granted on the inadequacy of a jury verdict, it is necessary that "the injustice of the verdict should stand forth like a beacon." So long as the verdict bears a reasonable resemblance to the damages proved, it is not the function of the court to substitute its judgment for that of the jury. *Elza vs. Chovan,* 396 Pa. 112, 118, 152 A.2d 238, 240 (1959). Circumstances do exist when a verdict may be declared inadequate. These include when the verdict is so inadequate as to indicate passion, prejudice, partiality, or corruption, when the jury disregarded instructions of the court, or when there was a mistake on the part of the jury. *Rutter vs. Morris,* 212 Pa. Super. 466, 469, 243 A.2d 140, 142 (1968). None of these elements are present in our verdict, as the verdict is reasonably related to the facts such that a reasonable person could reach a similar conclusion as the jury did here.

Another instance when the court may declare a jury verdict to be inadequate is where the verdict "shocks the judicial conscience" as it is rendered. *Lupi vs. Keenan,* 396 Pa. 6, 8, 151 A.2d 447, 449 (1959). The court in *Coward vs. Ruckert,* 381 Pa. 388, 393, 113 A.2d 287, 290 (1955), stated that a verdict is

> "shocking to the judicial conscience when the jury's verdict at the time of its rendition causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench."

However, when we received this verdict from the jury, we did not

even lose our balance. Accordingly, we cannot say that the jury verdict was inadequate as a matter of law as persuaded by plaintiff in exceptions 2 and 3.

Plaintiff's final exception argues that we erred in refusing to permit plaintiff's husband and daughter to testify that plaintiff was no longer capable of performing secretarial duties, due to the injuries she received in the accident, in contradiction of the expert testimony of the treating physician.

In *Lewis vs. Mellor,* 259 Pa. Super. 509, 393 A.2d 941 (1978), the Superior Court adopted the Federal Rules of Evidence position regarding the admissibility of lay opinion evidence. In so holding, the Court declared that the reasoning underlying the Federal Rules is that a trial judge should be given discretion to decide whether lay opinion based on personal opinion may be helpful to the jury. *Lewis,* at 523-524, 948. Whether or not the lay testimony would be helpful is determined by whether the witness is "qualified by ordinary experience" to testify as to the matter at hand. Such matters must be those to which an ordinary person is qualified on which to give an opinion, such as everyday experiences, and not in an area requiring "special skills." *Critzer vs. Donovan,* 289 Pa. 381, 387, 137 A. 665 667 (1927).

Accordingly, we are of the opinion that this testimony would not have been helpful to the jury since the witnesses are not experts in this field and this is not an area within the experience of the ordinary person. Further, the jury already had the evidence before them, including the opinion of the treating physician.

Finding plaintiff's arguments for a new trial to be unpersuasive, the motion for a new trial is denied.

ORDER

AND NOW, September 19, 1983, for the reasons set forth in the opinion of even date attached hereto,

IT IS ORDERED that the plaintiff's motions for a new trial be and the same are hereby denied.

PALMER v. PALMER, C.P. Franklin County Branch, F.R. 1981 - 604

Divorce - Equitable Distribution - Marital Property - Pensions - Income Tax Implications - Future Inheritance - Alimony - Counsel Fees

1. Pension benefits are marital assets subject to distribution regardless of whether the plan was vested or not vested.

2. It is not error for the Master to admit evidence relating to tax consequences if a distribution is to be "equitable."

3. A court may not consider the issue of alimony in determining equitable distributions.

4. The starting point to consider the relevant factors in making an equitable distribution is an equal division.

5. Where the parties find themselves in nearly equal financial positions as a result of assets being equitably distributed and with awards of alimony pendente lite and alimony, each party should pay their individual counsel fees and costs.

Martha B. Walker, Esq., Counsel for Plaintiff

Barbara B. Townsend, Esq., Counsel for Defendant

OPINION AND DECREE

KELLER, J., January 23, 1984:

The present divorce action was commenced by the plaintiff, Emily Palmer, on August 14, 1981, with the filing of her complaint against the defendant, Sidney M. Palmer. In addition to the alternative divorce grounds of irretrievable breakdown of the marriage and indignities to the person, the plaintiff also requested relief by way of equitable distribution, alimony, alimony pendente lite and counsel fees and expenses. On defendant's motion dated February 19, 1982, the Court entered an Order appointing Robert C. Schollaert, Esq., Master. On April 13, 1982, an Order of Court was entered at Mr. Schollaert's request revoking his commission and appointing J. Dennis Guyer, Esq., Master to hear the issues of division of property, alimony, alimony pendente lite and counsel fees and expenses and to return the record and a transcript together with his report and recommendations. Hearings were conducted by the Master on June 10, 11 and 14, 1982, and attended by the parties and their counsel.