

Helmick v Pace

Maryann C. Helmick, Plaintiff v. John E. Pace, Sr., Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch;  
Civil No. 2010-1296

HEADNOTES

*Post Trial Motions; Negligence; Causation; Weight of the Evidence*

1. Where the parties agree as to defendant's negligence and both parties' experts agree that the motor vehicle accident cause some injury, a jury must find that the accident was a substantial factor in causing a plaintiff's injury. Andrews v. Jackson, 800 A.2d 959 (Pa. Super. 2002).
2. Where a defendant's expert does not unequivocally admit that an accident caused an injury but, instead, admits that the accident "could have" or "may have" caused the injury, then a jury is justified in finding no causation. Henery v. Shadle, 661 A.2d 439 (Pa. Super 1995) and Holland v. Zelnick, 478 A.2d 885 (Pa. Super. 1984).
3. Where defendant is attempting to dispute that the accident in question was the factual cause of an injury to a particular body part, evidence of a prior injury to that body part is relevant to show that the injury already existed prior to the accident.

Appearances:

Anthony Cosentino, Esq., Attorney for Plaintiff  
Kevin Rauch, Esq., Attorney for Defendant  
Maryann C. Helmick, Plaintiff  
John E. Pace, Sr., Defendant

OPINION

Before Herman, J.

**PROCEDURAL HISTORY**

Plaintiff, Maryann C. Helmick, initiated this negligence action following a motor vehicle collision that occurred on January 14, 2009. The Complaint was filed April 1, 2010. Defendant, John E. Pace, Sr., filed an Answer with New Matter on April 28, 2010. In the Answer, Defendant admitted his negligence. Plaintiff answered the New Matter on May 11, 2010. The matter was tried to a jury on August 2-3, 2012 to determine the issue of factual causation and damages. The jury returned a verdict in favor of the Defendant finding no factual causation between the accident and Plaintiff's injuries and, accordingly, awarded no damages to the Plaintiff.

Plaintiff filed a Motion for Post Trial Relief on August 8, 2012, and then an amended motion on August 13, 2012. The Defendant filed an answer on August 21, 2012. The parties filed briefs in support. Oral argument was held on December 4, 2012. The matter is now ready for decision.

**DISCUSSION**

*Whether the jury's verdict was against the weight of the evidence.*

Plaintiff argues that she is entitled to post trial relief because the uncontradicted evidence at trial established that Plaintiff sustained an injury in the accident. It is worth noting that there were two types of injuries at issue during trial. The main focus of the case was an injury to the brachial plexus network of nerves located in Plaintiff's shoulder. The other injury, the one now at issue, involved soft tissue damage. Plaintiff is arguing that because Defendant's medical expert, Dr. Bird, admitted that Plaintiff suffered soft tissue damage, any verdict that did not find factual causation was against the weight of the evidence.

A jury's verdict can only be overturned for being against the weight of the evidence if the verdict is so contrary to the evidence that it shocks one's sense of justice. Criswell v. King, 834 A.2d 505 (Pa. 2003).

Plaintiff relies on Andrews v. Jackson, 800 A.2d 959 (Pa. Super. 2002). In Andrews, the Superior court held that where there is no dispute as to a defendant's negligence, and both parties' experts agree that the accident caused some injury to the plaintiff, the jury must find that the accident was a substantial factor in bringing about some of the plaintiff's injuries. Andrews, 800 A.2d at 962. A verdict to the contrary would be against the weight of the evidence. Id. Plaintiff analogizes Andrews to the matter before us.

Defendant, however, notes a critical distinction between the holding in Andrews and the holdings in Henery v. Shadle, 661 A.2d 439 (Pa. Super 1995) and Holland v. Zelnick, 478 A.2d 885 (Pa. Super. 1984) which are both cited in Andrews. In these two cases, where the issue for the jury was the same issue before us now, the experts did not agree that the Plaintiff actually suffered damage from the accident, rather, they agreed that the injury "could have" or "may have" been caused by the accident. In both cases, the Superior Court found that the juries were justified in finding no factual causation because the experts did not unequivocally admit that the injury was the result of the accident. This is a critical distinction we must consider in analyzing the matter before us.

In light of this distinction, we find that Dr. Bird did not specifically admit that Plaintiff suffered soft tissue damage. Rather, as in Henery and Holland, he admitted that she "may have suffered some cervical strain – and a soft tissue injury as her primary care doctor mentioned." (Bird T. at 43) (emphasis added). Dr. Bird did not admit any injury. He specifically denied any neurologic injury, and then he refused to offer an opinion as to any soft tissue injury. He refused to give his opinion because his expertise is in neurological injuries, and he limited his testimony as such. (Bird T. at 43, 45). Therefore, the only evidence of any soft tissue injury came from testimony of Plaintiff's expert who the jury was free to find credible or not. The verdict was not against the weight of the evidence.

*Whether the Court erred in allowing Defendant to question Plaintiff regarding her medical history.*

Plaintiff's second argument is that the Court erred in finding Plaintiff's medical history relevant. In the alternative, Plaintiff argues that if the testimony was relevant, its probative value was outweighed by its prejudicial effect.

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Pa. R. E. 401.

While cross examining Ms. Helmick, Defendant's counsel began inquiring into her medical history. Specifically, counsel began asking questions regarding prior instances where Plaintiff complained about shoulder pain and whether she received any treatments or diagnoses for her shoulder. Plaintiff's counsel entered an objection and a discussion occurred at the sidebar. (N.T. 8/2/2012 at 69-72). Plaintiff's counsel argued that the testimony being elicited is in reference to a shoulder injury which occurred several years ago and does not relate to the brachial plexus injury Plaintiff claims to have received during the accident. The objection was overruled because the court found that the testimony of a previous shoulder injury, which was undiagnosed and unconfirmed by her doctor, could help the jury determine the main issue in this case; that is, whether the accident was the factual cause of injury to the Plaintiff. We find no error in our decision. We reaffirm our finding that testimony of any prior shoulder injuries could have assisted the jury in determining whether any current injury was the result of the accident or is from a previous injury.

As to whether the prejudicial effect of this evidence outweighs its probative value, we find that the evidence is more probative than prejudicial. "Unfair prejudice means a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially." Pa. R. E. 403 (Comment). Certainly this evidence is detrimental to Plaintiff's case, however, evidence derogating of Plaintiff's case does not render it prejudicial. The prior medical history testimony did not suggest an improper basis or divert the jury's attention. Rather, it presented facts allowing the jury to assess all possible causes of Plaintiff's shoulder pain.

Therefore, we reaffirm our decision overruling Plaintiff's objection to the relevancy of Defendant's line of questioning regarding Plaintiff's medical history.

### **CONCLUSION**

In light of the foregoing discussion, we find that the jury's verdict was not against the weight of the evidence. We also find that the Court committed no error in overruling Plaintiff's objection to the relevance of prior medical history. Plaintiff's Motion for Post Trial Relief will be denied.

ORDER OF COURT

AND NOW, this 21st day of February 2013, upon consideration of Plaintiff's Motion for Post Trial Relief, Defendant's response thereto, the briefs in support, and oral argument,  
THE COURT HEREBY ORDERS that Plaintiff's Motion for Post Trial Relief is DENIED pursuant to the attached opinion.

Pursuant to Pennsylvania Rules of Civil Procedure 236, the Prothonotary shall give written notice of the entry of this Order of Court, including a copy of this Order of Court, to each party's attorney of record and shall note in the docket the giving of such notice and the time and manner thereof.