COREY LAWSON

VERSUS

STARR INDEMNITY AND LIABILITY COMPANY, ET AL

NO. 24-CA-379

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE FORTIETH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 75,923, DIVISION "B"
HONORABLE NGHANA LEWIS, JUDGE PRESIDING

April 30, 2025

TIMOTHY S. MARCEL
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Scott U. Schlegel, and Timothy S. Marcel

JUDGMENT GRANTING JNOV VACATED EXCEPT FOR AWARD OF COSTS; JUDGMENT ADOPTING JURY VERDICT REINSTATED

TSM

CONCURS IN PART, DISSENTS IN PART

FHW

CONCURS WITH REASONS

SUS

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS
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Andrew D. Weinstock
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MARCEL, J.

In this case arising from an automobile rear-end collision, defendants Starr Indemnity and Liability Company, Jones Industrial Holdings, Inc. and Brett Kling appeal a March 19, 2024 judgment of the trial court granting a Judgment Notwithstanding the Verdict ("JNOV") awarding plaintiff, Corey Lawson, additional damages not awarded by the jury following the trial on the merits and also denying plaintiff's Motion for a New Trial. For the following reasons, we vacate the March 19, 2024 judgment of the trial court and reinstate the September 8, 2023 judgment that reflects the jury's verdict.

BACKGROUND

On November 18, 2019, while driving westbound on Airline Highway, Mr. Lawson was rear-ended by a motor vehicle operated by Mr. Kling who was operating his vehicle while in the course and scope of his employment with Jones. Mr. Lawson was taken to a nearby emergency room where he was x-rayed and discharged a short time later. Following the accident, Mr. Lawson sought treatment from chiropractors, orthopedists, and pain management specialists for pain in his neck and lower back. Mr. Lawson alleged in his petition filed on September 29, 2020 that he suffered multiple damages as a result of the accident including pain and suffering, bodily injury, loss of enjoyment of life, lost wages, mental anguish, damage to his vehicle and more.

The matter proceeded to a jury trial on the merits on June 26 and 27, 2023.[1] At the conclusion of the trial, the jury returned a verdict in favor of the plaintiff and against defendants. The jury awarded Mr. Lawson $25,000 for past medical expenses, $18,500 for future medical expenses, $2,000 for past, present and future

[1] Prior to trial, the parties entered into a consent judgment on May 2, 2023 wherein parties agreed that the negligence of Mr. Kling was the sole proximate cause of the accident.

physical pain and suffering, $0 for mental pain and suffering, and $0 for loss of enjoyment of life.

Following the trial, the parties offered competing final judgments: Mr. Lawson offered a final judgment form that reflected the total $45,500 amount awarded by the jury. Defendants offered a final judgment that awarded Mr. Lawson only $5,460 which reflected an 88% discount of the $45,500 per an interrogatory in the jury verdict form that asked the jury to identify the percentage of Mr. Lawson's pre-existing injuries aggravated by the November 16, 2019 accident. On September 8, 2023, the trial court signed the judgment awarding Mr. Lawson $45,500.

Subsequent to signing the final judgment, Mr. Lawson filed a Motion for Judgment Notwithstanding the Verdict (JNOV) or, alternatively, a Motion for a New Trial. Plaintiff argued that the award of damages by the jury was so low as to constitute an abuse of discretion thereby warranting a judgment notwithstanding the verdict. Alternatively, plaintiff argued that the jury verdict was clearly contrary to the law and evidence thereby warranting a new trial.

On March 19, 2024, the trial court granted plaintiff's motion for judgment notwithstanding the verdict, denied the motion for a new trial, and entered a judgment awarding Mr. Lawson $25,500 for past medical expenses, $18,500 for future medical expenses, $25,000 for mental pain and suffering, $25,000 for loss of consortium, and $25,000 for physical pain and suffering. The trial court also awarded Mr. Lawson $2,017.54 in costs and interest in the amount of $21,528.45. Defendants' timely appeal followed.

On appeal, defendants raise three assignments of error: (1) the trial court erred in granting plaintiff's JNOV and increasing the general damage award because the jury's verdict was supported by the evidence; (2) the trial court erred in granting the JNOV and awarding loss of consortium damages because plaintiff

is not the proper party to receive such damages and never pled or requested such damages; and (3) the trial court erred in entering plaintiff's proposed final judgment on September 8, 2023 because doing so disregarded multiple line items on the jury verdict form and ignored specific instructions provided on the jury verdict form. We consider these assignments of error in our discussion below.

DISCUSSION

Judgment Notwithstanding the Verdict

A JNOV is a procedural device authorized by La. C.C.P. art. 1811, by which the trial court may modify a jury's findings to correct an erroneous jury verdict. *Aych v. State Farm Mut. Auto. Ins. Co.*, 23-89, p. 7 (La. App. 5 Cir. 10/31/23), 374 So.3d 1000, 1006. The Louisiana Supreme Court, recognizing that the jury is the trier of fact in a jury trial, has articulated the "rigorous" standard for granting a JNOV to be when the facts and inferences from the evidence "point so **strongly and overwhelmingly** in favor of one party that reasonable persons could not arrive at a contrary verdict. (Emphasis added.) *Pitts v. Louisiana Med. Mut. Ins. Co.*, 16-1232, pp. 7-8 (La. 3/15/17), 218 So.3d 58, 64-65 (citing *Joseph v. Broussard Rice Mill, Inc.*, 00-628 (La. 10/30/00), 772 So.2d 94, 99.). All reasonable inferences or factual questions should be resolved in favor of the non-moving party. *Id.* If the evidence opposed to the motion could lead reasonable and fair minded people to reach different conclusions, the motion should be denied. *Id.*

In a personal injury case, the plaintiff bears the burden of proving the causal relationship between the injury sustained and the accident which caused the injury. *Simon v. Auto. Club Inter-Ins. Exch.*, 20-156, p. 10 (La. App. 5 Cir. 10/13/21), 329 So.3d 1072, 1081. The test for determining whether the causal relationship between the accident and subsequent injuries is whether the plaintiff proved through medical testimony that it is more probable than not that the subsequent injuries were caused by the accident. *Id*. Whether an accident caused a person's

injuries is a question of fact that should not be reversed on appeal absent manifest error. *Id*.

A jury is given great discretion in its assessment of quantum for both general and special damages. *Aych*, 374 So.3d at 1006. The jury's assessment of quantum or determination of the appropriate amount of damages is a determination of fact that is entitled to great deference on appeal. *Id*. On review, an appellate court must be careful not to reweigh evidence or substitute its own factual findings just because it would have decided the case differently. *Id*.

General damages are those which may not be fixed with pecuniary exactitude; instead, they involve mental or physical pain or suffering, inconvenience, the loss of intellectual gratification or physical enjoyment, or other losses of life or lifestyle, which cannot be definitely measured in monetary terms. *Giglio v. ANPAC Louisiana Ins. Co.*, 20-209, p. 8 (La. App. 5 Cir. 12/23/20), 309 So.3d 416, 423. The role of the appellate court in reviewing general damages is not to decide what it considers to be an appropriate award, but to review the exercise of discretion by the trier of fact. *Id*. Only after a finding of an abuse of discretion by the fact finder may an award be disturbed, and even then the court may only lower it (or raise it) to the highest (or lowest) point reasonably within the discretion afforded that court. *Id*. With these precepts in mind, we review the evidence presented:

At trial, plaintiff offered testimony from four witnesses: Dr. Andrew Todd, an orthopedic surgeon, Dr. Fred DeFrancesch, a doctor of pain management, Dr. Shael Wolfson, an expert in forensic economics, and the testimony of Mr. Lawson himself.[2] The documentary evidence introduced by the plaintiff included copies of medical records (including notes and invoices) from his visits with Dr. Todd,

[2] The testimonies of Dr. Todd and Dr. DeFrancesch were offered at trial *via* video deposition.

invoices from the ambulance service, notes and invoices from the hospital for the emergency room visit, notes and invoices for chiropractor and physical therapy treatment, notes from pain management doctors (including invoices for epidural steroid injections), photographs of the damage to Mr. Lawson's car at the time of the accident, and car damage appraisals.

Mr. Lawson testified that he worked as a process operator and volunteer fireman for Shell Norco, and also that he had not missed any days of work due to his injuries. On the night of the accident, he recalled telling the doctors at the ER that his back hurt very badly, but he didn't feel any pain in his neck at that time. He first reported neck pain to Dr. John Barrett, the chiropractor, a few days after the accident. Dr. Hijazi, the first pain management doctor he saw following the accident, recommended epidural steroid injections ("ESIs"), but Mr. Lawson refused them at that time.[3] Mr. Lawson stated that the treatments prescribed by his treating physicians, including physical therapy and acupuncture, provided relief from his pain, but that it returned.

Mr. Lawson was then referred to Dr. Todd, who sent Mr. Lawson to physical therapy. Mr. Lawson testified that after he was feeling better, Dr. Todd discharged him from further treatment and told Mr. Lawson to return if the pain or discomfort returned. Mr. Lawson testified that he returned to see Dr. Todd after two months because he was experiencing pain in his neck again. Dr. Todd then recommended the ESIs in his neck. Mr. Lawson stated that he had received 5 ESIs at the time of the trial, and that they provided relief for a few months at a time, but that the pain eventually returned.

Regarding pain medication prescribed by multiple treating physicians, Mr. Lawson stated that he would have the prescriptions filled, but that he did not take

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[3] Dr. Hijazi's medical records indicate that Mr. Lawson denied any history of neck or low back pain prior to the accident.

prescription pain medication because it made him sick. He stated that the pain in his neck bothered him about 10 minutes a day and that he would treat the pain with a heating pad. He stated that he was unable to cut the grass or go fishing because of the pain. Mr. Lawson denied in his deposition ever having pain in his lower back prior to the 2019 automobile accident. He admitted on cross-examination at trial, however, that he received medical treatment at the VA for back pain in November 2016 and June 2017.

Dr. Todd first saw Mr. Lawson in May of 2020. At that time, Mr. Lawson complained of pain in his neck and lower back for which Dr. Todd prescribed pain medication and physical therapy. But following his physical examination of Mr. Lawson, Dr. Todd found that the pain in Mr. Lawson's neck was based on Mr. Lawson's subjective complaints. Thereafter, Dr. Todd saw Mr. Lawson approximately every three to four months. In May 2021, Dr. Todd noted that Mr. Lawson was feeling better, required no medication, and had transitioned from therapy to a home exercise program. Thus, Dr. Todd discharged Mr. Lawson. Mr. Lawson returned to Dr. Todd in July 2021 complaining of neck pain. Dr. Todd referred Mr. Lawson to another doctor to receive ESI treatment. Dr. Todd testified that he was still treating Mr. Lawson at the time of trial in June of 2023. Dr. Todd noted considerable improvement in Mr. Lawson's complaints of pain following treatment by ESIs.

Dr. Todd testified that he had not reviewed Mr. Lawson's medical records from the emergency room or from the VA hospital where Mr. Lawson had received previous treatment. Dr. Todd opined that Mr. Lawson's injuries related to the 2019 automobile accident, but also acknowledged that some of the evidence in the medical imaging of Mr. Lawson's spine was indicative of a degenerative disc disease that develops over a long period of time. Dr. Todd also noted the presence of osteophytes (arthritis) at every level in Mr. Lawson's neck.

Dr. DeFrancesch testified that he first saw Mr. Lawson in August of 2021 and at that time began administering ESIs, and that Mr. Lawson reported one hundred percent relief of his pain following these treatments. Dr. DeFrancesch administered the ESIs to Mr. Lawson every few months and continued to do so up until the time of trial in June of 2023.

Dr. Wolfson, an expert in forensic economics, offered various estimates as to the cost of Mr. Lawson receiving ESIs for the rest of his life and stated an expected cost ranging from $388,520 to $607,588.

The defense offered only one witness, Dr. Kevin Martinez, a medical doctor and expert in pain management who performed an independent medical examination of Mr. Lawson and reviewed all of his medical records.[4] Dr. Martinez noted that there was no report of neck pain in the notes from the emergency room visit following the accident. He also opined that the MRI of Mr. Lawson's neck was indicative of a degenerative disc disease that likely pre-existed the accident rather than an acute injury. Dr. Martinez noted the inconsistencies in Mr. Lawson's reports of pain from his July 2021 deposition when he stated that he didn't take any pain medication at all, not even Tylenol, and didn't want any injections, and notes from Mr. Lawson's visit to Dr. Todd a few days later where he was prescribed ESIs. Dr. Martinez noted some inconsistencies in the timing between how long Mr. Lawson stated the ESIs were effective at relieving his pain and the timing of his visits to Dr. DeFrancesch. Dr. Martinez opined that he did not believe Mr. Lawson required ESIs for the rest of his life, but rather perhaps three or four more ESIs over the next few years.

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[4] The documentary evidence introduced by the defense included Dr. DeFrancesch's deposition and medical records, automotive insurance policies and claims, medical records from Dr. Todd, medical records for treatment relating to a 2015 automobile accident, and medical records from VA medical providers indicating Mr. Lawson had complaints of low back pain in 2016 and 2017.

Upon review of the testimony and evidence in the record, we find that the trial court erred in granting the JNOV. The initial verdict and awards of the jury, which are entitled to great deference, are supported by the evidence. The trial court pointed specifically to the jury's award of $2,000 for physical pain and suffering, $0 for mental pain and suffering, and $0 for loss of consortium as "excessively low"; however, this finding disregards the evidence presented.

Mental Pain and Suffering

We agree with appellants that the record lacks evidence that Mr. Lawson experienced mental distress or mental pain and suffering as a result of the accident. In his memorandum supporting his motion for JNOV, Mr. Lawson included only one sentence on this issue stating that the jury's failure to award damages for mental pain and suffering could not be reconciled with the fact that the jury awarded future medical damages. Mr. Lawson did not cite any evidence establishing that he had or would experience mental pain and suffering as a result the accident. Further, he does not even address the issue of mental pain and suffering in his appellate brief.

Due to the lack of evidentiary support, we find that reasonable jurors could have concluded that Mr. Lawson was not entitled to any award for mental pain and suffering. *See Scramuzza v. River Oaks, Inc.*, 03-959, p. 13 (La. App. 5 Cir. 3/30/04), 871 So.2d 522, 531, *writ denied*, 04-1088 (La. 6/25/04), 876 So.2d 389 (affirming jury's refusal to award damages for mental anguish due to lack of evidence). Thus, we vacate the trial court's $25,000 award for mental pain and suffering.

Physical Pain and Suffering

As for physical pain and suffering, the trial court increased the jury's award from $2,000 to $25,000. We agree with appellants, however, that the trial court erred by granting the JNOV to increase these damages. When applying every

inference in favor of appellants, the jury's verdict was one that a reasonable person could reach. When findings are based on determinations regarding the credibility of witnesses, the manifest error standard demands great deference to the jury's findings of fact. *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989).

Mr. Lawson argues on appeal that the trial court correctly increased general damages because a jury award of $43,500 for special damages and only $2,000 for general damages is inconsistent. We recognize that in *Wainwright v. Fontenot*, 00-492, p. 8 (La. 10/17/00), 774 So.2d 70, 76, the Louisiana Supreme Court stated that "as a general proposition" a jury verdict awarding special damages without general damages may often be so inconsistent as to constitute an abuse of discretion. But the *Wainwright* court also held that a verdict awarding medical expenses yet denying general damages is not per se invalid.[5] *Id*. Thus, a reviewing court faced with such a verdict must ask whether the jury's determination is so inconsistent as to constitute an abuse of discretion. *Id*. "[A] jury, in the exercise of its discretion as factfinder, can reasonably reach the conclusion that a plaintiff has proven his entitlement to recovery of certain medical costs, yet failed to prove that he endured compensable pain and suffering as a result of defendant's fault." *Id*.

In the present matter, Mr. Lawson asked the jury to award over $45,855 in past medical expenses and between $388,520 and $607,588 for future medical expenses. It is apparent the jury did not accept the testimony of Mr. Lawson or his

[5] In fact, Louisiana courts have frequently upheld similar awards when the jury was presented with conflicting medical evidence and credibility issues, just as in this case. *See, e.g. Jones v. Bravata*, 18-837, pp. 8-13 (La. App. 1 Cir. 5/9/19), 280 So.3d 226, 234-37, *writ denied*, 19-1850 (La. 2/26/20), 294 So.3d 477 (upholding award of $15,000 in general damages when jury awarded $185,000 for medical expenses); *Guillory v. Lee*, 09-75, pp. 29-30 (La. 6/26/09), 16 So.3d 1104, 1125-26 (reinstating jury's award of $10,000 of general damages and $50,000 of medical expenses and finding that an appellate court cannot disturb an award if two permissible views of the evidence exist); *Welch v. London*, 20-362, p. 9 (La. App. 1 Cir. 12/30/20), 2020 WL 7768715 ($70,000 for medical expenses and $10,000 for general damages); *Delco v. Stafford*, 01-18, pp. 5-7 (La. App. 1 Cir. 2/20/02), 813 So.2d 458, 462-63, *writ denied*, 02-1125 (La. 6/14/02), 818 So.2d 779 ($26,716.46 for medical expenses and $3,000 for general damages).

doctors, who related all of his pain and medical treatment to the accident, as the jury only awarded $25,000 for past medical expenses and $18,500 for future medical expenses. Mr. Lawson's own testimony was that the pain he felt, while recurring, was of limited duration (10 minutes) and completely alleviated by various treatments including physical therapy and ESIs. Further, Mr. Lawson testified at his deposition that he did not want steroid injections and did not even use Tylenol for pain. Notwithstanding, several days after his deposition, Mr. Lawson made an appointment with Dr. Todd to undergo cervical injections. Mr. Lawson's sudden change in position regarding the ESIs may have raised reasonable doubts as to the level of his pain and the necessity to undergo the injections.

Besides Mr. Lawson's own testimony as to the limited duration and successful management of his pain, the evidence introduced by the defense, including the testimony of Dr. Martinez and the VA medical records of previous visits where Mr. Lawson reported lower back pain prior to his 2019 accident, was also sufficient for the jury to call Mr. Lawson's credibility into doubt, particularly the extent to which Mr. Lawson suffered physical pain as a result of the accident. Mr. Lawson denied experiencing any back pain prior to the accident during his visit with Dr. Hijazi and also during his deposition. However, the VA medical records indicated that Mr. Lawson had recently reported low back pain before the accident in November 2016 and June 2017. When there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or wrong. *Guillory*, 16 So.3d at 1117. Based upon the evidence in the record, the jury could have reasonably concluded that $2,000 was an appropriate award for physical pain and suffering, and thus, did not abuse its discretion in that regard. In addition, considering the vast discretion afforded to the jury, we find no error in its credibility determinations and factual conclusions. Accordingly, we

vacate the trial court's $25,000 award for physical pain and suffering and reinstate the jury's $2,000 award.

Loss of Consortium

Finally, appellants argue that the trial court erred by granting the JNOV and awarding loss of consortium damages. Appellants argued that Mr. Lawson is not the proper party to receive this type of damage and that he never asked for an award for loss of consortium. Mr. Lawson argues in response that the trial court's award for loss of consortium was clearly a mistake and the only logical conclusion is that the trial court intended to award damages for loss of enjoyment of life.[6]

La. C.C. art. 2315(B) provides that damages for loss of consortium "shall be recoverable by the same respective categories of persons who would have had a cause of action for wrongful death of an injured person." La. C.C. art. 2315.2(A), which governs wrongful death claims, does not list the injured person, such as Mr. Lawson, as a person with a cause of action for such claims.[7] Rather, a claim for loss of consortium is a cause of action separate from any claim of the primary

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[6] Mr. Lawson did not file a cross-appeal or an answer to the appeal regarding this issue. Thus, we are precluded from considering whether he is entitled to an award of damages for loss of enjoyment of life. La. C.C.P. art. 2133 provides that an "appellee shall not be obliged to answer the appeal unless he desires to have the judgment modified, revised, or reversed in part or unless he demands damages against the appellant. In such cases, he must file an answer to the appeal, stating the relief demanded, not later than fifteen days after the return day or the lodging of the record whichever is later." *See also Gandy v. United Services Auto Ass'n*, 97-1095, p. 9 (La. App. 5 Cir. 10/14/98), 721 So.2d 34, 38, *writ denied*, 98-2836 (La. 1/15/99), 736 So.2d 208.

[7] La. C.C. art. 2315.2(A) provides:

> A. If a person dies due to the fault of another, suit may be brought by the following persons to recover damages which they sustained as a result of the death:
> (1) The surviving spouse and child or children of the deceased, or either the spouse or the child or children.
> (2) The surviving father and mother of the deceased, or either of them if he left no spouse or child surviving.
> (3) The surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving.
> (4) The surviving grandfathers and grandmothers of the deceased, or any of them, if he left no spouse, child, parent, or sibling surviving.

victim. *Allemand v. Discovery Homes, Inc.*, 09-1565, p. 7 (La. App. 1 Cir. 5/28/10), 38 So.3d 1183, 1187. This claim compensates beneficiaries for their own damages as a result of their relationship with the victim, albeit separate and distinct from the victim's injuries. *Landry v. Avondale Industries, Inc.*, 03-719 (La. 12/3/03), 864 So.2d 117, 126. Accordingly, the trial court clearly erred by granting the JNOV and awarding $25,000 in damages for loss of consortium to an accident victim such as Mr. Lawson.

Further, even assuming, *arguendo*, that the trial court was referring to the jury's award for "loss of enjoyment of life" when discussing the "loss of consortium," the only evidence concerning changes to Mr. Lawson's life following the accident is his statement that he was no longer able to cut the grass or go fishing, but even these statements were unaccompanied by any further expression of how meaningful such losses are to him.

The jury is the trier of fact. In making her determination on the JNOV, the trial court judge should not have substituted her own evaluations of the credibility of the witnesses' testimony in the place of that the jury's. Reasonable persons could reach different conclusions about the scope of the injuries suffered by Mr. Lawson, and the findings of the jury are supported by the evidence.

In its JNOV, the trial court awarded costs to the plaintiff and against the defendants in the amount of $2,017.54. Appellants have not appealed that award. Therefore, except for the award in the amount of $2,017.54 for costs, we vacate the March 19, 2024 judgment of the trial court granting the JNOV and reinstate the September 8, 2023 judgment that adopts the verdict and award of the jury.

The Jury Verdict Form

Addressing the final assignment of error, appellants argue that the trial court judge erred in implementing the plaintiff's proposed final judgment awarding Mr. Lawson $45,500. In making this argument, appellants state that there was no

manifest error on the part of the jury in making their awards, but rather legal error on the part of the judge in making calculations required by the form.[8]

The jury verdict form states:

VERDICT FORM

1. Do you find that the plaintiff Corey Lawson sustained any injuries, which, more probably than not, were caused by the vehicular accident on November 16, 2019?

Yes ____x_____ No _____

[IF THE ANSWER TO QUESTION NO. 1 IS "YES" GO TO QUESTION 2. IF THE ANSWER TO QUESTION NO. 1 IS "NO", STOP, SIGN AND DATE THE BOTTOM OF THE FORM]

2. Do you find that the plaintiff Corey Lawson sustained any damages as a result of those injuries?

Yes ____x_____ No _____

[IF THE ANSWER TO QUESTION NO. 2 IS "YES" GO TO QUESTION 3. IF THE ANSWER TO QUESTION NO. 2 IS "NO", STOP, SIGN AND DATE THE BOTTOM OF THE FORM]

3. Do you find that plaintiff Corey Lawson had any pre-existing injuries prior to the November 16, 2019 accident?

Yes ____x_____ No _____

[IF THE ANSWER TO QUESTION NO. 3 IS "YES" GO TO QUESTION 4. IF THE ANSWER TO QUESTION NO. 3 IS "NO", GO TO QUESTION 5]

4. Please identify as to what percentage Corey Lawson's pre-existing injuries were aggravated by the November 16, 2019 accident.

____12%___

5. Please state what sum of money, if any, would reasonably and fairly compensate the plaintiff, Corey Lawson for his damages [if zero or none, please write "0"]:

a. Past Medical Expenses $25,000
b. Future Medical Expenses $18,000

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[8] We note that appellants agreed to the submission of this form to the jury and raised no objections at trial. Generally, in order to preserve the right to appeal the giving of an erroneous jury instruction, a party must make a timely objection and state the grounds for that objection. *Warner v. USAA Gen. Indem. Ins. Co.*, 17-231, p. 15 (La. App. 5 Cir. 12/29/17), 237 So.3d 1241, 1253. We consider this argument now only because it was raised following the trial prior to the entry of the final judgment.

c. Physical Pain and Suffering - Past, Present and Future $2,000
d. Mental Pain and Suffering - Past, Present and Future $0
e. Loss of Enjoyment of Life - Past, Present and Future $0

TOTAL: $45,500

PLEASE SIGN, DATE AND RETURN YOUR VERDICT.

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Appellants argue that the trial court erred by failing to multiply the total damages award of $45,500 in Question 5 by the 12% figure from Question 4 and therefore award only $5,460 in damages. Appellants' argument concerning the trial court's "interpretation" of the jury verdict form is unclear and supported by almost no citations to legal authority. Either the language of the jury verdict form is clear and unambiguous or it is ambiguous and subject to multiple reasonable interpretations. We find the language of Question 5 of the jury verdict form to be clear and unambiguous. The jury is asked to state what sum of money, if any, would reasonably and fairly compensate the plaintiff for his damages. The jury did so. There is no indication that the jury or the judge failed to follow an instruction to multiply the totals in Question 5 with the percentage stated in Question 4 because there is no such instruction stated on the form.[9] We find no error in the trial court's implementation of the $45,500 jury award. This assignment of error is without merit.

Finally, Mr. Lawson is entitled to interest as a matter of law from the date of judicial demand. La. R.S. 13:4203 ("Legal interest shall attach from the date of judicial demand, on all judgments, sounding in damages, "ex delicto", which may be rendered by any of the courts.") *See also* La. C.C.P. art. 1921.

[9] We pretermit further discussion of whether such 'discounting' for pre-existing conditions is permissible under *Wainwright*,774 So.2d 70, 74 ("A defendant takes his victim as he finds him and is responsible for all natural and probable consequences of his tortious conduct…") because that issue has not been properly raised or argued in the trial court or on appeal.

CONCLUSION

Accordingly, we vacate the March 19, 2024 judgment of the trial court, except for the $2,017.43 cost award, and reinstate the September 8, 2023 judgment that reflects the jury's verdict.

JUDGMENT GRANTING JNOV VACATED EXCEPT FOR AWARD OF COSTS; JUDGMENT ADOPTING JURY VERDICT REINSTATED

COREY LAWSON	NO. 24-CA-379
VERSUS	FIFTH CIRCUIT
STARR INDEMNITY AND LIABILITY COMPANY, ET AL	COURT OF APPEAL
	STATE OF LOUISIANA

WICKER, J., CONCURS IN PART, DISSENTS IN PART

After careful consideration of the majority's opinion, I respectfully concur in part and dissent in part. I agree that the trial court erred by granting a judgment notwithstanding the verdict ("JNOV") and awarding $25,000 for mental pain and suffering and $25,000 for loss of consortium. Accordingly, I concur with the decision to vacate these awards. However, I disagree with the majority's finding that the trial court erred by granting a JNOV as to the award of general damages for physical pain and suffering and its decision to reinstate the jury's $2,000 award.

In this case, the record reflects that Mr. Lawson sought treatment for back and neck pain after the accident and his treatment was continuing at the time of the trial. Mr. Lawson saw various health care professionals, including an orthopedist, a chiropractor, and a pain management specialist. He also underwent physical therapy, acupuncture, and epidural steroid injections ("ESIs"). According to Mr. Lawson, he received five ESIs prior to trial, which provided temporary relief, but the pain would return.

The majority finds that the jury's award of $2,000 for physical pain and suffering is supported by the record, surmising that the jury determined Mr. Lawson's pre-existing degenerative changes and arthritis caused him to suffer the majority of his pain, regardless of the accident. However, the jury's award of past and future medical expenses belies such a determination.

In *Wainwright v. Fontenot*, 00-492 (La. 10/17/00), 774 So.2d 70, the Louisiana Supreme Court addressed the issue of inconsistency in a jury's damage awards. The Court found that a jury verdict awarding medical expenses but denying general damages is not *per se* invalid, but it may often be so inconsistent as to constitute an abuse of discretion. *Id.* at 76.

This Court has found inconsistencies in jury damage awards. In *Lockett v. UV Ins. Risk Retention Group, Inc.*, 15-166 (La. App. 5 Cir. 11/19/15), 180 So.3d 557, 567-568, this Court found that the trial court correctly granted a JNOV and increased the jury's general damages award, where the jury's award of $25,000 for past general damages and no award for future general damages was totally inconsistent with the jury's awards of over $100,000 for past medical expenses and $21,000 for future medical expenses. The Court pointed out that while the defendants presented evidence disputing whether the accident caused the plaintiff's injuries or necessitated the treatment received, the jury had determined that the accident caused the plaintiff's injuries by awarding past and future medical expenses. *Lockett*, 190 So.3d at 567.

Similarly, in *Simon v. Automobile Club Inter-American Exchange*, 20-156 (La. App. 5 Cir. 10/13/21), 329 So.3d 1072, 1085, this Court found that an award of $35,000 in general damages for past, present and future physical pain and suffering was abusively low and inconsistent with the jury's award of $188,928 for past medical expenses and $90,000 for future medical expenses. The Court indicated that by awarding past and future medical expenses, the jury found that the accident caused the injury and resultant medical treatment. Therefore, this Court amended the jury's verdict to award $200,000 for past, present, and future pain and suffering. *Simon*, 329 So.3d at 1087.

Also, in *Davis v. Vosbein*, 12-626 (La. App. 5 Cir. 5/16/13), 119 So.3d 100, 103, this Court found that the failure to award general damages for physical

pain and suffering was an abuse of discretion where the jury awarded the plaintiff $9,000 in past medical expenses and $25,000 in future medical expenses. The Court stated that the award of past and future medical expenses indicated the jury believed that the plaintiff continued to suffer injuries due to the accident and would require future medical treatment. *Davis*, 119 So.3d at 103-104.

The trier of fact, whether judge or jury, has much discretion in the assessment of damages, but this discretion is not unfettered. *Pete v. Boland Marine and Manufacturing Company, L.L.C.*, 23-170 (La. 10/20/23), 379 So.3d 636, 641. In the present case, it is my opinion that the jury's award of $2,000 for physical pain and suffering is so inconsistent with the jury's award of $25,000 for past medical expenses and $18,500 for future medical expenses that it constitutes an abuse of discretion. Accordingly, I believe that the trial court correctly granted a JNOV on this issue.

For these reasons, I respectfully concur in part and dissent in part from the majority's opinion.

COREY LAWSON	NO. 24-CA-379
VERSUS	FIFTH CIRCUIT
STARR INDEMNITY AND LIABILITY COMPANY, ET AL	COURT OF APPEAL
	STATE OF LOUISIANA

SCHLEGEL, J., CONCURS WITH REASONS

I concur and agree that the trial court erred by granting the JNOV to award additional damages for physical pain and suffering, mental pain and suffering, and loss of consortium. I also concur and agree that the trial court did not err when it declined to reduce the jury's original award to $5,460 based on the jury's finding that only twelve percent (12%) of Mr. Lawson's pre-existing injuries were aggravated by the accident. I write separately though to address the issue of whether the trial court should have included special jury interrogatories on the verdict form regarding the aggravation of pre-existing injuries and the percentage of aggravation caused by the accident. As explained more fully below, I would not pretermit this issue and instead believe that this Court should address these arguments.

On appeal, appellants argue that the trial court erred when it refused to reduce the damages award based on the jury's determination that the accident only caused 12% of the aggravation of Mr. Lawson's pre-existing injuries. More specifically, appellants ask this Court why the trial court would include interrogatories regarding the aggravation/percentage of aggravation of pre-existing injuries on the verdict form, if it was not going to apply the percentage identified by the jury to reduce the amount of damages? It is clear that appellants wanted the trial court to reduce the damages awarded by the jury just as a trial court would do when applying the percentage of fault assigned to a plaintiff pursuant to La. C.C. art. 2323.

Mr. Lawson argues in response that the trial court did not err by refusing to reduce the damages award because the jury was instructed to only award damages for the pre-existing and new injuries caused by the accident. Thus, he contends there is no need for a reduction because the jury did not award any damages that were not caused by the accident. Mr. Lawson further argues against a reduction of damages because the interrogatory asking the jury to identify the percentage of aggravation of the pre-existing injuries caused by the accident was "ill advised" and "never should have been included on the jury verdict form."

On the day prior to trial, appellants submitted a proposed verdict form that included an interrogatory asking the jury to identify the percentage of Mr. Lawson's pre-existing injuries that were aggravated by the accident. During the charge conference held prior to the start of trial, Mr. Lawson's counsel objected to the interrogatory on the grounds that it would mislead the jury and further argued that there was no evidence that Mr. Lawson had a pre-existing injury. In response, defense counsel argued that the evidence would show that Mr. Lawson had pre-existing degenerative conditions and that the standard jury instruction for the aggravation of pre-existing conditions or injuries supported the inclusion of an interrogatory asking the jury to identify the percentage of the aggravation of Mr. Lawson's pre-existing injuries caused by the accident.[1]

[1] The instruction that the trial court read to the jury regarding the aggravation of pre-existing conditions provided in part as follows:

> If the accident results in aggravation of a previous condition of disability or of pain of the injured person, the one responsible is liable both for the aggravation of the preexisting condition and for any new injuries resulting from the accident. However, Plaintiff must prove the prior existing condition and the extent of the aggravation.
>
> If you find that Plaintiff would have faced this aggravation of his condition whether this incident happened or not, then Plaintiff is not entitled to damages or that portion of his claim since the defendant is not responsible for the normal and natural results of Plaintiff's prior condition.

Following arguments, the trial court overruled Mr. Lawson's objection to the proposed jury interrogatory. Mr. Lawson's counsel then asked for the trial court to at least break the interrogatory into two separate questions. Specifically, he asked for the jury to determine if Mr. Lawson had any pre-existing injuries before being asked to identify a percentage of the aggravation caused by the accident. The trial court agreed that this was appropriate. The trial court further indicated that it would change the language from "pre-existing injury" to "pre-existing condition." However, the following verdict form completed by the jury did not include this change:

3. Do you find that plaintiff **Corey Lawson** had any pre-existing injuries, prior to the November 16, 2019 accident?

Yes ✓ No____

[IF THE ANSWER TO QUESTION NO. 3 IS "YES" GO TO QUESTION 4. IF THE ANSWER TO QUESTION NO. 3 IS "NO", GO TO QUESTION 5]

4. Please identify as to what percentage **Corey Lawson's** pre-existing injuries, were aggravated by the November 16, 2019 accident.

12 %

5. Please state what sum of money, if any, would reasonably and fairly compensate the plaintiff, **Corey Lawson** for his damages [If zero or none, please write "0"]:

a. Past Medical Expenses	$ 25,000
b. Future Medical Expenses	$ 18,500
c. Physical Pain and Suffering- Past, Present and Future	$ 2,000
d. Mental Pain and Suffering- Past, Present and Future	$ 0
e. Loss of Enjoyment of Life – Past, Present and Future	0
TOTAL:	$ 45,500

After the jury rendered its verdict on June 27, 2023, the parties each submitted a proposed judgment for the trial court's signature on August 15, 2023. Appellants proposed that the trial court award only $5,460 after applying the 12% assigned by the jury as the percentage of Mr. Lawson's pre-existing injuries aggravated by the accident. Mr. Lawson, on the other hand, proposed that the trial court enter a judgment for the full amount of $45,500 awarded by the jury. On September 1, 2023, Mr. Lawson filed a memorandum in support of his proposed judgment. Mr. Lawson argued that Interrogatory No. 5 only asked the jury to award an amount that would reasonably and

fairly compensate him for his damages. He argued that the 12% assigned by the jury in Interrogatory No. 4 was of no consequence because the jury charges instructed the jury to only award damages for the aggravation of pre-existing injuries and new injuries caused by the accident. He noted that there were no charges instructing the jury to award damages that were not caused by the accident. Thus, he asserted that the jury award only included damages caused by the accident and the reduction proposed by appellants was not warranted.

Appellants also filed a memorandum supporting their proposed judgment on September 6, 2023. First, appellants claimed that Mr. Lawson did not object to Interrogatory No. 4 at trial. This is incorrect. A review of the trial transcript clearly shows that Mr. Lawson objected, as discussed above. Second, appellants argued that the trial court would not have included the interrogatories regarding the aggravation of pre-existing injuries if they were inconsequential. On September 8, 2023, the trial court signed Mr. Lawson's proposed judgment awarding the full amount of damages awarded by the jury.

On appeal, appellants argue that the trial court erred by disregarding the jury's finding regarding the percentage of Mr. Lawson's pre-existing injuries that were aggravated by the accident. There are several problems with appellants' position though.

First, appellants argue that the assignment of a percentage to the aggravation of a pre-existing injury involves an issue of causation. But appellants fail to cite to any law or precedent that would require a finder of fact to render a percentage determination on a causation issue such as this. La. C.C. art. 2323 only requires the determination of the

percentage of *fault* for all persons causing or contributing to an injury, death, or loss.[2] [3] No similar statute or precedent requires an additional determination by the factfinder for the percentage of aggravation of a pre-existing injury caused by an accident. As correctly noted in the jury charges, defendants must take the injured person as he finds him and the jury should only award damages for the aggravation of pre-existing injuries and new injuries caused by the accident, just as with any other element of damages. There is no legal basis to identify a percentage of the aggravation caused by the accident. This unnecessary exercise can only serve to increase the complexity of the jury's difficult task of translating personal injuries into a dollar amount. Thus, I find appellants' position that the trial court was required to reduce the damages award by the percentage assigned for the aggravation of pre-existing injuries/conditions to lack merit.

Further, even if the law supported the assessment of a percentage of the aggravation, the reduction as proposed by appellants would still not be warranted

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[2] La. C.C. art. 2323 provides as follows:

> A. In any action for damages where a person suffers injury, death, or loss, the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined, regardless of whether the person is a party to the action or a nonparty, and regardless of the person's insolvency, ability to pay, immunity by statute, including but not limited to the provisions of R.S. 23:1032, or that the other person's identity is not known or reasonably ascertainable. If a person suffers injury, death, or loss as the result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death, or loss.
>
> B. The provisions of Paragraph A shall apply to any claim for recovery of damages for injury, death, or loss asserted under any law or legal doctrine or theory of liability, regardless of the basis of liability.
>
> C. Notwithstanding the provisions of Paragraphs A and B, if a person suffers injury, death, or loss as a result partly of his own negligence and partly as a result of the fault of an intentional tortfeasor, his claim for recovery of damages shall not be reduced.

[3] Because appellants stipulated to liability for the accident, the verdict form did not include an interrogatory for the jury to assign percentages for fault. During the charge conference, the trial court further indicated that because appellants accepted fault for the accident, it was removing the following instruction from the final interrogatory on the verdict form asking the jury to state the amount of damages: "Do not discount these amounts by any percentage of fault [you] assigned to the parties."

because appellants incorrectly assume that all of the damages awarded to Mr. Lawson were the result of the aggravation of pre-existing injuries. The interrogatories posed to the jury failed to determine whether the accident also caused Mr. Lawson to suffer new injuries. Thus, it is impossible to determine the amount of damages awarded for pre-existing injuries as opposed to new injuries. These issues illustrate why it is ill-advised to require a jury to identify a percentage of aggravation, as it requires the jury to further identify and divide the amount of damages awarded into separate amounts for pre-existing conditions/injuries and new injuries. In addition, if there are multiple pre-existing conditions and injuries, each would have to be assessed its own percentage of causation. This exercise is not supported by law, is impractical, and would only lead to jury confusion.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 30, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

24-CA-379

E-NOTIFIED
40TH DISTRICT COURT (CLERK)
HONORABLE NGHANA LEWIS (DISTRICT JUDGE)
JIM S. HALL (APPELLEE)
ANDREW D. WEINSTOCK (APPELLANT)

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