

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Alayna M. Gregory and Amy
Gregory,
Appellants-Plaintiffs,

v.

Jay P. Ritchison,
Appellee-Defendant.

March 11, 2022

Court of Appeals Case No.
21A-CT-2247

Appeal from the Johnson Superior
Court

The Honorable Marla K. Clark,
Judge

Trial Court Cause No.
41D04-1903-CT-46

Bradford, Chief Judge.

Case Summary

[1] On March 19, 2019, Amy Gregory was stopped at a stop sign in Johnson County when a vehicle being driven by Jay Ritchison struck her vehicle head-on, totaling Amy's vehicle. Amy's daughter, Alayna, was in Amy's vehicle at the time of the accident and was injured. Amy and Alayna (collectively, "the Gregorys") sued Ritchison, seeking to recover property damage suffered by Amy and damages relating to Alayna's injuries. Following trial, the jury returned a verdict of \$60,500.00 to Amy and \$15,000.00 to Alayna. Ritchison filed an Indiana Trial Rule 59 motion claiming that the jury's verdict was excessive as it related to Amy. Following a hearing, the trial court found the \$60,500.00 award to be excessive and reduced Amy's portion of the jury's award to \$9179.00, the maximum possible value for Amy's vehicle. Amy appeals, arguing that the trial court erred in reducing the jury's award of damages. We affirm.

Facts and Procedural History

[2] On March 9, 2019, Ritchison was driving on westbound County Road 700 North. (Tr. Vol. I p. 101) At the same time, Amy was driving a 2006 Chevrolet Trailblazer on northbound Hurricane Road. (Tr. Vol. IV pp. 101–02) Amy's daughter Alayna was a passenger in the vehicle.¹ (Tr. Vol. II pp. 172–73) Amy

¹ Amy's husband and son were also passengers in the vehicle at the time of the accident. They were not injured and do not participate in this appeal.

was stopped at a stop sign when Ritchison attempted to turn left onto southbound Hurricane Road. (Tr. Vol. IV p. 101) Ritchison turned into Amy's lane of traffic and his vehicle collided head on into Amy's vehicle. (Tr. Vol. IV p. 101) Alayna was injured in the accident, generating medical bills that totaled \$9727.68. (Tr. Vol. II pp. 172–73; Tr. Vol. IV pp. 24–26 and 29–30) Although Amy was not injured, her vehicle was inoperable after the accident. (Tr. Vol. II, p. 54) The value of Amy's vehicle prior to the accident was subsequently determined to be in the range of \$6186.00 to \$9179.00. (Tr. Vol. IV p. 102)

[3] On March 21, 2019, the Gregorys filed suit against Jay Ritchison.² (Appellants' App. Vol. II p. 3) A jury trial was held in Johnson County on July 13 and 14, 2021. (Tr. Vol. II p. 1) At the conclusion of trial, the jury found Ritchison to be 100% at fault and awarded damages of \$15,000.00 to Alayna and \$60,500.00 to Amy. (Appellants' App. Vol. II pp. 19–20) On July 15, 2021, the trial court entered judgment for the Gregorys in the amount of \$75,500.00. (Appellants' App. Vol. II p. 64)

[4] On July 26, 2021, Ritchison filed a motion to correct error pursuant to Indiana Trial Rule 59 ("Trial Rule 59"), alleging that the jury's award of damages to Amy was excessive. (Appellants' App. Vol. II pp. 27–37) The trial court held a hearing on Ritchison's motion on September 8, 2021. (Tr. Vol. II p. 1) On September 30, 2021, the trial court issued an order reducing Amy's property

² The Gregorys filed an amended complaint on April 2, 2019.

damages judgment from \$60,500.00 to \$9179.00. (Appellants' App. Vol. II pp. 16–17) The same day, the trial court issued an amended judgment order in favor of the Gregorys for \$24,179.00, reflecting Alayna's unchanged award of \$15,000.00 and Amy's amended award of \$9179.00. (Appellants' App. Vol. II p. 18)

Discussion and Decision

- [5] The Gregorys contend that the trial court abused its discretion by granting Ritchison's request to reduce the damages awarded to Amy. "We generally review a trial court's ruling on a motion to correct error for an abuse of discretion." *Santelli v. Rahmatullah*, 993 N.E.2d 167, 173 (Ind. 2013). "An abuse of discretion will be found when the trial court's action is against the logic and effect of the facts and circumstances before it and the inferences which may be drawn therefrom." *DeVittorio v. Werker Bros.*, 634 N.E.2d 528, 530 (Ind. Ct. App. 1994). "An abuse of discretion also results from a trial court's decision which is without reason or is based upon impermissible reasons or considerations." *Id.*
- [6] "Our courts have traditionally granted the jury a great deal of discretion in assessing damage awards[.]" *Groves v. First Nat. Bank of Valparaiso*, 518 N.E.2d 819, 831 (Ind. Ct. App. 1988). However, "[t]he jury's discretion, while broad, is not limitless." *Id.* Following trial, Ritchison filed a motion to correct error, alleging that the jury's award of damages to Amy was excessive. Trial Rule 59(J) provides, in relevant part, as follows:

Relief Granted on Motion to Correct Error. The court, if it determines that prejudicial or harmful error has been committed, shall take such action as will cure the error, including without limitation the following with respect to all or some of the parties and all or some of the errors: ... (5) In the case of excessive or inadequate damages, enter final judgment on the evidence for the amount of the proper damages, grant a new trial, or grant a new trial subject to additur or remittitur[.]

“In its order correcting error the court shall direct final judgment to be entered or shall correct the error without a new trial unless such relief is shown to be impracticable or unfair to any of the parties or is otherwise improper[.]” Ind. R. Trial P. 59(J)(7).

[7] At the conclusion of the evidence, the trial court instructed the jury, *inter alia*, as follows:

The Plaintiffs, Alayna Gregory and Amy Gregory, sued Jay P. Ritchison, the Defendant.

This case involves a collision between two motor vehicles at the intersection of Hurricane Road and County Road 700 North on March 9, 2019. The Gregorys claim that Amy Gregory was stopped at a stop sign on northbound Hurricane Road, waiting to turn right onto eastbound CR 700. Alayna Gregory was a passenger in Amy’s vehicle. At the same time, Defendant Ritchison was traveling on westbound CR 700, approaching Hurricane Road. The Gregorys claim that, while they were stopped, Defendant Ritchison attempted to turn from westbound CR 700 to southbound Hurricane Road and, in doing so, crossed into the left half of Hurricane Road and struck the Gregory’s vehicle head on. The Gregorys claim that Ritchison was negligent in the operation of his motor vehicle, resulting in the collision. The Gregorys further claim that both Alayna and Amy

suffered personal injuries and damages as a result of the collision. The Gregorys have the burden of proving these claims by the greater weight of the evidence.

Jay Ritchison denies that he was negligent in the operation of his motor vehicle. Jay Ritchison denies that his conduct in the operation of his vehicle was a responsible cause of the Gregorys' injuries and damages. Ritchison further disputes the nature and extent of Amy and Alayna Gregory's injuries and damages. Defendant Ritchison has no burden to disprove the claims of the Gregorys. As I already stated, it is Amy and Alayna Gregory who have the burden to prove these claims.

Ritchison has claimed certain defenses. He has asserted the defense of the apportionment of comparative fault between him and Amy Gregory. Ritchison has the burden of proving this defense by the greater weight of the evidence.

When personal property is completely destroyed, the measure of damages is the fair market value of the property at the time of the destruction.

"Fair market value" means the price a willing seller will accept from a willing buyer when neither party is forced to do so.

Alayna Gregory does not have to present evidence of the dollar value of her pain, suffering, mental anguish, or injuries. These types of damages need not be proven to a mathematical certainty.

Alayna Gregory must prove the nature and extent of these types of damages, however. The dollar value, if any, of these damages is left to your good judgment.

If you decide from the greater weight of the evidence that Jay Ritchison is liable to Alayna Gregory, then you must decide the amount of money that will fairly compensate Alayna Gregory.

In deciding the amount of money you award, you may consider:

- (1) the nature and extent of the injuries, and the effect of the injuries on the Alayna's ability to function as a whole person;
- (2) whether the injuries are temporary or permanent;
- (4³) the physical pain and mental suffering Alayna has experienced and will experience in the future as a result of the injuries;
- (5) the reasonable value of necessary medical care, treatment, and services plaintiff incurred and will incur in the future as a result of the injuries;
- (6) the aggravation of a pre-existing condition.

Appellants' Supp. App. pp. 11, 26–28.

[8] With respect to the amount of damages awarded to Alayna, the jury found: “We also decide that the total amount of damages the Plaintiff, Alayna Gregory, is entitled to recover, without considering the fault percentages of Amy Gregory and Jay Ritchison, is \$15,000.00.” Appellants' App. Vol. II p. 19. The jury found Ritchison to be “100%” at fault for the accident and, as such, found Alayna's “verdict amount against [Ritchison]” to be \$15,000.00. Appellants' App. Vol. II p. 19. With respect to Amy, the jury found: “We also

³ The trial court's instruction skips the number three, going straight from two to four.

decide that the total amount of *property damages* the Plaintiff Amy Gregory, is entitled to recover, without considering the fault percentages, is \$59,500.00.” Appellants’ App. Vol. II p. 20 (emphasis added). The jury again found Ritchison to be “100%” at fault and that Amy’s “verdict amount against [Ritchison]” to be \$60,500.00. (Appellants’ App. Vol. II p. 20) The jury’s verdict form is unclear as to why its total award to Amy was \$60,500.00, or \$1000.00 more than the amount of property damages it found Amy suffered.

[9] The Gregorys contend that “[a]lthough the jury’s verdict for Amy may seem excessive,” Appellants’ Br. p. 14, the trial court nonetheless abused its discretion in decreasing Amy’s award from \$60,500.00 to \$9179.00 because “Amy’s damages are supported by the evidence.” Appellants’ Br. p. 11. The trial court only awarded Amy property damages. In support of her claim that the evidence supports the awarded damages, Amy argues that Alayna’s medical bills, her rental car expense, and the replacement value of her vehicle “alone add up to \$19,446.54.” Appellants’ Br. p. 13. Amy, however, does not point to any other damages allegedly incurred that would support the difference between the jury’s award of \$60,500.00 and her claimed damages of \$19,446.54.

[10] Further, in arguing that she should recover for Alayna’s medical bills, Amy asserts that since Alayna was seventeen at the time of the accident, her medical bills would have actually been paid by Amy. However, as the above-quoted jury instructions indicate, which were agreed upon by the parties, the jury was instructed to consider payment for Alayna’s medical bills in arriving at its award of damages to Alayna. Nothing in the record or the parties’ argument

indicates that the jury did not comply with the court's instruction. Given that damages relating to Alayna's medical bills were seemingly included in its \$15,000.00 award of damages to Alayna, it would be inappropriate for the jury to also include damages for these same medical bills in its award to Amy because doing so would result in a double recovery. *See Cutter v. Classic Fire & Marine Ins. Co.*, 926 N.E.2d 1067, 1075 (Ind. Ct. App. 2010) (concluding that the law disfavors a windfall or a double recovery).

[11] Apart from funds to cover Alayna's medical bills, Amy's remaining claimed damages include the replacement value for her vehicle and her rental car expenses. As for the replacement value of Amy's vehicle, the evidence indicated that the value of Amy's vehicle at the time of the accident was in the range of \$6186.00 and \$9179.00. (Tr. Vol. IV p. 102) In reducing Amy's award of damages, the trial court credited the value of the vehicle as the maximum amount supported by the evidence. As for her rental car expenses, although Amy submitted a rental agreement summary indicating a credit card hold or payment in the amount of \$539.86, the rental agreement also listed Amy's total estimated charges as \$339.86. Tr. Vol. IV p. 31. The trial court seemingly was not convinced by Amy's claim that she incurred \$539.86 of rental car expenses, and we cannot say that the trial court's decision in this regard was against the logic and effect of the facts and circumstances before us. We therefore conclude that the trial court did not abuse its discretion in determining that Amy's proven damages equaled \$9179.00, the maximum value of her vehicle on the date of the accident.

[12] Furthermore, to the extent that the Gregorys argue for the first time on appeal that the damages award was inadequate because the jury actually intended to award Amy \$120,000.00 in damages, “[p]ursuant to Ind. Trial Rule 59(A)(2), a motion to correct error is a prerequisite to appeal when a party seeks to raise a claim that the damage award was either excessive or inadequate.” *Howard v. Trevino*, 613 N.E.2d 847, 848 (Ind. Ct. App. 1993); *see also Tipmont Rural Elec. Membership Corp. v. Fischer*, 716 N.E.2d 357, 358 (Ind. 1999) (clarifying that while a claim that the verdict was outside the scope of the evidence may be presented to the court of appeals without the need for a motion to correct error, a claim that a jury’s award of damages is either inadequate or excessive must be presented to that judge under Rule 59 before the matter is eligible for appeal). “The failure to file a mandatory motion to correct error prevents this court from considering the issue on appeal.” *Howard*, 613 N.E.2d at 848–49. The Gregorys did not file a timely motion to correct error under Trial Rule 59 alleging that the award of damages to Amy was inadequate and have therefore waived this argument on appeal.

[13] The judgment of the trial court is affirmed.

Crone, J., and Tavitas, J., concur.