STATE OF MICHIGAN

COURT OF APPEALS

FREDERICK HERZIG,

Plaintiff-Appellant,

v

CARLETON GLEN GOLF CLUB, INC., and THOMAS ROGOFF,

Defendants-Appellees.

UNPUBLISHED
July 18, 1997

No. 196628
Monroe Circuit Court
LC No. 94-002810-NO

Before: Doctoroff, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

In this personal injury case arising from an altercation on a golf course, plaintiff appeals on leave granted a lower court order denying his motion for a new trial or a judgment notwithstanding the verdict. The jury returned a verdict of no cause of action in favor of defendant Carleton Glen Golf Club. In plaintiff's claim against defendant Rogoff, the jury returned a verdict in favor of plaintiff in the amount of $5,000 for past medical expenses and $5,000 for future pain and suffering. However, the jury found that plaintiff was comparatively negligent by forty-nine percent. Plaintiff unsuccessfully moved in the lower court for a judgment NOV against defendant Carleton Glen Golf Club, Inc., as well as an additur or a new trial regarding plaintiff's judgment against defendant Rogoff. We affirm.

On appeal, plaintiff claims that the trial court abused its discretion in denying plaintiff's motion for a new trial or judgment notwithstanding the verdict. We disagree. In analyzing whether the jury verdict contravened the great weight of the evidence, we review the evidence to determine whether the trial court abused its discretion in ruling that the evidence in plaintiff's favor was not overwhelming. *Severn v Sperry Corp,* 212 Mich App 406, 412; 538 NW2d 50 (1995); *Rice v ISI Mfg, Inc,* 207 Mich App 634, 637; 525 NW2d 533 (1994). This Court gives substantial deference to a trial court's conclusion that a verdict was not against the great weight of the evidence. *Severn, supra* at 412. In reviewing the trial court's decision not to grant a judgment notwithstanding the verdict, we examine the testimony and all legitimate inferences that may be drawn therefrom in a light most favorable to the nonmoving party. *Matras v Amoco Oil Co,* 424 Mich 675, 681-682; 385 NW2d 586 (1986); *Howard v Canteen Corp,* 192 Mich App 427, 431; 481 NW2d 718 (1992). The motion should not

be granted unless there was insufficient

evidence presented at trial to create an issue for the jury. *Brisboy v Fibreboard Corp*, 429 Mich 540, 549; 418 NW2d 650 (1988); *Winiemko v Valenti*, 203 Mich App 411, 415; 513 NW2d 181 (1994).

In personal injury cases, the amount and extent of damages for pain and suffering is a matter particularly suited to the jury's determination. *Aho v Conda*, 347 Mich 450, 455; 79 NW2d 917 (1956). There is no exact standard for measuring such damages, and we give great deference to the jury's damage award. *Palenkas v Beaumont Hosp*, 432 Mich 527; 443 NW2d 354 (1989); *Bosak v Hutchinson*, 422 Mich 712, 731, 736; 375 NW2d 333 (1985).

After a thorough review, we conclude that there is competent evidence to support the jury's verdict. The jury could find that, although plaintiff required medical treatment, he had not experienced any meaningful pain or suffering. Indeed, there was testimony that plaintiff went golfing the day after his injury. There was also evidence that plaintiff did not treat his back for almost two years. Additionally, it is not inherently inconsistent for a jury to award economic damages while awarding no damages for past pain and suffering. *Moore v Spangler*, 401 Mich 360, 379-381; 258 NW2d 34 (1977); *Hill v Henderson*, 107 Mich App 551; 309 NW2d 663 (1981). Nevertheless, by awarding defendant more for actual medical expenses than he had claimed, the jury appears to have awarded plaintiff some damages for his past pain and suffering. Contra *Weller v Mancha*, 353 Mich 189, 195-196; 91 NW2d 352 (1958).

Regarding plaintiff's future damages claim, the jury was not required to believe plaintiff's testimony concerning his alleged jaw or back condition. See *Flones v Dalman*, 199 Mich App 396, 406; 502 NW2d 725 (1993). This is especially true where they could watch plaintiff testify and see for themselves how much pain he experienced when using his jaw. Furthermore, there was testimony that defendant rarely sought treatment before filing this lawsuit and that any alleged back condition was not necessarily related to the golf course altercation. Moreover, where defense counsel questioned plaintiff's doctor's estimate regarding future medical costs, the jury was free to disbelieve or reduce the speculative estimate. *Flones, supra* at 406.

Accordingly, the trial court did not err when it denied plaintiff's motion for a new trial or in the alternative judgment notwithstanding the verdict.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin