

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ANDREW C. RAFFAELE,

Plaintiff-Appellant,

and

MARY ANN RAFFAELE,

Plaintiff,

v

MARILYN K. BRENNAN and BRIAN  
BRENNAN,

Defendants-Appellees.

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UNPUBLISHED

February 9, 2010

No. 288566

Lake Circuit Court

LC No. 07-007066-NI

Before: Talbot, P.J. and Whitbeck and Owens, JJ.

PER CURIAM.

In this action for noneconomic damages arising from a motorcycle/automobile accident, plaintiff Andrew Raffaele (hereinafter “plaintiff”) was awarded total damages of \$39,281, after adjustment to present day value, following a jury trial. Plaintiff now appeals as of right, asserting that the trial court erred in denying his motion for a new trial or additur. We affirm.

I. Standard of Review

We review for an abuse of discretion on a motion for additur and a motion for a new trial. *Robertson v Blue Water Oil Co*, 268 Mich App 588, 595; 708 NW2d 749 (2005). An abuse of discretion occurs when the trial court’s decision is outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). When reviewing a trial court’s decision on a motion for additur, we must consider whether the evidence, viewed in a light most favorable to the nonmoving party, supports the jury’s award. *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 462; 750 NW2d 615 (2008); *Robertson*, 268 Mich App at 595. We will uphold the jury's verdict if an interpretation of the evidence provides a logical explanation for the jury's findings. *Silberstein*, 278 Mich App at 462.

Further, we must give deference to a trial court's decision on a motion for additur "because of the trial court's superior ability to view the evidence and evaluate the credibility of the witnesses." *Unibar Maintenance Services, Inc v Saigh*, 283 Mich App 609, 629-630; 769 NW2d 911 (2009), quoting *Bordeaux v Celotex Corp*, 203 Mich App 158, 171; 511 NW2d 899 (1993). The trial court's inquiry is limited to objective criteria relating to the actual conduct of the trial or the evidence adduced to determine if an adjustment should be made. *Settington v Pontiac Gen Hosp*, 223 Mich App 594, 608; 568 NW2d 93 (1997).

## II. Analysis

A new trial may be granted when excessive or inadequate damages were awarded as apparently influenced by passion or prejudice, or when the verdict was clearly or grossly inadequate or excessive. MCR 2.611(A)(1)(c) and (d). When a jury ignores uncontroverted damages, the verdict is inadequate. *Bosak v Hutchinson*, 422 Mich 712, 732; 375 NW2d 333 (1985), overruled in part on other grounds in *DeShambo v Nielsen*, 471 Mich 27, 40; 684 NW2d 332 (2004). "Awards for personal injury damages, particularly pain and suffering, rest within the sound discretion of the trier of fact, and there is no absolute standard for the measurement of such damages." *Meek v Dep't of Transportation*, 240 Mich App 105, 122; 610 NW2d 250 (2000), overruled on other grounds in *Grimes v Dep't of Transportation*, 475 Mich 72; 715 NW2d 275 (2006). Thus, the adequacy of the amount of a verdict is generally a matter for the jury. *Kelly v Builders Square, Inc*, 465 Mich 29, 35; 632 NW2d 912 (2001).

In this case, the jury awarded plaintiff \$30,400 for present damages. Plaintiff argues that this award is wholly inadequate and unsupported by the evidence, given the amount of pain and suffering he endured during the 20 months before trial. The evidence showed that during the eight months after the accident, plaintiff's fractured toe and dislocated shoulder healed without surgical intervention, his serious leg injury required two surgeries and two hospitalizations, he attended over a hundred medical visits, and he experienced a degree of pain. However, plaintiff was well enough during the 12 months before trial to return to work with minimal accommodations. Only four of those months did plaintiff work less than full time. Plaintiff requested present damages of \$495,000, whereas defendants recommended no more than \$20,000. There was no absolute standard for measuring plaintiff's pain and suffering, and the jury had broad discretion to determine what amount was appropriate. *Kelly*, 465 Mich at 35; *Meek*, 240 Mich App at 122. The record does not disclose an objective basis for concluding that the amount awarded was so wholly inadequate as to not be supported by the evidence.

Plaintiff also argues that the jury's award of future damages is inadequate because it ignores uncontroverted evidence of his permanent injuries and conditions.<sup>1</sup> Drs. Recknagel and Schneeberger testified that plaintiff was likely to have permanent scarring and swelling in his left lower leg, which required the continued use of a compression sleeve. But Dr. Schneeberger stated that plaintiff's foot drop<sup>2</sup> condition could continue to improve and that his knee's

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<sup>1</sup> The jury awarded plaintiff future damages of \$1,000 for years 2008 to 2011, and \$6,350 for year 2012.

<sup>2</sup> Foot drop is a condition that affects a person's ability to lift his toes toward the ceiling, in turn  
(continued...)

instability could be corrected by eventually replacing the knee. The jury reasonably could have inferred that plaintiff's limp and need for orthotics would be resolved after the replacement surgery. Further, plaintiff's activities were only limited by his tolerance, and he testified that he took no pain medication. Both doctors also testified that plaintiff could lead a normal life after his knee was replaced, except running and jumping activities would be restricted. By that time, however, plaintiff would be in his early 60s, an age at which the jury could have concluded that such activity would be limited due to the natural aging process. Therefore, we can find no objective basis on which to conclude either that the jury ignored any evidence or that its award for years 2008 to 2012 was unsupported by the evidence and wholly inadequate. Further, the evidence supported a conclusion that plaintiff's only remaining conditions after knee replacement surgery would be his lower leg scarring and muscle hernia. It was within the province of the jury to decide not to continue to compensate plaintiff in the future for these conditions. *Kelly*, 465 Mich at 35.

Although both parties cite damages awards in other cases for comparison purposes, those cases are of little value in evaluating the jury's awards in this case, given the distinguishing or insufficient facts that prevent an objective comparison. See *Palenkas v Beaumont Hosp*, 432 Mich 527, 532-533, 537-538; 443 NW2d 354 (1989). Giving due deference to the trial court's decision, and given the lack of any objective basis for concluding that the jury's awards are wholly inadequate and unsupported by the evidence, we hold that the trial court did not abuse its discretion in denying plaintiff's motion for a new trial or additur.

Affirmed.

/s/ Michael J. Talbot  
/s/ William C. Whitbeck  
/s/ Donald S. Owens

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(...continued)  
affecting his gait.