

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR E. BATCHELDER,  
Appellant,  
vs.  
JAN WARD,  
Respondent.

No. 37796

FILED

OCT 08 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

This is an appeal from an order awarding an additur to Ward, and also awarding attorney fees to Ward. Batchelder argues that because the jury's verdict was not "clearly inadequate," the district court abused its discretion in discounting the jury's findings and awarding an additur in the amount of \$4,971.00. Batchelder also claims that the district court abused its discretion in awarding attorney fees to Ward simply because it was permitted to do so, and that such award, in essence, penalized Batchelder for exercising his right to a jury trial. We disagree.

We have held that a jury is not required to assign any particular probative value to any of the plaintiff's evidence, even if the defendant proffers no opposing evidence.<sup>1</sup> Furthermore, "[a] jury is permitted wide latitude in awarding tort damages, and the jury's findings will be upheld if supported by substantial evidence."<sup>2</sup> However, the

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<sup>1</sup>Quintero v. McDonald, 116 Nev. 1181, 1184, 14 P.3d 522, 524 (2000).

<sup>2</sup>Id. at 1183, 14 P.3d at 523.

district court may grant a motion for additur if the damages awarded by the jury are “clearly inadequate” or “shocking’ to the court’s conscience.”<sup>3</sup>

In the instant case, Ward provided several expert witnesses who testified regarding her medical expenses. In cross-examining Ward’s medical experts, Batchelder’s counsel elicited testimony which explained that many times, medical professionals will reduce the amount of a lien upon learning of an inadequate settlement. Batchelder offered no evidence which disputed liability for causing the accident. Batchelder’s expert witness testified that \$300.00 to \$400.00 was adequate for treating the injuries she believed were incurred in the subject accident. The expert witness further testified that, in her opinion, patients with the type of injuries Ward claims to have incurred usually resolve on their own. However, the expert witness testified that she did not challenge Ward’s treatments or billings related to the accident.

Quintero v. McDonald also involved a motor vehicle accident. In that case, the jury found for the plaintiff, but awarded no damages.<sup>4</sup> The district court refused to grant a new trial or a judgment notwithstanding the verdict.<sup>5</sup> The district court held “that although there was liability, there were no damages.”<sup>6</sup> On appeal, the plaintiff relied upon her medical bills and the fact that the defendant did not procure the testimony of an expert to rebut the charges she allegedly incurred as a

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<sup>3</sup>Donaldson v. Anderson, 109 Nev. 1039, 1042, 862 P.2d 1204, 1206 (1993).

<sup>4</sup>Quintero, 116 Nev. at 1183, 14 P.3d at 523.

<sup>5</sup>Id.

<sup>6</sup>Id. at 1184, 14 P.3d at 523.

result of the subject accident.<sup>7</sup> We held that the jury was not required to award all or even any of a plaintiff's medical expenses if the jury determined that the reasonableness of the expenses or the necessity of the treatment were not reasonably related to the negligence of a defendant.<sup>8</sup> We noted that the extent of the plaintiff's injuries were controverted by the plaintiff's own witnesses, and cross-examination revealed that the plaintiff suffered from a pre-existing back injury, which could have been responsible for her symptoms.<sup>9</sup> In addition, we noted that the plaintiff also had lapses in medical treatment following the accident,<sup>3</sup> and that the plaintiff's activities after the accident, including childcare, cleaning and swimming, suggested that she was not actually injured.<sup>10</sup> "On the facts of [that particular] case," we held that the jury properly refused to award any damages.<sup>11</sup>

Unlike Quintero, the only evidence in the instant case presented which suggests that Ward had a pre-existing injury was the testimony of Batchelder's expert witness. The expert testified that Ward's injuries, at best, were only an exacerbation of a previous condition that Ward had suffered, not an injury or aggravation of a prior injury. Further, the expert testified that for two visits to the doctor for an exacerbation of a previous condition, an appropriate cost would be \$400.00. However, on

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<sup>7</sup>Id.

<sup>8</sup>Id.

<sup>9</sup>Id.

<sup>10</sup>Id. at 1184, 14 P.3d at 524.

<sup>11</sup>Id.

cross-examination, the expert agreed that Ward had never been diagnosed with a previous condition. In addition, the expert did not challenge Ward's treatments or billing.

Here, there was no evidence suggesting that Ward had lapses in medical treatment, nor was there evidence presented regarding any activities by Ward which suggest she was not actually injured. Furthermore, in this case, the jury did not refuse to award any damages. Rather, the jury awarded actual medical damages as well as damages for past pain and suffering. We conclude that the narrow facts of Quintero are not controlling under the circumstances of this case.

Further, we conclude that although the jury awarded actual damages, it improperly took into consideration the possibility that Ward's physicians would reduce the amount of their lien due to an inadequate award. In his opening brief, Batchelder acknowledges that "[t]he jury evaluated all of the facts presented to it – including . . . physicians[] willing[ness] to take less than their bills reflected." Since there was no dispute as to causation, nor any dispute as to the amount of actual damages, the jury's award of damages was "clearly inadequate," and the district court properly granted the motion for additur.

NRS 18.010 provides that a prevailing party may be awarded attorney fees by the district court if she has recovered less than \$20,000.00. In the absence of a manifest abuse of discretion, the district court's decision to award attorney fees will not be disturbed.<sup>12</sup>

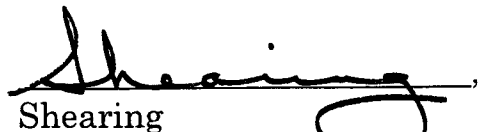
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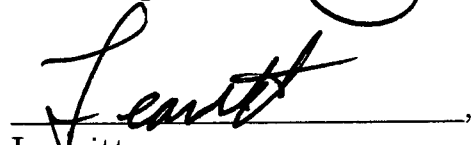
<sup>12</sup>County of Clark v. Blanchard Constr. Co., 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982).

On March 6, 2001, Ward filed a motion for attorney fees, arguing that she was entitled to an award of attorney fees in the amount of \$15,000.00 pursuant to NRS 18.010. Batchelder did not file an opposition to Ward's motion. The district court awarded attorney fees to Ward, but found that the amount requested by Ward was unreasonable. Therefore, the district court calculated reasonable attorney fees for seventy-five hours at a rate of \$100.00 per hour, totaling \$7,500.00.

Batchelder has provided no support for the proposition that the district court abused its discretion in awarding attorney fees to Ward pursuant to NRS 18.010, which provides authority to the district court to grant such an award. Therefore, we conclude that the district court did not commit a manifest abuse of discretion in awarding attorney fees to Ward. Accordingly we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Jack Lehman, District Judge  
Ryan, Marks, Johnson & Todd  
Albert D. Massi, Ltd.  
Clark County Clerk