Circuit Court for Baltimore City
Case No. 24-C-16-005520

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 02244

September Term, 2017

JAMES G. TRAUTWEIN

v.

ERIE INSURANCE EXCHANGE

Nazarian,
Arthur,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: February 12, 2019

James Trautwein was injured in a motor vehicle accident on October 24, 2013. In an underinsured motorist claim against his insurer, Trautwein moved in limine to exclude evidence of seven other "claims or injuries." The insurer agreed not to introduce evidence of other claims, but the court allowed the introduction of evidence of other accidents in which Trautwein had suffered injuries to the same parts of the body that he claimed to have injured in this case. A Baltimore City jury awarded only a fraction of the damages that Trautwein sought, and he appealed. We affirm.

QUESTIONS PRESENTED

Trautwein presents two questions for our review:

1. Did the trial judge err in allowing irrelevant evidence of prior and subsequent motor vehicle collisions in which Trautwein sustained injuries?

2. In the alternative, did the trial judge abuse her discretion in allowing relevant though prejudicial evidence of the prior and subsequent motor vehicle collisions?

BACKGROUND

On October 24, 2013, Trautwein was stopped at a red light in Baltimore City when he was rear-ended at low speed by the motorist behind him. The impact caused minor damage to the rear bumper and trailer-hitch receiver of Trautwein's 2002 Jeep Cherokee and punched a hole in the front bumper of the at-fault driver's 2005 Toyota Corolla. No airbags were deployed, no glass shattered, and no emergency services were called. Both cars were driven from the accident scene, and Trautwein proceeded directly to the law firm where he worked as a paralegal.

Later that day, Trautwein sought treatment from MultiSpecialty Healthcare for pain in his neck, back, left hand, left wrist, and left thumb, both knees, both hips, and both elbows, and his left ankle and left foot. He also complained of disorientation, nausea, and recurring headaches.

On November 4, 2013, Trautwein underwent an MRI, which revealed preexisting, degenerative changes to his neck and back – specifically, disk bulges and disk protrusions. Trautwein missed a week of work and intermittently sought medical treatment for pain: four times from October 24, 2013, to December 3, 2013; monthly from January 10, 2014, to July 24, 2014; once on December 9, 2015; once again on May 4, 2016; and twice in June 2016, when he was discharged. He also attended weekly physical therapy sessions from October 25, 2013, through December 2, 2013. He received a cervical epidural injection on March 18, 2014, and cervical facet-joint injections on April 1, 2014, April 29, 2014, May 27, 2014, and June 24, 2014. He also received a bilateral, cervical radiofrequency ablation on June 24, 2014, and unilateral, cervical radiofrequency ablations on March 30, 2016, and April 6, 2016.

On July 8, 2016, Trautwein was involved in another vehicle crash, for which he sought further treatment for pain. He returned to MultiSpecialty Healthcare on December 28, 2016, he had a follow-up appointment on January 25, 2017, and underwent treatment twice a month thereafter from February 7, 2017, through June 21, 2017. He had a single appointment in July on July 26, 2017, and was finally discharged for that injury on August 2, 2017. Between February 2, 2017, and May 9, 2017, he received two cervical facet-joint injections, a cervical medial-branch block, and cervical-facet radiofrequency

ablation. In addition, he attended weekly physical-therapy sessions from May 25, 2017, through June 21, 2017, and had an MRI taken on May 31, 2017.

The at-fault motorist in the October 24, 2013, accident carried policy limits of $10,000, but Trautwein's special damages alone exceeded $100,000. Consequently, on October 11, 2016, Trautwein filed a complaint for underinsured motorist benefits against his insurer, Erie Insurance Exchange, in the Circuit Court for Baltimore City.

During discovery, Erie requested the disclosure of information about any other injuries to the parts of Trautwein's body that he contended were injured in the collision on October 24, 2013. In response, Trautwein disclosed that he had been involved in six previous motor vehicle accidents and one motor vehicle accident after the date of the occurrence.

In 1989, Trautwein was involved in an automobile collision in which he injured his left knee. Trautwein was involved in a second motor vehicle accident in 1990 in which he suffered injuries to his neck, back, shoulders, elbows, and knees. A third collision in 1991 resulted in injuries to his neck, back, and knees. Trautwein began experiencing post-traumatic headaches and sustained injuries to his neck, back, and knees following another collision in 1992. Two years later, Trautwein reinjured his neck, back, and knees in a 1994 automotive accident. Trautwein's sixth motor vehicle accident occurred in 2003 and caused injuries to his neck and back. He experienced occasional flare-ups of lower-back pain after the conclusion of his treatment for the 2003 accident, but could not say with certainty that they resulted from that accident. Finally, as

previously stated, three years after the accident in the instant case, Trautwein was involved in a motor vehicle accident in which he injured his head, neck, and back.[1]

Trautwein filed a motion in limine to prevent the jury from learning about other "claims or injuries." Erie disclaimed any intention of introducing evidence of other claims, but the court allowed Erie to introduce evidence of the other accidents in which Trautwein had suffered injuries to the same parts of the body as those that he claimed to have injured in this case. Although the jury awarded over $28,000 in damages to Trautwein, he was dissatisfied with the award, because it amounted to only a fraction of his special damages. This timely appeal followed.[2]

DISCUSSION

Trautwein contends that the other motor vehicle accidents were irrelevant and that the circuit court committed reversible error in allowing Erie to introduce evidence of them. In the alternative, Trautwein contends that even if the other accidents were relevant, the court abused its discretion in allowing Erie to introduce evidence of them,

[1] Trautwein also injured his left shoulder in 1999 in a work-related accident. The record is silent as to whether this accident was motor-vehicle related.

[2] After the jury verdict, Erie filed a post-judgment motion, in which it asked the court to reduce the verdict by $10,000 to account for the payment that Trautwein had received from the tortfeasor's insurer. While the post-judgment motion was pending, Trautwein noted this appeal. The court eventually granted the post-judgment motion and reduced the amount of the judgment. Although Trautwein didn't note a second appeal after the decision on the post-judgment motion, his appeal is still timely under Md. Rule 8-202(c). "If a notice of appeal is filed and thereafter a party files a timely motion pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be treated as filed on the same day as, but after, the entry of a notice withdrawing the motion or an order disposing of it." *Id.*

because, he says, their probative value was substantially outweighed by the danger of unfair prejudice. We disagree on both counts.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. "A court may admit relevant evidence, but it has no discretion to admit evidence that is irrelevant." *Walter v. State*, 239 Md. App. 168, 198 (2018). "A ruling that evidence is legally relevant is a conclusion of law, which we review de novo." *Id*.; *accord Asphalt & Concrete Servs., Inc. v. Perry*, 221 Md. App. 235, 254 (2015) (stating that "we conduct an independent analysis of whether evidence is relevant"), *aff'd*, 447 Md. 31 (2016).

We cannot say that the evidence of other accidents had *no* "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Before trial, Erie's expert opined that Trautwein had required no more than a few weeks of treatment for the injuries that he suffered on October 24, 2013; that he had fully recovered from those injuries by early December 2013; and that his later treatment was attributable not to the injuries that he suffered on October 24, 2013, but to the preexisting degenerative changes to his cervical and lumbar spine. At trial, Erie's expert identified the degenerative changes; explained that they had existed before October 24, 2013; and opined that traumatic events like automobile accidents can cause these kind of changes. In addition, the expert testified that a subsequent collision "probably would be significant" to explain why Trautwein resumed treatment in 2016, after his condition seemed to have improved.

Finally, on cross-examination, Trautwein's own expert said that he had no reason to disagree with another physician's assessment that the degenerative changes in Trautwein's neck were more advanced than would have been expected for a person of his age.

In short, Erie sought to establish that Trautwein was attempting to recover damages for injuries other than the ones that he had suffered on October 24, 2013 – specifically, the damages relating to the degenerative changes that predated the accident and injuries from the subsequent collision. In these circumstances, the evidence of other trauma (i.e., the evidence of other accidents) had at least some relevance in explaining the degenerative changes and other injuries that, in Erie's view, were the source of Trautwein's complaints. In particular, the other injuries supplied part of the evidentiary basis for Erie's expert's opinion that most of Trautwein's damages were not attributable to the accident on October 24, 2013.

In arguing that the other accidents had no relevance, Trautwein leans heavily on *Kantor v. Ash*, 215 Md. 285 (1958), but to no avail. In that case, the plaintiff alleged that he had developed coronary thrombosis as a result of being rear-ended by another motorist. *Id*. at 287. At trial, the court erroneously permitted the defense to cross-examine the plaintiff about three, prior personal-injury lawsuits even though the defendant had no expert testimony to establish a causal connection between the earlier injuries and the injury to the plaintiff's heart. *See id.* at 289. On appeal from a defense verdict, the Court of Appeals held that the cross-examination "failed to disclose anything of probative value on the issue of causal connection." *Id.* at 290. In the Court's

assessment, the cross-examination amounted to improper impeachment on a collateral matter – apparently on whether the plaintiff was excessively litigious. *See id.*

Kantor is distinguishable for three, related reasons. First, unlike the defendant in *Kantor*, Erie had evidence of a causal connection between the other injuries or accidents and Trautwein's current complaints, because its expert identified them as a source for the pronounced degenerative changes in Trautwein's back and spine and (in the case of the subsequent accident) as an explanation for why Trautwein would seek additional treatment after he seemed to have recovered. Second, unlike the evidence of the other claims in *Kantor*, the evidence in this case was not intended solely to draw the plaintiff's credibility into question, but to cast doubt on the plaintiff's contention that his rather extensive course of medical treatment was all causally related to the relatively minor accident in this case. Third and finally, unlike the trial court in *Kantor*, the court in this case did not permit Erie to introduce evidence of other lawsuits or claims, but only of other injuries or accidents.

Trautwein also relies on *Desua v. Yokim*, 137 Md. App. 138 (2001), and *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357 (1997), which concern a *plaintiff's* obligation to adduce expert testimony in order to discharge the burden of persuasion in cases involving complicated issues of medical causation. On the basis of those cases, he seems to argue that because of the passage of time between the earlier injuries and the injuries in this case, Erie had an obligation to put on expert testimony to prove a causal connection between them.

Trautwein is incorrect. As the defendant, Erie had no obligation to put on expert testimony to prove by a preponderance of the evidence that Trautwein's damages were related to something other than the injuries that he suffered on October 24, 2013. Erie was entitled to challenge and dispute Trautwein's proof of causation, provided that it did so by means of admissible evidence. The evidence of other accidents or injuries was admissible because it was relevant to an understanding of the degenerative changes in Trautwein's back and spine.[3]

As an alternative to his contention that the other accidents or injuries were categorically irrelevant, Trautwein argues that their probative value was substantially outweighed by the danger of unfair prejudice. *See* Md. Rule 5-403. We review that evidentiary decision for abuse of discretion. *See, e.g.*, *Carter v. State*, 374 Md. 693, 705 (2003).

We cannot reverse a discretionary ruling simply because we would not have made the same ruling ourselves. *North v. North*, 102 Md. App. 1, 14 (1994). Instead, to merit reversal for an abuse of discretion, "[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of

[3] In the circuit court, Trautwein relied only on Maryland cases, but in his brief he cites *FGA, Inc. v. Giglio*, 278 P.3d 490 (Nev. 2016), for the proposition that Erie was required to have an expert testify, to a reasonable degree of probability, about the causal connection. *Giglio* does seem to say that, under Nevada law, if the defendant cites "independent alternative causes" for the plaintiff's injury, then the defense "'bears the burden of establishing the causative fact for the trier of fact.'" *Id.* at 498 (quoting *Williams v. District Court*, 262 P.3d 360, 368 (Nev. 2011)). On the other hand, *Giglio* acknowledges that "if expert testimony is offered to contradict the party opponent's expert testimony, the offered testimony must only be 'competent and supported by relevant evidence or research.'" *Id.* (quoting *Williams v. District Court*, 262 P.3d at 368).

what that court deems minimally acceptable." *Id.* We do not see an abuse of discretion in this case.

Here, Trautwein moved in limine to have the court exclude evidence of other "claims or injuries." Erie disclaimed any intention to introduce evidence of other "claims," but the court recognized that the other accidents or injuries might have some relevance to the question of whether his treatment resulted from the injuries that he sustained in the 2013 accident or whether it related in part to his pre-existing conditions. Although another judge could have reached a different conclusion, we cannot say that the circuit court abused its considerable discretion in deciding that the probative value of the other injuries or accidents was not *substantially* outweighed by the danger of *unfair* prejudice. The other injuries had some relevance, and Erie mentioned them only briefly, in Trautwein's cross-examination and in the direct examination of Erie's expert.[4]

At oral argument, Trautwein argued that the court should not have permitted the reference to other "accidents," as opposed to other "injuries." In hindsight, it might or might not have been preferable for the court to require Erie to refer to other injuries rather

[4] In the section of his brief in which he argues that the court abused its discretion in admitting evidence of the other injuries or accidents, Trautwein cites a number of out-of-state cases that he did not cite in the circuit court: *Wiker v. Pieprzyca-Berkes*, 732 N.E.2d 92 (Ill. App. Ct. 2000); *Lagestee v. Days Inn Mgmt. Co.*, 709 N.E.2d 270 (Ill. App. Ct. 1999); *Little v. King*, 161 P.3d 345 (Wash. 2007). The cases are inapposite because in each of them the defendant had no evidence of any causal connection between the plaintiff's prior injury and the injury for which he or she was seeking compensation. In this case, by contrast, the other injuries supplied some basis for the opinion of Erie's expert concerning the ongoing, degenerative changes that, he said, were responsible for most of Trautwein's complaints.

than other accidents. Trautwein, however, did not argue for that distinction in the circuit court. Consequently, we cannot fault the court for not adopting it.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY ALL COSTS.