

Circuit Court for Baltimore City  
Case No.: 24-C-16-007017

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2913

September Term, 2018

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KATRICE CARTER

v.

SCMD, LLC

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Berger,  
Gould,  
Salmon (Senior Judge,  
Specially Assigned),

JJ.

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Opinion by Gould, J.

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Filed: January 6, 2020

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant Katrice Carter was driving her car when she was rear-ended by a vehicle owned by Appellee A&B Holdings, LLC (“A&B”). She sued A&B and SCMD, LLC (“SCMD”).<sup>1</sup> A&B admitted liability, and the parties went to trial in the Circuit Court for Baltimore City on the issue of damages.

To resolve a discovery dispute regarding support for her damages claims, Ms. Carter agreed to limit the lost wages component of her claim to \$24,643. In addition to the \$24,643 in lost wages, Ms. Carter asked the jury to award her \$38,640 for past medical expenses and \$300,000 for non-economic damages. A&B vigorously contested these amounts.

After a two-day trial, the jury reached a verdict at the end of the second day. The verdict sheet had a separate line for each component of Ms. Carter’s damages claims: past medical expenses, past lost wages, and non-economic damages. Even though Ms. Carter’s counsel expressly told the jury during closing argument that she was seeking damages for past lost wages in the amount of \$24,643 for the six months she could not work, the jury’s verdict was as follows:

a. Past Medical Expenses:	\$38,641.48
b. Past Lost Wages:	\$128,616.00
c. Non-Economic Damages:	\$0.00

After the verdict was announced, the trial judge offered to poll the jury. Ms. Carter declined, but A&B accepted. The jury was polled, the verdict was hearkened, and the jury was dismissed.

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<sup>1</sup> SCMD was dismissed as a party prior to trial.

Ms. Carter filed a post-judgment motion invoking Rules 2-533, 2-534, and 2-535, claiming that the jury made a mistake. According to Ms. Carter, the jury’s award for past lost wages was \$103,973 more than she claimed, and therefore the jury must have intended to put that amount in the non-economic damages column. To Ms. Carter, that the jury erred was “obvious,” because the evidence supported a non-economic damages award, yet the jury awarded nothing, but did not support a past lost wages award exceeding \$24,643, yet the jury awarded her much more. Ms. Carter asked the trial court to honor the jury’s clear intent by reducing Ms. Carter’s award for past lost wages to \$24,643 and putting the difference—\$103,973—in the non-economic damages column. In the alternative, Ms. Carter requested a new trial.

A&B opposed the motion and cross-moved to reduce the lost wages component of the award to the stipulated amount of \$24,643. The trial court agreed with A&B, and revised the judgment accordingly. As a result, instead of a total judgment of \$167,257.48, the final judgment entered in Ms. Carter’s favor was for a total of \$63,284.48. Ms. Carter noted this timely appeal.

### **DISCUSSION**

No one disputes that the jury’s lost wages award should have been reduced to the agreed upon limit of \$24,643. The issue is whether the jury intended to award the additional \$103,973 as non-economic damages or past lost wages. In the exercise of its discretion, the trial court saw no basis to impute to the jury the intent that Ms. Carter claims is obvious.

A trial court’s denial of a motion for a new trial is reviewed for an abuse of discretion. Kleban v. Eghrari-Sabet, 174 Md. App. 60, 82 (2007). So too is the denial of a motion to revise or amend the judgment. Peay v. Barnett, 236 Md. App. 306, 315-16 (2018). The extent of a judge’s discretion to revise a jury verdict is limited to those circumstances where the jury’s intent is “manifest and beyond doubt.” Turner v. Hastings, 432 Md. 499, 513 (2013).

Based on the record, we find no abuse of discretion in the trial judge’s post-trial rulings. The trial judge ruled on the post-trial cross-motions in a thorough and well-reasoned eight-page Memorandum Opinion and Order. The trial court observed that the jury was “alert and diligent throughout the trial” and found that “the jury fully intended the verdict it delivered.” The court noted that while awarding nothing for non-economic damages was unusual in light of the award for medical expenses and lost wages, a “jury is not required . . . to award damages for pain and suffering.” Thus, the trial court ruled, “the intent of the jury to award zero [in non-economic damages] will not be erased by the Court.”

As to the motion for a new trial, the trial court, citing to Butkiewicz v. State, 127 Md. App. 412, 423-24 (1999) (“a jury’s verdict in a personal injury case is not necessarily invalid when the jury awards damages for medical expenses and lost wages without also awarding damages for pain and suffering”) and Abrishamian v. Barbely, 188 Md. App. 334, 348 (2009) (the “jury was free to disregard any and all testimony supporting appellant’s non-economic damages claim and to conclude, for example, that she experienced no pain, or that medication cured any such pain”), concluded that the jury’s

“decision to not award non-economic damages, where there is evidence of pain, in and of itself, does not warrant a new trial.”

Ms. Carter did not provide either to the trial court or this Court any basis for her contention that the jury erred, other than her claim that “[o]bviously, the past wages award was intended to cover both past wages and non-economic damages.” It is, however, far from obvious that the jury erred. The jury was properly instructed on damages, and notably, the jury was not instructed to limit the past lost wages component to any specific number. The verdict form clearly identified the three categories of Ms. Carter’s damages claims with a space next to each category for the jury to fill in the amount. The verdict form was filled out by hand, including “0.00” on the line next to “Non-Economic Damages.” And, of course, the verdict sheet was signed and dated by the foreperson. There was simply nothing complicated or confusing about the verdict form.

Given the clarity in which the jury was presented with and instructed on the damages claims, there is no basis in this record to conclude that the jury confused non-economic damages with past lost wages. Indeed, it strains credulity to believe that the jury would make such an error. Somebody in the jury room performed the calculations necessary to arrive at the \$128,616 awarded for past lost wages. That is, somebody intentionally took the stipulated amount of \$24,643 and added \$103,973. And the jury must have had some reasoning behind the non-rounded figure of \$103,973. Such calculations strike us as purposeful, not inadvertent.

It is entirely possible that the jury believed that Ms. Carter did not suffer non-economic damages, but that her lost wages claim was too modest. See, e.g., The Verdict

(20th Century Fox 1982). In fact, we think that’s exactly what happened. And although we cannot know for certain how the jury arrived at the \$103,973 figure, contrary to Ms. Carter’s contention, the evidence before the jury supports an additional award in that amount. We explain.

Ms. Carter testified that when she went back to work she did so at \$14 per hour *less* than what she had been making before the accident. Using this information, and assuming an eight-hour workday, that’s a \$112 per diem loss in wages. We believe that the \$103,973 represents reimbursement to Ms. Carter for this reduction to her wages. The record supports our theory.

We start by trying to determine the time frame that the jury might have credited Ms. Carter with a \$112 per diem loss. In doing so, we first note that the stipulated limit of \$24,643 for past lost wages represented 24 weeks of missed work at an hourly rate of \$25.67. The accident occurred on Thursday, May 22, 2014. Adding 24 weeks to May 22 lands us on Thursday, November 6, 2014, which means Ms. Carter’s first Monday back at work at the reduced hourly rate would have been November 10, 2014. So, for this exercise, that’s our start date: November 10, 2014.

Now we identify the end date. The last day of trial was Tuesday, June 5, 2018. That means the last business day before the start of trial was Friday, June 1, 2018. That’s our end date: June 1, 2018.

Next, assuming Ms. Carter worked Monday through Friday for eight hours per day, we must determine how many business days there were between November 10, 2014 and June 1, 2018. It would not have been feasible for the jury to have accounted for the holidays

between November 10, 2014 and June 1, 2018, if for no other reason that it had no way to determine which holidays Ms. Carter didn't work. So let's start by counting the total number of days between November 10, 2014 and June 1, 2018, and from there try to work our way to the number of business days.

Using just a pencil and paper,<sup>2</sup> and its knowledge of the number of days in each month, it would have been feasible for the jury to have counted by hand the number of days within that window of time. We count 1,300 days, including both the start and end dates.<sup>3</sup> Now we have the start date for the additional lost wages, the end date, and the total number of days in between.

Next, we drill down on the number of business days in that time frame. If we assume Ms. Carter worked five out of seven days per week, a reasonable method would have been to multiply 1,300 by the fraction  $5/7$ , which comes to 928.57 working days.

The result: Ms. Carter lost \$112 per day for a total of 928.57 days. If we multiply these two numbers, we arrive a total loss of \$104,000.

In comparison, the jury awarded an additional \$103,973. The difference is a mere \$27, which could reflect the use of slightly different assumptions or a mathematical error by either the jury or us.

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<sup>2</sup> As the jury was so restricted.

<sup>3</sup> That includes: 21 days for November 2014; 31 days for December 2014; 365 days for all of 2015; 366 days for all of 2016; 365 days for all of 2017; and 152 days for January 1 through June 1, 2018.

The point of the foregoing exercise is not to divine with certainty the jury’s method of calculating past lost wages. That, we will never know. But this exercise does show a reasonable methodology based on the information presented to the jury that gets us remarkably close, almost down to the last dollar, to the jury’s calculation. At a bare minimum, our calculation shows that it is far from “obvious” that the jury intended to put \$103,973 in the non-economic damage category instead of in the past lost wages category.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**