NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 2011

TIFFANY VARNELL PADGETT

VERSUS

STEPHEN A. CHENIER AND ALLSTATE INSURANCE COMPANY

Judgment Rendered: SEP 20 2006

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On Appeal from the 23rd Judicial District Court
In and For the Parish of Assumption, State of Louisiana
Trial Court No. 26836, Division "C"

Honorable Guy Holdridge, Judge Presiding

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BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

Downing, J. concurs.

HUGHES, J.

Defendants appeal a judgment awarding damages to plaintiff for injuries she sustained in an automobile accident. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On March 21, 2001, Tiffany Varnell Padgett was a guest passenger in a pickup truck driven by Stephen A. Chenier. Mr. Chenier, who was allegedly intoxicated, lost control of the vehicle, causing it to roll over up to four times before landing in a concrete culvert. Ms. Padgett was rendered unconscious as a result of the accident. After regaining consciousness, she and Mr. Chenier "flagged" down a passing motorist and were driven to Mr. Chenier's home. They returned to the scene of the accident, and an ambulance was summoned to transport Ms. Padgett to the emergency room at Thibodaux Regional Medical Center.

Ms. Padgett subsequently filed suit against Mr. Chenier and his liability insurer, Allstate Insurance Company, claiming that the trauma she sustained in the accident aggravated her preexisting back, neck, and jaw conditions. In addition to general damages, Ms. Padgett sought special damages for past medical expenses incurred up to the time of trial in the amount of $17,848.54. The parties stipulated to Mr. Chenier's fault in causing the accident.

At trial, it was established that Ms. Padgett suffered from various medical conditions predating the March 2001 accident. In 1994, she underwent jaw surgery to treat a TMJ disorder. In August 1997, she was involved in an automobile accident that caused injuries to her neck. A May 1998 MRI revealed a disc herniation at C5-6. At the time she ended her treatment with Dr. Horace Mitchell in May 1999, he concluded that she suffered from C6 radiculopathy secondary to spondylosis and a disc

herniation at C5-6. Moreover, her medical records indicated a history of minor back injuries.

Despite these preexisting conditions, Ms. Padgett testified that before the March 2001 accident she was doing relatively well. She maintained that she was able to perform routine household chores and was able to sleep in a comfortable position. While her back would occasionally hurt, it certainly was not to the degree she experienced after the accident occurred. Immediately following the accident, Ms. Padgett testified that she began to experience constant tension and tightness in her neck and shoulders and began to suffer much more severe back and neck pains, which caused burning and numbness in her extremities. She testified that she had difficulty sleeping due to the numbness and suffered from headaches, jaw clenching, and daily pain in her jaw that forced her to adopt a soft food diet. She further stated that because of the injuries she sustained in the accident, she now has leg pains and experiences difficulties in walking. Finally, she testified that following the accident she began to experience difficulties in urinating and averred that she often urinates on herself.

In conjunction with her testimony, Ms. Padgett submitted into evidence numerous medical bills as well as the deposition of her then-treating physician, Dr. Angelo. According to Dr. Angelo, Ms. Padgett's complaints regarding the aggravation of her preexisting conditions were consistent with the March 2001 accident.

Under cross-examination, Ms. Padgett admitted to past drug abuse and stated that she knowingly provided various emergency room physicians with inaccurate accident dates to increase the likelihood that she would be provided with pain medication. Moreover, Ms. Padgett conceded that she ultimately was involved in a subsequent accident, the date of which she

could not remember; however, she adamantly maintained that it did not result in any injuries.

Following Ms. Padgett's testimony, the trial court took the matter under advisement. On June 23, 2005, the trial court rendered judgment in favor of Ms. Padgett awarding her $17,000.00 in general damages and $6,702.72 in special damages. From this judgment, defendants now appeal.[1]

LAW AND ANALYSIS

In their first assignment of error, defendants assert that the trial court erred in finding plaintiff met her burden of proof that she more likely than not sustained injury in the accident. Whether an accident caused a person's injuries is a question of fact. **Poland v. State Farm Mutual Automobile Insurance Company**, 2003-1417, p. 5 (La.App. 1 Cir. 6/25/03), 885 So.2d 1144, 1147. For an appellate court to reverse a district court's factual finding, it must find from the record that a reasonable factual basis does not exist for the finding of the district court, and that the record establishes that the finding is clearly wrong. **Mart v. Hill**, 505 So.2d 1120, 1127 (La. 1987). Thus, the reviewing court must do more than simply review the record for some evidence that supports or controverts the district court's finding. The reviewing court must review the record in its entirety to determine whether the district court's finding was clearly wrong or manifestly erroneous. **Stobart v. State through Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993); **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). The issue to be resolved is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. **Stobart**, 617 So.2d at 882.

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[1] In brief, appellants make repeated reference to the trial court's reasons for judgment. However, appeals are taken from judgments, not written reasons for judgment. The court of appeal reviews judgments, and if a judgment is reasonable in light of the record as a whole, it will be affirmed. **Huang v. Louisiana State Bd. of Trustees for State Colleges and Universities**, 99-2805, p. 5 (La.App. 1 Cir. 12/22/00), 781 So.2d 1, 6.

In a personal injury suit, the plaintiff bears the burden of proving a causal relationship between the injury sustained and the accident that caused the injury by a preponderance of the evidence. The test for determining the causal relationship between the accident and subsequent injury is whether the plaintiff proved through medical testimony that it is more probable than not that the subsequent injuries were caused by the accident. **Maranto v. Goodyear Tire & Rubber Co.**, 94-2603, 94-2615, p. 3 (La. 2/20/95), 650 So.2d 757, 759. While expert medical evidence is sometimes essential, it is self-evident that, as a general rule, whether the defendant's fault was a cause in fact of a plaintiff's personal injury or damage may be proved by other direct or circumstantial evidence. **Lasha v. Olin Corp.**, 625 So.2d 1002, 1005 (La. 1993). Proof is sufficient to constitute a preponderance of the evidence when the entirety of the evidence, both direct and circumstantial, establishes the fact or causation sought to be proved is more probable than not. **Cay v. State, Department of Transp. and Development**, 93-0887, p. 5 (La. 1/14/94), 631 So.2d 393, 395. A defendant takes his victim as he finds him and is responsible for all natural and probable consequences of his tortious conduct. Where defendant's negligent action aggravates a preexisting injury or condition, he must compensate the victim for the full extent of his aggravation. **Touchard v. Slemco Elec. Foundation**, 99-3577, pp. 5-6 (La. 10/17/00), 769 So.2d 1200, 1204.

In **Housley v. Cerise**, 579 So.2d 973, 980 (La.1991), our supreme court held that the plaintiff is entitled to a presumption of causation if a) she was in good health before the accident, b) symptoms of the alleged injury began with the accident and were thereafter continuously manifested, and c) the medical evidence shows a reasonable possibility of a causal connection between the accident and the injury. If the plaintiff can show that she is entitled to this presumption of causation, the burden of proof then shifts to

the defendant to prove some other particular incident could have caused the injury. **Poland**, 2003-1417 at p. 13, 885 So.2d at 1151.

Ms. Padgett contends that she is entitled to benefit from the **Housley** presumption of causation. Clearly, Ms. Padgett had a history of neck, back, and jaw problems predating the accident at issue. However, the fact that a plaintiff had a preexisting condition does not automatically preclude her from establishing **Housley's** pre-accident "good health" requirement. **Poland**, 2003-1417 at pp. 10-11, 885 So.2d at 1149-50. We are unable to discern, from the record before us, whether the trial court considered or applied the **Housley** presumption when making its determination. However, it is of no moment. Assuming, for the sake of argument, that the **Housley** presumption is not applicable in this case, we still would be reluctant to overturn the trial court's finding of causation and injury given the testimony of Dr. Angelo and Ms. Padgett.

Defendants argue that while Dr. Angelo stated that Ms. Padgett's complaints regarding the aggravation of her prior conditions were "consistent" with the occurrence of the accident, he never said the aggravation was "more probably than not" related to the accident. We agree with defendants that the plaintiff in a personal injury lawsuit bears the burden of proving that "more probable than not" her injury was caused by trauma suffered in the accident. However, it is not necessary for the plaintiff's medical witness to recite the proper legal jargon verbatim before the trial court can properly rely on his testimony. Appellate courts should look to the substance of a witness's testimony to determine whether the trial court was manifestly erroneous in finding that it establishes causation by a preponderance of the evidence. **Housley**, 579 So.2d at 980.

In **Hall v. Folger Coffee Co.**, 2002-0920, 2002-0921, pp. 20-21 (La. App. 4 Cir. 10/1/03), 857 So.2d 1234, 1248, writs denied, 2003-1756 (La.

10/17/03), 855 So.2d 762 & 2003-3416 (La. 6/25/04), 876 So.2d 827, three doctors concluded that the plaintiff's injuries were consistent with his description of the accident. Defendant "emphasized the doctors' failure to recite that it is more probable than not that [plaintiff]'s injuries were caused by the trauma suffered in the accident." The court quoted **Housley's** holding that "it is not necessary for the plaintiff's medical witness to recite the proper legal jargon verbatim before the trial court can properly rely on his testimony." **Hall**, 2002-0920 at p. 21, 857 So.2d. at 1248-49 (quoting **Housley**, 579 So.2d at 980). The **Hall** court concluded that the doctors' affidavits, in conjunction with the plaintiffs' testimony, were sufficient evidence to establish causation. **Hall**, 2002-0920 at p. 21, 857 So.2d. at 1249.

Indeed, a plaintiff's own reasonable testimony, if accepted as true, may be sufficient to establish causation and injury. **Coleman v. Lewis**, 99-0094, p. 8 (La.App. 1 Cir. 3/31/00), 757 So.2d 907, 911, writ denied, 2000-1850 (La. 9/22/00), 768 So.2d 1291. Ms Padgett testified that she was able to function well before the accident. However, immediately following the accident, she began to suffer severe back, neck and jaw pains and experienced difficulty in walking and urinating. She was no longer able to perform routine chores or to sleep comfortably. She had to adopt a soft food diet and experienced constant tension, headaches, and jaw clenching. As the trier of fact, the trial court was free to accept or reject, in whole or in part, the testimony of any witness. **Morrison v. Morrison**, 97-0295, p. 5 (La.App. 1 Cir. 9/19/97), 699 So.2d 1124, 1127. Obviously, the trial court credited Ms. Padgett's testimony. Only when documents or objective evidence so contradict a witness's story, or the story itself is so internally inconsistent or implausible on its face that a reasonable factfinder would not credit the witness's story, may an appellate court find manifest error.

Doiron v. Wal-Mart Stores, Inc., 95-1705, p. 6 (La.App. 1 Cir. 4/4/96), 672 So.2d 249, 253. After a thorough review, we find no such contradictory evidence or inherent implausabilities in the record before us.

In an attempt to discredit her testimony, the defendants did provide evidence that Ms. Padgett abused drugs and lied to physicians regarding the date of the accident in order to obtain prescription medication. However, the fact that Ms. Padgett suffered from a chemical dependency does not prove that she was not injured in the accident. **Doiron**, 95-1705 at p. 6, 672 So.2d at 253.

At trial, Ms. Padgett admitted to her past substance abuse problems but testified that she had not used any illegal drugs during the preceding eleven months. She claimed that prior to then, she had used drugs in an effort to relieve her pains. Eventually, she came to an agreement with Dr. Angelo whereby she consented to obtain a limited amount of prescription pain medications only from him and only after submitting to periodic drug screens. It is worthy of note that even before this agreement was reached, Dr. Angelo continued to prescribe pain medication to Ms. Padgett, despite her known dependency, because he believed that she genuinely suffered neck and back pains necessitating such medication. Since the record provides a reasonable factual basis for the trial court's judgment, we find the defendants' first assignment of error to be without merit.

Alternatively, defendants argue that the general and special damages awarded by the trial court were excessive. The discretion vested in the trier of fact in fashioning an award of general damages is great, and even vast, so that an appellate court should rarely disturb an award of general damages. Reasonable persons frequently disagree about the measure of general damages in a particular case. It is only when the award is, in either direction, beyond that which a reasonable trier of fact could assess for the

effects of the particular injury to the particular plaintiff under the particular circumstances that the appellate court should increase or reduce the award. **Youn v. Maritime Overseas Corp.**, 623 So.2d 1257, 1261 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994). Given the particular facts herein, we cannot say that the trial court's award of $17,000.00 in general damages to this plaintiff amounts to an abuse of discretion.

Regarding special damages, we note that a plaintiff is required to prove such damages by a preponderance of the evidence, and that the trial court's findings are subject to the manifest error standard of review. **Fleniken v. Entergy Corporation**, 2000-1824, 2000-1825, p. 29 (La.App. 1 Cir. 2/16/01), 780 So.2d 1175, 1195, writs denied, 2001-1268, 2001-1305, 2001-1317 (La. 6/15/01), 793 So.2d 1250, 793 So.2d 1253, 793 So.2d 1254. Based upon our review, we conclude that the trial court did not err in making its special damages award.[2]

A plaintiff may ordinarily recover from the tortfeasor reasonable medical expenses that she incurs as a result of an injury, provided she proves the existence of the injuries and a causal connection between those injuries and the tortious conduct. **Emery v. Owens-Corporation**, 2000-2144, p. 19 (La.App. 1 Cir. 11/9/01), 813 So.2d 441, 456, writ denied, 2002-0635 (La. 5/10/02), 815 So.2d 842. Specifically, a tortfeasor is liable for the medical treatment of his victim, even for over treatment or unnecessary treatment, unless such treatment was incurred by the victim in bad faith, or was attributable to some separate, unrelated cause. **Spangler v. Wal-Mart Stores, Inc.**, 95-2044, p. 4 (La.App. 1 Cir. 5/10/96), 673 So.2d 676, 679,

[2] In taking the matter under advisement, the trial court invited the parties to submit post-trial memoranda focusing on the medical expenses incurred by Ms. Padgett during the first six months following the accident as opposed to those incurred during the one year period following the accident. In rendering its judgment, the trial court did not itemize the particular medical expenses it was including in its special damages award. We surmise that the trial court limited this award to 'related' expenses incurred within a specified period of time.

writs denied, 96-1450, 96-1407 (La. 9/27/96), 679 So.2d 1353; **Spillers v. ABH Trucking Co., Inc.**, 30,332, p. 9 (La.App. 2 Cir. 4/13/98), 713 So.2d 505, 510-11, writs denied, 98-1313, 98-1327 (La. 6/26/98), 719 So.2d 1063, 719 So.2d 1287. Considering the overlapping nature of plaintiff's genuine need for treatment due to the injury she sustained as opposed to that prompted by her chemical dependency, we recognize that a determination of the medical expenses found attributable to the accident at issue may contain an inherent degree of arbitrariness. See **Jarreau v. Hirschey**, 93-1402, pp. 7-9 (La.App. 1 Cir. 12/7/94), 650 So.2d 1189, 1194-95, writ denied, 95-0766 (La. 5/12/95), 654 So.2d 348; see also **Hayes v. State Farm Ins. Co.**, 40,649, pp.11-12 (La.App. 2 Cir. 4/20/06), 928 So.2d 742, 749-50. While we might have decided differently, we cannot say that the trial court was clearly wrong in awarding Ms. Padgett $6,702.72 in special damages. Accordingly, we find the defendants' second assignment of error also to be without merit.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is hereby affirmed. All costs of this appeal are assessed to defendants, Stephen A. Chenier and Allstate Insurance Company.

AFFIRMED.