

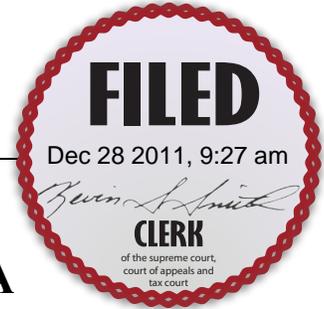
Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOSHUA BAKER,

Appellant-Plaintiff,

vs.

ROBERT BROWN,

Appellee-Defendant.

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No. 68A05-1103-CT-00122

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APPEAL FROM THE RANDOLPH CIRCUIT COURT  
The Honorable Jay L. Toney, Judge  
Cause No. 68C01-0905-CT-232

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**December 28, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Joshua Baker (“Baker”) filed a complaint in Randolph Circuit Court against Robert Brown (“Brown”) claiming damages incurred as a result of an automobile accident caused by Brown. A jury trial was held and the jury awarded damages to Baker in the amount of \$14,326.33. Thereafter, Baker filed a motion to correct error and alleged that the jury award was inadequate. The trial court denied Baker’s motion, and he appeals. Specifically, Baker raises two issues:

- I. Whether his motion to correct error met the specificity requirements of Trial Rule 59(D); and,
- II. Whether the jury’s damage award, an amount approximately one-half of Baker’s undisputed medical expenses, was inadequate.

Concluding that the jury’s verdict was inadequate as a matter of law, we reverse and remand for proceedings consistent with this opinion.

### **Facts and Procedural History**

On September 8, 2008, Baker and Brown were involved in an automobile accident. Brown struck Baker’s vehicle as Brown entered an intersection in which Baker had the right of way. Immediately after the accident, Baker was able to remove himself from his totaled vehicle, and he proceeded to check on Brown. He was then transported to the emergency room at Jay County Hospital.

In the emergency room, Baker complained of a severe headache and nausea, and he vomited multiple times. He also had chest, neck, shoulder, and abdominal pain. The treating physician was concerned about a possible brain injury because Baker was “very confused,” combative, and because his mental status deteriorated while he was in the emergency room. Tr. p. 49. Therefore, Baker was transferred to Parkview Hospital in

Fort Wayne where he was treated for two or three days. Tr. p. 26. Baker's ultimate diagnosis was a severe concussion with post-concussive syndrome. Tr. p. 52. After he was released from Parkview Hospital, Baker sought treatment for injuries suffered following the accident for approximately two months. Baker's main complaints were severe headaches and shoulder pain.

Because of the accident, Baker, a high school senior, missed several days of school. As a result, he failed a required government course and had to attend an alternative school to obtain the required credits and graduate with his class. Baker also missed three or four weekends of part-time work. His employer testified that Baker's lost wages totaled three to four hundred dollars.

On May 26, 2009, Baker filed a complaint against Brown seeking damages incurred as a result of the accident. A jury trial was held on December 13, 2010. Brown stipulated that he was at fault for the accident. Baker argued that Brown should be held liable for his medical expenses totaling over \$28,000, his lost wages, and several thousand dollars for pain and suffering and the fact that he had to attend the alternative school to complete the coursework required to graduate with his class. Brown acknowledged that it would be "fair" to award Baker his medical expenses and lost wages, in the amount of \$28,652.66. Tr. pp. 90-91. The jury returned a verdict in Baker's favor, but awarded only \$14,326.33 in damages.

On January 5, 2011, Baker filed his motion to correct error. In the motion, Baker requested that the court "correct the Jury's verdict" and in support, alleged only:

1. That the Jury's verdict was inadequate in that it failed to fully compensate the Plaintiff for the damages acknowledged at trial by the Defendant.
2. That as such, the Plaintiff is entitled to relief from the verdict in accordance with Trial Rule 59.

Appellant's App. p. 28. In response, Brown argued that Baker's motion was deficient in that it failed to comply with the specificity requirements mandated by Trial Rule 59(D). After a hearing was held on the motion, the trial court issued an order denying Baker's motion to correct error because 1) "the Plaintiff's Motion did not contain a statement of facts and grounds upon which the error is based"; and 2) assuming that the motion was sufficient to raise the error, "the jury verdict was within the scope of the evidence presented to the jury." Appellant's App. p. 11. Baker now appeals.

### **Discussion and Decision**

We review a trial court's denial of a motion to correct error for an abuse of discretion. Scales v. Scales, 891 N.E.2d 1116, 1118 (Ind. Ct. App. 2008). An abuse of discretion occurs where the trial court's decision is against the logic and effect of the facts and circumstances before it. Id.

Trial Rule 59(A) provides that a party's claim that the jury's verdict is inadequate must be raised by a motion to correct error. Moreover, any error raised in a motion to correct error "shall be stated in specific rather than general terms and shall be accompanied by a statement of facts and grounds upon which the error is based." Ind. Trial Rule 59(D).

The trial court denied Baker's motion to correct error because "the Plaintiff's Motion did not contain a statement of facts and grounds upon which the error is based."

Appellant's App. p. 11. In his motion, Baker alleged that "the Jury's verdict was inadequate in that it failed to fully compensate the Plaintiff for the damages acknowledged at trial by the Defendant." Id. at 28. Baker certainly could (and should) have argued his claimed error with more specificity. But Baker's claim of an inadequate jury verdict was supported by an argument, and the trial court heard further argument at the hearing held on Baker's motion. Because Baker's motion was sufficient to allow the trial court to determine the error raised and the reason for claiming the error, and given our preference for resolving a case on its merits, we will review whether the jury's verdict was inadequate.

When we review a jury's damage award that the appellant claims is inadequate, we apply a strict standard. Ritter v. Stanton, 745 N.E.2d 828, 843 (Ind. Ct. App. 2001), trans. denied. Specifically, we "consider only the evidence that supports the award together with the reasonable inferences therefrom." Id. "If there is any evidence to support the amount of the award, even if it is conflicting, this court will not reverse." Id. This standard reflects the premise that damages "are particularly a jury determination." Sears Roebuck and Co. v. Manuilov, 742 N.E.2d 453, 462 (Ind. 2001). Therefore, we do not substitute our "idea of a proper damage award for that of the jury." Id. (quoting Prange v. Martin, 629 N.E.2d 915, 922 (Ind. Ct. App. 1994), trans. denied). Because appellate courts are unable "to actually look into the minds of the jurors, . . . we will not reverse if the award falls within the bounds of the evidence." Sears Roebuck, 742 N.E.2d at 462 (citation omitted); see also Russell v. Nuemann-Steadman, 759 N.E.2d 234, 237 (Ind. Ct. App. 2001) (stating, "[t]he trial court may only reverse a jury verdict 'when it is

apparent from a review of the evidence that the amount of damages awarded by the jury is so small or so great as to clearly indicate that the jury was motivated by prejudice, passion, partiality, corruption or that it considered an improper element.”) (citation omitted)).

At trial, Brown stipulated that he was at fault for the accident. Therefore, the only issue before the jury was the amount of damages Baker was entitled to that were proximately caused by the accident. See Bader v. Johnson, 732 N.E.2d 1212, 1220 (Ind. 2000).

Indiana subscribes to the general principle of tort law that all damages directly attributable to the wrong done are recoverable. Russell, 759 N.E.2d at 237. And the law allows an injured plaintiff to recover the reasonable cost of necessary medical expenses. Id. See also Evans v. Buffington Harbor River Boats, LLC, 799 N.E.2d 1103, 1111 (Ind. Ct. App. 2003) (“A person injured by the negligence of another is entitled to reasonable compensation, which is such sum as would reasonably compensate the victim both for bodily injuries and pain and suffering.”), trans. denied.

In both Russell and Manzo v. Estep, 689 N.E.2d 474, 475 (Ind. Ct. App. 1997), our court concluded that jury verdicts in favor of the plaintiffs, but with awards of zero damages were inadequate because the awards failed to compensate the plaintiffs for actual, undisputed medical expenses directly attributable to the accidents. Russell, 759 N.E.2d at 237-38; Manzo, 689 N.E.2d at 476-77. See also Sherman v. Kluba, 734 N.E.2d 701, 704 (Ind. Ct. App. 2000) (“Because the jury’s damage award in the present case was well short of the undisputed medical expense evidence, we must agree with the

trial court that the jury's award was influenced by some improper element.”), trans. denied; Dee v. Becker, 636 N.E.2d 176, 178 (Ind. Ct. App. 1994) (stating “[o]nce liability and damages were established, a verdict for substantially less than the uncontroverted damages was error”).

Here, Baker argued to the jury that he should be compensated in the total amount of approximately \$92,000 for his medical expenses, lost wages, missed days of school, and pain and suffering. Brown argued against awarding that amount of damages, but during closing argument stated:

I am going to show you what I would call three options. Option number 1, what I think would be a fair award to [Baker], this is just a baseline. His medical bills and his loss [sic] wages . . . [s]o twenty-eight two fifty-two and sixty six [cents] plus four hundred dollars that his employer said he lost through lost wages so I would ask for option number 1, twenty-eight six fifty-two and sixty-six cents. That is pretty base-line, that is pretty basic. Those are the numbers that are not in dispute. The medical bills that were actually paid, four hundred dollars in loss [sic] wages that is what was actually lost and that is what I would consider as our baseline number.

Tr. pp. 90-91. Brown then suggested that the jury might award an additional \$2000 for pain and suffering and possibly another \$2000 for Baker's continuing problem with severe headaches. Tr. pp. 91-92. Therefore, the range of damages Brown proposed to the jury was \$28,652.66 to \$32,652.66.

Yet, despite Brown's concession that Baker was entitled to a minimum damage award of at least \$28,652.66, the jury awarded only \$14,326.33. This verdict, which is exactly one-half of Baker's undisputed medical expenses and lost wages, falls outside the bounds of the evidence and is therefore inadequate as a matter of law.

Baker's damages include not only his undisputed medical expenses and lost wages, but also pain and suffering. See Evans, 799 N.E.2d at 1111. The uncontested evidence presented at trial established that Baker suffered a severe amount of pain as a result of the accident. Because damages for pain and suffering are particularly within the province of the jury, the proper remedy in a case such as this, where liability has been admitted, and where the jury verdict was inadequate as a matter of law, is a new trial on the issue of damages. See Russell, 759 N.E.2d at 238; Sherman, 734 N.E.2d at 704; Manzo, 689 N.E. at 477.

For all of these reasons, we conclude that the trial court abused its discretion when it denied Baker's motion to correct error. We reverse and remand for a new trial on the issue of damages.

Reversed and remanded for proceedings consistent with this opinion.

BAILEY, J., and CRONE, J., concur.