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**IN THE
COURT OF APPEALS OF INDIANA**

THERESA COX,

Appellant-Plaintiff,

vs.

RONALD KIRBY,

Appellee-Defendant.

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No. 61A05-0703-CV-146

APPEAL FROM THE PARKE CIRCUIT COURT
The Honorable Sam A. Swaim, Judge
Cause No. 61C01-0207-PL-204

October 9, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-plaintiff Theresa Cox appeals from the trial court's denial of her motion to correct error and request for additur. Cox contends that she is entitled to additur, inasmuch as the jury's verdict on her negligence complaint against appellee-defendant Ronald Kirby was allegedly outside the scope of the evidence presented at trial. Finding no error, we affirm the judgment of the trial court.

FACTS

This case stems from an automobile accident that occurred in Lyford on December 11, 2000. Cox was driving a vehicle that was stopped at an intersection and was struck from behind by a vehicle driven by Kirby. Cox was placed on a backboard with a cervical neck brace and taken by ambulance from the scene of the accident to a hospital. After receiving treatment at the hospital, Cox was released with prescriptions for pain medication and instructed to follow up with her family doctor. Cox's medical expenses incurred on the day of the accident totaled \$2,159.17. During the next five and one-half years, Cox continued to seek treatment from physicians and chiropractors for pain and tingling in her neck, back, and extremities, incurring further medical expenses in the amount of \$23,141.93, which, when added to the expenses incurred on the day of the accident, totals \$25,301.10 in medical costs.

On July 9, 2002, Cox filed a complaint against Kirby, alleging that his negligence caused her to suffer injuries. Kirby admitted liability; thus, the only remaining issue litigated by the parties was the amount of Cox's damages. The case was tried to a jury from August 16 to 18, 2006, at the end of which the jury awarded Cox damages in the amount of \$2,159.17. On September 14, 2006, Cox filed a motion to correct error and request for

additur, arguing that the damages award contradicts undisputed evidence in the record regarding the amount of medical expenses she incurred as a result of the accident. Following a hearing, on November 15, 2006, the trial court denied Cox's motion: "[a]lthough this Judge may have reached a different decision in determining Plaintiff's damages, the Court is compelled to give the Jury great latitude in arriving at its decision. There is no clear evidence that the Jury based its decision on any inappropriate factors." Appellant's App. p. 111. Cox now appeals.

DISCUSSION AND DECISION

Cox argues that the trial court erroneously denied her motion to correct error and request for additur. Indiana Trial Rule 59(J)(5) provides that if the trial court determines that prejudicial or harmful error has been committed, it shall, "[i]n the case of excessive or inadequate damages, enter final judgment on the evidence for the amount of the proper damages"

We apply a strict standard when reviewing a claim that an award of damages is inadequate. We will neither reweigh the evidence nor assess witness credibility, considering instead only the evidence favorable to the award. We will not reverse a damages award so long as the damages fall within the scope of the evidence. Indeed, we will reverse only upon a finding that, based upon the evidence, the amount of damages awarded indicates that the jury was motivated by prejudice, passion, partiality, corruption, or consideration of some improper element. Where the evidence presented is conflicting as to the nature, extent, and source of the injury, the jury is in the best position to assess damages, and we will not disturb

the award. Palmer v. Comprehensive Neurologic Servs., P.C., 864 N.E.2d 1093, 1103 (Ind. Ct. App. 2007).

Here, Cox contends that the jury ignored allegedly undisputed evidence establishing that the medical treatment she received in the years following the accident was a direct result of the automobile accident. She directs our attention to the testimony of a number of the physicians and chiropractors who treated her.

Our review of the record, however, establishes that Cox's treating physicians did not uniformly and irrefutably conclude that Cox's pain stemmed directly from the automobile accident with Kirby. Dr. John Bradbury testified that he believed that Cox's problems were caused by the accident with Kirby, but he acknowledged that she had been in an earlier automobile accident in 1992 and admitted that the earlier accident could have caused some of her medical difficulties. Tr. p. 298. Dr. Bradbury also testified that he could not rule out other conditions, such as arthritis and Cox's physically demanding job, as sources of her pain. Id. at 302.

Dr. Duane Binder testified that the source of Cox's pain was a pinched nerve—a diagnosis with which Dr. Irving Haber disagreed, id. at 110—but further opined that she was experiencing pain as a result of the injury she suffered in the 1992 accident. Id. at 193. Indeed, Dr. Binder elaborated that the older injury likely caused many of the degenerative changes causing Cox's pain following the 2000 accident. Id. at 201. Dr. Binder also testified that Cox complained about her job, which entailed heavy lifting and constant movement, bending, and reaching, all of which can cause spinal trauma. Id. at 205. Finally, Dr. Haber

testified that although he believed it was reasonable to conclude that Cox's pain was caused by the 2000 accident with Kirby, it was possible that the pain had been caused by something else. Id. at 112.

Given this evidence, we cannot conclude that the jury considered an improper factor in calculating the amount of Cox's damages. It awarded her the damages she incurred on the day of the accident and apparently concluded, based on the above testimony, that the medical expenses she incurred thereafter were not directly related to the accident. We find, therefore, that the damages award was within the scope of the evidence presented at trial and that the trial court properly denied Cox's motion to correct error and request for additur.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.