

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1027

September Term, 2013

RONALD G. CHAMBERS

v.

COLIN M. BULEY

Krauser, C.J.
Zarnoch,
Reed,

JJ.

Opinion by Zarnoch, J.

Filed: December 29, 2014

This is an automobile accident case where appellee, Colin M. Buley, stipulated that his negligence was the cause of the accident. Thereafter, a jury in the Circuit Court for Montgomery County awarded appellant, Ronald G. Chambers \$3,000. Chambers appealed, claiming the court improperly instructed the jury and failed to provide him with post-trial relief with respect to the adequacy of the damage award. Finding no error, we affirm the rulings of the circuit court.

FACTS AND LEGAL PROCEEDINGS

On September 22, 2010, Chambers and Buley were involved in an automobile accident between Wooten Boulevard and Edmonson Road. At some point after the accident, Chambers complained of several injuries, including whiplash-type problems, tinnitus, and hearing loss due to airbag deployment.¹ Prior to the date of trial, Chambers had been in three accidents, including the September 2010 accident with Buley. Chambers' first accident occurred on November 21, 2009 and the third accident occurred on December 1, 2010. His airbag deployed in the November 2009 accident and he suffered injuries to his neck and back as a result of that collision.

On March 19, 2013, the case was tried before a jury. At trial, both sides presented expert opinions on Chambers' injuries. Chambers called Dr. Gregory Sater, an otolaryngologist, who was his treating physician and was qualified as an expert.² Dr. Sater

¹ Tinnitus is a "sensation of sound in one or both ears associated with disease in the middle ear, the inner ear, or the central auditory apparatus." *Fusco v. Shannon*, 210 Md. App. 399, 418 n.9 *cert. granted*, 432 Md. 466 (2013) and *rev'd*, 438 Md. 24 (2014) (citing *Stedman's Medical Dictionary* 1455 (24th ed. 1982)).

² An otolaryngologist is commonly referred to as an ear, nose and throat doctor.

testified that Chambers was first seen by other doctors at Kaiser Permanente on January 6, 2011. At that time, Chambers described the car accidents he was involved in and that he “noticed a decrease in hearing in his left ear after the first accident.” Dr. Sater first examined Chambers on February 15, 2011. The patient was again complaining of tinnitus. Chambers informed Dr. Sater at this time that he started to notice a hearing problem after the September 2010 accident with Buley. At trial, Dr. Sater explained that in his opinion, to a reasonable degree of medical probability, the hearing loss and tinnitus were “due to the acoustic trauma from the airbag deployment in the September 2010 auto accident.” On cross examination, Dr. Sater admitted that tinnitus can be a very subjective injury and is difficult to test. Chambers also called Dr. Abend as an expert in the field of orthopedic and general medicine to testify as to his other injuries.

In response, Buley called his own expert, Dr. Michael Dimiano, who was also an otolaryngologist. Dr. Dimiano testified that in his opinion he could not “say with a reasonable degree of medical probability that [Chambers’] hearing loss and tinnitus were a result of the September 22nd, 2010 accident.” He opined that those types of injuries would have been noticeable immediately after the accident when the airbag deployed, not three and a half months later. To explain Chambers’ hearing loss, Dr. Dimiano provided alternative causes including Meniere’s disease and the head injury Chambers sustained in the November 2009 accident.

On the last day of trial, Buley stipulated that his negligence was the cause of the accident. The parties reviewed the proposed jury instructions and no objections were made. The court then instructed the jury as to the damage issues in the case:

In an action for damages in a personal injury case, you shall consider the following: the personal injuries sustained and their extent and duration; the effects such injuries have on the overall physical and mental health and well-being of the plaintiff; the physical pain and mental anguish suffered in the past, and which with reasonable probability may be experienced in the future.

The jury was instructed that all “damages which you find for pain, suffering, inconvenience, physical impairment, disfigurement, or other non-pecuniary injury” were to be considered non-economic injuries. The jury instructions were given prior to closing arguments and no objection was submitted by either side. Chambers’ closing argument stated that this case was “about a particular kind of damages [specifically] non-economic damages.” The jury returned with a verdict for Chambers in the amount of \$3,000 for non-economic damages.

On April 5, 2013, Chambers filed a Motion for a New Trial, contending that the verdict was against the weight of the evidence. Chambers argued that “it would have been impossible for a reasonable jury to have not awarded damages for the hearing problems based upon the evidence presented” and that the award was “unconscionably low.” No issues regarding the jury instructions were raised in this motion. Without a hearing, the circuit court denied the motion on April 9, 2013. Chambers then filed a Motion to Reconsider the Judgment on May 31, 2013, which was also denied by the court. Chambers appealed *pro se* to this Court.

QUESTIONS PRESENTED³

Appellant presents four questions for our review, which we have consolidated as follows:

1. Were the jury instructions as to damages proper?
2. Did the circuit court abuse its discretion in denying Chambers' Motion for a New Trial?

For the following reasons, we affirm the circuit court's rulings.

DISCUSSION

I. Jury Instructions

Chambers contends that the circuit court neglected to inform the jury of its duty to award economic damages; however he did not request an instruction on economic damages and the case went to the jury only on non-economic damages. The Court of Appeals has held "that the standard of review for jury instructions is that so long as the law is fairly covered by the jury instructions, reviewing courts should not disturb them." *Smith v. State*,

³ Chambers' original questions were:

1. Did the Circuit Court err by instructing the Jury to determine Non-Economic damages only for the injuries sustained by Plaintiff?
2. Did the Circuit Court err by not instructing the jury to determine Economic damages as required by Maryland Code, Courts and Judicial Proceedings?
3. Did the Circuit court err by denying plaintiff[']s motion for New Trial based on the evidence?
4. Did the Circuit Court err by denying plaintiff[']s motion for Reconsideration of the Judgement?

No argument was presented in Chambers' brief regarding question four so it is not properly before this court. *See* Md. Rule 8-504(a)(6) (requiring that a brief include an "[a]rgument in support of the party's position on each issue").

403 Md. 659, 663 (2008) (Citations omitted). If “the instructions are ambiguous, misleading or confusing to jurors, those instructions will result in reversal and a remand for a new trial.” *Id.* (Citations omitted). However, Maryland Rule 2–520(e) provides that: “No party may assign as error the giving or the failure to give an instruction *unless the party objects on the record promptly after the court instructs the jury*, stating distinctly the matter to which the party objects and the grounds of the objection.” (Emphasis added). Here, Chambers failed to object to the jury instructions as given by the court or to request an instruction on economic damages, so the issue is not preserved for our review. *See Standiford v. Standiford*, 89 Md. App. 326, 338 (1991) (holding that “since appellant failed to object to the instruction given, the issue of attorney’s fees is not preserved for appellate review”). We, therefore, decline to entertain any challenges to the circuit court’s jury instructions or lack thereof.

II. Motion for New Trial

Chambers contends that we should reverse the denial of his motion for a new trial because it is clear that the damage verdict was against the weight of the evidence. Buley responds that the jury was presented with evidence that disputed the cause of Chambers’ hearing loss and that the jury properly weighed the evidence to come to the \$3,000 damage award.

We review the circuit court’s denial of a motion for a new trial under an abuse of discretion standard. *Mason v. Lynch*, 151 Md. App. 17, 28 (2003) *aff’d*, 388 Md. 37 (2005). The circuit court is granted wide discretion in determining whether or not to grant a motion for a new trial. Accordingly, this discretion will “expand or contract depending upon the

nature of the factors being considered, and the extent to which the exercise of that discretion depends upon the opportunity the trial judge had to feel the pulse of the trial and to rely on his own impressions.” *Buck v. Cam’s Broadloom Rugs, Inc.*, 328 Md. 51, 58–59 (1992). The “exercise of the discretion entrusted to the trial court will not be reviewed on appeal, at least when the trial court has fairly exercised its discretion, and except under the most extraordinary or compelling circumstances.” *Standiford*, 89 Md. App. at 339 (Citations omitted). A motion for a new trial should be granted “where it can be seen, upon a consideration of the whole case, that the verdict is inequitable, insufficient, or contrary to the admissions of the parties.” *Id.* at 340 (Citations omitted).

It is the role of the jury to “assess[] and evaluate[] the weight to be assigned to the evidence presented to it and decide[] its effect.” *Dennard v. Green*, 335 Md. 305, 321 (1994) (Citation omitted). In *Standiford*, this Court held that the denial of a motion for a new trial was appropriate because “the jury’s verdict was not against the evidence or the weight of the evidence [because] it was neither inequitable, insufficient, nor contrary to the admissions of the parties.” 89 Md. App. at 340. It is not our role as an appellate court to weigh the evidence: “[n]either the trial court nor this Court is permitted to substitute its evaluation of that evidence for that of the jury.” *Dennard*, 335 Md. at 321 (Citation omitted).

Here, the jury’s verdict was not against the weight of the evidence. Both sides were given an adequate opportunity to prove the cause of Chambers’ injuries and each side presented their own expert witness to the jury. The jury chose to believe one expert’s testimony over another and awarded Chambers only \$3,000 of his requested damages. *See*

Mason, 151 Md. App. at 30 (explaining that “the jury was not required to accept the expert’s conclusions”). Additionally, there was extensive evidence presented at trial about Chambers’ prior injuries and differing testimony as to the first instance where Chambers began to lose his hearing.

This case does not present any compelling circumstances that would lead to the conclusion that the verdict was unconscionable. Chambers requested \$3,000 for his “soft-tissue neck and back pain” and was awarded that amount. The jury was not convinced that Chambers was entitled to the greater damages requested. It was entirely reasonable for the jury to come to that conclusion based on the contradicting evidence presented at trial. The circuit court did not abuse its discretion in denying Chambers’ motion for a new trial and we affirm its decision.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**