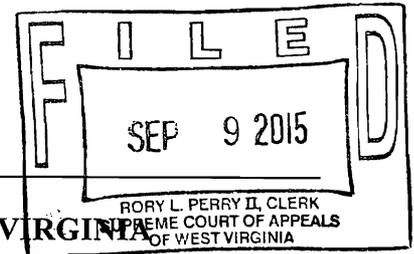


No. 15-0393



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

RYAN LYNN HARNISH,

Defendant Below / Petitioner,

v.

**CHARLES M. CORRA and
ELIZABETH G. CORRA,**

Plaintiffs Below / Respondents.

PETITIONER'S REPLY BRIEF

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I. ARGUMENT

A. *The Jury's Verdict Was Not Against the Clear Weight of the Evidence.*

This Court has consistently held that “the function of the jury is to weigh the evidence with which it is presented and to arrive at a conclusion regarding damages and liability.” *Shiel v. Ryu*, 203 W. Va. 40, 46, 506 S.E.2d 77, 83 (1998). To be sure, “credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” *Id.* (citation and internal quotations omitted).

In this case, the jury awarded Mr. Corra past medical damages of \$9,620.59. This figure represented the exact amount of medical damages that were undisputed by the parties for Mr. Corra's neck and back injury. However, the jury did not award any compensation for medical treatment Mr. Corra claimed was necessary to treat his knee. Therefore, the jury's verdict evidenced it did not believe Mr. Corra received a knee injury — or aggravation of any preexisting knee injury — caused by the motor vehicle accident.

In reaching its verdict, the jury heard all the evidence, observed the demeanor of the witnesses, decided issues of credibility and persuasiveness, and determined the weight that should be given to the experts' opinions. Yet, the Circuit Court disregarded the jury's verdict and interjected its own judgment in place of the jury's careful considerations.

In an attempt to justify the Circuit Court's intrusion upon the exclusive province of the jury to weigh and decide questions of fact, Respondents argue “the evidence was uncontroverted as to the necessity of the surgery as a result of aggravation caused by the October 4, 2012 motor vehicle accident.” However, Respondents ignore evidence presented at trial proving the accident did not cause Mr. Corra's knee injury or aggravation to a preexisting knee injury.

First, the jury considered a narrative provided by the ambulance service that transported Mr. Corra after the motor vehicle accident. This narrative made no mention of a knee injury. [App. 136.] Further, there was no mention of a knee injury in the emergency room records on the date of the accident. [App. 118-29.] More importantly, there was no mention of a knee injury in Mr. Corra's medical records for an entire month after the accident. In addition, Dr. Santrock testified there was no evidence Mr. Corra suffered direct trauma to his knee. [App. 210.]

Ignoring this evidence, Respondents argue the Circuit Court correctly determined that the jury's failure to include the knee surgery expense was against the clear weight of the evidence. Respondents attempt to support this argument by relying on Dr. Santrock's admission during cross-examination that Mr. Corra's knee injury was "aggravated" by the accident.

This Court has made clear that the jury, and **not the trial judge**, determines the weight to be given to expert's opinions. See Syl. Pt. 2, *Mayhorn v. Logan Medical Foundation*, 193 W.Va. 42, 454 S.E.2d 87 (1994). Indeed, the jury was instructed that it could accept or disregard the testimony of either parties' expert witness. The jury heard Dr. Santrock's testimony and weighed it accordingly. Based upon all of the evidence presented, the jury concluded that Mr. Corra did not receive any knee injury, aggravation or otherwise, from the motor vehicle accident.

The jury's verdict was supported by sufficient evidence. The Circuit Court ignored the jury's conclusions, drew its own conclusions from the evidence, and failed to make "every reasonable and legitimate inference, fairly arising from the evidence" in favor of Petitioner. See Syl. Pt. 3, *Faris v. Harry Green Chevrolet, Inc.*, 212 W. Va. 386, 572 S.E.2d 909 (2002). This Court should not permit the Circuit Court to substitute its conclusion for that of the jury.

II. CONCLUSION

The jury's verdict was not against the clear weight of the evidence. The Circuit Court failed to make every reasonable and legitimate inference, fairly arising from the evidence, in favor of Petitioner. Accordingly, the jury's original verdict should be upheld, and this Honorable Court should reverse the Circuit Court's decision to grant a new trial in this matter.



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CERTIFICATE OF SERVICE

I, the undersigned, counsel for the Petitioner, hereby certify that I served a true copy of the foregoing upon counsel for the Respondent, via U.S. Mail, postage prepaid, on this **9th day of September, 2015.**



David A. Mohler (WVSB #2589)