

2-15-19

S. Dieringer  
D. Cooper

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

ROBERT JOSEPH TRENT AND  
CHARLOTTE TRENT,

Plaintiffs,

Civil Action No. 16-C-333-1  
Hon. Judge Christopher McCarthy

v.

BRUCE A. WILFONG, ROOF SERVICES OF  
BRIDGEPORT, INC., and JOHN K. COLE,

Defendants.

**ORDER DENYING "DEFENDANT'S MOTION FOR JUDGMENT AS A MATTER OF  
LAW OR, IN THE ALTERNATIVE, FOR A NEW TRIAL"**

Pending before the Court is the "Defendant's Motion for Judgment as a matter of Law or, in the Alternative, for a New Trial" and "Memorandum in Support of Defendant's Motion for Judgment as a matter of Law or, in the Alternative, for a New Trial" which were filed on November 14, 2018. The Court is also in receipt of Defendant's "Supplemental Memorandum in Support of Defendant's Motion for Judgment as a matter of Law or, in the Alternative, for a New Trial," filed on November 21, 2018, and "Plaintiff's Response to Defendant's Motion for Judgment as a matter of Law or, in the Alternative, for a New Trial" filed on December 10, 2018. On December 14, 2018, this Court heard arguments from Counsel regarding the instant Motion.

Defendants allege, as grounds for their Motion, the following errors:

- 1) That the Court erred in failing to grant judgment as a matter of law to Defendants on the issue of whether Mr. Wilfong was acting within the scope of his employment;

63-2-21 That the Court erred in failing to exclude testimony regarding Plaintiff's

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ambulatory problems;

- 3) That the Court erred in failing to exclude testimony regarding Plaintiff's shoulder problem;
- 4) That the Court erred in rejecting Defendant's verdict form;
- 5) That the jury's decision regarding the proportional fault of the Plaintiff was against the clear weight of the evidence;
- 6) That the jury's decision on the issue of whether Mr. Wilfong was acting within the scope of his employment was against the clear weight of the evidence;
- 7) That the jury's verdict awarding Plaintiff \$250,000 for past, present, and future pain and suffering and \$250,000 for present and future loss of enjoyment of life was redundant, excessive, and against the clear weight of evidence; and
- 8) That the jury's verdict awarding Plaintiff's spouse \$250,000 for loss of consortium was excessive and against the clear weight of evidence.

The Court has reviewed the pending motion and considered the arguments of Counsel alongside the case file and all relevant points of law. It is now ready to rule on this matter. Accordingly, the Court concludes that the "Defendant's Motion Judgment as a matter of Law or, in the Alternative, for a New Trial" should be **DENIED** for the reasons articulated herein.

#### **Standard of Review**

In determining whether to grant judgment notwithstanding a verdict, the following should be considered: (1) the evidence must be reviewed in a light most favorable to the prevailing party; (2) assume that all conflicts in the evidence were resolved by the jury in

favor of the prevailing party; (3) assume as proved all facts which the prevailing party's evidence tends to prove; and (4) give to the prevailing party the benefit of all favorable inferences which reasonably may be drawn from the facts proved. *James v. Knotts*, 227 W.Va. 65, 67 (W. Va. 2010), citing Syl. Pt. 4 *Pipemasters, Inc. v. Putnam County Com'n*, 218 W.Va. 512 (W. Va. 2005). However, if the Plaintiff fails to establish a *prima facie* right to recover, the Court should grant the motion. *James v. Knotts*, 227 W. Va. 65 (W. Va. 2010).

Ultimately, the jury's verdict will not be set aside unless plainly contrary to the weight of the evidence or where there is not sufficient evidence to support the verdict. *Tippie v. Tippie*, 195 W. Va. 697 (W. Va. 1995).

A motion for a new trial is governed by a different standard than a motion for a directed verdict. *Rodriguez v. Consolidation Coal Co.*, 206 W. Va. 317, 524 S.E.2d 672 (1999). If the trial judge finds the verdict is against the clear weight of the evidence, is based on false evidence or will result in a miscarriage of justice, the trial judge may set aside the verdict, even if supported by substantial evidence, and grant a new trial. *Id.* The Supreme Court of Appeals of West Virginia has often stated that a trial judge should rarely grant a new trial. *In re State Public Building Asbestos Litigation*, 193 W.Va. 119, 124, 454 S.E.2d 413, 418 (1994), *cert. denied sub nom., W.R. Grace & Co. v. West Virginia*, 515 U.S. 1160, 115 S.Ct. 2614, 132 L.Ed.2d 857 (1995). Furthermore, a new trial should not be granted "unless it is reasonably clear that prejudicial error has crept into the record or that substantial justice has not been done[.]" *Id.* (citations omitted).

### **Analysis and Conclusions of Law**

- A. The Court did not err in denying Summary Judgment and Judgment as a Matter of Law on the issue of whether Mr. Wilfong was acting within the scope of his employment.

Defendants numerous arguments regarding why the Court erred by failing to grant summary judgment and judgment as a matter of law on the issue of whether Mr. Wilfong was acting within the scope of his employment can be distilled down to two arguments: 1) the undisputed evidence fails to show that a master-servant relationship existed for purposes of imposing liability under the doctrine of respondeat superior; and, 2) even if a master-servant relationship existed, Mr. Wilfong's actions were, for various reasons, outside the course and scope of such employment.

1. The Court did not err in allowing the factfinder to determine the issue of whether a master-servant relationship existed

Defendants first argue that the evidence conclusively failed to establish the existence of a master-servant relationship for purposes of the doctrine of respondeat superior. Defendants' argument is perplexing given that they stipulate, and the evidence unmistakably shows that, Mr. Wilfong was an employee of Defendants. Thus, rather than arguing that a master-servant relationship never existed, Defendants seemingly contend that the Court and the factfinder, in order to determine if Mr. Wilfong's actions at the time of the accident were within the course and scope and of his employment, should have analyzed whether the four elements bearing upon a master-servant relationship were present at the exact time of the accident.

This analysis overlooks that Mr. Wilfong testified that he was an employee of Defendants. Once the master-servant relationship is established, the inquiry shifts to a

different analysis to determine whether the employee's actions were within the course and scope of his employment. Further, to this Court's knowledge, until presenting this argument in their post-trial memorandum, Defendants' have never denied that Mr. Wilfong was their employee. Rather, this Court had always understood Defendants' position to be that, although an employee, Mr. Wilfong's actions at the time of the accident were outside the course and scope of his employment. Nevertheless, even if the Court were to undertake the analysis as suggested by Defendants, it cannot agree with Defendants' conclusion that the evidence indisputably fails to show a master-servant relationship at the time of the accident.

The question as to whether a person is an employee or an independent contractor depends on the facts in any given case and all elements must be considered together. *Spencer v. Travelers Ins. Co.*, 148 W. Va. 111, 116, 133 S.E.2d 735, 739 (1963)(citing 27 Am.Jur., Independent Contractor, § 5, page 485). In *Paxton v. Crabtree*, 184 W.Va. 237, 400 S.E.2d 245 (1990), the Supreme Court of Appeals of West Virginia set forth four factors for courts to consider when deciding whether a defendant is an "employer" who can be held vicariously liable for a contractor's negligence. In Syllabus Point 5 of *Paxton*, the Court stated that it is the power to control the subordinate's work that is determinative of whether an employer-employee relationship exists:

There are four general factors which bear upon whether a master-servant relationship exists for purposes of the doctrine of *respondeat superior*: (1) Selection and engagement of the servant; (2) Payment of compensation; (3) Power of dismissal; and (4) Power of control. The first three factors are not essential to the existence of the relationship; the fourth, the power of control, is determinative.

*France v. S. Equip. Co.*, 225 W. Va. 1, 7–8, 689 S.E.2d 1, 7–8 (2010).



Further, where the evidence relating to an independent contractor or employee is conflicting, or if not conflicting, where more than one inference can be derived therefrom, the question is one of fact for jury determination, but where the facts are such that only one reasonable inference can be drawn therefrom, the question is one of law for the court to decide. *Spencer v. Travelers Ins. Co.*, 148 W. Va. 111, 118, 133 S.E.2d 735, 740 (1963)(citing 56 C.J.S. Master and Servant, § 13; *Hicks v. Southern Ohio Quarries Co.*, 116 W.Va. 748, 182 S.E. 874; *Rice v. Builders Material Co.*, 120 W.Va. 585, 2 S.E.2d 527; *American Telephone & Telegraph Company v. Ohio Valley Sand Co.*, 131 W.Va. 736, 50 S.E.2d 884).

Defendants contend that the evidence demonstrated that Roof Services did not select or engage Bruce Wilfong for purposes of salvaging scrap metal from the Plaintiff's property to be sold exclusively for Mr. Wilfong's financial benefit. This contention overlooks that the evidence showed that Defendants knew and allowed Mr. Wilfong to return to this job site (and every other job site) for the purpose of salvaging scrap metal; it further overlooks the evidence showing that cleaning up and hauling away debris, such as scrap metal, was part of the contract with Plaintiffs and, thus, Mr. Wilfong's actions benefited Defendants.

Defendants also contend that the evidence demonstrated that Roof Services did not pay Mr. Wilfong compensation for anything done after he returned the company vehicle at the end of his workday. This contention overlooks the testimony of Mr. Cole that it was Defendants' policy for many years that Mr. Wilfong was allowed to retrieve and sell scrap metal from the job sites as a bonus or a reward for having worked for

Defendants for 35 years.

Finally, Defendants argue that Roof Services did not control Mr. Wilfong relative to his operation of his personal vehicle or personal activities. This overly broad contention ignores that Defendants, for years, were aware of and had allowed Mr. Wilfong to re-enter their job sites in his personal vehicle for the purpose of salvaging scrap metal. Thus, it can at least be inferred that Defendants did exercise control over Mr. Wilfong's actions in his personal vehicle, as pertains to him bringing such personal vehicle onto their job site. The Supreme Court of Appeals has noted, in regards to this determinative factor, the inquiry is "whether the right of control or supervision over the work done existed in the person for whom the work was done, and not the use of such control or supervision." *Spencer v. Travelers Ins. Co.*, 148 W. Va. 111, 117, 133 S.E.2d 735, 739 (1963). Here, Defendants controlled access to the job sites and could have, at any time, barred Mr. Wilfong from re-entering them to collect his bonus scrap, that Defendants never exercised such control is immaterial.

Thus, rather than categorically disproving a master-servant relationship at the time of the accident, the evidence at the time of Defendants' Motion for Summary Judgment and Motion for Judgment as a Matter of Law was conflicting, or if not conflicting, at least such that more than one inference could be derived from it and, thus, presented a question of fact properly determined by the jury.

2. The Court did not err in allowing the factfinder to determine issue of whether Mr. Wilfong's actions were within the course and scope of his employment

In *Griffith v. George Transfer & Rigging, Inc.* 157 W.Va. 316, 201 S.E.2d 281 (1973), the Supreme Court of Appeals noted:

The universally recognized rule is that an employer is liable to a third person for any injury to his person or property which results proximately from tortious conduct of an employee acting within the scope of his employment. ***The negligent or tortious act may be imputed to the employer if the act of the employee was done in accordance with the expressed or implied authority of the employer.***

157 W.Va. at 324–25, 201 S.E.2d at 287 (emphasis added). In *Griffith*, the Court discussed its holding in *Cochran v. Michaels*, 110 W.Va. 127, 157 S.E. 173 (1931), and noted the following language from Mechem on Agency, Second Edition, 1879:

[A] servant is acting within the course of his employment when he is engaged in doing, for his master, either the act consciously and specifically directed or any act which can fairly and reasonably be deemed to be an ordinary and natural incident or attribute of that act or a natural, direct and logical result of it. If in doing such an act, the servant acts negligently, that is negligence within the course of the employment.

In *Cochran*, the Court emphasized the need to examine the relation which the act bears to the employment and, in the syllabus, explained that “[a]n act specifically or impliedly directed by the master, or any conduct which is an ordinary and natural incident or result of that act, is within the scope of the employment.”

As the Court noted in *Griffith*, “ ‘[s]cope of employment’ is a relative term and requires a consideration of surrounding circumstances including the character of the employment, the nature of the wrongful deed, the time and place of its commission and the purpose of the act.” 157 W.Va. at 326, 201 S.E.2d at 288.

The Court held in Syllabus Point four of *Griffith*, whether an agent is “acting within the scope of his employment and about his employer’s business at the time of a collision, is *generally* a question of fact for the jury and a jury determination on that point will not be



set aside *unless clearly wrong*." (emphasis added). See also Syl. Pt. 1, in part, *Laslo v. Griffith*, 143 W.Va. 469, 102 S.E.2d 894 (1958) ("When the facts relied upon to establish the existence of an agency are undisputed, and conflicting inferences cannot be drawn from such facts, the question of the existence of the agency is one of law for the court[.]"); *Cremeans v. Maynard*, 162 W.Va. 74, 86, 246 S.E.2d 253, 259 (1978) (stating where evidence "conclusively shows lack of authority and where conflicting inferences cannot be drawn" the court may decide issues of agency). Our Supreme Court cited the holding of the Supreme Court of California in *Mary M. v. City of Los Angeles*, as an example of when it would be appropriate for a court to remove such a determination from the purview of the factfinder:

Ordinarily, the determination whether an employee has acted within the scope of employment presents a question of fact; it becomes a question of law, however, when "the facts are undisputed and no conflicting inferences are possible." In some cases, the relationship between an employee's work and wrongful conduct is so attenuated that a jury could not reasonably conclude that the act was within the scope of employment. 285 Cal.Rptr. 99, 814 P.2d at 1347 (citations omitted).

*W. Virginia Reg'l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 509, 766 S.E.2d 751, 768 (2014).

Defendants argue that the evidence regarding the course and scope of employment issue was undisputed such that they were entitled to Summary Judgment and Judgment as a Matter of Law. Defendants contend that "the evidence is undisputed that "[Mr. Wilfong] had not been directed by his employer to return to the worksite." This contention again overlooks evidence that Defendants were aware of and allowed Mr. Wilfong for years and years to return to job sites in his personal vehicle to salvage scrap

metal; it also overlooks evidence that this was a regular practice that occurred on every job site. Defendants contend that "[Mr. Wilfong] was not being compensated by his employer at the time of the accident." This again overlooks Mr. Cole's testimony that retrieving and selling the scrap metal was a bonus or a reward for Mr. Wilfong in recognition of his years of service. Defendants contend that "[Mr. Wilfong's] employer exercised no direction or control over [the] personal salvage activities." This contention overlooks the evidence that Defendants themselves controlled the salvage activities by allowing them to occur, for years, on every job site. Defendants also contend that "[Mr. Wilfong's] employer did not financially benefit from [the] salvage activities." This contention overlooks the evidence that removing and hauling away debris from the job site, such as scrap metal, was part of the contract with Plaintiff and, thus, Defendants arguably did derive a benefit from the salvage activities.

Defendants also contend that respondeat superior liability for Mr. Wilfong's actions is barred by the "going and coming" rule. The "going and coming rule" has its foundations in workers compensation law and is articulated in syllabus point two of *De Constantin v. Public Service Commission*, 75 W.Va. 32, 83 S.E. 88 (1914). "[T]he doctrine of respondeat superior is not typically applicable while [an] employee is coming or going to work." *Pratt v. Freedom Bancshares, Inc.*, No. 18-0180, 2018 WL 6016075, at \*5 (W. Va. Nov. 16, 2018)(quoting *Courtless v. Jolliffe*, 203 W.Va. 258, 263, 507 S.E.2d 136, 141 (1998)). "The reasoning underlying this rule is that the employee is being exposed to a risk identical to that of the general public; the risk is not imposed by the employer." *Id.* (quoting *Brown v. City of Wheeling*, 212 W.Va. 121, 126, 569 S.E.2d 197, 202 (2002)).

The "going and coming rule" traditionally applies where the only evidence linking the employer to the accident was the fact that the employee was coming or going to work. *Courtless v. Jolliffe*, 203 W.Va. 258, 263, 507 S.E.2d 136, 141 (1998). Various nuances of the rule may serve to alter its application where additional evidence exists linking the employer to the accident. *Id.* In *Pratt*, the Supreme Court of Appeals noted that the application of the "going and coming" rule may be altered

where additional evidence exists linking the employer to the accident[,] such as when the use of the roadway is required in the performance of the employee's duties for the employer, when the employee is rendering an express or implied service to the employer, or when there is an incidental benefit to the employer that is not common to ordinary commuting trips. *Keller v. Temple*, 2013 WL 6118679, at \*4 (N.D.W.Va. Nov. 21, 2013)(citing *Courtless*, 507 S.E.2d at 141–142)

*Pratt v. Freedom Bancshares, Inc.*, No. 18-0180, 2018 WL 6016075, at \*5 (W. Va. Nov. 16, 2018). Here, the "going and coming rule" is not applicable because there is evidence that Mr. Wilfong's salvaging of scrap metal from the job site at least partially fulfilled one of the employer's contractual obligations to Plaintiffs, to clean up and haul away debris from the job site. This evidence could reasonably be inferred to show that Mr. Wilfong was rendering an implied service to his employer or to show that Mr. Wilfong's actions had an incidental benefit to the employer that is not common to ordinary commuting trips.

Rather than categorically disproving that Mr. Wilfong's actions were outside the course and scope of his employment, the facts were not so undisputed that no conflicting inferences were possible; nor did the evidence show a relationship between Mr. Wilfong's actions and his work that was so attenuated that a jury could not reasonably conclude his actions were within the scope of his employment. Further, the "going and coming rule" is

not applicable to the instant case. Thus, the issue of whether Mr. Wilfong was acting within the course and scope of his employment was a question of fact properly determined by the jury.

B. The Court did not err in allowing Plaintiff to testify as to his ambulatory and shoulder problems

Defendants argue that the Court erred in allowing the Plaintiff to testify that his ambulatory and shoulder injuries were caused by the accident. Defendants, however, provide no legal authority for their argument that the Court was required to exclude Plaintiff's testimony. Rather, Defendants argue that such testimony should have been excluded because, they contend, it was inconsistent with the opinion of his treating physician. Defendants also argue that the medical testimony regarding these problems is not sufficient to support a finding of causation.

Whether a witness is qualified to state an opinion is a matter which rests within the discretion of the trial court and its ruling will not ordinarily be disturbed unless it clearly appears that its discretion has been abused. *Moore, Kelly & Reddish, Inc. v. Shannondale, Inc.*, 152 W.Va. 549, 165 S.E.2d 113 (1968); *Overton v. Fields*, 145 W.Va. 797, 117 S.E.2d 598 (1960); *Lewis v. Mosorjak*, 143 W.Va. 648, 104 S.E.2d 294 (1958); *Toppins v. Oshel*, 141 W.Va. 152, 89 S.E.2d 359 (1955). Where an injury is of such a character as to be obvious, the effects of which are reasonably common knowledge, it is competent to prove future damages either by lay testimony from the injured party or others who have viewed his injuries, or by expert testimony, or from both lay and expert testimony, so long as the proof adduced thereby is to a degree of reasonable certainty. *Jordan v. Bero*, 158 W. Va. 28, 30, 210 S.E.2d 618, 623 (1974). Further, medical

testimony, to be admissible and sufficient to warrant a finding by the jury of the proximate cause of an injury, is not required to be based upon a reasonable certainty that the injury resulted from the negligence of the defendant. All that is required to render such testimony admissible and sufficient to carry it to the jury is that it should be of such character as would warrant a reasonable inference by the jury that the injury in question was caused by the negligent act or conduct of the defendant. *Totten v. Adongay*, 175 W. Va. 634, 635, 337 S.E.2d 2, 3 (1985)(citing Syl. pt. 1, *Pygman v. Helton*, 148 W.Va. 281, 134 S.E.2d 717 (1964)).

Here, Plaintiff was struck by a vehicle. Medical records indicate that Plaintiff suffered, *inter alia*, a broken right hip, a broken right elbow, and a large abrasion to his right shoulder.

Plaintiff's injuries were of such a character as to be obvious, the effects of such injuries (mobility limitations as to distance/use of a cane and arm/shoulder pain and restricted range of motion) are reasonably common knowledge and not beyond the understanding of the jury without expert testimony. Thus, it was competent to prove damages from these injuries by lay testimony from the injured party or others who have viewed his injuries.

Because Plaintiff's injuries were not obscure, medical or other expert testimony establishing the future effects his injuries need not be to a degree of reasonable certainty but need only be of such character as would warrant a reasonable inference by the jury that the injury in question was caused by the negligent act or conduct of the defendant. Here, contrary to Defendants' assertion, Dr. France's testimony, as a whole, indicated



that the multiple traumatic injuries Plaintiff suffered could have effected Plaintiff and his strength. Further, Dr. France testified that Plaintiff's pre-existing arthritic shoulder could have been aggravated by the accident. This testimony, the Court concludes, is of such character as would warrant a reasonable inference by the jury that Plaintiff's ambulatory and shoulder problems were caused by the accident.

- C. The verdict form, agreed to by counsel for Defendants, allowed the jury to render a verdict on the issues framed consistent with this Court's remand, consistent with the evidence, and consistent with the jury's own convictions

The criterion for determining whether a verdict form is abuse of discretion is whether that form, together with any instruction relating to it, allows jury to render verdict on issues framed consistent with law, with evidence, and with jury's own convictions. *Adkins v. Foster*, 195 W. Va. 566, 466 S.E.2d 417 (1995).

The verdict form submitted asked the jury to decide whether Mr. Wilfong was acting within the course and scope of his employment, which would necessarily require the jury to also determine whether Mr. Wilfong was an employee or an independent contractor. The verdict form also provided the opportunity for the jury to apportion fault amongst the parties and specifically listed Plaintiff Robert J. Trent as a party to whom fault could be attributed. Thus, the verdict form submitted to the jury, together with the instructions given, covered essentially the identical matters contained in the Plaintiff's verdict form and allowed the jury to render a verdict on the issues framed, consistent with the evidence, and consistent with the jury's own convictions. Under the circumstances, this Court cannot conclude that submitting the verdict form as amended rather than the verdict form offered by the Defendants or that refusing to submit the Defendants' form constituted

reversible error.<sup>1</sup>

- D. The jury's decision regarding the comparative fault of Plaintiff was not against the clear weight of the evidence

Defendants argue that the jury's failure to attribute any fault to Plaintiff is against the clear weight of the evidence. Defendants' argument is based on their interpretation and application of Plaintiff's and the investigating officer's testimony regarding whether Plaintiff looked both ways when crossing the street. Defendants' interpretation of this testimony and the conclusions drawn from such testimony overlook the totality of the investigating officer's testimony and the actual facts of the accident.

The investigating officer testified that it would be negligent to not look both ways before crossing the street. Regardless, the officer also testified that there was nothing in his report showing that Plaintiff acted negligent in any way in connection with the accident and that it was his opinion that Plaintiff had not acted negligently in connection with the accident. More importantly, regardless of whether Plaintiff looked both ways when he crossing the street, there is no evidence that the accident occurred while Plaintiff was in the street. The evidence adduced at trial regarding the location of the accident showed that Plaintiff was hit by the vehicle while standing on the sidewalk.

Given the totality of the investigating officers' testimony and the evidence that Plaintiff was on the sidewalk, not crossing the street, when he was hit by the vehicle, this

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<sup>1</sup> It is this Court's recollection that the Court did not "reject" Defendants' verdict form. Rather, upon Plaintiff's objection to Defendants' verdict form, the Court asked counsel to amend their forms and come up with a mutually agreeable verdict form to be submitted to the jury. The trial transcript reflects that the Court asked counsel if they had reviewed the verdict form, as amended, and if everybody was ok with it. Counsel for Defendants replied in the affirmative.

Court cannot find that the jury's decision to attribute no fault to Plaintiff, regardless of any admission regarding looking both ways, is against the clear weight of the evidence.

E. The jury's decision regarding the issue of course and scope of employment was not against the clear weight of the evidence

Defendants argue that the jury's decision that Mr. Wilfong was acting within the course and scope of his employment was against the clear weight of the evidence. The evidence regarding this issue was thoroughly analyzed and discussed in Section A.1 and Section A.2 above. Based on the totality of the evidence and for the reasons discussed above, this Court cannot conclude that the jury's decision that Mr. Wilfong was acting within the course and scope of his employment was against the clear weight of the evidence.

F. The jury's awards are not redundant, excessive, or against the clear weight of evidence

Defendants argue that the jury's award of damages of \$250,000 for past, present, and future pain and suffering, \$250,000 for past, present, and future loss of enjoyment of life to Plaintiff, and \$250,000 for past, present, and future loss of consortium to Plaintiff's spouse were redundant, excessive, and against the clear weight of the evidence.

Under both State and Federal Constitutions, courts must not set aside jury verdicts as excessive unless they are monstrous, enormous, at first blush beyond all measure, unreasonable, outrageous, and manifestly show jury passion, partiality, prejudice or corruption. *Addair v. Majestic Petroleum Co.*, 160 W. Va. 105, 232 S.E.2d 821 (1977) U.S.C.A.Const. Amend. 7; Const. art. 3, § 13.

Here, given the nature of Plaintiff's injuries, which resulted in over \$180,000.00 in

medical bills, the testimony regarding Plaintiff's health and vitality before and after the accident, and medical testimony regarding the permanent nature of some of Plaintiff's injuries, this Court cannot conclude that the jury's awards of damages were redundant, excessive, or against the clear weight of the evidence.

### Conclusion

For the foregoing reasons, this Court cannot conclude that the jury's verdict is plainly contrary to the weight of the evidence or that there is not sufficient evidence to support the verdict. Further, this Court cannot conclude that prejudicial error has crept into the record or that substantial justice has not been done.

It is, therefore, accordingly **ORDERED** that "Defendant's Motion for Judgment as a matter of Law or, in the Alternative, for a New Trial" should be and the same is hereby **DENIED**.

The Circuit Clerk is **DIRECTED** to send certified copies of this Order to the following: Scot S. Dieringer, Esq., Law Offices of Scot S. Dieringer, 333 Lee Avenue, Clarksburg, WV 26301; and Daniel C. Cooper, Esq., Cooper Law Offices, PLLC, 240 West Main Street, Bridgeport, WV 26330.

ENTER

2/15/19

CHRISTOPHER MCCARTHY, CIRCUIT JUDGE

STATE OF WEST VIRGINIA,  
COUNTY OF HARRISON, TO-WIT:

I, Albert F. Marano, Clerk of the 15th Judicial Circuit and the  
18th Family Court Circuit of Harrison County, West Virginia, hereby  
certify the foregoing to be a true copy of the ORDER entered in the  
above styled action on the 15 day of Feb, 2019.

IN TESTIMONY WHEREOF, hereunto set my hand and affix the  
Seal of this Court this the 15 day of Feb, 2019.

Albert F. Marano  
15th Judicial Circuit & 18th Family Court Clerk  
of Harrison County, West Virginia