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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

RAQUEL DITLEVSEN et al.,

Plaintiffs and Appellants,

v.

SUSAN PEDERSEN et al.,

Defendants and Respondents.

C092064

(Super. Ct. No. PC20140312)

Plaintiff Raquel Ditlevsen appeals following jury verdicts awarding her damages to compensate her for injuries she sustained in two car accidents occurring within a day of one another. The dispute centers around the delineation of liability as to plaintiff's injuries, particularly plaintiff's herniated disk. Throughout trial, the parties disputed whether both accidents caused all of plaintiff's injuries or whether the herniated disk in plaintiff's lower back was caused by only the second accident. The jury's verdicts reveal the jury found substantially more damages were attributed to the second accident with

defendant Alan Vetter than to the first accident with defendant Susan Pedersen. Interpreting this finding, the court imposed judgment wherein defendants were held severally liable for paying their respective portions of plaintiff's damages award.

Plaintiff appeals contending the damages award should have been imposed jointly and severally. We agree in part. Through the jury's damages award, the verdicts establish that the jury found defendants were both substantial causes of harm to plaintiff's neck and upper back, but that the harm to her lower back was caused by only the second accident. Accordingly, we reverse the judgment and remand to the trial court for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff was rear-ended while stopped at a traffic light and leaning forward checking for oncoming traffic (the Pedersen accident). The next morning, plaintiff went to the emergency room complaining of neck and back pain. Plaintiff was given an anti-inflammatory shot and a prescription narcotic. On the way home from filling her prescription, a car pulled out in front of plaintiff's car causing another accident (the Vetter accident). The force of and property damage resulting from the Vetter accident greatly exceeded that of the Pedersen accident. Plaintiff hit her head and was transported to the same emergency room she had been to earlier that morning. She complained of head pain, as well as neck and back pain. Pain to plaintiff's neck and upper back dissipated with time, but not the pain to her lower back. Plaintiff later discovered she had a herniated disk in her lower back.

At trial, both defendants conceded their negligence and the main issues revolved around damages -- chief of which was whether the Pedersen accident caused plaintiff to suffer a herniated disk in her lower back. Indeed, plaintiff's and Pedersen's attorneys focused on the issue throughout their opening statements. Plaintiff's attorney argued there were three areas of injury after the Pedersen accident -- neck, upper back, and lower back. After the Vetter accident, plaintiff's pain to these same areas increased. To

plaintiff, this showed the herniated disk in her lower back was caused by both accidents. Pedersen's attorney argued that Pedersen accepted responsibility for plaintiff's injuries caused by the small rear-end accident, but explained, "Ms. Pedersen has been brought to trial because she disputes Plaintiff's claim that a low back injury specifically was caused by the tap to Plaintiff's car. She will call Experts who will confirm that the science and medical records do not support that a low back injury was caused by this accident."

The evidence was conflicting regarding the cause of plaintiff's herniated disk in her lower back. Plaintiff and Pedersen both called medical doctors to testify. The doctors disagreed as to the meaning of plaintiff's medical records and the likely cause of the herniated disk. Pedersen also called an expert in accident reconstruction and biomedical engineering to testify that it was extremely improbable for a low-speed, rear-end accident to cause a lower spine injury. Plaintiff presented evidence of her past medical expenses, which included the first and the second emergency room visits, as well as the medical expenses plaintiff incurred after being discharged from the hospital. The medical expenses incurred after plaintiff's emergency room visits included treatment solely for her herniated disk. The testimony relevant to her future medical expenses related only to the herniated disk in her lower back as well.

Before closing argument, plaintiff objected to the trial court's use of its own verdict forms. One verdict form provided for the jury to determine whether the Pedersen accident was a substantial factor in causing harm to plaintiff, and then specify damages amounts attributed to the Pederson accident. The other verdict form provided for the jury to determine whether the Vetter accident was a substantial factor in causing plaintiff's harm and delineate any specific damages attributed to the Vetter accident. Plaintiff advocated for use of her own verdict form, which provided for the jury to determine whether Pederson and Vetter were substantial factors in causing harm to plaintiff before

assigning the percentage of fault between defendants.¹ In plaintiff's view, the court's verdict forms were confusing and could lead to the finding of double damages.

The trial court disagreed reasoning the jury instructions adequately prevented a finding of double damages. In fact, as the trial court noted, the jury instructions were amended to "indicate that if the Plaintiff had the condition prior to the second accident that -- that those -- that she's not entitled to damages unless [Vetter] aggravated it. And in that aggravation, I think that the Jury will provide a full judgment and the Court will then take the damages and combine them to make one total judgment."

Plaintiff clarified that "if the Jury finds that Defendant Susan Pedersen was negligent -- or her negligence was a substantial factor in causing Plaintiff's harm, that would be what Plaintiff needs to prove that she's responsible -- joint and severally liable for all the economic damages in this case." The court responded, "Yes -- yeah. If they both are a substantial factor, then they're joint and severally liable." The court went on to explain that its intention when crafting the verdict forms was to account for the fact that there were two separate defendants and two separate incidents. "So I am striking a balance by not having the Jury figure out what injuries were from what, although -- I mean, I think they're going to be doing that in order to come up with damages. But I'm trying to strike a balance between making sure that they understand that they are looking at two different accidents and also not being overly prejudicial by taking out each injury."

During closing argument, plaintiff explained her view of the verdict forms. She urged the jury to answer the first question on each form -- whether that specific defendant

¹ Pedersen's proposed verdict form asked the jury whether Pedersen was a substantial factor in causing harm to plaintiff and whether Vetter was a substantial factor in causing harm to plaintiff. It also asked whether Pedersen was a substantial factor in causing harm to plaintiff's lower back, as well as whether Vetter was a substantial factor in causing harm to plaintiff's lower back. Pedersen's proposed verdict form then asked the jury to award damages, and then to apportion fault between Pedersen, Vetter, and factors unrelated to the accidents.

was a substantial factor in causing plaintiff's injury -- in the affirmative. Plaintiff then urged the jury to come up with a global number of damages and to divide that number between defendants depending on the percentage of fault it assigns to each defendant. Plaintiff emphasized that "[d]efendants cannot avoid responsibility just because some other person, condition or event was also a substantial factor. In this case, you have heard evidence and the evidence is that both collisions contributed to the harm. Both collisions are responsible for what [plaintiff] is dealing with today. One Defendant can't avoid that because the other -- the subsequent collision occurred and the subsequent collision -- Mr. Vetter -- can't avoid it because of the first collision. They're both responsible. There's multiple causes of the harm." Plaintiff proceeded to go through the evidence showing how the Pedersen accident was a substantial factor in causing the herniated disk in her lower back. Plaintiff proposed to the jury that her total damages were over \$2 million based on her expert's testimony and requested the jury to divide those damages evenly between defendants.

Pedersen began her closing argument stating that plaintiff failed to carry her burden to prove the herniated disk in her lower back was caused by Pedersen. After arguing the Pedersen accident did not cause plaintiff's lower back injury and plaintiff's requested damages were unreasonable, Pedersen urged the jury that, if it found the Pedersen accident caused plaintiff's neck and upper back injuries, it should award plaintiff the damages connected to her first emergency room visit because plaintiff did not present evidence she suffered from a neck or upper back injury beyond complaints during both emergency room visits.

When reviewing the special verdict forms, Pedersen urged the jury that if it found she was a substantial factor in causing plaintiff's harm, as asked in the first question, to assign damages " 'related to the first accident.' " Pedersen suggested "that you . . . give [plaintiff] the ER visit. It's reasonable to go to the hospital after an accident to get checked out, especially if you have pain in your neck and upper back. Give her \$4,005,

which is what she testified to in this trial.” Pedersen also urged the jury to award plaintiff \$500 for lost wages based on the emergency room doctor’s recommendation that plaintiff take a week off of work after the first accident. When talking about noneconomic damages, Pedersen urged the jury to award reasonable damages for plaintiff’s neck injury from the time of the accident until noon the next day, i.e., \$500. In relation to plaintiff’s upper back injury, Pedersen said, “this one is a little bit tougher because of the fact that we know that she still had ongoing symptoms from her upper back after the second accident. So what I would suggest is that a total award of \$7,000 for her upper back pain from both accidents, which we believe 25 percent would be related to the first accident -- so that amount would be \$1,750. . . . I think the grand total comes to \$6,225. And this is what we believe is reasonable, necessary and related to the first accident.”

The jury was instructed that “[t]here are two Defendants from two separate incidents in this trial. You should decide the case against each Defendant separately as if it were a separate lawsuit. Each Defendant is entitled to separate consideration of his or her own defenses.” Further, the instructions provided: “If you find that the negligence of Susan Pedersen and Alan Vetter was a substantial factor in causing Raquel Ditlevsen’s harm, you must then decide how much responsibility each has by assigning damages. Raquel Ditlevsen claims that she was harmed by Susan Pedersen and Alan Vetter’s negligence. Susan Pedersen and Alan Vetter agree that they were negligent, but deny that the negligence caused Raquel Ditlevsen the full extent of the harm claimed by Ms. Ditlevsen. To establish her claim against Susan Pedersen and Alan Vetter, Raquel Ditlevsen must prove both of the following: That Raquel Ditlevsen was harmed and that Susan Pedersen and Alan Vetter’s negligence was a substantial factor in causing Ms. Ditlevsen harm.”²

² Prior to the introduction of evidence, the instruction was read as follows: “Susan Pedersen claims that the negligence of Alan Vetter also contributed to Raquel Ditlevsen’s

The jury was instructed that “[a] substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm. A person’s negligence may contribute with another factor to cause harm. If you find that Defendants’ negligence was a substantial factor in causing Plaintiff’s harm, then Defendants are responsible for Plaintiff’s harm. Defendants cannot avoid responsibility just because some other person, condition or event was a substantial factor in causing Plaintiff’s harm.”

Regarding damages, the jury was instructed that “[i]f you decide that Raquel Ditlevsen was harmed and that Defendants were a substantial factor in causing the harm, you must also decide how much money will reasonably compensate Raquel Ditlevsen for the harm. This compensation is called, ‘Damages.’ The amount of damages must include an award for each item of harm that was caused by Defendants’ wrongful conduct even if the particular harm could not have been anticipated.” “In this case, Plaintiff seeks damages from more than one Defendant. You must determine the liability of each Defendant to Plaintiff separately. [If you] determine that more than one Defendant is liable to Plaintiff for damages -- you will be asked to find Plaintiff’s damages against each Defendant. In deciding the amount of damages, consider only Plaintiff’s claimed losses. The allocation of responsibility for payment of damages among multiple Defendants is to be done by the Court after you reach your verdict.”

harm. To succeed on this claim, Susan Pedersen must prove the following: That the negligence of Alan Vetter was a substantial factor in causing Raquel Ditlevsen’s harm. If you find that the negligence of Susan Pedersen and Alan Vetter was a substantial factor in causing Raquel Ditlevsen’s harm, you must then decide how much responsibility each has by assigning percentages of responsibility to each person listed on the verdict form. The percentages must total 100 percent.” This instruction was not repeated prior to jury deliberations.

The jury found Pedersen’s “negligence a substantial factor in causing harm to Plaintiff” It awarded plaintiff \$6,755 in damages against Pedersen, calculated as follows: \$4,005 for past medical expenses, \$500 for past lost earnings, and \$2,250 for past noneconomic loss. The jury did not award damages for future economic or noneconomic loss. The jury also found Vetter’s “negligence a substantial factor in causing harm to Plaintiff” As to Vetter, the jury awarded plaintiff \$517,517.34 in damages, calculated as follows: \$58,017.34 for past medical expenses, \$6,500 for past lost earnings, \$75,000 for past noneconomic loss, \$300,000 for future medical expenses, \$3,000 for future household services, and \$75,000 for future noneconomic loss. After taking the verdicts, the trial court found “based on the two Jury forms, that the total judgment is . . . \$524,272.34. And the allocation is 1.3 percent to Pedersen and 98.7 percent to Vetter.”

Each party submitted a proposed judgment. Plaintiff’s proposed judgment imposed damages jointly and severally as it pertained to the noneconomic damages. Pedersen’s proposed judgment provided, in pertinent part: “Plaintiff, RAQUEL DITLEVSEN’s total judgment against Defendants, as determined by the Court, is \$6,755.00 as to Defendant SUSAN PEDERSEN; and \$517,517.34 as to Defendant ALAN J. VETTER. [¶] Wherefore the jury found that each Defendant was severally liable to Plaintiff, RAQUEL DITLEVSEN, without any finding of joint liability.” The court signed Pederson’s proposed judgment, reasoning it was plaintiff’s burden to establish Pederson proximately caused her lower back injury because “[t]he evidence did not show there were successive collisions over a short period of time. The evidence presented to the jury could be reasonably construed by the jury as establishing that there were separate and distinct injuries and distinct aggravation of injuries that plaintiff claims resulted from two separate and distinct collisions, which were not successive collisions. The evidence before the jury did not require shifting the burden from plaintiff to

defendant Pedersen to prove defendant Pedersen's conduct was not the proximate cause of injuries sustained in the second accident."

Further, "[t]he evidence before the jury was there were two distinct and separate automobile accidents. The jury was expressly instructed to only impose liability for damages against each of the two defendants for the harm they were a substantial factor in causing; and where plaintiff's physical or emotional condition was made worse by defendants' wrongful conduct the jury must award damages that will reasonably compensate plaintiff for the effect on that condition. In other words, the jury was expressly instructed to determine from the evidence presented whether each of the two defendants were liable for each of the claimed injuries, that there could be more than one substantial factor causing the injuries claimed and in such an event, defendants that were substantial factors in causing the claimed harm are responsible for plaintiff's harm, and the jury was provided with special jury verdict forms that expressly required the jury to determine if each defendant was a substantial factor in causing the injuries claimed and the amount of damages for each category of plaintiff's claimed injuries attributable to the harm substantially caused by each individual defendant.

"The plaintiff provided evidence of future economic damages that were limited to the lower back injury to include injections and surgeries, as well as the loss of household services. [¶] The jury was properly instructed as to how to determine which defendant was a substantial factor in causing what injuries, that each defendant is only responsible for damages that each specific defendant was a substantial factor in causing, and the defendants disagree as to whether they were responsible for all the harms claimed by defendant. The jury has spoken through its findings in the special verdict forms that expressly limited the damages recoverable against defendant Peders[e]n and the special verdicts can only be reasonabl[y] construed in one way -- that defendant Peders[e]n was not a substantial factor in causing harm to plaintiff for injuries related to the low back injury claim and for any aggravation of the other injuries that will require future

treatment and cause additional pain and suffering in the future. It is not for the court to reject the jury verdict and enter judgment against defendants in amounts different than the amounts of damages the jury expressly found that each individual defendant was liable for under the evidence presented at trial and pursuant to the jury instructions concerning causation and damages to award against the defendants.”

Plaintiff appeals.

DISCUSSION

Plaintiff contends “the trial court’s judgment does not conform with the jury’s findings, is against California law, and must be corrected.” (Bolding and capitalization omitted.) In such an instance, we review the judgment de novo and “ ‘interpret the verdict from its language considered in connection with the pleadings, evidence and instructions.’ ” (*Woodcock v. Fontana Scaffolding & Equipment Co.* (1968) 69 Cal.2d 452, 456; accord, *Fuller v. Department of Transportation* (2019) 38 Cal.App.5th 1034, 1038 [consider pleadings, evidence, instructions, and arguments]; *Pinto v. Farmers Ins. Exchange* (2021) 61 Cal.App.5th 676, 689.) Instead of entering this analysis, however, plaintiff enters a de novo review of the evidence and asserts that she carried her burden of establishing her harm was indivisible, thus it was Pedersen’s burden to prove the harm was divisible. Because there was no explicit jury finding of divisibility, plaintiff’s argument continues, the court erred by imposing several liability, i.e., interpreting the verdicts to mean that the jury found the injuries were divisible.

We decline to reweigh the evidence. The cases plaintiff cites do not stand for the proposition that explicit jury findings on the divisibility of a harm are required before several liability is imposed. (See *Hughey v. Candoli* (1958) 159 Cal.App.2d 231, 234, 237-238, 241 [affirming the granting of a new trial based on *insufficient evidence* where evidence clearly established the defendant was one of two causes of the harm]; *Lareau v. Southern Pac. Transportation Co.* (1975) 44 Cal.App.3d 783, 789-792 [trial court erred by *failing to instruct* the jury that once the plaintiff met the initial burden of proof

establishing the harm was caused by both a car and train accident occurring within minutes of one another, the burden of proof shifted to the defendants to demonstrate their negligence was not a cause of the harm]; *Carr v. Cove* (1973) 33 Cal.App.3d 851, 852-853, 856 [court declined to offset damages award to one defendant with prior settlement amount by another *under Code Civil Proc., § 877* because car accidents occurring a year apart and injuring different parts of the plaintiff's body were not the same tort].) A verdict form must merely allow the jury to resolve every controverted issue. (*Saxena v. Goffney* (2008) 159 Cal.App.4th 316, 325.)

The verdict forms given here allowed the jury to resolve the controverted issues, contrary to plaintiff's contention. The chief controverted issue was whether the Pedersen accident caused plaintiff's herniated disk in her lower back. The verdict forms did not explicitly ask the jury this causation question, but the jury's damages allocation necessarily informed the resolution of that issue. As to past medical expenses, plaintiff pointed to her first and second emergency room visits and medical expenses related to the herniated disk in her lower back. If the jury awarded damages in an amount greater than the first emergency room visit when awarding past and future medical expenses, then the verdict would reflect a link between the Pedersen accident and an injury caused or aggravated by the Vetter accident, thereby answering the causation question. Thus, the forms did present the controverted issue of causation to the jury, whereas plaintiff's proposed verdict form did not. Specifically, plaintiff's verdict form asked the jury to allocate the percentage of responsibility for only a single harm. With plaintiff's verdict form, the causation of plaintiff's herniated disk in her lower back was necessarily indivisible from her other injuries despite the fact the evidence was conflicting on this point and the issue disputed.

We do, however, agree with plaintiff that the judgment does not conform with the verdicts insofar as it states Pedersen "was severally liable to Plaintiff . . . without any finding of joint liability." In light of the evidence, instructions, and arguments, we

conclude the jury did make a finding pertaining to joint liability, but only in relation to plaintiff's injuries to her neck and upper back.

“The divisibility or indivisibility of injuries does not rest on the nature of the injuries but on the element of causation.” (*Turcon Construction, Inc. v. Norton-Villiers, Ltd.* (1983) 139 Cal.App.3d 280, 284.) The main issue at trial was whether the Pedersen accident caused plaintiff's herniated disk in her lower back or whether that injury was caused solely by the Vetter accident. Experts were called to dispute this point, plaintiff's medical records were scrutinized, and both plaintiff and Pedersen argued extensively during closing arguments for their respective positions. The jury ultimately adopted Pedersen's theory of the case as shown in its verdicts. It awarded plaintiff from Pedersen the amount of money plaintiff was charged from her first emergency room visit, the amount of money for a week of lost work, and \$2,250 in pain and suffering, which Pedersen characterized during closing argument as damages for her neck injury and 25 percent of the damages for plaintiff's upper back injury. The jury did not award plaintiff damages from Pedersen that compensated plaintiff for future medical expenses or future pain and suffering. At trial, all the evidence presented relating to plaintiff's future economic and noneconomic damages pertained only to the herniated disk in her lower back. The evidence established the injury to her neck and upper back resolved long before trial.

The verdicts, as interpreted through the evidence, and instructions, demonstrate the jury believed the Pedersen accident caused plaintiff harm to her neck and upper back but did not cause or otherwise contribute to the herniated disk in her lower back. If the jury believed the Pedersen accident caused the herniated disk, then it would have awarded future economic or noneconomic damages in some fashion, or at the very least awarded past medical expenses beyond the first emergency room visit. Thus, the jury found the herniated disk divisible from the injuries to plaintiff's neck and upper back. Still, Pedersen is jointly and severally liable for the damages resulting from plaintiff's

injury to her neck and upper back. As Pedersen acknowledged, plaintiff complained of those injuries both before and after the Vetter accident. Further, Pedersen argued in closing that damages attributed to Pedersen were merely 25 percent of the total harm for which she and Vetter were both substantial factors. Accordingly, damages pertaining to plaintiff's neck and upper back injury should have been imposed jointly and severally, with 25 percent allocated to Pedersen and 75 percent allocated to Vetter.

Still, plaintiff argues the verdict forms allowed the jury to hold Vetter responsible for injuries attributed to Pedersen. Not so. The jury was instructed that if it found plaintiff "had a physical or emotional condition that was made worse by Alan Vetter's wrongful conduct, you must award damages that will reasonably and fairly compensate [plaintiff] for aggravating that condition." This instruction made clear that Vetter was only responsible for the amount attributed to his aggravation of an injury. The other instructions clearly told the jury Pedersen must be held liable for causing an injury, even if that injury was made worse by another. Indeed, the jury was instructed: "A person's negligence may contribute with another factor to cause harm. If you find that Defendants' negligence was a substantial factor in causing Plaintiff's harm, then Defendants are responsible for Plaintiff's harm. Defendants cannot avoid responsibility just because some other person, condition or event was also a substantial factor in causing Plaintiff's harm." From the whole of the instructions, the jury knew it had to assign damages related to plaintiff's herniated disk to the Pedersen accident if it believed the Pedersen accident substantially caused that injury.

By failing to award damages against Pedersen that compensated plaintiff for her past and future medical expenses related to the herniated disk in her lower back, the jury found the Pedersen accident was not a substantial factor in causing the herniated disk in plaintiff's lower back. Notably, the jury rejected plaintiff's view of the case and did not split the damages as requested. Although urged to come up with a total damages amount before dividing it among the verdict forms according to percentage of fault for plaintiff's

total harm, the jury adopted Pedersen's view and awarded plaintiff damages from Pedersen in the amount requested, which failed to include any expenses related to plaintiff's herniated disk in her lower back.

Plaintiff argues the instructions were insufficient because the court failed to instruct the jury that it was Pedersen's burden to prove part of the harm was the result of Vetter's conduct. The problem with plaintiff's argument is that we do not interpret special verdict forms from the instructions the jury was not given, but from the instructions the jury was given. Plaintiff does not advance an appellate argument of instructional error. In any event, the jury was instructed before testimony began that Pedersen believed Vetter was responsible for some of plaintiff's harm and it was her burden to prove the level of Vetter's responsibility. While that instruction was altered after the close of evidence, the whole of the instructions told the jury it had to award plaintiff damages related to her herniated disk if it believed Pedersen was a substantial factor in causing that injury. We assume the jury followed these instructions, and interpret its finding accordingly. (See *People v. Smith* (2007) 40 Cal.4th 483, 517.)

Finally, we also reject plaintiff's appellate contention that the trial court's verdict forms should have included a finding of whether her harm was divisible. Plaintiff did not object to the court's verdict forms on this basis at trial and instead asked for a verdict form that requested the jury to apportion damages in percentages. Because plaintiff did not object on this basis at trial, her contention is forfeited on appeal. (*Behr v. Redmond* (2011) 193 Cal.App.4th 517, 530.)

In sum, we agree with plaintiff that the court's judgment does not conform with the verdicts; however, we disagree with plaintiff regarding the meaning of the verdicts. The jury found Pedersen and Vetter were both a substantial factor in causing plaintiff's harm to her neck and upper back, but that only Vetter was a substantial factor in causing the herniated disk in plaintiff's lower back. Accordingly, defendants are jointly and

severally liable for plaintiff's injuries to her neck and upper back and Vetter is severally liable for the injury to plaintiff's lower back.

DISPOSITION

The judgment is reversed. The matter is remanded for further proceedings consistent with this opinion. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)



Robie, J.

We concur:



Hull, Acting P. J.



Krause, J.

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

Re: Ditlevsen et al. v. Pedersen et al.
C092064
El Dorado County
No. PC20140312

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