

RENDERED: APRIL 23, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2008-CA-002221-MR

ALMARIA NAPIER

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE GREGORY A. LAY, JUDGE  
ACTION NO. 02-CI-00152

ESTATE OF KENNETH MIRACLE

APPELLEE

OPINION  
AFFIRMING

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BEFORE: NICKELL AND WINE, JUDGES; HARRIS,<sup>1</sup> SENIOR JUDGE.

NICKELL, JUDGE: Almaria Napier appeals from a jury verdict entered by the Laurel Circuit Court in an automobile negligence case and an order denying her motion for a new trial. Napier argues she was entitled to a new trial because the

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<sup>1</sup> Senior Judge William R. Harris sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

jury awarded her zero dollars for pain and suffering despite awarding her damages for past medical expenses. After reviewing the record and briefs, we affirm.

On July 13, 2000, Napier was driving down Clark Street in London, Kentucky, at a slow rate of speed when her vehicle was struck on the passenger side as Kenneth Miracle backed out of his driveway. Napier and Miracle both declined medical attention at the scene. Napier sought medical attention the following day, but did not report any significant injuries. Her treating physician, Dr. Jose Echeverria, testified he did not believe her injuries were serious enough to warrant physical therapy. Napier was also evaluated by Dr. David Muffley, an orthopaedic surgeon, who testified Napier's injuries did not require surgery.

On April 15, 2002, Napier filed suit against Miracle in Laurel Circuit Court alleging simple negligence. The case was heard by a jury on September 15, 2008. At the close of Napier's case, the trial court granted her motion for directed verdict on the issue of liability. The only issue submitted to the jury was damages. After hearing the evidence, the jury returned a verdict awarding Napier \$2,085.00 for past medical expenses and zero dollars for pain and suffering. The trial court entered judgment according to the jury's verdict. Subsequently, Napier filed a motion for a new trial, which the trial court denied. This appeal followed.

Napier's sole argument on appeal is that the award of zero damages for pain and suffering was inadequate as a matter of law based on the evidence presented to the jury. We disagree.

The standard of review for the denial of a motion for a new trial is limited to whether the decision of the trial court was clearly erroneous. *Miller v. Swift*, 42 S.W.3d 599, 601 (Ky. 2001) (citing *Cooper v. Fultz*, 812 S.W.2d 497 (Ky. 1991)). An award of zero damages for pain and suffering is not necessarily inadequate as a matter of law. *Id.* at 602. "Whether the award represents 'excessive or inadequate damages appearing to have been given under the influence of passion or prejudice or in disregard of the evidence or the instructions of the court,' CR 59.01(d), is a question dependent on the nature of the underlying evidence." *Id.*

We have reviewed the record. There is ample evidence contradicting Napier's claims of pain and suffering as a result of the accident. Dr. Philip Corbett performed two independent examinations of Napier. Dr. Corbett stated Napier's complaints of pain corresponded to a psychiatric condition and were not in physiologic response to the condition of her spine. Dr. Corbett also testified Napier's injuries from the accident had sufficiently healed and required no active medical treatment. Dr. Jack Cope testified he treated Napier for numerous conditions including anxiety, which were unrelated to the automobile accident. Also, as stated above, Dr. Echeverria testified physical therapy was unwarranted for Napier's injuries and Dr. Muffley testified no surgery was necessary.

We conclude the jury's award in this case withstands the test for inadequacy based upon the evidence presented at trial. The order of the trial court was not clearly erroneous. *Miller, supra*.

Accordingly, the judgment of the Laurel Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Johnnie L. Turner  
Harlan, Kentucky

BRIEF FOR APPELLEE:

J. Warren Keller  
Michael J. Bender  
London, Kentucky