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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1642**

Cara Zimmer,
Appellant,

vs.

Raymond Landry,
Respondent.

**Filed June 18, 2018
Affirmed
Kirk, Judge**

Stearns County District Court
File No. 73-CV-16-1031

Michael A. Bryant, Bradshaw & Bryant, PLLC, Waite Park, Minnesota (for appellant)

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respondent)

Considered and decided by Peterson, Presiding Judge; Kirk, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant Cara Zimmer argues that she is entitled to a new trial on the issue of damages because the district court failed to properly instruct the jury on the 60-day disability threshold of Minn. Stat. § 65B.51, subd. 3 (2016), and that the district court erred

in allowing respondent Raymond Landry to request a determination of collateral sources more than ten days after the entry of the verdict. We affirm.¹

FACTS

In 2013, Zimmer and Landry were involved in an auto collision. Zimmer filed suit against Landry, alleging that Landry's negligence caused the collision and her resulting permanent and serious injuries. At trial, Zimmer testified that she began feeling soreness in her neck and arm the night after the crash and continued to suffer from that soreness. She testified that this soreness sometimes led to serious headaches and that the headaches and soreness are alleviated after chiropractic treatments. She testified that the soreness affected the way she exercises and kept her up at night at times. She presented evidence that she sought chiropractic treatment for her injuries 12 times from January 2013 through June 2013. Her chiropractor testified that, over time, Zimmer's condition improved and she decreased the frequency, but did not discontinue, the chiropractic treatments.

Before trial, Landry proposed a special verdict form that included an option for the jury to find that Zimmer sustained a disability for 60 days or more after the accident. The district court did not submit the question of whether Zimmer sustained a 60-day disability

¹ Landry asserts that he is entitled to damages and double costs under rule 138 of the Minnesota Rules of Civil Appellate Procedure. A party may be entitled to single or double damages "if an appeal delays proceedings on a judgment of the trial court and appears to have been taken merely for delay." Minn. R. Civ. App. P. 138. For damages to be awarded under rule 138, "it must be apparent that the appeal was taken merely for delay." *Sievert v. LaMarca*, 367 N.W.2d 580, 590 (Minn. App. 1985), *review denied* (Minn. July 17, 1985). Damages under rule 138 will not be awarded if an appellant raises a "sufficient question to justify the appeal." *Id.* Here, there is no basis to award Landry damages or costs under rule 138 because Zimmer's claims on appeal are meritorious, and there is no evidence the appeal was undertaken in bad faith or for the sole purpose of delay.

to the jury. On January 11, the jury found that (1) Landry's negligence caused the accident; (2) Zimmer was entitled to past healthcare expenses in the amount of \$1,691.28; and (3) Zimmer was entitled to \$2,000 for past pain, disability, and emotional distress. The jury found that Zimmer's injury was not permanent and that her medical expenses did not exceed \$4,000. The district court determined that Zimmer was not entitled to recover damages because she "failed to meet the tort thresholds as required by law" and entered judgment on behalf of Landry.

On February 1, Zimmer moved to vacate the judgment entered on January 12 and for entry of judgment in her favor because she was not barred from recovering her economic damages for past healthcare expenses. Zimmer also moved for a new trial, arguing that the district court erred in "refusing to allow [her] to argue that she met the 60-day disability threshold." Zimmer also argued that Landry was barred from moving for a determination of collateral sources under Minn. Stat. § 548.251, subd. 2 (2016), because he failed to move for a determination within ten days after the jury returned its verdict.

On May 22, the district court entered judgment on behalf of Zimmer, awarding her \$1,691.28 based on the jury's award after concluding that the tort threshold did not preclude her from recovering economic damages. The district court noted that the collateral-source issue was raised at a March 6 hearing and determined that entry of the amended order for judgment triggered the ten-day filing period for collateral-source offsets. On May 24, Landry filed a motion for collateral offsets, and the district court awarded him \$6,675.08 on September 14, 2017. This appeal follows.

DECISION

I. The district court did not abuse its discretion in denying Zimmer's motion for a new trial.

Landry proposed a special verdict form that included an option for the jury to find that Zimmer sustained a disability for 60 days or more after the accident under Minn. Stat. § 65B.51, subd. 3(b). The district court informed the parties that the jury would not receive an instruction on the 60-day disability threshold because Zimmer had not presented sufficient evidence on the issue. After the jury returned its verdict, Zimmer moved for a new trial on the grounds that the jury should have received the instruction on the 60-day disability threshold. The district court denied Zimmer's motion after determining that she failed to present sufficient evidence on the 60-day disability issue to entitle her to the instruction. Zimmer argues that the district court's refusal to instruct the jury on the 60-day disability threshold was error and that she is entitled to a new trial on the issue of damages. We disagree.

We review a district court's new-trial decision for a clear abuse of discretion. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 892 (Minn. 2010). "The district court has broad discretion in determining jury instructions and we will not reverse in the absence of abuse of discretion." *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002). "A party is entitled to a jury instruction that sets forth his or her theory of the case if evidence supports it and if it is consistent with the applicable law." *Kirsebom v. Connelly*, 486 N.W.2d 172, 174 (Minn. App. 1992) (citation omitted). "Errors in jury

instructions warrant a new trial only if they destroy the substantial correctness of the charge, cause a miscarriage of justice, or result in substantial prejudice.” *Id.*

The Minnesota No-Fault Automobile Insurance Act allows the recovery of noneconomic damages only where the plaintiff’s damages exceed \$4,000 or the injury results in permanent disfigurement, permanent injury, death, or disability for 60 days or more. Minn. Stat. § 65B.51, subd. 3. To recover noneconomic damages, the plaintiff must “prove the elements of negligence plus the additional element of a tort threshold under Minn. Stat. § 65B.51, subd. 3.” *Nemanic v. Gopher Heating & Sheet Metal, Inc.*, 337 N.W.2d 667, 670 (Minn. 1983). The tort threshold “must be pleaded and proved to recover damages for a noneconomic detriment.” *Id.* at 669. “Where an issue is raised as to whether a threshold requirement of section 65B.51, subd. 3 was satisfied, the question should be submitted to the jury as part of the special verdict.” *Id.* at 670 (citing *Murray v. Walter*, 269 N.W.2d 47, 50 (Minn. 1978)). For the purposes of Minn. Stat. § 65B.51, “disability means the inability to engage in substantially all of the injured person’s usual and customary daily activities.” Minn. Stat. § 65B.51, subd. 3. “The 60-day requirement is cumulative and does not require 60 consecutive days of disability.” *Lindner v. Lund*, 352 N.W.2d 68, 71 (Minn. App. 1984).

The district court did not abuse its discretion in denying Zimmer’s request for a new trial because Zimmer failed to present sufficient evidence on the 60-day disability issue to receive the instruction. Zimmer failed to specifically allege she suffered a 60-day disability in her complaint. Her testimony established the following facts: (1) she had soreness in her neck and shoulder that caused infrequent headaches; (2) she did not miss work in the

days after the accident and has not had to change anything at work due to her injuries; (3) because of her injury and the risk of headaches, she no longer lifts weights; and (4) she received chiropractic therapy twice per week in the immediate aftermath of the accident and 12 times through June 2013. There is no evidence that Zimmer missed any days of work or was confined to the hospital or her home for any period of time after the accident. Even including the days that Zimmer sought chiropractic care, the evidence would not support a conclusion that she was unable to engage in all, or substantially all, of her usual or customary daily activities for the 60-day period. Accordingly, we conclude that the district court did not abuse its discretion and that Zimmer is not entitled to a new trial on the issue of damages.

II. The district court properly determined collateral sources under section 548.251, subdivision 2.

Zimmer argues that the district court erred in considering Landry's motion for determination of collateral sources under Minn. Stat. § 548.251, subd. 2. Zimmer asserts that the motion was untimely because the clear language of the statute requires that the motion be brought within ten days of the return of the jury's verdict. We disagree.

Minnesota Statutes section 548.251, subdivision 2, provides that:

In a civil action . . . when liability is admitted or is determined by the trier of fact, and when damages include an award to compensate the plaintiff for losses available to the date of the verdict by collateral sources, a party may file a motion within ten days of the date of *entry of the verdict* requesting determination of collateral sources.

(Emphasis added.) Zimmer argues that “the date of entry of the verdict” means the date the jury returns the verdict. Questions of statutory interpretation are reviewed de novo. *Midland Credit Mgmt. v. Chatman*, 796 N.W.2d 534, 535 (Minn. App. 2011). This court construes “technical words and phrases ‘according to [their] special meaning’ and other words and phrases according to their ‘common and approved usage.’” *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016) (quoting Minn. Stat. § 645.08(1) (2014)). We construe a statute in a manner that gives effect to all of its provisions. Minn. Stat. § 645.16 (2016).

“[T]he date of entry of the verdict” is a technical phrase that has been interpreted to mean the date of the entry of judgment on a special verdict. See *Wertish v. Salvhus*, 555 N.W.2d 26, 28 (Minn. App. 1996), *rev’d on other grounds*, 558 N.W.2d 258 (Minn. 1997); *Braginsky v. State Farm Mut. Auto. Ins. Co.*, 624 N.W.2d 789, 795-96 (Minn. App. 2001); *Lee v. Hunt*, 642 N.W.2d 57, 59 n.1 (Minn. App. 2002). “The filing of a district court’s order for judgment pursuant to a jury’s special verdict triggers the time to file a motion for determination of collateral sources.” *Braginsky*, 624 N.W.2d at 795-96. “Construing ‘entry of the verdict’ to mean filing of the district court’s order for judgment is consistent with” the Minnesota Rules of Civil Procedure and “[a]ny other construction would render the statutory ten-day period meaningless.” *Id.* at 796. The rules of civil procedure treat the entry of a general verdict differently than the entry of a special verdict. Minn. R. Civ. P. 58.01 provides:

[J]udgment upon the verdict of a jury, or upon an order of the court for the recovery of money only or for costs or that all relief be denied, shall be entered forthwith by the court

administrator; *but the court shall direct the appropriate judgment to be entered upon a special verdict* or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49 or upon an order of the court for relief other than money or costs. Entry of judgment shall not be delayed for the taxation of costs, and the omission of costs shall not affect the finality of the judgment. The judgment in all cases shall be entered and signed by the court administrator in the judgment roll; this entry constitutes the entry of the judgment; and the judgment is not effective before such entry.

(Emphasis added.) While court administrators are to enter general verdicts forthwith, the court administrator is not to enter judgment on special verdicts “until after the court has directed the appropriate judgment to be entered.” *Kluge v. Benefit Ass’n of Ry. Emps.*, 276 Minn. 263, 273, 149 N.W.2d 681, 688 (1967). When a special verdict is used “the jury finds facts, after which it becomes the duty of the court to apply the law to those facts and render a judgment.” *Id.* Accordingly, a special verdict is not “entered” when it is returned by the jury, rather it is entered when the district court applies the facts found by the jury to the law and files an order directing entry of judgment.

Because a special verdict is not entered until judgment has been entered on the verdict by the district court, there was no error in allowing Landry to file his collateral-source motion after the entry of judgment on May 22. A motion for a determination of collateral sources cannot be made until (1) liability has been determined by the fact-finder; (2) damages have been awarded to compensate the plaintiff; and (3) the verdict has been entered. *See* Minn. Stat. § 548.251, subd. 2. Landry was not authorized by the statute to file a motion for determination of collateral sources until Zimmer was awarded damages. Because no damages were awarded in the initial January 12 order for judgment, Landry

was not entitled to file a motion for determination of collateral sources at that time. Once judgment was entered awarding damages to Zimmer, Landry timely filed a motion for determination of collateral sources. Therefore, there was no error in permitting Landry to file a motion for determination of collateral sources.

Affirmed.