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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

KRISTINA BOYADZHYAN,

Plaintiff and Appellant,

v.

MICHAEL BLUM, D.C., et al.,

Defendants and Respondents.

B228483

(Los Angeles County  
Super. Ct. No. BC378660)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Ernest Hiroshige, Judge. Affirmed.

Donald A. Garrard; Eric S. Multhaup for Plaintiff and Appellant.

Carroll, Kelly, Trotter, Franzen & McKenna, Mark V. Franzen, Jennifer L. Sturges  
and David P. Pruett for Defendants and Respondents.

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In this malpractice action arising from chiropractic care, Kristina Boyadzhyan appeals from a judgment entered following a special jury verdict in favor of chiropractor Michael Blum and his corporation, All Ages Chiropractic Center, Inc. (collectively, Blum). Boyadzhyan was treated by Blum for neck pain beginning in July 2004. On October 10, 2006 and again on October 11, 2006, Boyadzhyan suffered severe neck pain and went to Blum for treatment, which was described at trial as a chiropractic adjustment of her cervical spine to ease the pain. At trial, Boyadzhyan claimed that Blum was negligent in his diagnosis and treatment of her, and if Blum had not performed the adjustments she would not have had to undergo cervical spine disc fusion surgery and disc replacement surgery. The jury determined that Blum's care and treatment of Boyadzhyan was not negligent.

Boyadzhyan does not challenge the jury verdict. Instead, Boyadzhyan challenges the trial court's rulings, (1) denying her request for an instruction on failure to obtain informed consent, and (2) granting Blum's motion for nonsuit on her cause of action for intentional infliction of emotional distress. We conclude there are no grounds for reversal and affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

### 1. *Facts*

#### a. *Background*

Blum initially treated Boyadzhyan on July 15, 2004, when she complained of neck pain. At the initial visit, Boyadzhyan described pain that radiated into her shoulder. During the initial visit, she had zero range of motion in her neck, which indicated to Blum a probable herniated disc in her cervical spine.<sup>1</sup> Blum took a medical history, ordered x-rays, and performed a physical exam. Boyadzhyan's medical history, as reported in Blum's files, revealed multiple motor vehicle accidents. Blum suspected that Boyadzhyan had a herniated disc at the fifth (C5) and the sixth cervical vertebrae (C6).

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<sup>1</sup> The cervical spine (neck) begins at the base of the skull, and through a series of seven vertebral segments connects to the thoracic spine (the upper back).

Blum thought it was safe to perform a chiropractic “adjustment” on Boyadzhyan’s cervical spine.<sup>2</sup>

Blum treated Boyadzhyan intermittently in 2004 and 2005, when Boyadzhyan complained of the same symptoms. Blum also treated Boyadzhyan once in May 2006.

b. *Blum’s Treatment on October 10, 2006 and October 11, 2006*

Boyadzhyan returned to Blum on October 10, 2006, suffering from neck pain. Blum ordered new x-rays. The new x-rays showed a significant change in Boyadzhyan’s cervical spine from the x-rays taken at her initial visit. The x-rays revealed disc degenerative joint disease, including narrowing of disc space between the C5-6 vertebrae, spurring of the vertebral bodies at C5, C6, and C7, a reversal in the lordotic curve in the neck, and the fifth cervical vertebrae had rotated posterior, lateral, and superior.

Blum’s diagnostic tests indicated a possible herniated disc located between the C5-6 vertebrae. Blum testified that he told Boyadzhyan she had one or more herniated discs in her cervical spine. He performed a chiropractic adjustment, stating that he thought it was safe to treat Boyadzhyan because there were no emergency signs, and he knew he would not make her condition worse.

The evening after the treatment, Boyadzhyan’s neck pain increased, and she described pain that radiated down her shoulder and into her arm. She returned to Blum’s office for another treatment.

On October 11, 2006, Blum performed the same chiropractic adjustment that he had performed the day before.

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<sup>2</sup> “The theory of chiropractic is that various ailments and pathological conditions can be cured or allayed through manipulation of the joints and particularly the spinal column. . . . It is no secret that the validity of the theory is generally questioned if not rejected by the medical profession. The State of California, however, has licensed the practice of chiropractic and a practitioner in the field is no more a guarantor of success than is a medical doctor.” (*People v. Cabral* (1983) 141 Cal.App.3d 148, 152.)

*c. Diagnosis of Herniated Disc and Subsequent Surgeries*

The following day, Boyadzhyan was in extreme pain and sought emergency medical care. Boyadzhyan testified that she was in excruciating pain from her neck to her lower back and could not breathe.

An MRI revealed Boyadzhyan had more than one herniated disc in her cervical spine, and she had degenerative changes in the disc space between the C3-4, C4-5, and C5-6 vertebrae. Boyadzhyan underwent immediate surgery to perform an anterior fusion of the C5-6 vertebral space. David Sibley, M.D., an orthopedist specializing in spine disorders, testified that the first surgery was emergency decompression surgery.

Following the first surgery, Boyadzhyan had a second surgery to insert artificial discs at the C3-4 and C4-5 vertebrae.

*2. Proceedings*

Boyadzhyan filed an action against Blum, asserting negligence based on Blum's failure to "diagnose and treat her condition, and to perform all other acts and medical/chiropractic services necessary, proper and incidental to her treatment . . . ." The complaint did not specifically plead lack of informed consent as an alternative theory of negligence.

Boyadzhyan also asserted a cause of action for intentional infliction of emotional distress, alleging that Blum engaged in outrageous conduct by intentionally subjecting her to damaging treatment in the form of chiropractic adjustments of her cervical spine, rather than referring her to a medical specialist.

At trial, there was conflicting expert testimony as to whether Blum's chiropractic adjustments caused Boyadzhyan's injury, and whether Blum's treatment fell below the standard of care.

*a. Boyadzhyan's Expert's Testimony*

Sibley, Boyadzhyan's orthopedist expert, testified that the adjustments to Boyadzhyan's cervical spine from 2004 to 2006 accelerated her degenerative disc disease. Sibley testified that once there was a neurological indication of a herniated disc, Blum should not have adjusted Boyadzhyan's cervical spine.

Sibley also testified that Blum should not have adjusted Boyadzhyan's cervical spine on October 10, 2006 given her medical history. He was critical of Blum, noting that Blum could not safely adjust her cervical spine without first ordering an MRI. Sibley also testified that Blum should not have performed a chiropractic adjustment on October 11, 2006 because Boyadzhyan's symptoms indicated she had a herniated disc. Sibley believed that even if Blum's chiropractic adjustments did not cause Boyadzhyan's herniated disc, his treatment on October 10, 2006 and October 11, 2006 made her condition worse.

b. *Defense Experts' Testimony*

Chiropractor William DeMoss testified that the risk of a herniated disc becoming worse with a chiropractic adjustment is no greater than the risk when "turning [your] head or coughing or sneezing or sitting or sleeping . . . the risk is so low that it's almost nonexistent . . . ." DeMoss disagreed with Sibley's conclusion that Blum's chiropractic adjustments caused Boyadzhyan's degenerative disc disease. DeMoss stated, relying on his training, education, and experience as a chiropractor, that cervical spine adjustments do not cause degenerative disc disease.

Orthopedic surgeon Kevin Michael Ehrhart opined that the chiropractic adjustments Blum performed did not cause Boyadzhyan's herniated discs. In Ehrhart's opinion, Boyadzhyan's disc degeneration was caused by motor vehicle accidents, genetic predisposition, a history of smoking, and body mechanics. Ehrhart concluded that Boyadzhyan already had a degenerative disc in 2004. He testified that the cervical spine adjustments Blum performed were a symptomatic treatment to make Boyadzhyan feel better, but it could not prevent the disease from progressing or cause the disease to progress.

c. *Informed Consent Testimony*<sup>3</sup>

As noted, the complaint did not specifically plead that Blum was negligent in failing to obtain Boyadzhyan's informed consent before treating her with chiropractic adjustments. Boyadzhyan's trial counsel, however, addressed the issue in his opening statement and pursued lines of questioning of witnesses and experts.

Blum testified that he did not warn Boyadzhyan that a disc herniation or aggravation of an existing herniated disc was a risk associated with the adjustment of her cervical spine. Blum did not think that such a risk existed. In his view, the chiropractic adjustment might relieve her pain, but it would not make her condition worse. Blum also did not believe there was a risk in performing a chiropractic adjustment after reviewing the x-rays on October 10, 2006.

Blum testified that he explained to Boyadzhyan on October 10, 2006 that she had a herniated disc in her cervical spine. Blum's custom and practice is to explain to every patient when vertebrae are misaligned. Blum also testified that he customarily explains to his patients that when he performs a chiropractic adjustment they might hear "a little clicking or popping sound and that is the release of gas in the vertebra. . . . It's not compressing vertebra."

Boyadzhyan confirmed that Blum did not tell her that disc herniation is one of the risks associated with a chiropractic adjustment of her neck. Blum's new patient form entitled "Terms of Acceptance," generally described chiropractic adjustments but did not inform the patient that a herniated disc is one of the risks associated with chiropractic adjustments. Had Boyadzhyan been informed of this risk, she would not have agreed to Blum's treatment. Boyadzhyan also testified that she did not recall being told she had a herniated disc when Blum treated her on October 10, 2006, and if she had been told, she

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<sup>3</sup> We recite the evidence in the light most favorable to the contention that the requested instruction is applicable to determine whether the jury should have been instructed on failure to obtain informed consent. (*Ayala v. Arroyo Vista Family Health Center* (2008) 160 Cal.App.4th 1350, 1353, fn. 2.)

would not have agreed to treatment if there were risks associated with the treatment that might have aggravated her condition.

There was conflicting expert testimony on whether Boyadzhyan should have been informed of the risks associated with chiropractic adjustments. Boyadzhyan's expert testified that there were known risks associated with chiropractic adjustments, and Blum should have informed Boyadzhyan of those risks. He further opined that on October 10, 2006 and October 11, 2006, Blum should have told Boyadzhyan about the significant risk of aggravating her condition before he performed a chiropractic adjustment on her cervical spine. On cross-examination of defense expert Ehrhart, the jury learned he had previously stated under oath that “ ‘[d]isc herniations may sometimes result from properly performed chiropractic adjustments particularly where a patient may have had previous trauma or instability to the area.’ ”

Defense expert DeMoss testified that he did not believe there was a risk of disc herniation becoming worse with a chiropractic adjustment. He agreed with Blum that there was little or no risk of exacerbating degenerative disc disease from a chiropractic adjustment.

d. *Ruling on “Failure to Obtain Informed Consent” Instructions*

When the parties offered proposed jury instructions, Boyadzhyan's counsel requested California Civil Jury Instruction (CACI) CACI No. 532, which provides a definition of “Informed Consent,” and CACI No. 533, entitled “Failure to Obtain Informed Consent—Essential Factual Elements.”<sup>4</sup> The trial court determined that it

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<sup>4</sup> CACI No. 533 instructs the jury as follows: “[*Name of plaintiff*] claims that [*name of defendant*] was negligent because [he/she] performed [a/an] [*insert medical procedure*] on [*name of plaintiff*] without first obtaining [his/her] informed consent. To establish this claim, [*name of plaintiff*] must prove all of the following: [¶] 1. That [*name of defendant*] performed [a/an] [*insert medical procedure*] on [*name of plaintiff*]; [¶] 2. That [*name of plaintiff*] did not give [his/her] informed consent for the [*insert medical procedure*]; [¶] 3. That a reasonable person in [*name of plaintiff*]'s position would not have agreed to the [*insert medical procedure*] if he or she had been fully informed of the results and risks of [and alternatives to] the procedure; and [¶] 4. That [*name of*

would not instruct the jury on failure to obtain informed consent. The trial court explained that since the failure to obtain informed consent was an alternative theory of negligence, the cause of action should have been separately alleged. The court stated Boyadzhyan should have alleged facts to support this theory to give the defense pretrial notice and a chance to prepare a defense.<sup>5</sup> Finding the allegations in the operative complaint on this alternative theory of negligence insufficient, the trial court denied the requested instruction. Based upon the prejudice to Blum, the trial court also denied the motion for leave to amend the complaint to conform to the proof.<sup>6</sup>

The trial court gave jury instructions on Boyadzhyan's negligence theory that Blum did not meet the standard of care in his diagnosis and treatment of her condition. The court gave a modified version of CACI No. 501, which instructed on negligent care in diagnosis and treatment of a healthcare professional. The court also gave a modified version of CACI No. 505, which instructed the jury that a chiropractor is not necessarily negligent because his efforts are not successful or because he made an error that was reasonable under the circumstances.

*e. Nonsuit, Defense Verdict, and Subsequent Proceedings*

Before the jury was instructed, the trial court granted a nonsuit on the cause of action for intentional infliction of emotional distress.

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*plaintiff*] was harmed by a result or risk that [*name of defendant*] should have explained before the [*insert medical procedure*] was performed.” (Bold omitted.)

<sup>5</sup> Boyadzhyan's counsel identified a paragraph in the complaint he thought was sufficient. The paragraph states: Blum “failed to diagnose and treat her condition, and to perform all other acts and medical/chiropractic services necessary, proper and incidental to her treatment with respect to all matters related to her medical/chiropractic treatment, physical health and well-being.”

<sup>6</sup> Boyadzhyan does not challenge the trial court's discretion to deny the motion. “[T]he allowance of amendments to conform to the proof rests largely in the discretion of the trial court and its determination will not be disturbed on appeal unless it clearly appears that such discretion has been abused.” (*Trafton v. Youngblood* (1968) 69 Cal.2d 17, 31.)

The jury returned a special verdict, finding that Blum was not negligent in the diagnosis or treatment of Boyadzhyan.<sup>7</sup>

The trial court denied Boyadzhyan's motion for new trial. The order states: "The Court is in agreement with Defense counsel that Plaintiff's counsel engaged in conduct, in which, through various last minute, 'eleventh hour' attempts to allege causes of action of which there was no reasonable notice from which the Defense could have prepared in pre-trial to defend against, such as, this Lack of Informed Consent theory of liability, Plaintiff's theory appeared to be if things are not going well on the theory of liability that they [*sic*] were prosecuting, let's try to resurrect this trial by another theory which the defense is unprepared to defend on. [¶] These types of trial tactics are antithetic to the concept of fair trial or fair discovery in pretrial preparation in civil cases and should not be countenanced by Courts of Law."

This appeal followed. On appeal, Boyadzhyan contends that the trial court prejudicially erred in refusing to instruct the jury on failure to obtain informed consent, and erred in granting nonsuit on her cause of action for intentional infliction of emotional distress.

## DISCUSSION

### 1. *Instructional Error*

Boyadzhyan contends that there was sufficient evidence to warrant the failure to obtain informed consent instruction, and the trial court's reasons for refusing to instruct the jury were erroneous because (1) a claim for failure to obtain informed consent is a subtype of negligence, which was adequately alleged, and (2) Blum was on notice throughout the proceedings that this was an alternative theory of liability. Boyadzhyan maintains the trial court's ruling was prejudicial because it removed an alternative theory of recovery from the jury. We conclude there was no prejudicial error.

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<sup>7</sup> The special verdict asked jurors: "Was Michael Blum, D.C. negligent in the diagnosis or treatment of Kristina Boyadzhyan?" Ten jurors voted "no," one was undecided, and another voted that Blum was negligent.

a. *Standard of Review*

“ “[P]arties have the ‘right to have the jury instructed as to the law applicable to all their theories of the case which were supported by the pleadings and the evidence, whether or not that evidence was considered persuasive by the trial court.’ [Citation.]” “ ‘A reviewing court must review the evidence most favorable to the contention that the requested instruction is applicable since the parties are entitled to an instruction thereon if the evidence so viewed could establish the elements of the theory presented. [Citation.]’ [Citation.]” [Citation.]’ [Citation.]” (*Ayala v. Arroyo Vista Family Health Center, supra*, 160 Cal.App.4th at p. 1358.)

A trial court, however, need not give an instruction if it is not supported by the pleadings and evidence in the case. (*LeMons v. Regents of University of California* (1978) 21 Cal.3d 869, 875; *Zagami, Inc. v. James A. Crone, Inc.* (2008) 160 Cal.App.4th 1083, 1094-1095.)

b. *Informed Consent*

A claim for failure to obtain informed consent arises out of a “physician’s duty to disclose to a patient information material to the decision whether to undergo treatment[.]” (*Arato v. Avedon* (1993) 5 Cal.4th 1172, 1175.) In *Cobbs v. Grant* (1972) 8 Cal.3d 229, the Supreme Court held that “as an integral part of the physician’s overall obligation to the patient there is a duty of reasonable disclosure of the available choices with respect to proposed therapy and of the dangers inherently and potentially involved in each.” (*Id.* at p. 243.) The essential elements of a negligence claim arising from a physician’s failure to obtain informed consent are: (1) performance of a medical procedure on the plaintiff; (2) the plaintiff did not give informed consent; (3) a reasonable person would not have given consent to the medical procedure if she or he had been fully informed of the results and risks of the medical procedure; and (4) the plaintiff was harmed by a result or risk that should have been explained before the medical procedure was performed. (*Id.* at p. 245; see also *Arato v. Avedon, supra*, at pp. 1182-1184, 1186-1187.)

As stated in *Cobbs v. Grant, supra*, 8 Cal.3d 229, there must be a causal relationship between the failure to inform and the injury to the plaintiff. “Such causal

connection arises only if it is established that had revelation been made consent to treatment would not have been given.” (*Id.* at p. 245.) The patient may testify on this subject, “but the issue extends beyond his credibility. Since at the time of trial the uncommunicated hazard has materialized, it would be surprising if the patient-plaintiff did not claim that had he been informed of the dangers he would have declined treatment. Subjectively he may believe so, with the 20/20 vision of hindsight, but we doubt that justice will be served by placing the physician in jeopardy of the patient’s bitterness and disillusionment.” (*Ibid.*)

We agree with Boyadzhyan that neither *Cobbs v. Grant*, *supra*, 8 Cal.3d 229, nor *Willard v. Hagemeister* (1981) 121 Cal.App.3d 406, relied on by the trial court, state that the plaintiff must plead a separate cause of action asserting lack of informed consent. The *Willard* court, however, assumed that the pleadings would allege facts to support a negligence claim arising from the failure to obtain informed consent. (*Id.* at pp. 418-419.) Here, the operative complaint does not allege any facts related to lack of informed consent. In response to the trial court’s question to counsel to identify the allegations related to informed consent, Boyadzhyan’s counsel identified a paragraph alleging failure to diagnose and treat her condition. (See fn. 5, *ante.*) These allegations do not sufficiently assert the alternative theory of lack of informed consent to the chiropractic treatment. While the issue was raised in papers submitted to the court in proceedings before trial, this did not give Blum an opportunity before trial to prepare a defense to the alternative theory.

If we were to assume there was sufficient notice to mount a defense, we cannot overlook the limited evidence in the record to support this alternative theory. Boyadzhyan’s testimony that she would not have consented is the type of 20/20 hindsight testimony that the *Cobbs* court rejected in favor of an objective test. (*Cobbs v. Grant*, *supra*, 8 Cal.3d at p. 245.) The cited expert testimony focused on whether the risk of disc herniation even existed in the context of the diagnosis and treatment of Boyadzhyan’s neck pain. The testimony regarding the risks associated with chiropractic adjustments supported the negligence theory that Blum’s treatment was below the standard of care

because it was too risky to treat her in this manner. Boyadzhyan's expert testified that there were significant risks associated with chiropractic adjustments, but this testimony was consistent with Boyadzhyan's alleged theory of negligent treatment, not that it was reasonable (within the standard of care) to perform chiropractic adjustments on Boyadzhyan if the known risks had been disclosed.

Based upon the pleadings, the evidentiary showing, and the circumstances of the case, the trial court did not err in refusing to give the lack of informed consent instructions.

*c. No Prejudicial Error*

Even if the trial court erred in refusing to give the requested instructions on failure to obtain informed consent, "there is no rule of automatic reversal or 'inherent' prejudice applicable to any category of civil instructional error, whether of commission or omission. A judgment may not be reversed for instructional error in a civil case 'unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.' [Citation.]" (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580; see Cal. Const., art. VI, § 13.) Instructional error is harmless if it is not reasonably probable Boyadzhyan would have obtained a more favorable result in its absence. (*Soule v. General Motors Corp.*, *supra*, at p. 570.)

Boyadzhyan contends the failure to instruct was prejudicial error because the jury was prevented from considering an alternative theory of liability. Boyadzhyan maintains the jury could have concluded that Blum was not negligent in performing a chiropractic adjustment, but it could have found that Blum breached his duty in failing to inform her of the risks associated with a chiropractic adjustment.

The jury, by its defense verdict on Boyadzhyan's negligence cause of action, concluded that Blum met the standard of care, that is, he did not ignore a significant risk of disc herniation or aggravating a herniated disc when he performed chiropractic adjustments on Boyadzhyan's cervical spine. In reaching this conclusion, the jury must have credited the testimony that in performing a chiropractic adjustment the risk of a

herniated disc did not exist, or that Boyadzhyan was not harmed by the treatment. If the jury had agreed with Boyadzhyan's expert that disc herniation was a risk associated with chiropractic adjustments (and should have been disclosed), the jury would have found that Blum was negligent in treating Boyadzhyan by performing chiropractic adjustments. Given the defense verdict, any error in refusing to instruct on lack of informed consent was harmless.

## 2. *Trial Court Did Not Err in Granting Nonsuit*

Boyadzhyan contends the trial court erred in concluding there was insufficient evidence to present her cause of action for intentional infliction of emotional distress to the jury. On appeal, Boyadzhyan focuses on Blum's outrageous "course of conduct" in which he ignored the risk of injury to justify his treatment to continue to perform chiropractic adjustments. This evidence could not support a judgment in Boyadzhyan's favor as a matter of law.

### a. *Standard of Review*

A motion for nonsuit allows a defendant to test the sufficiency of a plaintiff's evidence before presenting its own case to the jury. (*Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830, 838.) The motion presents a question of law, that is, whether the evidence offered by the plaintiff could support a judgment. (*Loral Corp. v. Moyes* (1985) 174 Cal.App.3d 268, 272.) A nonsuit may only be granted if no evidence supports a jury verdict in the plaintiff's favor. (*Elmore v. American Motors Corp.* (1969) 70 Cal.2d 578, 583.)

In reviewing a trial court's grant of nonsuit, we must evaluate the evidence in the light most favorable to the plaintiff. " 'The judgment of the trial court cannot be sustained unless interpreting the evidence most favorably to plaintiff's case and most strongly against the defendant and resolving all presumptions, inferences and doubts in favor of the plaintiff a judgment for the defendant is required as a matter of law.' [Citations.]" (*Carson v. Facilities Development Co.*, *supra*, 36 Cal.3d at p. 839.)

b. *Intentional Infliction of Emotional Distress*

Intentional infliction of emotional distress requires (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff suffered severe or extreme emotional distress; and (3) the plaintiff's injuries were actually and proximately caused by the defendant's outrageous conduct. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050). In this case, the trial court concluded Boyadzhyan had not presented sufficient evidence to establish the first element. To be considered outrageous, a defendant's conduct must be so extreme as to exceed all bounds tolerated in a civilized community, and the defendant must either have intended to inflict injury, or engaged in conduct with the realization that injury would result. (*Id.* at pp. 1050-1051.)

Blum's care and treatment of Boyadzhyan, accepting a difference of expert medical opinions as to whether Blum should have treated her with chiropractic adjustments, does not constitute the type of outrageous conduct required to recover tort damages for intentional infliction of emotional distress. This case differs from *Little v. Stuyvesant Life Ins. Co.* (1977) 67 Cal.App.3d 451 (*Little*), a decision Boyadzhyan cites and relies on to show error.

In *Little*, the defendant disability insurer made a deliberate decision to discontinue disability benefits despite "overwhelming" evidence showing the plaintiff was "totally disabled" and had an "almost unbelievable" negative medical history. (*Little, supra*, 67 Cal.App.3d at p. 457.) After purposely ignoring the undisputed evidence of the disability, the insurer then withheld information from evaluating physicians to ensure the evaluations would support the insurer's termination decision. (*Id.* at pp. 458-459, 462.) The plaintiff was forced to sell her home and was so depressed that she attempted suicide. (*Id.* at pp. 460-461.) Under these circumstances, the court found the decision to terminate disability benefits of a "totally disabled" insured by ignoring overwhelming evidence of the disability was "outrageous" conduct. (*Id.* at p. 462.)

Blum's conduct in this case did not similarly rise to the level of outrageous conduct that exceeds all bounds tolerated in a civilized community. (*Hughes v. Pair*,

*supra*, 46 Cal.4th at pp. 1050-1051.) Unlike *Little*, where the insurance company ignored and withheld evaluating physicians' diagnosis to justify its decision to deny disability benefits, Blum's conduct constituted treatment decisions, which he believed might ease her neck pain. Boyadzhyan's expert testified that Blum should not have treated her with chiropractic adjustments, and that it "reckless" for him to do so because Blum's treatment caused her herniated disc or aggravated her existing herniated disc. This evidence supported sending a negligence cause of action to the jury, but it did not involve deceitful conduct as described in *Little*. A dispute as to the proper course of treatment is not the type of "outrageous" conduct necessary to support a tort claim for intentional infliction of emotional distress. The trial court did not err in granting the motion for nonsuit.

DISPOSITION

The judgment is affirmed. Blum is awarded costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.