

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

CYNTHIA ARIAS,

Plaintiff and Appellant,

v.

JOHNNY REED BEAUDION,

Defendant and Appellant,

2d Civil No. B228942
(Super. Ct. No. 56-2008-00311086-CU-
PA-VTA)
(Ventura County)

Cynthia Arias and Johnny Reed Beaudion were involved in a car crash. A jury found Beaudion 75 percent at fault and Arias 25 percent at fault. The jury awarded Arias damages for past medical care and pain and suffering, but awarded no damages for future medical care. The trial court granted Arias's motion for a new trial on the grounds of juror misconduct, inadequate damages, and insufficiency of the evidence. Beaudion appealed on the sole ground that the order granting a new trial did not contain a sufficient statement of reasons. Arias filed a precautionary cross-appeal. We affirm the order granting a new trial and dismiss Arias's cross-appeal as moot.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Beaudion and Arias were involved in a two-car collision on January 16, 2006, at the intersection of Las Posas Road and Glenbrook Avenue in Camarillo. Arias

was driving westbound on Las Posas when she struck Beaudion, who was making a left turn onto Glenbrook from eastbound Las Posas. Beaudion was uninjured, but Arias sustained injuries requiring medical care. She was taken by ambulance to a hospital emergency room. She told emergency room personnel that a lot of things hurt but her primary concerns were her knees and hips. She also reported pain in the "strap" muscles and the right side of her neck. After treatment, she was released and returned home.

The following day, Arias began experiencing pain in her right collarbone area. She was examined by her personal physician, Dr. Figueroa, the next day. He diagnosed shoulder strain. He referred her to Dr. Toyama, a chiropractor. Dr. Toyoma treated Arias for three or four weeks, but his treatment was unsuccessful.

Dr. Figueroa then referred Arias to an orthopedic shoulder specialist. Dr. Ghilarducci, who specializes in sports injuries to the shoulders, examined Arias in March 2006. An MRI was taken of her right shoulder. The MRI report suggested that Arias had damage to the capsule that holds the shoulder in place. Dr. Ghilarducci suspected Arias was suffering from rotator cuff dysfunction. He attempted non-surgical treatments, which included cortisone injections, but they were not effective.

Arias continued to suffer from shoulder pain. She sought a second opinion from Dr. Walker, an orthopedic surgeon. Dr. Walker performed shoulder surgery in September 2006. During the surgery, Dr. Walker discovered that Arias had a full thickness rotator cuff tear, which is a hole through the rotator cuff tendon. Dr. Walker repaired the rotator cuff, shaved part of her acromion, and removed part of her clavicle. After the surgery, Arias underwent several weeks of physical therapy. In January 2007, Dr. Walker determined that Arias was doing "excellent" and achieved an elevation of 170 degrees.

Subsequently, Arias's shoulder pain returned. She returned to Dr. Walker in January 2009, complaining of shoulder pain. Arias sought a second opinion, and was examined by Dr. Zeman, an orthopedic elbow and shoulder specialist, in April 2009. Dr. Zeman believed that Arias's persistent shoulder pain was caused by scar tissue from Dr.

Walker's surgery, regrowth of the bone that was removed during surgery, arthritis, and shoulder instability. He recommended two additional surgeries to fix Arias's medical problems.

Arias filed a complaint seeking to recover general and special damages. After seven days of trial, the jury deliberated two days and returned a special verdict finding Beaudion 75 percent at fault and Arias 25 percent at fault. The jury awarded Arias total damages in the amount of \$46,330. This amount included \$21,100 for past medical expenses; \$1,230 in past lost earnings; \$12,000 in past noneconomic damages, and \$12,000 in future noneconomic damages. The jury awarded nothing for future medical expenses. Judgment was entered in Arias's favor in the amount of \$34,747.50 after reducing damages by 25 percent to account for the jury's finding of fault.

Arias filed a motion for a new trial on the grounds of insufficiency of the evidence of fault, inadequate damages, and juror misconduct. Juror declarations submitted both in support of and in opposition to the new trial motion revealed that there was juror discussion regarding Arias's insurance coverage and Beaudion's lack of insurance coverage during deliberations. Some of the jurors reported: "[D]uring deliberations a juror made a statement that Ms. Arias likely had medical insurance which had probably already paid for all of her past medical expenses." Another juror responded by stating, "why should we pay for it again[?]" At least one juror overtly expressed agreement with the above two comments and no one expressed, overtly or otherwise, any disagreement. There were additional statements by the same jurors that Mr. Beaudion likely did not have insurance to pay for a judgment against him and stated it was unfair he should have to pay a large settlement. No one disagreed with those comments. After these comments, the jury foreman said that the jurors were not supposed to talk about insurance.

The trial court issued a minute order granting a new trial. The order states in full: "The court states it has read all the papers filed. [¶] Matter submitted to the court with argument. [¶] The motion is granted. [¶] As to the evidence of liability, the jurors

found plaintiff 25% responsible which is totally against the weight of the evidence. [¶] There was insufficient evidence to support the finding of plaintiff's liability. Plaintiff's evidence was much more compelling, and there should not have been any reduction for liability. The damages to date are inadequate, and for [sic] future damages were inadequate. [¶] The court finds misconduct of the jury by statements made about insurance. [¶] Plaintiff was not awarded full medical expenses which should have been awarded. The cost of plaintiff's second operation should have been awarded. [¶] In response to defendant's inquiry as to whether the court is considering an additur, the court's response is, 'no.'"

Beaudion appealed on the sole ground that the order granting a new trial does not contain an adequate statement of reasons. Arias filed a protective cross-appeal contending the order is sufficient, and that a new trial is warranted on the grounds of juror misconduct, compromise verdict, inadequate damages, and insufficient evidence supporting apportionment of fault to Arias.

DISCUSSION

Standard of Review

On appeal from an order granting a new trial, the reviewing court indulges all presumptions in favor of the order as against the verdict and will reverse only if a manifest abuse of discretion is shown. (*Maier v. Saad* (2000) 82 Cal.App.4th 1317, 1323; *Caldwell v. Paramount Unified School Dist.* (1995) 41 Cal.App.4th 189, 205.)

"The correctness of the trial court's order is presumed. Abuse of discretion must be manifest and unmistakable and will be found only if it plainly appears that the trial court's reasons are without any substantial support in the record. [Citations.] In ruling on a motion for a new trial, the trial court is an independent trier of fact. '[T]he trial court may disbelieve witnesses, reweigh evidence and draw reasonable inferences that are contrary to those drawn by the jury.' [Citation.] The requirement that an abuse of discretion be manifest and unmistakable 'is particularly true when the discretion is exercised in favor of awarding a new trial, for this action does not finally dispose of the

matter. So long as a reasonable or even fairly debatable justification under the law is shown for the order granting the new trial, the order will not be set aside. [Citations.]"
(*Sanchez v. Hasencamp* (1980) 107 Cal.App.3d 935, 944, fn. omitted; compare *Twedt v. Franklin* (2003) 109 Cal.App.4th 413, 417 ["the question of whether the form of the trial court's written order granting the motion for a new trial fails to comply with [Code of Civil Procedure] section 657 and requires reversal is subject to independent review"].)

Code of Civil Procedure Section 657 (Section 657)

The trial court's authority to grant a new trial is purely statutory and governed by section 657. The grounds for granting a motion for new trial include juror misconduct, inadequate damages, and insufficiency of the evidence. (*Id.* at subds. 2, 4, 5.) When a new trial is granted, "the court shall specify the ground or grounds upon which it is granted and the court's reason or reasons for granting the new trial upon each ground stated." (*Id.* at subd. 7.) The requirement of a specification of reasons serves a two-fold purpose of encouraging careful deliberation by the trial court before ruling on a motion for a new trial, and of making a record sufficiently precise to permit meaningful appellate review. (*Twedt v. Franklin, supra*, 109 Cal.App.4th at p. 419.)

"[T]o comply with section 657 "the trial judge is not necessarily required to cite page and line of the record, or discuss the testimony of particular witnesses," nor need he undertake "a discussion of the weight to be given, and the inferences to be drawn from each item of evidence supporting, or impeaching, the judgment." . . . "[I]t will be sufficient if the judge who grants a new trial furnishes a concise but clear statement of the reasons why he finds one or more of the grounds of the motion to be applicable to the case before him. No hard and fast rule can be laid down as to the content of such a specification, and it will necessarily vary according to the facts and circumstances of each case." . . . [I]n instances of doubt the judge would do well to apply the yardstick in . . . the case now before us, i.e., by considering whether his proposed specification of reasons will fairly serve the legislative purposes elucidated in *Mercer [v. Perez]* (1968) 68 Cal.2d 104]." (*Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 136.)

"[O]n appeal from an order granting a new trial upon the ground of the insufficiency of the evidence to justify the verdict . . . or upon the ground of excessive or inadequate damages, it shall be conclusively presumed that said order as to such ground was made only for the reasons specified in said order or said specification of reasons, and such order shall be reversed as to such ground only if there is no substantial basis in the record for any of such reasons." (§ 657.)

The Statement of Reasons Was Adequate

Beaudion contends the trial court's order does not contain an adequate specification of reasons because it does not describe the specific evidence supporting the stated grounds of insufficient evidence, inadequate damages, and juror misconduct. We may affirm an order granting a new trial on any valid ground, notwithstanding the insufficiency of other grounds. (*Oakland Raiders v. National Football League* (2007) 41 Cal.4th 624, 638; *Baker v. American Horticulture Supply, Inc.* (2010) 186 Cal.App.4th 1059, 1066, fn. 3.)

The court's statement of reasons concerning juror misconduct could not have been more explicit. The court's order identified the basis of the misconduct—"statements made about insurance." The juror affidavits submitted by both parties contained undisputed evidence that the jurors discussed the parties' insurance coverage, or lack of it, during deliberations. Juror discussions about a party's insurance coverage is a quintessential example of misconduct. (See, e.g., *Tapia v. Barker* (1984) 160 Cal.App.3d 761, 766, and cases cited [consideration of collateral sources of compensation is outside the evidence, contrary to the court's instruction on damages and wholly improper].) Those portions of the declarations in which the jurors made statements about the effect of the discussion on their mental processes were properly ruled inadmissible by the court. (See *In re Hamilton* (1999) 20 Cal.4th 273, 294 ["with narrow exceptions, evidence that the internal thought processes of one or more jurors were biased is not admissible to impeach a verdict. The jury's impartiality may be challenged by evidence of 'statements made, or conduct, conditions, or events occurring,

either within or without the jury room, of such a character as is likely to have influenced the verdict improperly[.]' [B]ut '[n]o evidence is admissible to show the [actual] effect of such statement . . . upon a juror . . . or concerning the mental processes by which [the verdict] was determined'" (Italics omitted.)

Where, as here, an order granting a new trial is based on juror misconduct and "the record leaves no room for doubt as to the trial court's reasons for granting a new trial and its resolution of conflicting evidence supporting those reasons—as may be the case where the motion for new trial alleged only a single, specific instance of juror misconduct," we may defer to the court. (*Oakland Raiders v. National Football League, supra*, 41 Cal.4th at p. 643 (conc. opn. of Baxter, J.))

Conclusion

In reaching our conclusion, we are mindful that "trial courts have a strong incentive not to crowd their dockets and squander limited judicial resources by ordering unnecessarily that cases over which they presided, and which have already been taken to verdict, be retried. We are confident that motions for such relief are examined with considerable care." (*People v. Ault* (2004) 33 Cal.4th 1250, 1271, fn. omitted.) After careful consideration, the trial court concluded that this case presents one of those occasions when a new trial is warranted. Moreover, the court based its decision on several statutory grounds, provided a sufficient statement of reasons for each ground, and the record contains evidence supporting that decision.

As we said recently in *Baker v. American Horticulture Supply, Inc., supra*, 186 Cal.App.4th at page 1068, "[o]ur observations in *People v. Andrade* (2000) 79 Cal.App.4th 651, 661, are equally apposite in the civil context: 'A trial court serves as a "gatekeeper" on a motion for new trial. It opens the gate only rarely, a testament to the fact that the vast majority of trials . . . are fairly conducted. In these cases, motions for new trial are routinely made, routinely denied, and are routinely affirmed on appeal. In the remaining cases, however, the trial court grants the motion, and we affirm those rulings in the absence of a clear showing of abuse of discretion. [Citation.]'"

Based on our determination that the trial court's order supports the grant of a new trial, it is unnecessary for us to discuss the issues raised by Arias's precautionary cross-appeal. (9 Witkin, Cal. Procedure (4th ed. 1997) § 485, p. 531.)

The order granting Arias a new trial is affirmed. Arias's cross-appeal is dismissed as moot. Arias shall recover costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Charles McGrath, Judge
Superior Court County of Ventura

Snyder Dorenfeld, LLP, Bradley A. Snyder, Rodger S. Greiner and Michael W. Brown for Appellant Beaudion.

Law Offices of John Howard, John Howard; Law Offices of J. Jeffrey Herman, J. Jeffrey Herman; Ferguson Case Orr Paterson LLP, Wendy C. Lascher and John A. Hribar for Appellant Arias.