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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Shasta)**

CARL R. MASSEY,

Plaintiff and Appellant,

v.

CATHOLIC HEALTHCARE WEST,

Defendant and Respondent.

C067690

(Super. Ct. No. 159473)

In December 2009, we reversed the dismissal of plaintiff Carl R. Massey’s action for “medical” negligence upon the grant of a motion for nonsuit after his opening statement, finding that the alleged act of negligence posed only questions of common knowledge and thus did not require expert testimony. (*Massey v. Mercy Medical Center Redding* (2009) 180 Cal.App.4th 690, 692-694, 697.)¹

¹ The corporate entity operating Mercy Medical Center Redding is Catholic Healthcare West (CHW), and the parties stipulated that the two names were interchangeable. Although CHW has undergone a change in name (to Dignity Health), it chooses to continue this litigation under its former name, CHW. Codefendant Ken O’Bar, CHW’s

After a retrial involving eight days of testimony, the jury deliberated for one and a half days. On December 3, 2010, it returned its verdict finding CHW negligent for medical expenses of \$7,500 and noneconomic losses of \$5,000. The trial court subsequently granted CHW's motion to reduce the economic damages to \$1,290 (rounded) to conform to the only evidence of such damages at trial. It also awarded costs to CHW as the prevailing party, Massey having rejected a May 2010 settlement offer of \$40,000. (Code Civ. Proc., § 998.) The court thus entered a net judgment in favor of CHW in April 2011. Massey filed a timely notice of appeal.²

Echoing an unsuccessful motion for judgment notwithstanding the verdict (JNOV) or new trial on the issue of damages, Massey challenges numerous rulings of the trial court: the denial of motions to reopen discovery before retrial, and to grant a continuance on the basis of illness; the exclusion of evidence of incurred medical costs to which the parties had stipulated in lieu of a deposition, and the exclusion of testimony from his expert regarding the extent to which these costs were caused by Massey's fall, necessary, and reasonable; the omission of future pain and suffering from an instruction and the special verdict form, and the restrictive definition of compensable past damages; the failure to give requested pattern instructions regarding (1) aggravation of preexisting conditions and (2) unusually susceptible plaintiffs; the exclusion of testimony on the issue of the need for future care from his wife causally related to his fall; and the exclusion of testimony from one of his experts that his injury caused depression and that he did not suffer from somatoform disorder. We shall affirm the judgment.

Given the context-specific procedural nature of the various arguments that Massey raises, we will incorporate the pertinent facts in the Discussion rather than provide a

employee, died before retrial and Massey dismissed him from the action at the outset of the second trial, leaving CHW the sole defendant.

² The parties completed their briefing on appeal in August 2012.

separate summary of the evidence at trial (particularly as neither of the parties has attempted to synthesize an overview of the testimony of the individual witnesses). For purposes of orientation, the injury occurred in March 2006 at CHW's Redding facility, where Massey had just undergone surgery to improve the diabetes-impaired circulation in his legs that was causing gangrene in his toes. Nurse O'Bar left the 65-year-old Massey unattended in a walker after helping him out of bed to go to the bathroom. When he lost patience and tried to move on his own, Massey fell backward, hitting his back and head against the wall. He incurred a compression fracture to his T12 vertebra (the bottom thoracic vertebra).

DISCUSSION

We note several general matters at the outset. First, Massey has divorced his analysis of his arguments from their factual underpinnings and the supporting record citations, which appear only in the opening brief's lengthy statement of the case and the facts. As we have noted in the past, this is extremely vexing for the staff attorneys and appellate justices of the court, and is grounds of itself for declaring his claims forfeited. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239 & fn. 16.) We have, however, done our best to piece these disparate parts together. Second, we disregard any arguments that do not appear under a heading embracing them in the argument section of his brief. (*Sourcecorp, Inc. v. Shill* (2012) 206 Cal.App.4th 1054, 1061-1062, fn. 7 (*Sourcecorp*)). Third, when confronted with issues lacking cogent argument or authority—in particular, an inadequate analysis of the manner in which a ruling was unreasonable or arbitrary on the facts before the trial court or the prejudicial effect of any purported error—we may deem them to be without merit, as we are not obligated to provide analysis on behalf of a party. (*Quail Lakes Owners Assn. v. Kozina* (2012) 204 Cal.App.4th 1132, 1137; *Imagistics Internat., Inc. v. Department of General Services* (2007) 150 Cal.App.4th 581, 588, 591 & fn. 8, 593; *Jones v. Superior Court* (1994)

26 Cal.App.4th 92, 99 [“[i]ssues do not have a life of their own” unsupported with argument or authority].) Fourth, and finally, to the extent Massey raises new matter in his reply brief, we will not consider it. (*Sourcecorp, supra*, 206 Cal.App.4th at pp. 1061-1062, fn. 7.)

I. Denial of Reopening of Discovery and Continuance Request

A month before the scheduled October 2010 trial date, Massey filed a motion to reopen discovery. He explained that his primary care provider, after consultation with a new local neurosurgeon, agreed to refer Massey to UC Davis Medical Center (UCDMC) for a determination of whether to treat problems with the L1 vertebra (the first of the lumbar vertebrae, adjacent to the repaired T12).³ Massey’s cardiologist thought surgery would be high-risk in light of his cardiac issues; the neurosurgeon did not want to perform high-risk surgery locally because the proper surgical facilities were unavailable. The motion requested “an order re-opening discovery with respect to [the proposed] treatment and augmenting the treating doctors as expert witnesses.”

In ruling on the motion, the trial court noted that Massey did not need to reopen discovery to obtain his own medical records from the new course of proposed care. When Massey subsequently made clear that he wanted to depose the treating cardiologist, the court granted the motion for the purpose of preserving testimony about these recent developments in lieu of live testimony at trial, and otherwise denied the motion “as [it] is

³ The primary care physician did not think there was any connection between the fall and Massey’s back problems (including the back spasms that weaken him and cause him to fall), though the physician deferred to the opinions of the spinal specialists. Massey’s treating orthopedist did not believe there were any fall-related injuries to the lumbar region. The surgeon who repaired the T12 vertebra did not think there were any injuries to the L1 vertebra that merited treatment. A defense radiology expert thought there was a very subtle abnormality in the top of the L1 vertebra as a result of the fall, but deferred to the opinions of the primary care physician and any orthopedic expert.

vague as to any other deposition or discovery being sought.” It also denied the motion to the extent it sought to augment the list of retained experts to include the recent (or possibly future) medical providers, but allowed Massey to include the local neurosurgeon and cardiologist as treating physicians. It denied the motion without prejudice to the extent that it prematurely sought to augment the expert witness disclosure with future medical providers.

Two weeks before the scheduled trial date, Massey moved on shortened time for a continuance pursuant to California Rules of Court, rule 3.1332.⁴ Taking his cardiologist’s advice to heart, Massey had decided against the referral to UCDMC. His overall condition had worsened (with “bad days where he is bed[-]ridden . . . and would not be able to testify”) and he had been able to obtain an appointment with his treating orthopedist (who had previously told him there was nothing further he could offer surgically) a few days before the scheduled trial date. If the orthopedist decided to treat Massey surgically, this would incapacitate Massey during the scheduled time for trial. Massey also desired to depose the orthopedist in the event his opinions changed after this consultation and treatment (a deposition being more convenient to schedule with the busy orthopedist than trial testimony). In response to the ex parte application for an order shortening time, the trial court postponed the scheduled date for trial by one week. In the meantime, the orthopedist was dissatisfied with the imaging results after the appointment and wanted to take new ones. Defense counsel noted that significantly absent from Massey’s showing was any indication from the orthopedist that Massey was in immediate need of surgery.⁵ The court denied the motion without elaboration (although it later

⁴ Further rule references are to the California Rules of Court.

⁵ In fact, after examining Massey, the treating orthopedist affirmed his opinions at trial that the fall did not cause any other problems in the thoracic or lumbar vertebrae except for the fracture of the T12 vertebra, which was unchanged since its repair except for age-related degeneration. He did not see any evidence of pressure on the nerves at the T12

noted that it had not found good cause for a continuance because Massey's condition was "fluid" such that waiting for him to stabilize would be futile and ran the risk that he might not survive until trial).

Massey provides next to nothing in the way of argument regarding the denial of his motion to reopen discovery, beyond a misstatement of the record (flatly contrary to his own declaration in the trial court) that the denial of the motion "caused" him to abandon treatment at UCDCMC and return to a treating orthopedist who had been "perhaps . . . negligent" in his assessment of Massey to date. Massey has thus failed in his obligation as an appellant to discuss all the facts that were before the trial court in making its ruling and explain how the court's resolution was arbitrary or irrational, or to provide adequate argument. Moreover, he has failed to particularize any prejudice on the facts of the case from the denial of the motion to reopen. We thus do not consider the issue further.

As for the denial of the motion to continue the trial on the basis of illness (which Massey does address on appeal), it is a matter within the discretion of the trial court. A party is not entitled to liberal construction of the documentation in support of a continuance request, nor does a party have any right to one as a matter of law even if illness will result in a party's unavoidable absence from trial (if the trial court would nonetheless be able to accomplish substantial justice). In ruling on the request for a continuance, the trial court may properly take into account the legal sufficiency of the party's showing, including the provision of an affidavit from the party's attorney rather than the party or the party's physician. (*McElroy v. McElroy* (1948) 32 Cal.2d 828, 832-833; *Kalmus v. Kalmus* (1951)

vertebra, and attributed Massey's difficulties with walking to his diabetic neuropathy rather than any radiculopathy (spine-related) cause (a conclusion with which Massey's treating physiatrist concurred with respect to Massey's ongoing pain).

103 Cal.App.2d 405, 414; cf. *Mahoney v. Southland Mental Health Associates Medical Group* (1990) 223 Cal.App.3d 167, 170-171 [continuance to oppose summary judgment].)

Massey has failed to demonstrate any abuse of discretion. The trial judge was well familiar with plaintiff's ongoing condition (dating back several years to the first aborted trial), and was properly concerned both that it would not improve with further passage of time, and that waiting for improvement would frustrate the policy of expediting litigation involving the elderly with serious medical conditions (e.g., Code Civ. Proc., § 36). The claim of incapacity to attend trial was documented only with representations from Massey's lawyer rather than Massey, his wife, or any of his doctors. Massey also did not provide any showing that his own testimony or attendance at trial was essential in any way to the battle of the experts that was the central focus at trial.

Furthermore, Massey once again fails to identify any prejudice from the trial court's ruling. He in fact attended trial,⁶ and the jury found in his favor on the question of liability. He has not identified any material facts that his purported incapacity prevented him from producing with respect to the issue of damages (which was the focus of his motion for JNOV or new trial and thus his appellate challenges). We therefore reject his claim.

Massey alternatively suggests we "can" view his request for a continuance under rule 3.1332 as a request under rule 1.100 for reasonable accommodation of his obvious handicap (his confinement to a wheelchair). He does not cite any authority for a trial court to have the obligation to raise the issue of reasonable accommodation sua sponte; rather, his citation to *In re Marriage of James & Christine C.* (2008) 158 Cal.App.4th 1261, 1266-1267, 1269 involved a litigant who expressly invoked rule 1.100 (holding that a continuance should be considered as one of the accommodations), and thus is not authority for the converse

⁶ According to CHW, Massey attended the trial and testified without difficulty. Massey indicates in his briefing that he did not attend all days of the trial and did not attend full days of the trial when he did attend.

proposition that the trial court was compelled in ruling on a continuance request to consider the necessity of reasonable accommodation for a handicap.

II. Exclusion of Medical Billings and Testimony Addressing Them

A. Exclusion of Billings for Want of Foundation

In 2008, defense counsel accepted a spreadsheet Massey's lawyer prepared that detailed Massey's expenditures on medical costs. Defense counsel stipulated that the figures were "the amounts that were actually paid, [and] can be provided to the jury." However, "we will not stipulate to the *reasonableness* of the medical care provided, or that the care was provided for the treatment of a condition *caused by* the alleged incident." (Italics added.) The offered stipulation also did not address whether the costs of medical care were for *necessary* treatments.

In a motion in limine, Massey sought to obtain an order that the spreadsheet, pursuant to the stipulation, represented expenses that were in fact incurred, and were *reasonable* in amount (recognizing that medical necessity and causation were not included in the stipulation). He also sought judicial notice of a May 2009 MediCare lien statement and an October 2010 Medi-Cal lien statement for medical costs that were ostensibly associated with the March 2006 fall.⁷ The court denied the latter without elaboration before trial (and reiterated its ruling at the end of trial). As for the stipulation, the trial court informed Massey's lawyer in mid-trial that the billings in the spreadsheet could not be introduced into evidence absent testimony establishing a causal connection with the March 2006 fall. It deferred further ruling until the end of plaintiff's case. At that time, it found that Massey had failed to have any witness testify about the causal connection, necessity, or reasonability of the charges in the spreadsheet, which Massey's

⁷ We note also a request for judicial notice of 181 pages of notices from MediCare regarding claims processed. It is unclear whether this is related to the request for judicial notice of the liens.

lawyer acknowledged (“And so, because the Court didn’t rule on this and allow me to ask these questions, they were not asked.”).

In a single page of argument lacking any authority in support, Massey contends unspecified “doctors testified about care as reasonable and necessary and caused by the fall,” and thus “[t]hese [spreadsheet] numbers should have been allowed to [be] read to the jury” because “[t]he numbers . . . had stand alone evidentiary value—the numbers spoke for themselves in connection with [unspecified] testimony by the experts” and allowed the jury to determine when a cost listed on the spreadsheet was “reasonable and necessary and caused by the subject fall.” This is manifestly inadequate to satisfy his burden of affirmatively establishing error on appeal.

First, we note Massey does not provide any authority for admission of the Medi-Cal and MediCare liens (or MediCare statements) through the vehicle of judicial notice. A court may take judicial notice of the existence of ordinary documents, but not the truth of their contents. (*Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865.)

As for admitting them pursuant to the stipulation, the assent of CHW was limited to agreeing that the spreadsheet showed the sums actually paid to the medical providers. “A person who undergoes *necessary* medical treatment for *tortiously caused* injuries suffers an economic loss by taking on liability for the costs of treatment. Hence, any *reasonable* charges for treatment the injured person has paid or, having incurred, still owes . . . are recoverable as economic damages.” (*Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541, 551, italics added.) Thus, it is not enough for a plaintiff to introduce evidence of actual payments—in order to recover them as damages, the plaintiff must establish that they are causally related to a tortious injury, and necessary and reasonable, and at least the former two elements require expert testimony because they are not subjects within a jury’s common understanding in a case with complex medical procedures such as the present one. (1 Jefferson, Cal. Evidence

Benchbook (2d ed. 1982) Hearsay and Nonhearsay, § 1.3, pp. 51, 54-55 [for complex medical issues, must have expert testimony to establish medical services are result of injury and were necessary]; *Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1267 [bills are hearsay otherwise not admissible independently as proof, but payment is some evidence that charges were reasonable because debtor has every interest to dispute extent of payment].) The trial court thus properly declined to admit the spreadsheet absent further foundational testimony that Massey has failed to identify adequately on appeal.

B. Exclusion of Expert Testimony as Foundation for Billings

Massey designated his treating geriatrician as an expert witness. At the time of the expert's deposition, he had not been asked to review any of Massey's medical billings to render an opinion as to whether they were medically necessary or reasonable, and admitted he was not familiar with the reasonable costs of services in the Redding area. In an updated expert witness disclosure before the second trial, dated May 2010, Massey stated that the geriatrician would testify about causation of damages and the necessary and reasonable nature of Massey's medical expenditures. In a letter sent to CHW in August 2010 after it had cancelled scheduled depositions of his experts,⁸ Massey said, "As we spoke on Friday, you believe that expert[] . . . Feinberg ha[s] not changed [his] opinion[] which was a condition [precedent] by stipulation to have [his] deposition[] taken and, therefore, you have withdrawn your notice to depose [him]. While I think you have to ask [him] if [his] opinion[has] changed since [his] original deposition[], I suspect that this is the correct." When the court queried him before trial on the issue, Massey's lawyer asserted that he had not questioned the geriatrician as to whether he had changed

⁸ Neither party provided a citation to the record for the letter itself in their briefs; we were able to find it, thanks to a reference to its exhibit number in a pretrial discussion of this issue.

his opinion as to any issue. As a result, the court deferred ruling on whether the geriatrician would be permitted to offer new opinions in his testimony.

At a foundational hearing before the geriatrician's testimony, CHW's counsel asserted his belief that the geriatrician would "be offering opinion testimony with regard to the causation of multiple conditions plaintiff alleges to have suffered. And I would like to have his qualifications and the basis for his opinions established that he can do so in light of his lack of specific expertise in certain medical fields." CHW also asserted that it had not yet been notified that the geriatrician had developed opinions regarding the medical costs being necessary and reasonable. CHW read the except from the deposition in which the geriatrician eschewed any opinion regarding medical costs. The trial court again reviewed the August 2010 correspondence from Massey's lawyer to CHW's counsel. Massey expressed the viewpoint that CHW already had all the information from the spreadsheet and the liens in its possession that the geriatrician would be reviewing in his testimony. The trial court ruled that as a matter of due process the geriatrician would not be allowed to testify whether the medical services or the charges for them were appropriate because Massey had never indicated until trial that the geriatrician was in fact going to offer opinions on this subject. However, when Massey later brought up his May 2010 supplemental expert witness disclosure, the court stated it would reserve ruling on the issue.

The geriatrician then testified at the foundational hearing. (Evid. Code, § 402.) He asserted that he would express the opinion that Massey experienced pain and suffering attributable to the fall, including a hernia from stretching of the incision from the surgery he had just undergone, further compression of the T12 vertebra despite its surgical repair (called a vertebroplasty, in which cementing material is injected into the vertebra to shore it up), whiplash, and misalignment of the other vertebrae. He would incur future expenses related to the disabilities attributable to the fall as an "additive

factor” distinct from his other medical issues. He also was prepared to offer an opinion whether the medical costs were necessary. The trial court stated it would reserve ruling on CHW’s foundational objections that a geriatrician who was neither a surgeon nor a neurologist could not offer any opinions on causation or necessity of the procedures Massey underwent.

The geriatrician briefly testified in front of the jury, explaining his background in family practice (in the course of which he gained experience with geriatric patients as his clientele aged, though he was not certified in the specialty) that included treatment of patients with the same medical issues as Massey. He offered an opinion that Massey’s fall caused a compression fracture in T12 (requiring the vertebroplasty),⁹ blunt trauma to his lower back, and whiplash to his neck.¹⁰ This resulted in a long period of pain and discomfort, required rehabilitation services, led Massey to become depressed, and made Massey “deconditioned” to the point he was unable to engage in his usual physical activities. This left him significantly worse than Massey would have been even with his chronic progressive preexisting conditions, including an increase in his pain (although the geriatrician did not purport to quantify the degree to which Massey’s condition was worse).

The trial court then returned to the foundational issues at the morning recess. It noted the reference in the supplemental expert disclosure to the geriatrician giving opinions on necessary and reasonable medical expenses, but ruled that his lack of

⁹ As noted above, Massey’s treating orthopedist concurred.

¹⁰ Massey’s primary care physician, however, testified that Massey did not report any problems with his neck at the time of the fall. It was not until 2009 that Massey began to complain about neck pain, which the physician attributed to degeneration in the upper cervical vertebrae in parallel with the spondylosis developing in the lumbar region. His treating physiatrist also expressed the opinion that the fall did not result in whiplash, cervical injuries, broken ribs, or injury to the coccyx.

familiarity with the reasonable charges in Shasta County precluded him from offering opinions on that topic. It also noted that it would limit any opinion evidence from the expert on causation to that consistent with the expertise of a family practice physician (having already ruled that the geriatrician's opinion of whether Massey's back spasms were caused by the fall lacked foundation).

Again in a single page of argument lacking any pertinent authority, Massey argues simply that the court abused its discretion in precluding his geriatrician "from testifying about the costs of care."¹¹ However, the only manner in which he specifically faults the trial court's reasoning is to assert that the geriatrician's lack of knowledge of reasonable costs in Shasta County was not a foundational lacuna because Medi-Cal and MediCare had paid the bills and thus the reasonability of the costs was government-defined.¹² This remarkable proposition falls flat for want of any logic or authority in support. A policy decision of a government entity to compensate medical providers at a particular rate does not have any correlation with whether this rate is *reasonable*; it could be either below or above whatever reasonable rate prevails in Redding (as a result, this is unlike the situation in which the *actual payor* testifies about paying a bill and thus makes the payment "some evidence" of the bill's reasonability). As Massey does not offer any

¹¹ In a non sequitur, Massey argues the medical records (presumably the ones we noted above) "were foundational and an exception to the hearsay rule because these bills were [sic] not offered for the truth of the matter asserted but rather as foundational [sic] for [the geriatrician's] ultimate opinion on what the damages were as a result of the fall." He does not explain how this "foundational" evidence would be admissible *absent* an opinion that they supported.

¹² Massey also obliquely adverts to his expert's foundational testimony identifying necessary medical services without tying this loose thread into the fabric of his argument. He does not explain how satisfying one foundational criteria without the other has any relevance to the basis for the trial court's ruling.

other argument regarding the restrictions on his geriatrician's opinions, we do not consider the issue further.

III. Definition of Noneconomic Damages in Instructions and Omission of Future Noneconomic Damages in Special Verdict

Massey offered an instruction (which appears as an exhibit to his motion for JNOV or new trial) that sought damages for “[p]ast and future physical pain/mental suffering/loss of enjoyment of life/disfigurement/physical impairment/inconvenience/grief/anxiety/humiliation/emotional distress” (employing *all* the examples contained in the pattern jury instruction) and described the process by which the jury should determine the amount of these future noneconomic damages. He also submitted a special verdict (also an exhibit to the motion) that included a provision for a determination of future noneconomic damages. The trial court ultimately instructed the jury that the specific items of noneconomic damages claimed by Massey were generally “[p]ast physical pain, mental suffering, and emotional distress” for which “[n]o fixed standard exists for deciding the amount” and thus the jury “must use [its] judgment to decide a reasonable amount based on the evidence and [its] common sense.” The special verdict omitted any provision for future noneconomic damages.

Neither party refers us to any point in the instruction-setting conference in which the definition of noneconomic damages (past or future) arose. The trial court told the parties at the conclusion of the conference that it would be drafting a special verdict form; neither party objected. It then provided counsel with copies of the special verdict to review before submitting it to the jury. Neither party identifies any point at which there was discussion of the court's draft of the special verdict; we note CHW specifically asserted in its opposition to Massey's motion for JNOV or new trial that Massey had

forfeited any challenge to the special verdict because he failed to object to it, but the trial court did not discuss this procedural obstacle in denying the motion.¹³

Massey has not provided (either in the trial court or on appeal) any explicit explanation of why the general expressions in the trial court's instruction would not embrace the catalogue of sources of pain or suffering in his own instruction. Having failed to spell out how it is probable that this difference prejudicially affected the manner in which the jury considered his past noneconomic damages (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580 [standard for prejudicial instructional error in civil case]), his claim fails.

What appears to be the gist of Massey's argument (which reiterates his motion for JNOV or new trial) regarding the prejudice from the failure to provide for an award of future noneconomic damages is that he has experienced a shrinking in his stature as his back grows increasingly hunched¹⁴ (which he calls a "disfigurement"), the noneconomic effects of which he will continue to experience in the future. Assuming we accept the proposition that the loss of stature is causally linked to the fall and of itself can be the basis for damages for a plaintiff confined to a wheelchair, Massey fails to identify any other evidence to support an award of future noneconomic damages that was a result of

¹³ That Massey raised the issue in his motion for JNOV or new trial negates CHW's claim of forfeiture. (*American Modern Home Ins. Co. v. Fahmian* (2011) 194 Cal.App.4th 162, 170.)

¹⁴ Massey's treating physician testified that before the fall, Massey was six feet tall and in June 2010 his height was 70 inches. This was the result of hunching, which he believed was caused by preexisting compressions in the T5 and T6 vertebrae and the damage to the T12 vertebra (though he deferred to the opinions of the spinal specialists). On the other hand, he admitted that the T12 vertebra did not appear to have degraded further; the surgeon who repaired the T12 vertebra termed the surgery a success, as did the treating physiatrist; and the defense radiology expert did not see any change in it in subsequent imaging.

the fall beyond the geriatrician's opinion regarding an unquantified increment of aggravation of Massey's back-hunching and ongoing pain that resulted from the fall, which would have left the jury to speculate in any attempt to put a value on such future noneconomic damages.¹⁵ (Although his treating physiatrist testified that Massey would need ongoing physical therapy and medications for his back pain, he also did not connect the back pain with the fall even though the leading question of Massey's lawyer invited him to do so.) We therefore reject Massey's effort to premise reversible error on the omission of future noneconomic damages from the special verdict.

IV. Refusal to Instruct

Massey sought to have the trial court give pattern instructions regarding his entitlement to damages for aggravation of any preexisting conditions, and CHW's liability for damages regardless of a preexisting condition that might have made him particularly susceptible to injury. During instruction-setting, Massey's lawyer asserted the evidentiary basis for the former was Massey's preexisting back problems, pain, and depression, citing only the opinion of his physiatrist (who, however, was not aware that the primary care physician had prescribed Massey an antidepressant for other purposes). The court concluded substantial evidence of aggravation did not support the instruction. With respect to the latter, Massey's lawyer stated Massey's age and low bone density made him more susceptible to injury from the fall; the trial court, however, could not

¹⁵ Lurking in the midst of his argument under this heading are unrelated cursory claims that the trial court abused its discretion in precluding (1) his lawyer from measuring him in court to demonstrate the loss of height, and (2) his treating psychologist from offering a rebuttal opinion on the extent to which his injuries had healed. This manner of briefing forfeits our consideration of the claims. (*Sourcecorp, supra*, 206 Cal.App.4th at pp. 1061-1062, fn. 7; *People v. Baniqued* (2000) 85 Cal.App.4th 13, 29.) Moreover, the former would not have added anything to the testimony about his height, and we reject the latter later in the Discussion in any event.

recall any witness testifying that these conditions played any role in his injuries, and thus substantial evidence did not support the instruction.

On appeal (as in his motion for JNOV and new trial), Massey now asserts he was entitled to the instruction based on the opinion of a defense neurology and psychiatry expert that Massey had preexisting somatoform disorder (i.e., complaints of pain without evidence of physical cause other than overexcited pain-processing nerves), degenerative peripheral nerve damage as a result of diabetes (which also made him prone to falling), mild fractures in the T5 and T6 vertebrae dating back to 1986, and low bone density that could have been the reason the fall resulted in the T12 fracture. It was, however, the expert's opinion that the only injury that the fall could have caused was the T12 fracture, any pain from which would have abated after the repair to the vertebra and which did not contribute either to Massey's present pain complaints or difficulties with balance and walking.

The defense expert's opinion does not establish any aggravation of a preexisting condition warranting an instruction on the subject (and, for the reasons discussed above, the geriatrician's testimony about an undefined increment of aggravation of Massey's condition is not substantial evidence of aggravated damages). As for the instruction on particular susceptibility, it is based on the premise that a defendant is *not exonerated* from liability by virtue of the unusual sensitivity of a plaintiff, which is a particular application of the element of proximate cause. (Rest.2d Torts, Legal Cause, § 461; *Ng v. Hudson* (1977) 75 Cal.App.3d 250, 255.) As the jury found in favor of Massey, he cannot establish that it is probable the omission of the instruction prejudicially affected the manner in which the jury considered his case. We therefore reject this argument.

V. Restricting Testimony on Value of Future Caregiving Services

In the heading to this argument, Massey asserts his argument relates to the value of the care that his wife will provide in the future, and also asserts it was error to omit any provision in the special verdict for such damages. However, his argument under this heading discusses only his *need* for future care without offering any connection between this subject and heading. (Although we are not obliged to look elsewhere in his brief for supporting argument, we note in his statement of facts that he adverts to his need for 24-hour care from his wife because of his increased risk of falling from his degenerative peripheral nerve damage, in echo of his motion for JNOV and new trial). As Massey has not identified any evidence connecting this need for 24-hour care with the fall for which CHW is liable, or provided adequate argument in proper form, and admits in his reply brief that his wife receives payments from Shasta County for her provision of care without explaining why he would nonetheless be entitled to additional damages from CHW, we reject this claim. (*Sourcecorp, supra*, 206 Cal.App.4th at pp. 1061-1062, fn. 7.)

VI. Exclusion of Expert Testimony from Massey's Treating Psychologist

Massey makes the extraordinary assertion that the scope of practice provision for psychologists (Bus. & Prof. Code, § 2903) qualified his treating psychologist to give expert opinions on any subject within his scope of practice “as a matter of law.” Under this far-fetched proposition, a psychologist would qualify as an expert on the date of obtaining a license. Massey does not provide any authority for overriding the requirement in Evidence Code section 720 that a person be qualified to testify as an expert only on an adequate *showing* of expertise in a subject. “The definitive criteri[on] in guidance of the trial court’s determination of the qualifications of an expert witness . . . rest[s] primarily on ‘occupational experience’ ‘[An expert] must have had basic

educational and professional training . . . , but it is a practical knowledge . . . that is of controlling importance in determining competency of the expert to testify’ ”
(*Huffman v. Lindquist* (1951) 37 Cal.2d 465, 478.) We thus turn to the showing of the psychologist’s expertise.

Massey initially wanted to introduce portions of the psychologist’s deposition. Before trial, the court ruled he could not offer opinions on medical causation, only on the degree of damages stemming from depression and stress that was a result of pain causally related to the injury. Toward the end of the plaintiff’s case, the trial court held a foundational hearing before permitting the psychologist to testify. The expert noted that he was treating Massey for depression, stress, and pain management without medication. The depression had a number of causes other than the back pain and physical disability that Massey was experiencing. The expert did not have a medical degree, and did not personally examine Massey for any physical causes of his complaints. He could not assess the degree to which the depression and stress stemmed solely from Massey’s physical problems and pain (which itself had multiple causes). On the question of the cause of the pain, the psychologist would need to defer to the medical professionals who had treated Massey. The court concluded that the expert was not qualified to offer an opinion that his treatment of Massey was causally related to the injury because the degree to which the symptoms he treated stemmed from the injury was merely speculative. As a result, Massey rested his case without calling the psychologist. After the defense neurology expert testified, Massey sought to call his psychologist in rebuttal of the opinion that he had a somatoform disorder. The trial court ruled that the psychologist was not competent to give an opinion that Massey’s physical condition did not support a diagnosis of somatoform disorder under the standard psychiatric definition.

Massey seems to argue that the psychology expert should have been able to “testify about the [costs of the] reasonable and necessary care” that he provided as

documented in his billings “as solely regarding the injury and the fall.” However, as noted above, the expert explicitly acknowledged that he was *not* able to apportion his treatment in this fashion. He also conceded he had to defer any causation determinations to the medical experts. Thus, for the same reason that Massey’s medical billings were inadmissible for want of causation evidence connecting them with his injury, his psychologist expert could not testify that the psychiatric billings were recoverable damages.

As for the excluded rebuttal testimony, Massey claims that it is a “fiction” that offering an opinion on a diagnosis of somatoform disorder would require any medical expertise. However, as the neurology expert testified, it is the absence of a diagnosable physical cause for pain that is among the premises for an opinion the disorder is present. Moreover, even if the psychologist expert could have testified in rebuttal that the disorder was not present because other *nonmedical* criteria were not satisfied (which appear in an exhibit to Massey’s motion for JNOV and new trial), Massey has yet again failed to specify the manner in which his assertion of error resulted in any prejudice to him on the facts of this case. Ultimately, it is irrelevant whether the jury attributed his subjective experience of pain (which no one disputed was genuine) to an indiscernible cause or to the challenged diagnosis of somatoform disorder. It is Massey’s failure to establish a causal connection between the pain and the injuries from the fall that is fatal to his case. Thus, we do not find it reasonably probable that admission of the testimony of the psychologist either in Massey’s case-in-chief or in rebuttal would have yielded him a more favorable result.

DISPOSITION

The judgment is affirmed. Respondent CHW shall recover its costs on appeal.
(Rule 8.278(a)(1), (2).)

BUTZ, J.

We concur:

RAYE, P. J.

NICHOLSON, J.