Affirmed and Opinion of En Banc Court filed May 1, 2025.

In The

Fourteenth Court of Appeals

NO. 14-23-00929-CV

YANIER VEGA BLANCO AND KARLA CHICAS DE PEREZ, Appellants

V.

DENNIS JULIUS BARTON, Appellee

On Appeal from the 157th District Court
Harris County, Texas
Trial Court Cause No. 2020-68447

OPINION OF EN BANC COURT

Appellants Yanier Vega Blanco and Karla Chicas De Perez appeal from a final take-nothing jury verdict rendered on their personal injury claims asserted against appellee Dennis Julius Barton. Appellants raise a single issue on appeal arguing that the jury's finding that they suffered no compensable damages in the accident was against the great weight and preponderance of the evidence. Concluding that the evidence was sufficient to enable reasonable jurors to differ in their conclusions regarding the severity and cause of the injuries suffered by the

appellants, we affirm the judgment of the trial court as challenged on appeal.

I. BACKGROUND

Appellants, then husband and wife, were driving east on Interstate 10 in downtown Houston when Barton's vehicle hit the rear of appellants' vehicle. The accident occurred around 5:30 pm in what all three participants described as "stop-and-go" traffic. Although no injuries were reported to the peace officer that completed the accident report, appellants sought medical treatment six days later for neck and back pain.

Barton testified that he heard a horn blow to his right and he looked toward the sound. However, he stated that while he was looking to the side, Vega slammed on his brakes and Barton was unable to avoid hitting Vega's vehicle. Barton testified that he caused the accident but also believed Vega shared responsibility for causing the accident.

The jury found both Barton and Vega equally negligent in causing the accident. The jury further found that appellants suffered no compensable injuries caused by the accident at issue. As a result, the trial court rendered a final take-nothing judgment on appellants' claims against Barton.

II. ANALYSIS

In their sole issue on appeal, appellants argue that the jury's failure to award any damages was against the great weight and preponderance of the evidence. They maintain that their damages were established by their own testimony as well as testimony from two different treating physicians. When a party asserts that a jury finding is against the great weight and preponderance of the evidence, the party is challenging the factual sufficiency of the evidence. *See Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001); *Chang v. Nguyen*, 76 S.W.3d 635, 637

n.1 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

A. Standard of review

"When a party attacks the factual sufficiency of an adverse finding on an issue on which [it] has the burden of proof, [it] must demonstrate on appeal that the adverse finding is against the great weight and preponderance of the evidence." *Francis*, 46 S.W.3d at 242. A "court of appeals must consider and weigh all of the evidence, and can set aside a verdict only if the evidence is so weak or if the finding is so against the great weight and preponderance of the evidence that it is clearly wrong and unjust." *Id*.

The jury is the sole judge of witnesses' credibility and may give credence to one witness rather than another. *City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005). As it is the jurors' role to resolve conflicts in the evidence, our review assumes that they did so in a manner consistent with their verdict. *Id*. at 820. We also may not substitute our own judgment for that of the trier of fact, even if we would reach a different answer on the evidence. *Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 407 (Tex. 1998).

B. Applicable law

The trier of fact is afforded considerable discretion in evaluating opinion testimony on the issue of damages. *McGalliard v. Kuhlmann*, 722 S.W.2d 694, 697 (Tex. 1986). "The jury's province is to resolve the speculative matters of pain and suffering, future pain and suffering, future disfigurement, and future physical impairment, and set the amount of damages attributable thereto." *Weidner v. Sanchez*, 14 S.W.3d 353, 372 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (internal citation omitted); *see generally Figueroa v. Davis*, 318 S.W.3d 53, 62 (Tex. App.—Houston [1st Dist.] 2010, no pet.) ("The amounts of damages

awarded for pain and suffering and disfigurement are necessarily speculative and each case must be judged on its own facts."). A jury may disbelieve a witness, even if the witness's testimony is uncontradicted. *Grant v. Cruz*, 406 S.W.3d 358, 364 (Tex. App.—Dallas 2013, no pet.). "When there is conflicting evidence about the severity of the injuries or about whether the injuries were caused by the collision, the jury has the discretion to resolve the conflicts, determine which version of the evidence to accept, and refuse to award damages." *Lanier v. E. Foundations, Inc.*, 401 S.W.3d 445, 455 (Tex. App.—Dallas 2013, no pet.).

In resolving an issue of this nature, Texas courts have recognized a distinction between cases in which the plaintiff has presented uncontroverted "objective" evidence of an injury caused by a defendant's negligence, and cases in which the plaintiff's injuries are merely "subjective" in nature. *See, e.g.*, *Rumzek v. Lucchesi*, 543 S.W.3d 327, 332–33 (Tex. App.—El Paso 2017, pet. denied); *In re State Farm Mut. Auto. Ins. Co.*, 483 S.W.3d 249, 263 (Tex. App.—Fort Worth 2016, no pet.) ("When there is uncontroverted, objective evidence of an injury and the causation of the injury has been established, appellate courts are more likely to overturn jury findings of no damages for past pain and mental anguish."); *Schwartz v. Pinnacle Communications*, 944 S.W.2d 427, 436 (Tex. App.—Houston [14th Dist.] 1997, no writ) ("The fact finder may not disregard uncontroverted evidence of an objective injury in order to enter a finding of no damages."); *see also Lopez v. Salazar,* 878 S.W.2d 662, 663 (Tex. App.—Corpus Christi–Edinburg 1994, no writ) ("Although the jury is the sole judge of the credibility of witnesses and the weight to be given a witness's testimony, the jury may not disregard the objective symptoms or signs of injury and render a verdict of no damages or award less than the undisputed medical expenses caused by the accident.").

When a party has alleged injuries that are primarily of a subjective nature,

and there is no directly observable or objective evidence that an injury has occurred, a fact issue is created which must be determined solely by the jury. *Szmalec v. Madro*, 650 S.W.2d 514, 517 (Tex. App.—Houston [14th Dist.] 1983, writ ref'd n.r.e.). Although appellants argue on appeal that the jury was not free to ignore their uncontroverted evidence of injuries, appellants do not substantively address the nature of their injuries despite the fact they cite to and rely on cases involving "objective" injuries. *See, e.g., Lopez*, 878 S.W.2d at 663 (involved children who had head injuries, leg fractures and hospitalizations); *Monroe v. Grider*, 884 S.W.2d 811, 819–20 (Tex. App.—Dallas 1994, writ denied) (plaintiff stepped in front of golf cart, was hit, fractured her wrist and injured her groin).

In a recent opinion, a panel of this court concluded in a similar low-speed car accident with soft-tissue injuries that the jury was not free to disbelieve the uncontradicted testimony of a treating physician who testified on causation. *Jefferson v. Parra*, 651 S.W.3d 643, 652 (Tex. App.—Houston [14th Dist.] 2022, no pet.) ("The jury cannot simply award zero damages when there is undisputed evidence of injury, even if the injury is relatively minor."). That conclusion was out of step with this court's precedent and Texas jurisprudence. *See McGalliard*, 722 S.W.2d at 697; *see also Walker v. Scopel*, No. 14-14-00411-CV, 2016 WL 552197, at *4–5 (Tex. App.—Houston [14th Dist.] Feb. 11, 2016, no pet.) (mem. op.) (upholding zero-damages award on subjective injuries of back and neck pain); *Imamovic v. Milstead*, No. 01-13-01030-CV, 2015 WL 505383, at *5–6 (Tex. App.—Houston [1st Dist.] Feb. 5, 2015 no pet.) (mem. op.) (upholding zero-damages award with stipulated liability on subjective injuries of neck pain); *Walker v. Ricks*, 101 S.W.3d 740 (Tex. App.—Corpus Christi–Edinburg 2003, no pet.) (upholding zero-damages award on subjective injuries of neck and jaw pain). Therefore, this court has ordered en banc consideration of this case on its own

motion to secure or maintain uniformity of this court's decisions. *See* Tex. R. App. P. 41.2; *Mitschke v. Borromeo*, 645 S.W.3d 251, 256–57 (Tex. 2022) (horizontal stare decisis requires three-judge panels to follow "materially indistinguishable decisions" of earlier panels unless that decision has been superseded by "a decision from the U.S. Supreme Court, [the Texas Supreme Court], or the Court of Criminal Appeals; an en banc decision of the court of appeals itself; or an applicable legislative or constitutional provision").

This court, sitting en banc, disapproves of *Jefferson* to the extent that it holds that the jury is not free to make credibility determinations of expert testimony generally, and specifically, with respect to subjective injuries. *See Jefferson*, 651 S.W.3d at 656 (Christopher, C.J., dissenting) ("The majority fails to appreciate the black-letter law that the jury is free to disregard a doctor's testimony on both the necessity of treatment and the causal relationship between the accident and the plaintiff's complaints.").

C. Evidence at trial

Nature of the accident

We begin first by considering the nature of the accident. The February 2020 accident occurred in "stop-and-go" traffic at very low speed. Although both of the appellants described the accident as a "strong blow," Barton in contrast testified, "I barely just — just kind of bumped him." The only photograph in evidence reflects minor damage to Vega's vehicle.

Nature and extent of injuries

Next we consider the nature and extent of appellants' injuries, which was disputed. Although Vega testified that he was wearing his seatbelt, he testified that he hit his chest on the steering wheel. He also testified that he hit his "head on the

back" and "the lower part of my back." Vega described Chicas De Perez as dizzy immediately after the accident because she hit her head on her seat. Chicas De Perez testified that she hurt her neck, lower back and chest in the accident. However, neither Vega nor Chicas De Perez sought any medical attention immediately or the day of the accident. In fact, appellants were on their way to Louisiana for work. After the accident, they continued driving to Louisiana. Chicas De Perez testified that she attempted to work the following day but was unable. Vega did not provide any detail as to what he did in Louisiana, but testified that two days later he drove home with Chicas De Perez. Both of the appellants sought medical attention for the first time six days after the accident in Houston.

Vega testified that he felt pain the same day but that the pain began increasing in the days after in his neck and lower back. After six days, Vega went to the Memorial Heights Emergency Center for his pain. An x-ray examination reflected no fracture and Vega received care from a referred chiropractor in the form of massages, electrical stimulation and exercises. After one month, an MRI was performed reflecting that Vega had a discal hernia. He received a series of injections into his lower spine to address his complaints of pain. He also underwent a radio frequency nerve ablation. Vega testified that all of the therapies relieved his pain, but that as of the time of trial he still felt pain.

Just as with Vega, Chicas De Perez had an initial scan at Memorial Heights reflecting no fractures and a small disc protrusion in her cervical spine. Chicas De Perez was referred for physical therapy and received massages, electrical stimulation and engaged in exercises. After her therapy, an MRI was done reflecting two discal protrusions or hernias in her cervical spine and two in her lumbar spine. Similar to Vega, Chicas De Perez then received a series of injections for her pain as well as a nerve ablation. She testified that although her treatment

helped her pain, she continued to have pain at the time of trial.

Alternative causes for their pain

Chicas De Perez admitted that she was involved in a car accident before the February 2020 accident. Although she went to a doctor, hired lawyers and filed a lawsuit, Chicas De Perez testified that she was not injured in that accident. Appellants were then involved in another automobile accident in August 2020 for which they sustained injuries, hired lawyers, and sought medical treatment.

Expert testimony

Vega's pain-management specialist testified. He testified that his diagnosis and causation opinion for Vega's pain and injuries was based primarily on Vega's reports of pain along with his review of Vega's tests and a physical examination. Barton cross-examined the pain-management specialist about whether he was aware that Vega testified in a lawsuit filed for injuries received in the subsequent August 2020 car accident that he had not injured his lower back in February 2020, but rather his middle back. The pain-management specialist was not aware of Vega's testimony on this point and explained that all the treatment he oversaw was for Vega's lower back. Although the jury never heard Vega's actual testimony from any other proceeding, it did hear the question about his inconsistent testimony, which was not objected to nor was it addressed by Vega at trial. The pain-management specialist testified that he was aware that Vega was involved in a subsequent accident and received treatment for injuries related to the subsequent accident at his clinic.

Chicas De Perez's chiropractor testified that he was aware that Chicas De Perez had been in a car accident before February 2020 but was told she had no symptoms as a result of that accident. The chiropractor testified that Chicas De

Perez reported experiencing pain to him, but he explained that he could not measure or objectively confirm her pain. The chiropractor further testified that he relied on Chicas De Perez to report pre-existing injuries, pain or accidents in determining his causation opinion. Therefore, his determination of causation was itself based on Chicas De Perez's reporting of her medical history. The chiropractor had no knowledge of the severity of the February 2020 accident and was unable to read the intake form written by Chicas De Perez.

Medical bills

The medical bills are all unpaid. Appellants never testified that they were going to pay the bills or that they were financially responsible for them.

Countervailing evidence

There was testimony at trial that supported the appellants' claims as to causation: (1) testimony from the appellants about their injuries and (2) testimony from two of their treating health-care providers. Both of the appellants testified they did not have pain in their lower back before the accident. They also testified as to the treatments they received for their injuries. The uncontradicted testimony of the two treating health-care providers supported appellants' claims that the accident at issue was the cause of the injuries for which they received medical treatment. If the jury had returned a verdict awarding damages to appellants, there was factually-sufficient evidence to support such a finding.

But, pertinent to our factual-sufficiency review, there is also factually-sufficient evidence that supports the jury's verdict. The nature of the accident, the nature of the injuries and the credibility issues for the appellants all weigh in favor of the jury's verdict. The nature of appellants' injuries and their causation was a fact issue for the jury, and the jury was free to disregard the

testifying experts' testimony on both the necessity of treatment and the causal relationship between the accident and the appellants' complaints. *See Johnson v. King*, 821 S.W.2d 425, 428 (Tex. App.—Fort Worth 1991, writ denied); *see also McGalliard*, 722 S.W.2d at 697 ("opinion testimony does not establish any material fact as a matter of law"). And as discussed above, there were reasons for the jury not to credit the doctors' uncontroverted opinions.

It is not the role of this court to sit as the thirteenth juror. Given the nature of the injuries at issue and the evidentiary conflicts as to the severity and cause of the injuries in this case arising from a low-speed car accident without contemporaneous indicia of injury, we conclude that it "would enable reasonable and fair-minded people to differ in their conclusions." *See City of Keller*, 168 S.W.3d at 822; *accord Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W.3d 213, 223 (Tex. 2019). Restated, we conclude there is factually-sufficient evidence to support the jury's verdict and will not disturb the jury's finding.

We overrule appellants' sole issue on appeal.

III. CONCLUSION

We affirm the judgment of the trial court as challenged on appeal.

/s/ Tonya McLaughlin
Justice

En banc court consists of Chief Justice Christopher and Justices Wise, Jewell, Wilson, Hart, McLaughlin, Bridges, Boatman and Antu.