

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Jennifer Cuffy	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 08C-04-055
	)	
Alan Krusheski	)	
Defendant	)	
	)	

Submitted: June 19, 2009
Decided: June 26, 2009

ORDER

The vast majority of submissions by Delaware lawyers are of high quality and of assistance to the Court. On occasion, however, there are submissions that fall short of the standard expected of members of our Bar. Unfortunately, Plaintiff's "brief" in support of her motion for additur or a new trial is among the latter. For the reasons which follow, that brief is stricken with leave to file a new brief.

This personal injury matter arises from a motor vehicle accident in which Defendant rear-ended Plaintiff, who was stopped at a traffic light. Prior to trial Defendant admitted liability, so that the only issues remaining to be tried were the nature and extent of Plaintiff's injuries proximately caused by the accident and the damages to be awarded for

those injuries. The jury returned a zero verdict on damages, and Plaintiff now seeks an additur or new trial.

Plaintiff asserted at trial that she suffered permanent injuries to her neck and back. Among her claimed injuries are herniated cervical and lumbar disks. She contended, among other things, that she has constant pain radiating down her legs and in her groin. Plaintiff treats with a board certified pain specialist who, more than two years after the accident, continues to maintain Plaintiff on a regimen of narcotic painkillers. At trial Defendant introduced the testimony of a board certified orthopedic surgeon who opined that Plaintiff does not have any herniated disks and that the only abnormality with her spine are congenital problems unrelated to the accident. Defendant's expert cast serious doubt on Plaintiff's complaints of pain, testifying that during his physical examination of Plaintiff she was able to perform certain movements which, if there was a physical cause for Plaintiff's complaints of pain, she would be unable to perform. Lastly, Defendant's expert testified that there was no need for Plaintiff to take pain medication and that the continued administration of these narcotics to Plaintiff was detrimental to her health. Needless to say, the jury's zero verdict shows that it chose to believe Defendant's expert and to disbelieve Plaintiff and her expert.

The gist of Plaintiff's motion, as the Court understands it, is that even accepting Defendant's expert's testimony and rejecting Plaintiff's

case, the jury was not free to award zero damages. According to Plaintiff, Defendant agreed that Plaintiff's trip to the Emergency Room after the accident was reasonable and necessary and that Plaintiff suffered a cervical neck strain as a result of the accident. It is not clear from Plaintiff's motion whether she is seeking reimbursement for medical expenses in addition to the emergency room bill.

Plaintiff submitted a two page document, which she labeled a "brief," in support of her motion. This so-called brief falls far short of what this Court expects from Delaware lawyers. Among its shortcomings are the following:

1. Plaintiff asserts that she is entitled to the cost of her Emergency Room visit as damages. Yet she never advises the Court of the amount of that cost or where evidentiary support for any such amount can be found in the record. Apparently Plaintiff expects the Court to sift through her exhibits until it comes upon a bill from the Emergency Room and then further expects the Court to scour the remaining bills to determine whether there are any additional bills, such as separate radiology bills, that might be related to the emergency room visit.¹

¹ See *Gonzalez v. Caraballo*, 2008 WL 4902686 (Del. Super.) (noting that courts are not obligated to do "counsel's work for him or her"). This is not the first time during this case that Plaintiff's counsel placed the onus of doing his work upon the Court. At the prayer conference, Plaintiff submitted an instruction on her future life expectancy which contained a blank where the number of years was to be inserted. When the Court asked Plaintiff's counsel what number was to be inserted in the instruction he submitted, counsel responded he did not know and would have to refer to the Am. Jur. Desk Book. Counsel explained that he

2. It is obvious to the Court that Defendant will contend that Plaintiff's emergency room expenses, which were the very first expenses incurred by Plaintiff as a result of the accident, are covered by PIP. Plaintiff seems oblivious to this issue, for she neglects to even mention it in her brief.
3. Plaintiff's counsel refers to four cases in Plaintiff's opening brief, but provides a citation to only one of them.
4. Plaintiff's motion and brief are filled with obvious omissions and typographical errors. For instance, in Plaintiff's motion, her counsel requested the Court to "enter a judgment in favor of Plaintiff and against the Defendant in the amount of [blank]." Elsewhere there is at least one sentence which does not contain a verb, and another sentence refers to Defendant's "closing agreement." While an occasional typo or similar error is easily overlooked, submissions filled with such matters indicate that the author is so lacking in respect for this Court that he cannot be bothered to proofread his written work.

would have to return to his office to get that text or find someplace where he could access the internet. Since time was of the essence, the Court was forced to search for this information on the computer while sitting on the bench. At the time the Court was willing to overlook counsel's lack of preparation and willingness to have the Court do his work for him, but in retrospect, give the quality of of counsel's later submissions, the Court now feels that this incident was simply another manifestation of counsel's lack of respect for the Court.

The material submitted by Plaintiff's counsel is so far below the minimum standards expected of a Delaware lawyer that the Court cannot reasonably expect the Defendant to be able to formulate a response. The opening brief is therefore **STRICKEN** from the record. On or before July 7, 2009 Plaintiff shall file a revised brief which, among other things shall:

1. Detail the amounts sought for medical expenses and describe where in the record evidence supporting those expenses can be found. Copies of trial exhibits upon which Plaintiff relies shall be attached.
2. Explain why the expenses sought by Plaintiff were not covered by PIP.
3. Describe the evidence relating to the severity of Plaintiff's cervical strain, and state precisely where in the record such evidence can be found. Copies of any trial exhibits upon which Plaintiff relies shall be attached.
4. Use citations whenever referring to a case. Plaintiff shall attach copies of any unreported opinions to her brief.
5. Contain a separate certification from Plaintiff's counsel that he has proofread the brief.

Defendant shall file any reply on or before July 24, 2009.

It is **So Ordered**.



John A. Parkins, Jr.
Superior Court Judge