

Judge Sarah J. Heffley  
not for publication

DIVISION I

CA07-114

November 28, 2007

TONYA WILLIAMS  
APPELLANT

AN APPEAL FROM CRAWFORD COUNTY  
CIRCUIT COURT  
[NO. CV2004-345-2]

v.

BARRY NEEDHAM and  
JOHNSON CONTROLS, INC.  
APPELLEES

HONORABLE MIKE MEDLOCK  
CIRCUIT JUDGE

AFFIRMED

A Crawford County jury awarded appellant Tonya Williams \$50,000 on her negligence claim against appellee Barry Needham in connection with a car accident. Williams appeals, seeking a new trial on grounds that Needham tampered with the jury and that the damage award was too small. She also asserts that the trial court erred in allowing Needham's employer, Johnson Controls, Inc., to intervene. We affirm.

Williams and Needham were divorced in 1997. On June 18, 1998, they were en route to Pine Bluff in separate vehicles for their own individual business purposes when Williams observed Needham on the road. Unbeknownst to him, she followed him. At a point where Needham was a short distance ahead of Williams, he rounded a curve and the ladder on top of his van fell into the road. He pulled over, backed up, and stopped. As he was exiting the van, Williams rounded the curve, hit the ladder, and collided with Needham's van. Williams

was taken to the emergency room at Jefferson Regional Medical Center, where she complained of back pain. X-rays showed no evidence of fracture or acute subluxation, and she was released.

Williams followed up with her family doctor, complaining of back pain radiating down her legs and head pain. For several years thereafter, she saw at least six other physicians and a chiropractor for pain in her back, neck, legs, hips, and head. She was also involved in three more car accidents, two in 1999 and one in 2003. Prior to 1998, she had been involved in car accidents in 1985, 1986, and 1993.

Williams sued Needham on July 14, 2004, alleging that his negligence proximately caused her injuries.<sup>1</sup> She did not sue Needham's employer, Johnson Controls, Inc., despite Needham's being in the course and scope of his employment when the accident occurred. Johnson Controls was later permitted to intervene over Williams's objections. At trial, Williams presented medical bills totaling \$52,821.08 and sought over one million dollars in damages for lost income and future medical expenses. The jury returned a verdict of \$50,000. Williams moved for a new trial on the grounds that the verdict was too small and that Needham improperly spoke with jurors during the trial. The trial court denied the motion, and Williams filed this appeal.

Williams argues first that a new trial should have been granted due to misconduct of the jury or prevailing party. *See* Ark. R. Civ. P. 59(a)(2). Attached to her new-trial motion was a letter purportedly written by Needham in which he stated that, in an attempt to have

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<sup>1</sup> She first filed suit in 2001 but took a non-suit and re-filed in 2004.

the jurors favor him and his employer and “keep the [jury’s] award as low as possible,” he made “comments and statements” to jurors “outside the realms [sic] of the courtroom” that “could have had an impact on” the jurors’ thoughts and decisions. The exact content of Needham’s communications to the jurors was not revealed, nor did the letter indicate whether the jurors responded to him in any way.

The decision to grant or deny a new trial under Rule 59(a)(2) is discretionary with the trial court. *D.B.&J. Holden Farms Ltd. P’Ship v. Ark. State Highway Comm’n*, 93 Ark. App. 202, 218 S.W.3d 355 (2005). We will not reverse absent an abuse of that discretion. *Id.* The burden of proof in establishing jury misconduct is on the moving party. *Dodson v. Allstate Ins. Co.*, 345 Ark. 430, 47 S.W.3d 866 (2001). An appellant bears the burden of demonstrating that a reasonable possibility of prejudice resulted from the alleged improper conduct. *See D.B.&J., supra.*

We find no abuse of discretion in denying the new trial. Williams failed to comply with Ark. R. Civ. P. 59(c), which provides that, when misconduct of the jury or the prevailing party is asserted as a ground for a new trial, the motion must be supported by affidavits showing the truth of that ground. *See Franklin v. Griffith Estate*, 11 Ark. App. 124, 666 S.W.2d 723 (1984). Williams filed no affidavits. Her motion was accompanied only by Needham’s unsworn letter to the court. She therefore could not support her claim of misconduct by the jury or by Needham, if in fact Needham may be considered the “prevailing party” as required by Rule 59(a)(2). Moreover, Williams did not demonstrate a reasonable possibility of prejudice from any alleged misconduct. *See D.B.&J., supra.* She

established at most that Needham made unspecified comments to unnamed jurors, who, if they heard his comments at all, apparently did not react to them.

Williams also sought a new trial on the ground of error in the assessment of the amount of recovery. *See* Ark. R. Civ. P. 59(a)(5). She argues that the jury's \$50,000 award failed to take into account her pain and permanent injuries from the 1998 car accident; that her normal life activities were severely curtailed immediately following that accident; that she would incur well over one million dollars in lost income and medical expenses over her lifetime; and that the 1998 accident aggravated injuries she suffered in prior accidents. She also states, incorrectly, that all experts in the case agreed that her "condition was permanent and was caused by the June 18, 1998 wreck." We review the trial court's denial of a new trial on this ground for a manifest abuse of discretion. *See Home Mut. Fire Ins. Co. v. Jones*, 63 Ark. App. 221, 977 S.W.2d 12 (1998). We further consider whether a fair-minded jury could reasonably have fixed the award at the challenged amount. *See Luedemann v. Wade*, 323 Ark. 161, 913 S.W.2d 773 (1996).

We hold that the trial court did not abuse its discretion in this instance and that the jury could reasonably have fixed its award at \$50,000. Williams was involved in several car accidents, both before and after this one, and a few of them were quite serious. Her car was hit by a train in 1986; she was rear-ended in April 1999; and she totaled her car in September 1999. Williams also received treatment for scoliosis as a teenager, which involved putting a steel rod in her back. Her medical records indicate that she experienced back pain for some time prior to 1998 and that her pain increased markedly following the post-1998 accidents.

Moreover, Johnson Controls's expert testified that Williams suffered from a psychological disorder that caused her to embellish and exaggerate her injuries. Williams presented testimony to the contrary, but it was the jury's prerogative to resolve questions of credibility and conflicts in the evidence. *McCoy v. Montgomery*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (June 21, 2007); *Laird v. Weigh Sys. South II*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (April 25, 2007).

Given the proof adduced at trial, the jury may have determined that, although Williams was hurt in the 1998 accident and entitled to some damages, she did not experience pain and suffering to the extent she claimed and her principal items of damage were attributable to physical or psychological causes not related to the 1998 accident. *See Luedemann, supra*; *Garrett v. Brown*, 319 Ark. 662, 893 S.W.2d 784 (1995); *Kempner v. Schulte*, 318 Ark. 433, 885 S.W.2d 892 (1994); *Warner v. Liebhaber*, 281 Ark. 118, 661 S.W.2d 399 (1983). We therefore find no basis for reversal on this point.

Lastly, Williams argues that the trial court erred in allowing Johnson Controls to intervene. Her argument is directed to the timing of the intervention, which occurred a few months before trial.

A motion to intervene as a matter of right must be timely, Ark. R. Civ. P. 24(a) (2007), although no particular time limit is stated in the rule. *Ark. Best Corp. v. Gen. Elec. Cap. Corp.*, 317 Ark. 238, 878 S.W.2d 708 (1994). A trial court's decision as to the timeliness of an intervention is a matter within its sound discretion. *See McLane Co., Inc. v. Davis*, 342 Ark. 655, 33 S.W.3d 473 (2000). Timeliness is to be determined from all the

circumstances. *Id.* The factors to be considered are: 1) how far have the proceedings progressed; 2) has there been any prejudice to other parties caused by the delay; and 3) what was the reason for the delay. *Id.*

Before intervening, Johnson monitored the case as Needham's employer and expected to indemnify him in the event that damages were awarded—its insurance policy had a two-million-dollar deductible. In November 2005 Williams's attorney sent a demand letter seeking more than two million dollars. Johnson became concerned because Williams and Needham had apparently remarried, and Needham stood to benefit from a verdict in Williams's favor. When Needham's attorneys told Johnson that they would do nothing to impeach Needham's testimony if he said anything that helped Williams, Johnson moved to intervene on December 13, 2005, to protect its interest. The trial was not held until April 2006. Johnson told the court that it wished to conduct limited discovery and maintain the scheduled April trial date, which in fact occurred. Under these circumstances, we see no abuse of discretion in allowing Johnson to intervene several months before trial. *See Bradford v. Bradford*, 52 Ark. App. 81, 915 S.W.2d 723 (1996) (affirming intervention where sought two months prior to hearing date).

Williams cites *Cupples Farms Partnership v. Forrest City Production Credit Association*, 310 Ark. 597, 839 S.W.2d 187 (1992), for the proposition that intervention should not be allowed where one waits too long to intervene under the belief that another party in the case is protecting his interest. But, in *Cupples*, our supreme court did not establish that proposition as an absolute rule. Rather, the court affirmed the trial judge's

denial of intervention on that basis, holding that no abuse of discretion occurred. We accord the same deference to the trial court in this case and find no abuse of discretion.

Williams's brief also includes a very short argument that the trial court erred in allowing Johnson to conduct additional discovery and subject her to an independent medical exam. The argument is not sufficiently developed or supported by authority. Therefore, we do not consider it. *Nationsbanc Mtg. Corp. v. Hopkins*, 82 Ark. App. 91, 114 S.W.3d 757 (2003).

Affirmed.

GLADWIN and BIRD, JJ., agree.