



Avi Taylor, Appellant V. Mirina Stone, Respondent

2022 | Cited 0 times | Court of Appeals of Washington | May 2, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

AVI LEANNE TAYLOR,

Appellant,

v.

MIRINA STONE,

Respondent. No. 82680-8-I

DIVISION ONE

UNPUBLISHED OPINION

SMITH, A.C.J. Following a bench trial, the trial court found Mirina Stone at fault for a car accident she had with Avi Taylor and awarded Taylor \$35,000.00 for noneconomic damages only s award of noneconomic damages and the failure to award economic damages. Because the award was within the range of the evidence in this case, we find no error and affirm.

FACTS

On February 23, 2016, at an intersection in West Seattle. None of the airbags deployed and neither vehicle sustained substantial damage.

Immediately after the collision, Taylor sought treatment from her



Avi Taylor, Appellant V. Mirina Stone, Respondent

2022 | Cited 0 times | Court of Appeals of Washington | May 2, 2022

naturopathic physician Dr. Sari Gallegos. Dr. Gallegos examined her and noted that Taylor had sprains and strains to her back, neck, ribs, and pelvis, headaches, and pain in both wrists. Dr. Gallegos prescribed Taylor ibuprofen and -inflammatory and nerve to help with the pain and to

Three days later, Taylor returned to Dr. Gallegos and reported increased reported pain in her neck, upper and lower That

same day, Taylor obtained a set of x-rays from chiropractic physician Dr. John

Miller. The x-rays did not reveal any spinal or rib fractures. seek acupuncture, chiropractic, and ultrasound therapy treatment over the next

In February 2019, Taylor initiated this tort

negligent driving caused her personal injuries. Her complaint alleged that she suffered

and sought judgment against Stone for all

economic and noneconomic damages.

At the bench trial in November 2020, Taylor represented herself. 1 She

called several lay witnesses to testify, including Mysti Green, Joe Basco, Iris

Milligan, Howard Hammond, Lisa Leon-Guerrero, and Daniel Blue. They all

testified in similar fashion. Before 2016, they knew Taylor to be very active,

1 The trial was conducted via Zoom because of the COVID-19 pandemic - based peer-to-peer video software platform that is used for teleconferencing, - Wo severe, highly contagious respiratory illness that quickly spread throughout the

world after being discovered in December 2019. None of them witnessed the February 2016 collision or knew exactly what



Avi Taylor, Appellant V. Mirina Stone, Respondent

2022 | Cited 0 times | Court of Appeals of Washington | May 2, 2022

injuries Taylor had sustained from that accident. As to their observations of her after the collision: Green testified ; Milligan noted that she rarely saw Taylor after 2016 ; Hammond stated that he

2016; Leon- [s] about headaches ; and Blue testified

Taylor also testified, but did so in narrative fashion. She described herself healer, energy medicine practitioner astro travel, and other thi Taylor spoke of launching her company, Northwest Wonderland, about a month before the 2016 collision.

Through Northwest Wonderland, Taylor created and sold wellness products with cannabis as an ingredient. Taylor testified: [T]he business, Northwest Wonderland, had projected for me nothing in the first year of operation. So I would have no income the first year and then start[ing] the second year I was going to earn business we had it tiered up toward[] the end so I got up to 4 but I just accounted for 3 because it was easier math. But, yeah, so I was never able to pay myself as projected because I was never able to work enough to bring enough money in.

Despite her efforts, Taylor claimed, she was not physically able to keep up with the demands of operating Northwest Wonderland. She thus alleged that in December 2019, of picking it back up once [she] reac

Taylor also testified to being physically assaulted in 2005, to representing herself in federal court proceedings in 2010 to acquire a permanent disability award, and to suffering back, rib, hip, and other pains in a Mar - car accident.

During cross-examination, defense counsel confronted Taylor about some of her damage claims, some of which included these exchanges: Q. Do you recall at your deposition when I asked you about wage wages? A. completely.



Avi Taylor, Appellant V. Mirina Stone, Respondent

2022 | Cited 0 times | Court of Appeals of Washington | May 2, 2022

... Q. So right go to the deposition where we talked about which accident

A. Awesome. And then if I could just clarify your my answer to

ss I was doing my best to run.

Additionally, Taylor agreed that despite any physical struggles she

suffered as a result of the 2016 collision, she actually did quite a bit of work for

Northwest Wonderland inclusive of developing, marketing, and delivering

products every year until she closed the business. Dr. Gallegos testified Taylor was a long-established patient before the

2016 accident. On average, before 2016, Taylor reported pain of 4 out of 10

whereas after the accident, she averaged pain levels of 6 out of 10.

Taylor did not call an economist or provide any expert testimony about

either past or future lost wages, lost profits, or limited earning capacity. Nor did

she call any additional medical witnesses, treating providers, or other experts.

After Taylor rested her case-in-chief, Stone moved for a directed verdict

contending that Taylor failed to prove that the 2016 collision proximately caused

in part on

Dr. also ruled that because no medical bills were

admitted into evidence and there was no testimony about costs of treatments,

The defense called Dr. James Blue, a neurosurgeon, who performed a

CR 35 orthopedic examination of Taylor and reviewed her medical records.

Dr.



Avi Taylor, Appellant V. Mirina Stone, Respondent

2022 | Cited 0 times | Court of Appeals of Washington | May 2, 2022

injury [to Taylor]

Bradley Probst, a biomechanical forensics expert, also testified for the defense. He was asked to address the forces involved in this collision as opposed to any potential injuries that could have arisen from the accident.

Probst opined that the forces involved were akin to bump or a because [she] never went to [her] doctor or anything, and [i]f I had been jerked

around hard in the car, I was 7 months pregnant, I would have wanted to go to my doctor and

After considering the testimony and evidence admitted, the trial court entered findings of fact. It concluded that Stone was liable for this collision, Taylor had proven she was injured and suffered damages as a proximate cause of the collision, and awarded Taylor \$35,000.00 in noneconomic damages. It did not award any economic damages because

bills or produce any testimon offer any cost of vehicle repairs, demonstrate that her loss of business profits or future earnings was proximately

The trial court later entered judgment in her favor.

Taylor appeals pro se. 2

ANALYSIS

Taylor claims that the court should have awarded her more in noneconomic damages and awarded her economic damages.

2 A pro se litigant is bound by the same rules of procedure and substantive law as an attorney. In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). Failure to act accordingly may preclude review. Olson, 69 Wn. App. at 626. Standard of Review



Avi Taylor, Appellant V. Mirina Stone, Respondent

2022 | Cited 0 times | Court of Appeals of Washington | May 2, 2022

respondents are entitled to the benefit of

all evidence and reasonable inference therefrom in support of the findings of fact

entered by the trial court *Mason v. Mortgage America, Inc.*, 114 Wn.2d 842,

853, 792 P.2d 142 (1990) (quoting *Lidstrand v. Silvercrest Indus.*, 28 Wn. App.

359, 364, 623 P.2d 710 (1981)). After a trial court has weighed the evidence, our

findings and, if so, whether the findings support its conclusions. *City of Tacoma*

v. State, 117 Wn.2d 348, 361, 816 P.2d 7 (1991). Substantial evidence is that

which would persuade a fair-minded, rational person of the truth of the finding. In

re Estate of Palmer, 145 Wn. App. 249, 265-66, 187 P.3d 758 (2008).

It is not the function of an appellate court to substitute its judgment for

that of the trial court or to weigh the evidence or the credibility of witnesses & *Indus.*, 94 Wn.2d 119, 124, 615 P.2d 1279 (1980). We

will not disturb findings of fact that are supported by substantial evidence, even if

conflicting evidence exists. *Merriman v. Cokeley*, 168 Wn.2d 627, 631, 230 P.3d

162 (2010). Unchallenged findings are verities on appeal. *Merriman*, 168 Wn.2d

at 631.

Sufficiency of the Record

As an initial matter, in 20 of the 31 assignments of error scattered

throughout her brief, 3 Taylor contends that the evidence does not support the trial

3 separate concise statement of each error contends was made by the trial court to RAP 10.3(a)(5). But we cannot consider these

assignments of error because of an incomplete record on appeal.



Avi Taylor, Appellant V. Mirina Stone, Respondent

2022 | Cited 0 times | Court of Appeals of Washington | May 2, 2022

An appellant bears the burden of providing a sufficient record to review the issues raised on appeal. *Story v. Shelter Bay Co.*, 52 Wn. App. 334, 345, 760 P.2d 368 (1988). By not designating for review any of the 16 exhibits admitted at trial, some of which are referenced in her brief, Taylor fails to provide a sufficient record to enable our consideration of her appeal. RAP 9.2(b) If the party seeking review intends to urge that a verdict or finding of fact is not supported by the evidence, the party should include in the record all evidence relevant to the disputed verdict or finding); RAP 9.6(a). Without the trial exhibits, we cannot fully review the evidence before the trial court or discern whether substantial evidence supports its findings. Accordingly, the findings that Taylor seeks to challenge must stand. *Story*, 52 Wn. App. at 345.

Application of Damages

Taylor first broadly erred in applying the evidence to the law for the damage awards any evidence in the record that relates to a specific claim for damages. We generally will not consider arguments that are unsupported by pertinent legal authority, references to the record, or meaningful analysis. RAP 10.3(a)(6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments not supported by authority); , 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (issues unsupported by adequate argument and authority); *State v. Camarillo*, 54 Wn. App. 821, 829, 776 P.2d 176 (1989) (no references to



Avi Taylor, Appellant V. Mirina Stone, Respondent

2022 | Cited 0 times | Court of Appeals of Washington | May 2, 2022

the record).

Because Taylor fails to reference the record, cite to any evidence or provide substantive argument to support her claim of general error, we do not consider it further.

Noneconomic Damages

Taylor alleges that the trial court erred by failing to award her any damages for past or future disfigurement, disability, and mental and emotional anguish. We disagree.

Disfigurement, disability, and mental anguish are types of noneconomic damages. RCW 4.56.250(1)(b) defines noneconomic damages subjective, nonmonetary losses, including but not limited to pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation, and destruction of the parent-child relationship 4

The question of whether a plaintiff is entitled to noneconomic damages turns on the evidence. *Palmer v. Jensen*, 132 Wn.2d 193, 201, 937 P.2d 597 (1997) Although there is no per se rule that [noneconomic] damages must be awarded to every plaintiff who sustains an injury, a plaintiff who substantiates her

4 In *Sofie v. Fibreboard Corporation*, 112 Wn.2d 636, 669, 771 P.2d 711 (1989), the court held that the limit on noneconomic damages in RCW 4.56.250 is unconstitutional. This does not affect definitions contained within that provision. See *Segura v. Cabrera*, 184 Wn.2d 587, 596 n.4, 362 P.3d 1278 (2015) (Gordon McCloud, J., concurring) (citing RCW 4.56.250(1)(b) for definitional purposes). pain and suffering with evidence is entitled to [noneconomic] damages *Palmer*,



Avi Taylor, Appellant V. Mirina Stone, Respondent

2022 | Cited 0 times | Court of Appeals of Washington | May 2, 2022

132 Wn.2d at 201; *Estes v. Bevan*, 64 Wn.2d 869, 871, 395 P.2d 44 (1964) The determination of the proper amount of [noneconomic] damages which reasonably compensate a party for his personal injuries is a difficult question. There is no precise formula for making an award of such damages . If damages are within the range of evidence, they will not be disturbed. *Wooldridge v. Woolett*, 96 Wn.2d 659, 668, 638 P.2d 566 (1981).

her for the various types of noneconomic damages she suffered. But the trial planning events, and working to launch her company. She testified that it is too painful now to garden, she is often too tired to socialize and she suffered too much pain t witnesses testified that she needed help with her business because she was in too much pain and did a preponderance of evidence that she was injured and suffered damages as a proximate cause addressed damages.

Taylor has not cited any authority to suggest that the trial court was required to itemize her award by amount and type of noneconomic damage.

Relying on *State v. Ashcraft*, 71 Wn. App. 444, 859 P.2d 60 (1993) and *State v. Atkinson*, 113 Wn. App. 661, 54 P.3d 702 (2002), Taylor claims that she is entitled to recover damages specifically for disfigurement. Her reliance is misplaced. *Ashcraft* and *Atkinson* are criminal cases where the defendants were



Avi Taylor, Appellant V. Mirina Stone, Respondent

2022 | Cited 0 times | Court of Appeals of Washington | May 2, 2022

convicted of second degree assault under RCW 9A.36.021(1)(a) and the State had the burden of proving substantial bodily harm. Neither case applies to this civil action for personal injury damages.

Citing *Parris v. Johnson*, 3 Wn. App. 853, 859-60, 479 P.2d 91 (1970), for constitute[s] a disability disabled as a result of this collision. Then she points to *Kirk v. Washington State University*, 109 Wn.2d 448, 461, 746 P.2d 285 (1987), r]ecover for disability pointing to activities or interest an injured person will no longer be able to enjoy. While both *Parris* and *Kirk* say disability damages are recoverable, they do not require that such damages be delineated as subparts of a noneconomic damages award. Here, the fact remains that the trial court considered activity limitations in its award.

Next, though she alleges that the trial court failed to award her damages for mental and emotional anguish, Taylor argues for damages in her brief based on a negligent infliction of emotional distress (NIED) claim. But she neither asserted a NIED claim in her complaint nor argued for recovery for such damages at trial. The trial court did not err by refusing to award damages that Taylor never sought. In sum, Taylor fails to establish that the award of damages was outside the range of the evidence presented at trial. She has not presented a basis for appellate relief as to her noneconomic damages claims.

Economic Damages



Avi Taylor, Appellant V. Mirina Stone, Respondent

2022 | Cited 0 times | Court of Appeals of Washington | May 2, 2022

Next, Taylor says that the trial court erred by failing to award any economic damages. Economic damages are objectively verifiable monetary losses. RCW 4.56.250(1)(a). 5

Here, unfortunately, the medical bills did not end

up getting admitted are awardable for medical

expenses that are reasonably certain to be necessary in the future Stevens v.

Gordon, 118 Wn. App. 43, 55, 74 P.3d 653 (2003) (citing Leak v. United States

Rubber Company, 9 Wn. App. 98, 103, 511 P.2d 88 (1973)), Taylor failed to

present any exhibits or testimony as to her future need for medical treatment and

costs of such treatment. Based on Taylor verifiable proof of her past and future medical costs, the trial court correctly

declined to award damages for medical expenses.

Taylor also failed to establish a factual basis to recover any past or future

lost wages, lost profits, or lost earning capacity. And though she testified about

potentially earning \$3,000.00 and up to \$4,000.00 per month while operating

Northwest Wonderland, Taylor also testified that she never mentioned operating

5 medical expenses, loss of earnings, burial costs, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, loss of employment, and loss of business or employment opportunities RCW 4.56.250(1)(a). Northwest Wonderland at her deposition

account for it And

even though she was in pain as a result of this collision, Taylor conceded that

marketing [her] products, delivering [her] products, advertising [her] products



Avi Taylor, Appellant V. Mirina Stone, Respondent

2022 | Cited 0 times | Court of Appeals of Washington | May 2, 2022

until she shut the business down. The trial court credibility as to her economic damages claim and we will not disturb that

determination on appeal. Accordingly, we cannot say that it was error for the trial

court to conclude that no economic damages should be awarded based on

were proximately caused by this

collision.

Post-Trial Motions

Finally, Taylor asserts that the trial court erred by denying her post-trial

motion for partial new trial, and motion to amend findings of fact and conclusions

of law. Taylor did not appeal from the order denying her post-trial motions, so it

is not properly before us on review. RAP 5.3(a); *In re Marriage of Grigsby*, 112

Wn. App. 1, 17, 57 P.3d 1166 (2002).

Appellate Costs

Stone requests costs on appeal. Her request should be directed to the

commissioner or court clerk pursuant to RAP 14.2, which A

commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its

decision terminating review.

Affirmed.

WE CONCUR:

