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NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-04273-11T4

MICHAEL MARRANCA,
Plaintiff-Appellant,

v.

VALERY LOYTSKER,
Defendant-Respondent.

Submitted November 16, 2015 – Decided August
8, 2016

Before Judges Messano and Sumners.

On appeal from Superior Court of New Jersey, Law
Division, Middlesex County, Docket No. L-9287-
09.

Michael Marranca, appellant pro se.

Hoagland, Longo, Moran, Dunst & Doukas, LLP,
attorney for respondent (Jeffrey J. Czuba, on the
brief).

PER CURIAM

Plaintiff Michael Marranca appeals the Law Divi-
sion's order denying his motion for a new trial on dam-
ages after the jury verdict declining to award damages.
We affirm.

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I.

Marranca alleged that he sustained permanent injuries as a result of an automobile accident caused by defendant Valery Loytsker on November 13, 2007. Following the trial conducted February 16, 21, 22, and 23, 2012, the jury determined that Loytsker was eighty percent negligent with Marranca being twenty percent negligent. However, the jury did not award any damages based upon the determination that Marranca failed to prove by a preponderance of the evidence that he sustained a permanent injury proximately caused by the accident, as required by the verbal threshold, N.J.S.A. 39:6A-8(a).

During the trial, Marranca testified he continued to have pain in his neck, back, and knees due to the 2007 accident. Dr. Alan Epstein, a licensed chiropractor, treated Marranca for fifteen months following the accident, and rendered his opinion that the injuries to Marranca's neck, back, and knees were permanent. Dr. Epstein testified that his diagnosis was supported by: objective findings of muscle spasms indicating disc herniations in the neck and lower back; an x-ray of the cervical spine revealing a compression fracture; an MRI of the cervical spine revealing five disc herniations, with four impinging on the spinal cord; an MRI of lumbar spine revealing two herniations, with one pressing on the anterior thecal sac; an MRI of both knees revealing meniscus tears; and x-rays of the lumbar and thoracic spine indicating mild scoliosis. Dr. Epstein also acknowledged that he treated Marranca for

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similar injuries when he was involved in a January 2011 automobile accident.

In 1996, Marranca had sustained neck, lower back, and knee injuries from an automobile accident. Records of his chiropractor, Dr. Robert R. Weber, documented that Marranca was treated for neck, knee, and back pain. However, Marranca testified that Dr. Weber never treated or manipulated his neck or his knees.

In 1998, Marranca had arthroscopic surgery on both knees performed by Dr. Albert B. Thrower. According to Dr. Thrower's records, Marranca continued to complain of pain in his knee, neck, and lower back a year and half after the surgery and his injuries to his knees were "likely to remain with him on a permanent basis."

Plaintiff also presented the expert testimony of orthopedic surgeon Dr. Steven Nehmer, who examined Marranca and reviewed his medical records. Dr. Nehmer agreed with Dr. Epstein that Marranca's neck and back herniations were permanent injuries caused by the 2007 accident. However, Dr. Nehmer was unaware that Marranca was treated for similar injuries in a 1996 automobile accident. He also opined that Marranca's torn meniscus in both knees were due to the 2007 accident, because they were not torn when plaintiff had his knee surgery in 1998. According to Dr. Nehmer, his examination of Marranca revealed full range of motion in his neck, lumbar region, and both knees, as well as no evidence of muscle spasm in his neck or lumbar region.

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In opposition, defense medical expert, Dr. Steven H. Fried, opined that based upon his examination of Marranca and review of Marranca's medical records, Marranca did not sustain permanent injuries caused by the 2007 accident. Yet, similar to Dr. Nehmer, Dr. Fried's examination of Marranca evidenced a full range of motion in the neck, lumbar region, and both knees, and no muscle spasm in the neck or lumbar region. Dr. Fried contended that Marranca's injuries from the accident had temporary soft-tissue sprains and strains. He stated that the disc herniations in Marranca's neck and back were caused by degeneration due to the aging process. He also believed that the MRI of Marranca's knees showed degeneration and that there were no tears due to the accident. Finally, Dr. Fried maintained it was totally improbable that Marranca sustained injuries to his neck, back, and knees from trauma caused by the accident, because he refused medical treatment at the scene and waited six days to seek medical help for relief from the pain.

During the jury charge conference, Marranca's counsel requested that trial judge Heidi Willis Currier give the *Model Jury Charge (Civil)*, 8.11F, "Aggravation of the Preexisting Disability" (1997).¹ Judge Currier denied the request based upon her assessment that there was no expert testimony that Marranca had

¹ In the trial court proceedings, the charge was inaccurately referred to as aggravation of pre-existing condition. We use the proper model charge terminology.

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a pre-existing condition. As noted, the jury did not award Marranca any damages.

Approximately a week after the trial, Marranca filed a pro se motion for a new trial on damages, claiming that the jury's verdict was against the weight of the evidence.² At the conclusion of argument, Judge Currier issued an oral decision denying the motion and subsequently issued an order memorializing her decision.

In deciding the motion, Judge Currier applied *Jastram v. Kruse*, 197 N.J. 216 (2008), and viewed the evidence in the light most favorable to Loytsker, the party opposing the motion. She found that Marranca "underwent approximately a year of treatment" for the 2007 accident, resuming treatment once again after a subsequent accident in 2011 which injured the same body parts as the 2007 accident; that there was no testimony as to any impact Marranca's claimed injury had on his daily life nor testimony as to the projected impact on his future; and that Marranca had a credibility issue because he did not tell Dr. Nehmer about his injuries from a 1996 accident. Consequently, Judge Currier did not find the jury verdict was against the weight of the evidence or otherwise warranted a new trial.

In considering Marranca's claim that a new trial was warranted because the jury had not received the aggravation of a pre-existing disability charge, Judge

² Prior to the filing of this motion, plaintiff had been represented by counsel.

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Currier found that there was no testimony to warrant the charge. She repeated the comments made when she initially denied the charge request: that neither of Marranca's experts testified that Marranca had an aggravation of a pre-existing condition, and that defense expert Dr. Fried testified only that Marranca suffered from degenerative disc ailment and temporary strain and sprain of the neck, back, and knees resulting from the accident at issue. In addition, the judge recalled that Dr. Fried specifically stated that he did not think the 2007 accident aggravated a preexisting condition.

II.

In this pro se appeal, Marranca contends that the trial court abused its discretion by not granting his motion for a new trial, thereby upholding a verdict that was against the weight of the evidence. He asserts that the trial judge erred in not giving the jury charge on aggravation of a pre-existing disability. Marranca contends that Dr. Nehmer's report erroneously states that Marranca denied a prior history of neck or back injury. He argues that Dr. Fried did not testify in an honest, fair and impartial manner. Lastly, Marranca contends that his trial counsel committed plain error when he did not address defense counsel's attack on Marranca's credibility based on Dr. Nehmer's false testimony that Marranca did not inform Dr. Nehmer about his injuries from the 1996 accident.

Having considered Marranca's arguments, we affirm substantially for the sound reasons expressed in

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Judge Currier's oral decision. We amplify her decision with the following comments.

We begin with the well-established fundamental principle that jury trials are the cornerstone of our civil jurisprudence and that the fact-finding functions of a jury deserve a high degree of respect and judicial deference. *See, e.g., Lockley v. Turner*, 344 N.J. Super. 1, 13 (App. Div. 2001), *modified and affirmed*, 177 N.J. 413 (2003). In terms of its assessment of the relative strength of the proofs, a jury verdict is "impregnable unless so distorted and wrong, in the objective and articulated view of a judge, as to manifest with utmost certainty a plain miscarriage of justice." *Doe v. Arts*, 360 N.J. Super. 492, 502-03 (App. Div. 2003) (quoting *Carrino v. Novotny*, 78 N.J. 355, 360 (1979)).

Denial of a motion for a new trial "shall not be reversed unless it clearly appears that there was a miscarriage of justice under the law." R. 2:10-1; *See also* R. 4:49-1(a). On appellate review, we must provide "due deference" to the trial court's 'feel of the case,' with regard to the assessment of intangibles, such as witness credibility." *Jastram, supra*, 197 N.J. at 230 (quoting *Feldman v. Lederle Labs.*, 97 N.J. 429, 463 (1984)). In reviewing a trial judge's decision on a motion for a new trial, we view the evidence in a light most favorable to the party opposing the new trial motion. *Caldwell v. Haynes*, 136 N.J. 422, 432 (1994).

With these principles in mind, we are satisfied that the evidence was such that the jury could reasonably have found that Marranca failed to establish he

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was permanently injured as a result of the 2007 accident. To recover under the verbal threshold, a plaintiff must prove “[a]n injury shall be considered permanent when the body part or organ, or both, has not healed to function normally and will not heal to function normally with further medical treatment.” N.J.S.A. 39:6A-8(a).

Here, the issue of permanence was disputed at trial with the parties presenting competing expert testimony and evidence on this issue. Marranca’s experts, Drs. Epstein and Nehmer, testified that Marranca had permanent injuries from the 2007 accident based upon objective medical tests. Neither physician rendered an opinion that Marranca had any pre-existing injuries from a 1996 automobile accident that were aggravated or made permanent by the 2007 accident. The defense expert, Dr. Fried, testified that his examination of Marranca and review of Marranca’s medical records, including the objective tests relied upon by Marranca’s experts, showed no permanent injury attributable to the 2007 accident. Simply put, the jury did not believe the testimony of Marranca’s experts. It was within the jury’s province to reject all of, or adopt all of, the testimony of the respective experts. *Amaru v. Stratton*, 209 N.J. Super. 1, 20, (App. Div. 1985) (citation omitted). Accordingly, a reasonable jury could find that Marranca suffered no permanent injuries from the 2007 accident as required by N.J.S.A. 39:6A-8(a).

There is no merit to Marranca’s argument that Judge Currier erred in not giving the jury instruction on aggravation of pre-existing disability. First of all,

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Marranca's argument is belied by his submission to this court that he "did not have any pre[-]existing neck and back conditions," and that his injuries were resolved in 1999. There was also no testimony by any expert that Marranca had a pre-existing injury that was made permanent, or an aggravation of a pre-existing permanent injury, as a result of the 2007 accident. Further, Marranca did not present any comparative medical analysis evidence that a portion of his injury was caused by aggravation of the preexisting injury. See *Polk v. Daconceicao*, 268 N.J. Super. 568, 575 (App. Div. 1993) ("A diagnosis of aggravation of a pre-existing injury or condition must be based upon . . . an evaluation of the medical records of the patient prior to the trauma with the objective medical evidence existent post trauma.").

As for Marranca's remaining contentions, they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Accordingly, we are convinced that denial of Marranca's motion for a new trial was appropriate.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

[Illegible]

CLERK OF THE APPELLATE DIVISION

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FILED, Clerk of the Appellate Division, November 10, 2016, A-004273-11

ORDER ON MOTION

MICHAEL MARRANCA SUPERIOR COURT
V. OF NEW JERSEY
VALERY LOYTSKER APPELLATE DIVISION
DOCKET NO.
A-004273-11T4
MOTION NO.
M-009455-15
BEFORE PART E
JUDGE(S)
CARMEN MESSANO
THOMAS W. SUMNERS
JR

MOTION FILED: BY:
08/23/2016 MICHAEL MARRANCA

ANSWER(S)
FILED:

SUBMITTED TO COURT: October 31, 2016

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 9th day of November, 2016, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR RECONSIDERATION DENIED

SUPPLEMENTAL:

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FOR THE COURT:

/s/ Carmen Messano
CARMEN MESSANO, P.J.A.D.

L-009287-09 MIDDLESEX
ORDER – REGULAR MOTION

[Illegible]

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**AIELLO, HARRIS, MARTH, TUNNERO,
PASTOR & SCHIFFMAN, P.C.
501 WATCHUNG AVENUE
WATCHUNG, NEW JERSEY 07069
(908) 561-5577
ATTORNEYS FOR PLAINTIFF**

MICHAEL MARRANCA,
Plaintiff,
v.
VALERY LOYTSKER,
et al
Defendants.

SUPERIOR COURT
OF NEW JERSEY
LAW DIVISION:
MIDDLESEX COUNTY
DOCKET NO.:
MID-L-9287-09
Civil Action

**ORDER FOR A
NEW TRIAL**

(Filed Mar. 30, 2012)

THIS MATTER having been brought before the Court by counsel for Plaintiff Michael Marranca, Aiello, Harris, Marth, Tunnero, Pastor & Schiffman, P.C. (Frank Tunnero, Esq., appearing) [oral argument of counsel] and for good cause having been shown and the papers having been considered:

IT IS ON THIS 30th day of March, 2012:

ORDERED that the jury verdict of February 23, 2012 rendered on the issue of damages be and is hereby vacated; and it is further [denied]

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ORDERED that plaintiff's motion for a new trial on the issue of damages be granted; and it is further [denied]

ORDERED that a copy of the within order be served on all parties within ~~ten (10)~~ [7] days from the date hereof.

X OPPOSED

 UNOPPOSED

/s/ Heidi W. Currier
J.S.C.
HEIDI WILLIS CURRIER, J.S.C.

FOR REASONS SET FORTH
ON THE RECORD ON 3/30/12

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SUPREME COURT
OF NEW JERSEY
C-794 September Term 2016
078703

MICHAEL MARRANCA,
PLAINTIFF-PETITIONER, ON PETITION FOR
V. CERTIFICATION
VALERY LOYTSKER, (Filed May 10, 2017)
DEFENDANT-RESPONDENT.

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-004273-11 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 5th day of May, 2017.

/s/ Mark Neary
CLERK OF THE
SUPREME COURT

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SUPREME COURT OF NEW JERSEY

M-105/106/107

September Term 2017

078703

MICHAEL MARRANCA,
PLAINTIFF-MOVANT,

V.

VALERY LOYTSKER,
DEFENDANT.

ORDER

(Filed Sep. 22, 2017)

It is ORDERED that the motions for leave to file a motion for reconsideration as within time (M-105) and file an overlength brief (M-106) are granted; and it is further

ORDERED that the motion for reconsideration of the Court's order denying the petition for certification (M-107) is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 19th day of September, 2017.

/s/ Mark Neary
CLERK OF THE
SUPREME COURT
