

# IN THE SUPREME COURT OF TEXAS

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No. 13-0978

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JLG TRUCKING, LLC, PETITIONER,

v.

LAUREN R. GARZA, RESPONDENT

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ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS

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**Argued February 26, 2015**

JUSTICE LEHRMANN delivered the opinion of the Court.

This case requires us to review the trial court's exclusion of evidence on relevance grounds. The plaintiff was involved in two car accidents approximately three months apart. After the second accident, she sued the opposing driver in the first accident and alleged that this collision caused her injuries. The defendant sought to present two alternative defensive theories. First, the defendant presented expert testimony that the plaintiff's injuries were degenerative and thus not trauma-related at all. Alternatively, the defendant contended that the second accident caused her injuries. On the plaintiff's pretrial request, and because of the lack of expert testimony supporting the defendant's alternative theory, the trial court excluded all evidence of the second accident on relevance grounds. The trial court rendered judgment on the jury's verdict for the plaintiff, and the court of appeals

affirmed. We hold that evidence of the second accident was relevant to the central issue of whether the defendant's negligence caused the plaintiff's damages. We further hold that the trial court committed harmful error in excluding the evidence, and particularly in refusing to allow cross-examination of the plaintiff's expert on the subject. Accordingly, we reverse the court of appeals' judgment and remand the case for a new trial.

### **I. Background**

On July 16, 2008, Lauren Garza was traveling south on U.S. Highway 83 in Zapata County when an 18-wheeler driven by a JLG Trucking, LLC employee rear-ended her truck. An ambulance was called to the scene but did not transport Garza to the hospital. Instead, Garza testified that her aunt took her to a nearby emergency clinic where x-rays were taken, although the record contains no medical records from the clinic regarding that visit. Five days later Garza saw an orthopedic surgeon, Dr. Guillermo Pechero, complaining of neck and back pain. An x-ray showed some straightening of the lordotic curve, which Dr. Pechero concluded was associated with muscle spasms in the neck. Dr. Pechero prescribed physical therapy, which Garza underwent for roughly eleven weeks.

On October 9, 2008, shortly after ceasing physical therapy, Garza was involved in a second car accident. She was taken by ambulance from the scene of the accident to a hospital on an immobilization board with a hard collar to prevent movement in her neck. At the hospital, Garza complained of pain in her head, neck, and chest. On October 31, Garza returned to Dr. Pechero for a follow-up visit, complaining of continuous pain in her neck that radiated into her shoulders. Dr. Pechero ordered an MRI, which revealed that Garza had two herniated discs in her neck. Dr.

Pechero began a conservative treatment of primarily medication in hopes of avoiding surgery, but a March 2009 nerve study revealed that a nerve at the site of the herniations had become compressed, and a second MRI in August 2011 showed two additional herniated discs in her neck. Garza underwent spinal fusion surgery in January 2012. The surgery was successful, and at the time of trial Garza was “doing well.” However, Garza lives with a scar on her neck, reduced neck mobility, the permanent presence of hardware from the surgery, and the possibility of future surgery.

Garza sued JLG, alleging that the employee driver’s negligence proximately caused her injuries and seeking damages for past and future medical expenses, loss of earning capacity, physical pain, mental anguish, physical impairment, and disfigurement.<sup>1</sup> Garza’s treating physician, Dr. Pechero, served as her expert witness to testify that the July 2008 accident caused the herniated discs. JLG designated Dr. Bruce Berberian, a neuroradiologist, as its expert witness to testify that Garza was suffering from degeneration of her discs, and not a trauma-related injury at all. JLG also intended to introduce evidence of the October accident as an alternative cause of Garza’s injuries, although JLG did not designate an expert to testify in support of that theory.

Garza filed a pretrial motion to exclude any evidence of the second accident on the grounds that such evidence was not relevant, or that its probative value was substantially outweighed by the unfair prejudice or confusion it would cause the jury, because “there is no causal connection between the injuries [Garza] is complaining of and the subsequent collision.” After a hearing, the trial court granted Garza’s motion to exclude.

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<sup>1</sup> Garza named the employee as a defendant, but it appears that he was never served with citation. Garza also asserted claims against JLG for negligent entrustment and gross negligence, but those claims were not submitted to the jury.

Dr. Pechero testified by deposition at trial that the July accident caused Garza's injuries. He noted that Garza exhibited neck pain after that accident and that the October MRI revealed injuries consistent with a rear-end collision. One portion of the deposition played to the jury contained the following exchange between Dr. Pechero and Garza's counsel:

Q. Now, up to this point in the treatment of her you took a history, correct?

A. Correct.

Q. And Lauren indicated to you that she had not had any or been involved in any other accidents other than the one from July -- July 16th of 2008; is that correct?

A. I don't think I asked her one way or the other on that.

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Q. Well, you took a history, correct?

A. Correct.

Q. All right. And let's take a look at the July 21st note real quick.

A. Okay. Are you referring to the October note, or the July note?

Q. The July note.

A. Oh, okay. In the July note, she did not have any other history of injury.

Taking the position that this testimony opened the door to questions concerning the second accident, JLG renewed its objection to the exclusion of all mention or evidence of that accident. The trial court upheld its earlier exclusion ruling, and JLG submitted an offer of proof as to the testimony that would have been elicited from Dr. Pechero and the evidence that would have been presented in

support of the second accident as an alternative cause. JLG’s offer of proof included the police report regarding the second accident, photos of Garza’s vehicle after the second accident, medical records documenting Garza’s emergency treatment after that accident, and Dr. Pechero’s testimony that he had not reviewed those medical records. Garza responded with an offer of proof consisting of Dr. Pechero’s testimony that he had relied on Dr. Berberian’s testimony that the second accident did not cause Garza’s injuries to rule out that possibility. The jury found that JLG’s employee’s negligence proximately caused the July accident and awarded her \$1,166,264.48 in damages.<sup>2</sup>

JLG appealed the trial court’s judgment on the verdict, arguing that evidence of the second accident was relevant and that its exclusion amounted to harmful error because it prevented JLG from holding Garza to her burden of proving that JLG caused her injuries. The court of appeals affirmed, holding that the trial court did not abuse its discretion in excluding evidence of the second accident because “expert testimony would be required to establish any . . . causal link between the second collision and Garza’s injuries.” \_\_ S.W.3d \_\_, \_\_ (Tex. App.—San Antonio 2013).

## II. Analysis

We review a trial court’s exclusion of evidence for an abuse of discretion. *Interstate Northborough P’ship v. State*, 66 S.W.3d 213, 220 (Tex. 2001). Erroneous exclusion of evidence is reversible only if it probably resulted in an improper judgment. *Id.*; TEX. R. APP. P. 44.1(a)(1).

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<sup>2</sup> The jury awarded \$108,135.48 for past medical expenses, \$110,000.00 for future medical expenses, \$583,693.00 for future loss of earning capacity, \$42,048.00 for past physical pain, \$252,288.00 for future physical pain, \$5,000.00 for past physical impairment, \$57,600.00 for future physical impairment, and \$7,500.00 for future disfigurement. The jury awarded \$0 for past loss of earning capacity, past and future mental anguish, and past disfigurement.

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