

[Cite as *Baxter v. Ohio Dept. of Transp.*, 2003-Ohio-7120.]

IN THE COURT OF CLAIMS OF OHIO

MARGARET ILENE BAXTER, et al. :

Plaintiffs : CASE NO. 2000-08681

v. : Judge J. Warren Bettis

: DECISION

OHIO DEPARTMENT OF :
TRANSPORTATION, et al. :

Defendants :

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{¶1} On April 10, 2002, this court issued a decision and judgment entry in favor of plaintiffs in the amount of \$104,106.91. On December 19, 2002, the court of appeals reversed the judgment of this court and remanded the case for further proceedings, stating in relevant part:

{¶2} "*** to the extent the trial court disregarded Dr. Granacher's testimony and opinions as a whole, due to his opinion on the SPECT scan results and any contrary testimony, this was against the manifest weight of the evidence. The evidence from all the experts as to the SPECT scan in general and the specific results here confirm Dr. Granacher's opinions. Thus, the trial court erred to the extent it concluded that Dr. Granacher's opinions were unpersuasive. ***

{¶3} "In summary, no witness testified that Patricia BaxterMoore's condition, including her depression, would significantly improve even with treatment. The one witness who opined that Patricia could obtain some relief, return to daily activities and return to 'very limited' part-time work, said so

only if Patricia received 'aggressive' and 'extensive' treatment. Given this evidence, at the very least, future economic damages should have been awarded to provide for such treatment and for appellants' economic needs while Mrs. BaxterMoore attempts such treatment. In making such award, it should also be kept in mind that no witness testified that Patricia BaxterMoore can be totally or even significantly cured. ***

{¶4} "A re-determination of damages must not only include future economic damages to account for the aggressive and extensive treatment needed by Mrs. BaxterMoore, but must include the factor that Mrs. BaxterMoore will never fully recover, even with such treatment. There was ample evidence, especially the testimony and report of Jack M. Sink, Ed.D., from which to make such award(s).

{¶5} "We also note that because there will be a re-determination of damages to include future economic damages and given the extent of Mrs. BaxterMoore's injuries and her poor prognosis, the trial court must also re-determine the amounts awarded to her family in their loss of consortium claims and the amount awarded Mrs. BaxterMoore for her non-economic damages." *Baxter v. Ohio Dept. of Transp.*, Franklin App. No. 02AP-537, 2002-Ohio-7023, paragraphs 37, 55-57.

{¶6} On April 16, 2003, this court conducted a new trial on the issue of damages. In accordance with the judgment of the Court of Appeals and based upon the evidence presented at trial, this court finds that the testimony of Dr. Granacher was persuasive in establishing both that plaintiff¹ has suffered permanent injury

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The term "plaintiff" shall be used to refer to Patricia BaxterMoore throughout this decision.

which resulted in attention and memory deficits and that she has suffered a progressively-worsening mood disorder (depression) as a result of the injuries she sustained on October 7, 1998. The court further finds that plaintiff is entitled to future economic damages in order that she may obtain long-term treatment.

{¶7} However, the court also finds that the amount of plaintiffs' request for damages is too speculative to be granted in its entirety. The expert testimony of William T. Baldwin, Ph.D., was presented for the proposition that plaintiff's future work loss would amount to \$1,152,337. Evidence was presented that: plaintiff's family business, Omni Solutions, began operations in 1997 and showed a net loss of \$6,725 for that year; in 1998, Omni Solutions earned a net income of \$23,599; after the accident, Omni Solutions went out of business; and plaintiff had taken some college courses before the accident but had not completed a degree.

Based upon these facts, the court finds that it is unrealistic that plaintiff would incur lost income in the amount of \$54,150 per year as stated in Baldwin's projections. (Plaintiffs' Exhibit 20.)

{¶8} Plaintiff was 37 years old at the time of the accident. Assuming that plaintiff would have worked for an additional 20 years and would have earned \$10,000 per year, she will incur \$200,000 in work loss. In addition, plaintiff is currently receiving and will continue to receive benefits in the amount of \$390 per month from Social Security/Disability,² which constitute a collateral source that must be deducted from any work loss award pursuant to R.C. 2743.02(D). Therefore, the court finds that

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Plaintiff receives assistance from Social Security/Disability because she is legally blind and has a physical deformity of her right hand; both conditions existed prior to the October 7, 1998, motor vehicle accident.

plaintiff is entitled to an award of work loss in the amount of \$106,400.

{¶9} The court finds that plaintiff is also entitled to future economic damages. Plaintiff asserts that she will incur future economic damages, based upon a life expectancy of 77 years, in the amount of \$2,504,111, as calculated in the "Life Care Plan" developed by plaintiff's expert, Jack Sink, Ed.D.³ (Plaintiffs' Exhibit 17.) The expenses include projected medical evaluations, therapeutic services, such as counseling for depression,⁴ ancillary services, medication, and medical supplies. Upon review of the Life Care Plan, the court finds that plaintiff has failed to prove that she would incur the ancillary services listed, including case management services, financial management services and bookkeeping services.⁵

{¶10} The largest expense contained in the Life Care Plan is the cost of a live-in companion, or home health aide, in the amount of \$54,600 per year. Dr. Sink arrived at this figure by calculating in-home assistance at a rate of \$15 per hour for 70 hours per week. However, the court finds that plaintiff would need the services of a home health aide only when her husband is at work. Accordingly, Dr. Sink's estimate should be reduced to 40

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The court notes that the Life Care Plan was calculated for 41 years instead of 40 years. Therefore, the figure will be adjusted to represent 40 years.

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The court notes that the projected therapeutic services for the year 2003 amount to a total of \$5,291 instead of \$5,555 as listed in the summary of costs.

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The court notes that the costs for financial management services and bookkeeping services were not included in the total figure for the Life Care Plan.

hours per week, which amounts to \$31,200 per year. In addition, Dr. Sink calculated "heavy housework/home maintenance" at \$10 per hour for six hours per week, which equals \$3,120 per year. The court finds that plaintiff is not entitled to an award of damages for housework. Therefore, the court concludes that plaintiff is entitled to future economic damages in the amount of \$1,364,229.

{¶11} Pursuant to the directive contained in the decision by the Court of Appeals, the court has also re-evaluated both the noneconomic damages that were previously awarded by this court to plaintiff and the damages that were awarded to her husband and children for loss of consortium. Accordingly, damages shall be awarded in favor of plaintiffs as follows:

{¶12} 1) Property damage in the amount of \$19,081.91;

{¶13} 2) Loss of Patricia BaxterMoore's future income as a result of injuries sustained in the collision in the amount of \$106,400;

{¶14} 3) Future economic damages for projected medical evaluations, therapeutic services such as counseling for depression, medication and medical supplies, and home care in the amount of \$1,364,229;

{¶15} 4) Patricia BaxterMoore's noneconomic damages, including physical pain, anxiety, mental distress, loss of enjoyment of life, inability to perform ordinary activities and physical impairment in the amount of \$35,000;

{¶16} 5) Earl BaxterMoore's loss of spousal consortium, in the amount of \$25,000;

{¶17} 6) Danielle BaxterMoore's loss of parental consortium, in the amount of \$10,000;

{¶18} 7) Agapi BaxterMoore's loss of parental consortium, in the amount of \$10,000.

{¶19} This case was tried to the court on the issue of damages. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is hereby rendered in favor of plaintiffs in the amount of \$1,569,735.91, which includes the \$25 filing fee paid by plaintiffs. Court costs are assessed against defendants. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. WARREN BETTIS
Judge

Entry cc:

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HTS/cmd
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