IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

SHAWN G EVANS, INDIVIDUALLY AND AS GUARDIAN OF JANICE K. EVANS, **PLAINTIFF,** **V.** **ROCKDALE HOSPITAL, LLC D/B/A ROCKDALE MEDICAL CENTER,** **DEFENDANT.**	**CIVIL ACTION** **FILE NO. 13A48465-4**

ORDER

This matter comes before the Court on remand from the Court of Appeals, which directed this Court "to consider in the first instance whether the verdict was void as the result of an inconsistent verdict in light of the framework enunciated in *Evans II*, 306 Ga. at 853 (3), n. 5, and *Anthony*, 288 Ga. at 79." *Evans v. Rockdale Hosp., LLC*, 355 Ga. App. 33, 38 (2020). The parties filed briefs regarding the foregoing issue on August 24, 2020. The Court has reviewed the law and evidence presented in briefs and at oral argument on November 19, 2020.

The Georgia Supreme Court noted:

> The Evanses have expended considerable effort in the lower courts and in this Court asserting that the verdict rendered in this case is inconsistent because it does not comply with the general rule that a damages award for medical expenses necessarily requires damages for pain and suffering. *See, e.g., Bibb County v. Ham*, 110 Ga. 340, 341 (1900) ("[T]he law infers bodily pain and suffering from personal injury[.]" (citation and punctuation omitted)); *Clark v. Wright*, 137 Ga. App. 720, 722 (1) (1976) (same). But inconsistency in a verdict is not the same as inadequacy of a verdict, and the consequences differ for each. In particular, under our precedent, a contradictory verdict is entirely void and requires a new trial, not additur or a retrial on damages alone. *See Anthony*, 288 Ga. at 79 ("In a civil case, a verdict that is contradictory and repugnant is void, and no valid judgment can be entered thereon. A judgment entered on such a verdict will be set aside." (citation and punctuation omitted)). *See also Howell v. Ansley*, 169 Ga. App. 935, 936 (1984) (inconsistent verdicts required new trial where jury returned a defense verdict on pain and suffering in a suit brought by the plaintiff but then, in a second suit

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> presenting the same evidence brought by the plaintiff's father, awarded the plaintiff's father medical expenses).

Rockdale Hosp. LLC v. Evans, 306 Ga. 847, 853 n.5 (2019) (*Evans II*).

Plaintiff argues that, by awarding the amount Plaintiffs had requested for Janice Evans's past medical expenses but zero damages for her future medical expenses, past and future lost wages, and past and future pain and suffering, the jury's verdict was self-contradictory. Plaintiff cites "the general rule that a damages award for medical expenses necessarily requires damages for pain and suffering." Defendant argues that an award of damages for pain and suffering is not necessarily required, even when bodily injury and medical expenses are proven.

The proposition that "[t]he law infers bodily pain and suffering from personal injury" first appeared in *Bibb County v. Ham* as a quote from a treatise discussing pleading and procedure, setting forth which damages must be specially pled. 110 Ga. 340 (1900), citing 1 J.G. Sutherland & John R. Berryman, A Treatise on the Law of Damages § 421 (2d ed. 1893). In *Bibb County*, the Court upheld the trial court's jury charge on the difference between general and special damages, explaining that "a part if not all of the plaintiff's claims came within the class 'general damages,' which are said to include not only the direct expenses incurred by the plaintiff, but the loss of his time, the bodily suffering endured, and any incurable hurt inflicted; *for these may be classed among necessary results*." *Bibb County*, 110 Ga. at 341-342 (emphasis supplied).

In *Coleman v. Dublin Coca-Cola Bottling Co.*, 27 Ga. App. 369, 373 (1933), the Court of Appeals construed the language from *Bibb County*, in addition to evidence of "stomach pains, vomiting of blood, bodily pain, and illness" to hold that a minor plaintiff was entitled to recover for pain and suffering through his next friend. The quotation was again given the weight of evidentiary inference in *Dodson v. Cobb*, in which the Court of Appeals reversed a trial court's directed verdict for the hospital bill only where testimony evinced that the plaintiff's arm had been

cut and bruised. 92 Ga. App. 654 (1955). In *Stover v. Atchley*, the Court of Appeals reiterated the quotation in explaining that general damages include bodily suffering. 189 Ga. App. 56, 57 (1988) (holding that "the jury was authorized to find that the appellee had suffered physical injuries as the result of a violent, physical attack by the appellant" where "[t]here was evidence that the appellee had suffered cuts and bruises on his neck as a result of the attack [but] there was no evidence that he had sustained any hospital or medical expenses or suffered any other type of pecuniary loss as a consequence of the attack.")

In *Cochran v. Lynch*, the trial court directed a verdict for the plaintiff on liability, leaving only the issue of damages for the jury, but the jury returned a defense verdict, completely disregarding the testimony of plaintiff and her doctor. 126 Ga. App. 866, 866-67 (1972). In that case, the Court extended the evidentiary inference to support testimony by the plaintiff and her doctor, holding that the jury was not authorized to return a verdict for the defendant where uncontradicted evidence showed that plaintiff was injured and suffered and the question of liability had been adjudicated against the defendant. *Id*.

Defendant has cited cases in which the Court of Appeals upheld verdicts awarding medical expenses without any award for pain and suffering, to wit, *Salvatore v. Coppinger*, 198 Ga. App. 386 (1991) ("While this may have been the exact sum claimed as special damages [medical expenses and lost wages] . . ., the jury may have reduced either or both of these items. It cannot be said as a matter of law that the jury failed to allow any amount for pain and suffering."); *Ray v. Stinson*, 172 Ga. App. 718 (1984) ("When the rule concerning comparative negligence is involved in a case, the verdict of the jury cannot be set aside on the ground that the amount of the damages awarded is inadequate."); *Barnes v. Cornett*, 134 Ga. App. 120 (1975) (same as *Salvatore*); and

Johnson v. Cook, 123 Ga. App. 302 (1971) ("the jury could and may have awarded a part of the total verdict for special expenses and a part thereof for pain and suffering.").

The Court of Appeals specifically addressed the cases cited by Defendant in *Evans I*, observing that those cases "predate Georgia's present apportionment statute, OCGA § 51-12-33, which was enacted in 2005 and supplanted Georgia's common law comparative negligence regime with a statutory system of 'assigning responsibility for an injury to a plaintiff according to his "fault" under subsections (a) and (g) of the apportionment statute.' *Evans v. Rockdale Hosp. LLC*, 345 Ga. App. 511, 520 (2018). These cases are, in fact, distinguishable because the separate procedure under the apportionment statute precluded the jury in this case from making the reductions supposed by the courts in those earlier analyses.

In addition to the foregoing cases noting that pain and suffering can be inferred from injury, another line of cases invalidates verdicts for inconsistency where claims that are derivative of others (particularly consortium claims) receive inconsistent awards:

> There is a line of cases from [the Court of Appeals] in which the husband and wife combine their actions for trial and the spouse who was involved in the accident recovers damages from the defendant but the other spouse does not recover anything, or recovers only part of the proved damages. This court has reversed the judgment against the nonrecovering party because of "inconsistent verdicts from the same jury."

Jordan v. Ellis, 148 Ga. App. 286, 288-289 (1978), *citing White v. Hammond*, 129 Ga. App. 408, 412; *Smith v. Tri-State Culvert Mfg. Co.*, 126 Ga. App. 508; *Jarrett v. Parker*, 135 Ga. App. 195 (217 SE2d 337); *Clark v. Wright*, 137 Ga. App. 720 (224 SE2d 825); *Burnett v. Doster*, 144 Ga. App. 443 (2) (241 SE2d 319); and 66 ALR3d 472. One spouse's right of action for the loss of the other's society or consortium is a derivative one, stemming from the right of the other. *Hightower v. Landrum*, 109 Ga. App. 510, 514 (1964).

In *Howell v. Ansley*, the jury returned a 3-part verdict, finding (1) in favor of defendant on compensatory damages, (2) in favor of plaintiff for punitive damages, and (3) in favor of plaintiff's father for medicals. 169 Ga. App. 935 (1984). The Court of Appeals held that the defense verdict against plaintiff necessarily precluded damages on derivative claims and that inconsistency required a new trial. *Id.*

In light of the foregoing authority, the Court finds that the verdict rendered by the jury in this matter is contradictory both because Shawn Evans's consortium claim is derivative of Janice Evans's compensatory claims and because the jury's failure to award pain and suffering is inconsistent with its award for part medical expenses. Accordingly,

IT IS HEREBY ORDERED that the judgment in this case be **SET ASIDE**.

SO ORDERED, this 3rd day of December, 2020.

Johnny Panos

JOHNNY N. PANOS, JUDGE
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