IN THE COURT OF APPEALS OF TENNESSEE

AT KNOXVILLE

MELISSA D. BOYE,) C/A NO. 03A01-9812-CV-00424
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Plaintiff-Appellee,)
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v.) APPEAL AS OF RIGHT
FROM THE
) ANDERSON COUNTY CIRCUIT COURT
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JOHN HOLLIS MOORE, JR.,)
) HONORABLE JAMES B. SCOTT, JR.,
Defendant-Appellant.) JUDGE

For Appellant

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For Appellee

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O P I N I O N

AFFIRMED AND REMANDED

Susano, J.

Melissa D. Boye ("Boye") filed this personal injury action against John Hollis Moore, Jr. ("Moore") seeking damages for a permanent brain injury that -- she claims -- resulted from a motor vehicle accident caused by Moore. The defendant admitted liability for the accident, and the court below conducted a bench trial on the issue of damages. At the conclusion of the trial, the court below found that Boye's expert medical testimony sufficiently established causation and the existence of a significant, permanent brain injury, and awarded Boye compensatory damages of $219,000. Moore appeals, raising the following issues for our consideration:

1. Did the expert medical testimony adduced at trial sufficiently establish that Boye sustained a significant, permanent brain injury as a result of the automobile accident with Moore?

2. Was the trial court's judgment improperly affected by considerations not in evidence and was the judgment a result of passion, prejudice, or caprice?

Boye raises the additional issue of whether she is entitled to damages for a frivolous appeal pursuant to T.C.A. § 27-1-122.

I. Facts

On Friday, October 28, 1994, 16-year-old Melissa Boye was driving home in a Ford Explorer. While stopped in a line of traffic, Boye's vehicle was struck from behind by a vehicle driven by Moore. The force of the collision caused a chain reaction: Boye's vehicle was forced into the automobile in front of it, and that vehicle, in turn, was pushed into the vehicle in front of it. As a result of the impact, Boye's head struck some part of the inside of her vehicle. At the time, Boye did not feel she was

seriously injured. Her only manifestations of injury were neck pain and a bump on the right side of her head immediately behind the hairline.

Boye's father, Dr. Harry Boye ("Dr. Boye"), who is also her physician, examined Boye on the day of the accident. His examination revealed cervical spasms and a possible concussion. Dr. Boye, a general surgeon, phoned a neurosurgeon, Dr. William Reid ("Dr. Reid"), and arranged for his daughter to see him the following Monday. Since Dr. Boye found no indication of a significant brain injury, he limited the information he conveyed to Dr. Reid to his daughter's possible cervical injury. Dr. Reid's subsequent evaluation revealed no broken bones, but did indicate mild decreased range of motion of the cervical spine. Boye's neck was free of symptoms in two to three months.

A few weeks after the accident, Boye began to experience dizziness and problems with her vision. In January, 1995, she fell, chipped her tooth, and completely lost control of her body. Boye attributed this incident to "female problems" and simply told her father that she had fallen.

In March, 1995, while at work, Boye experienced an incident during which she completely lost her vision, felt "tingly", and vomited several times. Subsequently, these types of incidents increased in frequency and severity and were usually at their worst when Boye was " stressed out" or during menstruation.

On September 11, 1996, Boye experienced a grand mal seizure[1] while attending a biology class at the University of Tennessee. The

seizure began with Boye suddenly feeling hot, queasy and light-headed. She was taken to the bathroom, an event she does not recall. She does remember being able to see and hear, yet being unable to control her body's convulsions. Boye recovered and then experienced another seizure approximately ten minutes later.

At the hospital emergency room the same day, a physician ordered a CT brain scan. The CT scan revealed an abnormality in a small area on Boye's right frontal lobe. The physician, who examined the scan at the hospital, opined that the abnormality was of "doubtful clinical significance," and that the abnormality could be attributed to an insignificant clinical finding referred to as "volume averaging or artifact." Volume averaging or artifact refers to an anomaly of the test itself rather than an indication of an abnormality of the brain. The physician also noted that Boye exhibited some weakness on the left side of her body.[2]

The next day, Dr. Berta Bergia ("Dr. Bergia"), a board certified neurologist specializing in adult and child neurology,[3] examined Boye. Dr. Bergia, relying on the CT scan report, the report of left-sided weakness following the seizure, and information conveyed by Boye, concluded that Boye's grand mal seizure was a focal onset seizure. This type of seizure is generally caused by a traumatic event rather than hereditary factors. Dr. Bergia further concluded that Boye's seizures were a result of the head injury she received in the automobile accident in 1994. Dr. Bergia prescribed medication in an attempt to control Boye's seizures and related symptoms.

In the years preceding trial, Boye experienced a variety of

problems relating to her health and education. At one point in the spring of 1998, after Boye stopped taking her medication for approximately a month, she experienced a loss of vision and tingling and accidentally struck her head on a bathroom stall door. She began to take her medication after that event, but, even while medicated, Boye often saw and still sees spots and has headaches. She also feels that she is more easily fatigued and frustrated than before the accident.

In addition to medical difficulties, Boye has also experienced educational problems to some degree. Prior to the accident, Boye was a C to C+ student. After the accident, in her junior year of high school, Boye received three Ds and enrolled in summer school so she could graduate on time. Her senior year, she made a C+ average taking classes such as weight training and drama. In the 1996 academic year, prior to being medicated for her seizures and related problems, Boye registered for several classes at the University of Tennessee, but withdrew from all but one. She received a B in that class, partly based on a paper she authored regarding seizures. In the fall of 1997, after beginning her medication, Boye registered for two classes at Pellissippi State Technical Community College. She dropped one class and received a C in the other. In the spring, she registered for one class and completed the course with an A. In the fall of 1998, Boye registered for and attended five classes while working four hours a night as a telemarketer, but, despite maintaining a B average, she eventually dropped all of her classes.

Boye filed this suit on August 14, 1997 alleging that she sustained permanent injuries as a result of Moore's negligence. In his answer, Moore admitted that his negligence was the proximate cause of the

accident but denied the existence of injury.

II. Medical Testimony

At trial, in addition to testifying on her own behalf, Boye presented the testimony of three witnesses. Dr. Boye testified both in his capacity as the plaintiff's father and in his capacity as her physician. Dr. Bergia and Dr. Eric Engum ("Dr. Engum") testified as expert witnesses.

A. Dr. Boye

Dr. Boye is a general surgeon whose practice includes working with neurologists and neuropsychologists in the treatment of patients with traumatic head injuries resulting in brain dysfunction. Dr. Boye testified that, in his professional opinion, his daughter's epileptic condition resulted from the head injury she received in the automobile accident. He also testified that her epilepsy was a permanent, or at least chronic, condition, and that he did not believe there would be any improvement over time. These answers were given in response to a request to state his opinion with a reasonable degree of medical certainty. He also testified that he would defer to Dr. Bergia's opinion regarding Boye's neurological condition.

B. Dr. Bergia

Dr. Bergia stated that all of her conclusions were given with a reasonable degree of medical certainty. Dr. Bergia's testimony established that she relied on the following information in forming her professional opinion: (1) Boye had had at least one, possibly two seizures, and complained of some dizziness, impairment of vision, and headaches; (2) Boye experienced left-sided weakness following her grand mal seizure; (3) there was no history of seizures in Boye's family; (4) a CT scan taken after her grand mal seizure revealed a possible abnormality on the right frontal lobe of Boye's brain; and (5) Boye had been in an automobile accident, *i.e.*, the accident with Moore, approximately two years prior to her grand mal seizure in which she had sustained a bump on the right side of her head.

In addition to the foregoing facts, Dr. Bergia testified to the following information in her field of expertise: (1) left-sided weakness following a seizure is generally presumed to be caused by an anomaly on the right side of the brain; (2) a CT scan revealing an abnormality on the right frontal lobe tends to confirm this presumption; (3) such a seizure is generally not hereditary but rather a result of trauma; and (4) seizures occurring as a result of a head injury can develop as late as ten years following the injury.

Applying the knowledge she possessed by virtue of her medical expertise to the facts of the instant case, Dr. Bergia concluded that the head injury which Boye suffered in the automobile accident caused a contusion to Boye's brain, which in turn made Boye prone to seizures and thus an epileptic. *She testified that there was "no question" that the seizures were related to the automobile accident.*

Dr. Bergia also testified that her opinion regarding the cause of Boye's seizures was unaffected by the fact that a CT scan, which was taken a year after the first scan, revealed no abnormality. She explained that a negative CT scan does not necessarily establish the absence of an injury. She also opined that even if the subsequent CT scan correctly showed no injury, the first CT scan could still have been properly interpreted as showing a concussion, since the evidence of concussion could have disappeared between the two scans.

Dr. Bergia testified that she could not comment on the permanency of Boye's injury with any certainty. Dr. Bergia's intended

course of treatment was to continue Boye on her medication and to reevaluate her in the future.

C. Dr. Engum

Dr. Engum is a clinical psychologist specializing in clinical neuropsychology. As a neuropsychologist, he evaluates, diagnoses, and treats individuals with various types of brain injuries. On October 16, 1998, Dr. Engum performed a complete neuropsychological evaluation of Boye by administering four tests designed to determine whether she had suffered some degree of cognitive dysfunction.

Dr. Engum first administered a traditional intelligence quotient ("I.Q.") test. Boye scored an overall I.Q. of 104. Boye's verbal I.Q. was 95 and her performance I.Q.[4] was 116.[5] Dr. Engum testified that the normal difference between one's verbal I.Q. and performance I.Q. is five to seven points. A difference of 12 to 15 points, according to Dr. Engum, indicates a significant dysfunction. He concluded that the 21-point difference between Boye's verbal I.Q. and performance I.Q. indicated significant impairment in basic verbal skills, including vocabulary, reasoning and judgment.

The next test Dr. Engum administered was an attention and concentration test. Boye's overall attention quotient ("A.Q.") was 83. Her auditory A.Q. was 71 and her visual A.Q. was 102.[6] Again, Dr. Engum concluded that the large difference between Boye's auditory A.Q. and her visual A.Q. indicated significant impairment.

The third test Dr. Engum administered measured short-term memory. Boye's auditory immediate memory was 105 and her visual immediate memory was 121.[7] Though these scores were "average" and "superior" respectively, Dr. Engum concluded that the 16 point difference between the two indices also indicated significant impairment.

Finally, Dr. Engum administered a personality, emotional and behavioral status test. This test revealed signs of mild depression, increased self-absorption and rumination, as well as an increased distrust towards others.

From these test results, Dr. Engum concluded that Boye had sustained a loss of brain function due to some impairing event. More specifically, Dr. Engum's opinion was that Boye had suffered (1) a reduction in I.Q., especially verbal I.Q.; (2) a reduction in attention and concentration, especially through auditory channels; (3) some reduction of immediate auditory memory; and (4) a reduction in abstract reasoning ability. Dr. Engum testified that these deficiencies impact a person's ability to pay attention to the presentation of information and his or her ability to retain the information presented and to incorporate that information into the brain and to relate it to what the person already knows. Dr. Engum testified that Boye will need to expend more effort to achieve the same result as others and will likely need to attend college part-time rather than full-time as a result.

Dr. Engum was unconcerned that he had no pre-accident test results to compare to the results of the tests he administered. He testified that there was "no way," absent an impairing event, that Boye

could exhibit a 104 overall I.Q. along with an auditory attention quotient of 71. Dr. Engum explained that an attention quotient of 70 is "retarded level" and that, if she had an attention quotient of 71 prior to age 16, her grades "would have been terrible." Dr. Engum conceded, however, that Boye achieving a B average after the accident for a full load of classes while working part-time was inconsistent with his professional opinion.

Finally, Dr. Engum testified that Boye's brain dysfunction could be mitigated to some extent through treatment.

Based on all of the testimony, the trial court concluded that the evidence preponderated in Boye's favor. The court further concluded that a judgment in the amount of $219,000 was reasonable.

III. Standard of Review

In this non-jury case, our review is *de novo* upon the record, with a presumption of correctness as to the trial court's factual determinations, unless the evidence preponderates otherwise. Rule 13(d), T.R.A.P.; ***Union Carbide Corp. v. Huddleston***, 854 S.W.2d 87, 91 (Tenn. 1993); ***Wright v. City of Knoxville***, 898 S.W.2d 177, 181 (Tenn. 1995). The trial court's conclusions of law, however, are accorded no such presumption. ***Campbell v. Florida Steel Corp.***, 919 S.W.2d 26, 35 (Tenn. 1996); ***Presley v. Bennett***, 860 S.W.2d 857, 859 (Tenn. 1993).

Our *de novo* review is also subject to the well-established principle that the trial court is in the best position to assess the credibility of the witnesses; accordingly, such determinations are entitled

to great weight on appeal. ***Massengale v. Massengale***, 915 S.W.2d 818, 819 (Tenn.App. 1995); ***Bowman v. Bowman***, 836 S.W.2d 563, 566 (Tenn.App. 1991). Furthermore, "[e]xpert opinions...are purely advisory in character and the trier of facts may place whatever weight it chooses upon such testimony and may reject it, if it finds that it is inconsistent with the facts in the case or otherwise unreasonable." ***Gibson v. Ferguson***, 562 S.W.2d 188, 189-190 (Tenn. 1976).

IV. Analysis

A. Expert Medical Testimony

The first issue Moore raises on appeal is whether Boye, through expert medical testimony, sufficiently established that she sustained a significant, permanent brain injury as a result of the accident. In finding that the preponderance of the evidence was in favor of Boye, the trial court relied on the medical experts' testimony regarding causation and permanency.

An expert's opinion testimony is admissible if (1) the witness is qualified as an expert by "knowledge, skill, experience, training, or education", and (2) the testimony will "substantially assist the trier of fact to understand the evidence or to determine a fact in issue...." Rule 702, Tenn.R.Evid. "A professional is competent to testify as an expert only as to matters within the limited scope of his or her expertise and licensure." ***Bolton v. CNA Ins. Co.***, 821 S.W.2d 932, 935 (Tenn. 1991). Generally, causation of a medical condition and permanency of an injury must be established by testimony from medical experts. ***Thomas v. Aetna***

Life & Cas. Co., 812 S.W.2d 278, 283 (Tenn. 1991).

To establish causation, a plaintiff must "introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result." ***Lindsey v. Miami Dev. Corp.***, 689 S.W.2d 856, 861 (Tenn. 1985) (quoting W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 41, at 269 (5th ed. 1984)). Hence, an expert's testimony that the defendant 's conduct more likely than not caused the plaintiff's injury is admissible. ***Id.*** at 861-862. Expert testimony that causation is "possible" is inadmissible. ***Id***.

Similarly, an expert's testimony as to the permanency of a plaintiff's injury is admissible if it establishes "that the medical factors that indicate permanency of disability outweigh those to the contrary." ***Johnson v. Midwesco, Inc.***, 801 S.W.2d 804, 806 (Tenn. 1990) (quoting ***Owens Illinois, Inc. v. Lane***, 576 S.W.2d 348, 350 (Tenn. 1978)). Expert testimony merely speculating that a plaintiff's injury is permanent is inadmissible. ***Id***. An expert's opinion "may be reduced to mere conjecture by proof of physical facts completely inconsistent therewith." ***Standard Oil Co. v. Roach***, 94 S.W.2d 63, 70 (Tenn.App. 1935).

A medical expert's opinion may be based upon the reports of others as long as those reports are of a type reasonably relied upon by experts in the field. Rule 703, Tenn.R.Evid.; ***Porter v. Green***, 745 S.W.2d 874, 878 (Tenn.App. 1987). Such reports may include statements concerning the incidents connected with the beginning of the symptoms and the findings of other physicians. ***Porter***, 745 S.W.2d at 878. However, a court must "

disallow testimony in the form of an opinion or inference if the underlying facts or data indicate lack of trustworthiness." Rule 703, Tenn.R.Evid.

"The qualifications, admissibility, relevancy and competency of expert testimony are matters which rest within the sound discretion of the Trial Court which may not be overturned unless the discretion is arbitrarily exercised." ***Buchanan v. Harris***, 902 S.W.2d 941, 945 (Tenn.App. 1995).

Moore argues that the trial court erred in relying on Dr. Bergia's testimony because, according to Moore, it was speculative and did not substantially assist the trier of fact. In support of this argument, Moore refers to Dr. Bergia's testimony that the first CT scan could be interpreted as inconclusive and that the second CT scan was negative. Moore also emphasizes Dr. Bergia's testimony that seizures caused by trauma generally develop within weeks after the trauma rather than years later and that Boye's prognosis was uncertain.

We find and hold that the trial court did not err in relying on Dr. Bergia's testimony as to causation. Dr. Bergia explained that though the abnormality revealed by the first CT scan could have been the result of clinically-insignificant volume averaging or artifact, the presence of an abnormality on the right side tended to confirm her presumption that Boye's seizure followed by left-sided weakness was caused by that right-sided abnormality. Additionally, Dr. Bergia explained that a negative CT scan does not necessarily establish the absence of injury. She also opined that even if the subsequent CT scan was correct in showing no injury, the first CT scan could still have been properly interpreted as

showing a concussion since evidence of the concussion could have disappeared between the two scans. Dr. Bergia also testified that, while seizures caused by head trauma generally develop within weeks after the injury, they can develop as many as ten years later. Finally, Dr. Bergia's uncertainty as to prognosis is not fatal to the plaintiff's case because the trial court did not rely on Dr. Bergia's testimony in its finding that Boye's injury was permanent. We conclude that Dr. Bergia's testimony affords a reasonable basis for the conclusion that the accident more likely than not caused Boye's injury. Accordingly, we hold that the evidence does not preponderate against the trial court's finding that the accident caused Boye's brain injury.

Next, Moore argues that the trial court erred in relying on Dr. Engum's testimony because, so the argument goes, it was speculative and based on evidence lacking in trustworthiness. Moore asserts that Dr. Engum's testimony was speculative because his opinion that Boye has suffered a reduction in brain function as a result of some impairing event is based on tests administered after the accident and that there were no pre-accident test results with which to compare the post-accident results. Moore also notes that Dr. Engum's assertion that Boye could not have had an attention quotient of 71 prior to the accident and still achieve an I.Q. of 104 is inconsistent with Boye's grade history. Finally, Moore argues that Dr. Engum's testimony was based on untrustworthy evidence because Dr. Engum relied on Dr. Bergia's testimony as well as the inconclusive and negative CT scans. He strenuously argues that Dr. Engum was not competent to testify as to the permanency of Boye's condition.

We find and hold that the trial court did not err in relying

on Dr. Engum's testimony as to the extent of Boye's present cognitive function. The tests administered by Dr. Engum are specifically designed to determine whether a patient has suffered a loss of function. They do not depend on a comparison to results of other tests. Dr. Engum testified that these tests are based on the assumption that auditory and visual indices should be within five to seven points of each other. Where the tests reveal large differences between the indices, the tests indicate that something has occurred which has impaired performance. Dr. Engum's opinion that Boye has undergone some impairing event was based on Boye's test results revealing significant differences in her relevant indices. Dr. Engum was competent to administer the subject tests and to interpret the test results with respect to the extent of Boye's present brain dysfunction.

The fact that Boye testified she was taking a full load of college classes while working part-time and making a B average does not render the test results untrustworthy in light of the fact that Boye ultimately dropped all of her classes. Moreover, the fact that Dr. Engum relied on Dr. Bergia's testimony and the CT scans to conclude that the impairing event must have been the accident is not fatal to the plaintiff's claim because the trial court relied on Dr. Bergia -- not Dr. Engum -- on the subject of causation. We conclude that Dr. Engum's testimony affords a reasonable basis for the conclusions reached by him as to the extent of Boye's cognitive dysfunction.

Finally, Moore argues that the court erred in considering Dr. Boye's testimony because of his relationship to Boye and because he is not qualified as an expert in neurology. We disagree. Dr. Boye was competent to testify as to the permanency of his daughter's brain injury. The fact

that he was her father goes to the weight to be given his testimony, and not its admissibility. As a medical doctor with experience dealing with traumatic head injuries, he was competent to express an opinion as to the permanency of his daughter's brain injury.

We recognize that, through skillful cross-examination, Moore's counsel was able to establish facts consistent with his theory of defense; but the medical experts did not waiver from their conclusions with respect to causation and permanency, and Dr. Engum did not repudiate his conclusions with respect to the results of his tests. Certainly, the points made on cross-examination did not render the conclusions of Drs. Bergia, Boye, and Engum inadmissible. The points made by defense counsel went to weight and not admissibility. Their weight is not sufficient to cause us to find that the preponderance of evidence is contrary to the trial court's factual findings.

In summary, Dr. Bergia's testimony established causation; Dr. Boye's testimony furnished the element of permanency; and Dr. Engum, the clinical psychologist, quantified the impact of Boye's brain injury on her cognitive functions.

For the foregoing reasons, we hold that the evidence does not preponderate against the trial court's finding that Boye suffered a permanent brain injury of some magnitude as a result of the accident.

B. Passion, Prejudice or Caprice

The second issue Moore raises on appeal is whether the trial court erred in considering matters not in evidence and whether its judgment was the result of passion, prejudice or caprice. Moore refers to the

following excerpts from the trial court's opinion in arguing that the court below improperly considered subjective elements in rendering a judgment for Boye:

> the process of the brain . . . [is] so complex that it's almost frightening. We all are human beings, we know that human beings, to look, to think, to learn, is so much more important than it used to be.
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> * * *
>
> And I don't want to tear down your [*i.e.*, Boye's] confidence except to say that some people test well, other people don't test well simply because they are not of the chemistry that does well under pressure. You may be one of those, I'd like to think that I am, quite frankly.
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> * * *
>
> And I say that [a judgment in the amount of $219,000 is reasonable in this case] because you have other very positive tests that show you're above average. But this does concern me in that area from a mention of cortex and some of the other things, neuro transmitters, axons, synapses, and all those complicated areas that cause a person to think, and whether they think quickly and whether they're able to react to certain things.

The amount awarded to a personal injury plaintiff is largely within the discretion of the trier of fact. ***Coakley v. Daniels***, 840 S.W.2d 367, 372 (Tenn.App. 1992). The trier of fact's determination is entitled to great weight on appeal and may only be disturbed upon a finding of fraud or corruption or that the award is so excessive as "to indicate passion, prejudice and caprice on the part of the trier of fact." ***Id***. That the trier of fact's decision conveys a degree of emotion does not necessarily indicate that the decision was improperly guided by passion, prejudice or caprice. For example, *see* ***Jenkins v. Commodore Corp. Southern***, 584 S.W.2d 773, 778 (Tenn. 1979) ("It is not every 'passion' or emotion which is tantamount to jury misconduct."). Additionally, a large award alone is insufficient to allow an inference of passion, prejudice, or caprice. *See*

Pitts v. Exxon Corp., 596 S.W.2d 830, 836 (Tenn. 1980), *unrelated point modified by* ***City of Gatlinburg v. Fox***, 962 S.W.2d 479 (Tenn. 1998).

We are of the opinion that the trial court did not err in awarding Boye $219,000 as compensation for her injuries. As previously stated, the record supports the trial court's findings of causation and permanency of a significant brain injury. That the trial court commented on the complexity of the brain and voiced its judgment with a sympathetic tenor does not give rise to a tenable inference of passion, prejudice or caprice. Nor does the amount of the award elevate the trial court's judgment to an impermissible realm. Accordingly, we find that the evidence does not preponderate against the amount of the trial court's award.

C. Frivolous Appeal

Boye argues that Moore's appeal is frivolous. She requests damages, including court costs and attorney's fees incident to the appeal. An award of damages to an appellee on the ground that the appeal is frivolous is governed by T.C.A. § 27-1-122, which provides as follows:

> When it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.

T.C.A. § 27-1-122 (1980).

An appeal is frivolous if it has no reasonable chance of success. ***Bursack v. Wilson***, 982 S.W.2d 341, 345 (Tenn.App. 1998). While

the General Assembly, through enactment of T.C.A. § 27-1-122, clearly intended to discourage frivolous appeals, courts must interpret and apply the statute strictly so as not to discourage legitimate appeals. ***Davis v. Gulf Ins. Group***, 546 S.W.2d 583, 586 (Tenn. 1977).

We are of the opinion that an award of damages for frivolous appeal is inappropriate in this case. While Moore called no experts to contradict the testimony of Boye's experts, we cannot say that Moore's argument that Boye's own witnesses failed to establish causation, permanency, and a significant brain injury had no reasonable chance of success on appeal. Thus, Boye's request for damages in the form of attorney 's fees is denied.

V.

The judgment of the trial court is affirmed. Costs on appeal are taxed to Moore. This case is remanded to the trial court for enforcement of the judgment and collection of costs assessed below, all pursuant to applicable law.

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Charles D. Susano, Jr. J.

CONCUR:

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Houston M. Goddard, P.J.

_____
D. Michael Swiney, J.