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ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-23-117

MELISSA KOPASKA APPELLANT V. PAULA MCNEIL APPELLEE	Opinion Delivered June 5, 2024 APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [NO. 04CV-19-1325] HONORABLE JOHN R. SCOTT, JUDGE AFFIRMED

RAYMOND R. ABRAMSON, Judge

Appellant Melissa Kopaska and appellee Paula McNeil were longtime neighbors and, at one point, friends until their relationship soured to the point of litigation. Following a two-day jury trial, McNeil obtained a verdict against Kopaska for $114,043: $40,363 in compensatory damages and $73,680 in punitive damages.[1] Kopaska timely moved for a new trial or remittitur, arguing that that the jury's award was excessive; the circuit court denied the motion. On appeal, Kopaska challenges an evidentiary ruling made by the circuit court and the circuit court's denial of her motion for a new trial or remittitur. For the following reasons, we affirm.

[1]The Benton County jury also awarded McNeil $151,983 in damages against defendant Britt Houser, but he is not a party to this appeal.

At a jury trial held on March 28 and 29, 2022, the evidence showed that McNeil lived in her childhood home with her husband and three teenage children. When Kopaska moved in next door, they became close friends. In December 2016, Kopaska met Britt Houser and began dating him. Soon thereafter, he moved in with Kopaska, and the problems between the two families arose. McNeil instructed Houser to have no contact with her children. Despite that request, in May 2017, Houser smoked marijuana with the McNeils' then fifteen-year-old son. Police were called on numerous occasions for various reasons, including shots being fired, cat traps being set, and hanging the McNeil family dog from a deer stand.

Over the objection of Kopaska's attorney, McNeil testified that as a result of over four years of Kopaska's daily behavior, she suffered permanent anxiety from posttraumatic stress disorder (PTSD). She testified she lost her job as a paralegal because she felt like she had to leave work early to be at home when the school bus delivered her children in order to protect them from Kopaska and Houser. She further testified that she divorced her husband because of years of fighting over what to do about Kopaska's abuse. McNeil was intolerable to live with because she was so hypervigilant; she would not let her children go outside while she lived in her house; she could no longer live in a home she had lived in for forty-five years; she went to therapy and had her children go to therapy for which she was charged $726, and she was charged $1,100 to fix her canoe and boat that Houser destroyed while Kopaska watched. McNeil testified she is still hypervigilant; she still constantly worries; and she cannot trust people, make friends, or sleep well. The jury returned a verdict in McNeil's favor and awarded her just over $114,000 in damages.

On appeal, Kopaska first argues that the circuit court abused its discretion in denying her objection to McNeil's testimony that she suffers from PTSD. Kopaska contends that McNeil's self-diagnosis of PTSD was prejudicial and was the sole arguable ground to find "extreme distress."

This point attacks an evidentiary ruling. Evidentiary rulings are reviewed for an abuse of discretion. *S. Farm Bureau Cas. Ins. Co. v. Daggett*, 354 Ark. 112, 123, 118 S.W.3d 525, 530–31 (2003). An abuse of discretion means discretion that is improvidently exercised, i.e., exercised thoughtlessly and without due consideration. *Id.* at 125, 118 S.W.3d at 532. An error of law can constitute an abuse of discretion. *SMG 1054, Inc. v. Thompson*, 2014 Ark. App. 524, at 5, 443 S.W.3d 574, 577. To support reversal, an evidentiary error must also be prejudicial. *Young v. Blake*, 2022 Ark. App. 378, at 8, 653 S.W.3d 523, 528. Kopaska argues that the circuit court abused its discretion and cites Arkansas Rules of Evidence 602 and 701 and Arkansas Code Annotated section 17-95-401 (Repl. 2018). We do not find her argument persuasive.

Rule 602 states in part as follows:

> A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself.

Opinion testimony by lay witnesses is outlined in Arkansas Rule of Evidence 701, which states that if a witness is not testifying as an expert, the testimony in the form of opinions or inferences is limited to those opinions or inferences that are (1) rationally based

on the perception of the witness; and (2) helpful to a clear understanding of the testimony or the determination of a fact in issue. The requirements of Rule 701 are satisfied if the opinion is one that a normal person would form on the basis of the observed facts. *Vasquez v. State*, 2022 Ark. App. 328, 652 S.W.3d 586. Rule 701 is not a rule against lay opinions but is a rule that conditionally favors them. *Id.*

The three-prong test for determining admissibility under Rule 701 is (1) the testimony must pass the "personal knowledge" test of Rule 602; (2) it must be rationally based and be one that a normal person would form on the basis of the facts observed; and (3) the opinion must meet the helpful test. *Marks v. State*, 375 Ark. 265, 289 S.W.3d 923 (2008). Rule 701(1) speaks in terms of "perception" of the witness. *Id.* Perception is defined as an observation, awareness, or realization usually based on physical sensation or experience, appreciation, or cognition. *Id.*

Here, McNeil satisfied all three prongs for determining admissibility under Rule 701. She personally observed and experienced the trauma associated with Kopaska's acts inflicted on her, and her opinions were rationally based on her observations and feelings. Further, her opinion testimony passed the prong-one personal-knowledge test in Rule 602 as well as the prong-two rationality test because she is a normal person whose opinion was based on the facts she observed. Finally, McNeil's opinion that she suffered PTSD as a result of the ongoing abuse was helpful to the jury's determination of her emotional-distress damages issue, thereby passing the third-prong helpful test. We hold that Kopaska has not met her

burden here and has not shown that the circuit court abused its discretion.[2] We affirm the circuit court's ruling.

Kopaska next argues that there was not substantial evidence to support a damages award in this tort-of-outrage case; therefore, the circuit court abused its direction in denying her motion for a new trial or remittitur.

Substantial evidence is evidence of such force and character that it will compel a conclusion with reasonable certainty. *Kiersey v. Jeffrey*, 369 Ark. 220, 253 S.W.3d 438 (2007). In examining whether substantial evidence exists, the verdict is given the benefit of all reasonable inferences permissible in accordance with the proof. *Id.* This court views the evidence in the light most favorable to McNeil to determine if it supports the jury's verdict. *Id.*

When the issue appealed is primarily one of damages, we reverse a denial of a motion for a new trial only if the court's ruling was a clear and manifest abuse of discretion. *Pearson v. Henrickson*, 336 Ark. 12, 983 S.W.2d 419 (1999). In this appeal, Kopaska challenges the jury's damages award. Therefore, the proper standard of review is whether there has been a clear and manifest abuse of discretion by the circuit court. *Id.* It is up to the circuit court to determine whether a jury award is clearly excessive. Ark. R. Civ. P. 59(a)(4)–(5). In the case before us, Kopaska filed a motion for new trial or remittitur on the basis that the damages

[2]We also note that Arkansas Code Annotated section 17-95-401, which Kopaska references, is not applicable here. That statute prohibits any person from practicing medicine.

were excessive and appeared to be awarded under the influence of the jurors' passion or prejudice; the amount of recovery was too great and therefore erroneous; and the damages award was clearly contrary to the preponderance of the evidence and contrary to law.

Substantial evidence is evidence of such force and character that it will compel a conclusion with reasonable certainty. *Koch v. Northport Health Servs. or Ark., LLC*, 361 Ark. 192, 205 S.W.3d 754 (2005). In examining whether substantial evidence exists, the verdict is given the benefit of all reasonable inferences permissible in accordance with the proof. *Id.* This court views the evidence in the light most favorable to the appellee and affirms if there is substantial evidence to support the jury's verdict. *Id.* Remittitur is appropriate when the compensatory damages awarded are excessive and cannot be sustained by the evidence. *Id.* The standard of review is whether there is substantial evidence to support the verdict. *Id.* A new trial may be granted if there was an error in the assessment of the amount of recovery, whether too large or too small. *Id.* Moreover, Arkansas Rule of Civil Procedure 59(a)(4) provides that "excessive damages appearing to have been given under the influence of passion or prejudice" is one ground for a new trial.

Such is not the case here. The evidence showed Kopaska intentionally inflicted daily emotional pain on McNeil for approximately four years. Between 2016 and 2020, Kopaska and Houser daily yelled horrible obscenities and derogatory epithets at McNeil, and they threatened her life. This daily harassment continued until McNeil and her daughter moved

out of the house that McNeil had lived in for forty-five years to live in an apartment for six months; and they ultimately moved to Utah.

In addition to four years of daily verbal abuse and threats to McNeil's life, the evidence also showed that Kopaska intentionally inflicted emotional pain on McNeil by falsely reporting to the police at least sixty-three times that McNeil was committing a crime and by falsely reporting several times to the Environmental Protection Agency that McNeil was violating its regulations. Kopaska and Houser also took and hung McNeil's dog, Chevy, with a blue rope from a deer stand, and the couple later displayed a blue-rope noose from their open garage so that McNeil could see it.

The jury justifiably found that Kopaska willfully and wantonly engaged in extreme and outrageous conduct, knowing her conduct would naturally and probably result in emotional distress, and she continued such conduct in reckless disregard of the consequences. The jury justifiably determined Kopaska's conduct was so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency. The jury reasonably determined Kopaska caused McNeil's resulting emotional distress. Further, the jury reasonably and justifiably found that the circumstances were so severe that no reasonable person in similar circumstances could be expected to endure it. The jury reasonably compensated McNeil for her past, present, and future distress, including her divorce; her move away from her childhood home; the loss of her job; her need for therapy; her insomnia; and her fear of making friends.

Kopaska asserts that the damages award was excessive in light of the evidence presented at trial—specifically, arguing that the only proven numerical damages were property and the cost of therapy. When an award of damages is alleged on appeal to be excessive, we review the proof and all reasonable inferences most favorably to the appellee and determine whether the verdict is so great as to shock the conscience or demonstrate passion or prejudice on the part of the jury. *United Ins. Co. of Am. v. Murphy*, 331 Ark. 364, 961 S.W.2d 752 (1998); *Builder's Transp., Inc. v. Wilson*, 323 Ark. 327, 914 S.W.2d 742 (1996). Construing all reasonable inferences in McNeil's favor, we do not find the amount of the verdict so great as to shock the conscience. Nor does the verdict demonstrate passion or prejudice on the part of the jury. We therefore hold that the circuit court's denial of the motion for new trial or remittitur is not a clear and manifest abuse of discretion. Accordingly, this case is affirmed.

Affirmed.

GRUBER and WOOD, JJ., agree.

Matt Kezhaya, for appellant.

Harry McDermott and *Elizabeth Finocchi*, for appellee.