between parties subordinating best interests of child to interests of parents).

I recognize that very complex issues may arise in circumstances in which a child, without a guardian ad litem or next friend, is represented by an attorney appointed pursuant to § 46b-54. Nevertheless, none of these issues has been raised in this appeal. Furthermore, there is no evidence that by advocating the children's entitlement to support in this case, the children's attorney was not acting in their best interests. Therefore, such a conflict is not at issue here and those issues must be left for another day.

Accordingly, I agree with the result.

HARRY CHILDS *v.* FRANK BAINER (15048)

Borden, Berdon, Norcott, Katz and Palmer, Js.

The plaintiff sought to recover for personal injuries he allegedly sustained in a motor vehicle accident caused by the defendant. At trial, the plaintiff claimed medical expenses of $5129, lost earnings of $14,000 and damages for pain and suffering. The jury returned a verdict in favor of the plaintiff and awarded him $3649 in economic damages but it did not award him any damages for pain and suffering. Thereafter, the trial court denied the plaintiff's motion to set aside the verdict and for an additur and rendered judgment in accordance with the verdict, from which the plaintiff appealed to the Appellate Court. The Appellate Court reversed the trial court's judgment and remanded the case for further proceedings, from which the defendant, on the granting of certification, appealed to this court. *Held* that the Appellate Court improperly concluded, as a matter of law, that a plaintiff's personal injury verdict is defective if the jury awards greater than nominal economic damages but zero noneconomic damages; because the jury could reasonably have reached the verdict that it did, the defendant having contested the cause, nature and extent of the plaintiff's injuries and having introduced substantial evidence to rebut the plaintiff's claims, the trial court did not abuse its discretion in denying the plaintiff's motion for additur.

(One justice dissenting)

Argued May 26—decision released August 15, 1995

Action to recover damages for personal injuries sustained by the plaintiff in a motor vehicle accident allegedly caused by the defendant's negligence, brought to the Superior Court in the judicial district of Waterbury and tried to the jury before *Sylvester, J.*; verdict for the plaintiff; thereafter, the court denied the plaintiff's motion to set aside the verdict and for an additur, and rendered judgment in accordance with the verdict, from which the plaintiff appealed to the Appellate Court, *O'Connell, Landau* and *Freedman, Js.*, which reversed the trial court's judgment and remanded the case for further proceedings, from which the defendant, on the granting of certification, appealed to this court. *Reversed; judgment directed.*

Katherine C. Callahan, with whom, on the brief, were *Karen P. Blado, Robert R. Simpson* and *David A. Sylvestre*, for the appellant (defendant).

James A. Mulhall, Jr., with whom was *Kevin T. Nixon, Sr.*, for the appellee (plaintiff).

KATZ, J. The sole issue on appeal is whether a trial court is required to grant an additur in a personal injury case in which the jury has awarded to the prevailing party economic damages but noneconomic damages. The plaintiff, Harry Childs, had alleged and attempted to prove at trial that the negligent driving of the defendant, Frank Bainer, had caused him to sustain damages resulting from personal injuries. The jury returned a verdict in favor of the plaintiff and awarded him economic damages only.[1] Because the jury had failed to

[1] General Statutes § 52-572h (a) defines "economic damages" as "compensation determined by the trier of fact for pecuniary losses including, but not limited to, the cost of reasonable and necessary medical care, rehabilitative services, custodial care and loss of earnings or earning capacity excluding any noneconomic damages." The same subsection defines "noneconomic damages" as "compensation determined by the trier of fact for all nonpecuniary losses including, but not limited to, physical pain and suffering and mental and emotional suffering."

award noneconomic damages, the plaintiff, pursuant to General Statutes § 52-228b,[2] filed a motion with the trial court for an additur and, alternatively, to set aside the verdict as to damages only. The trial court denied the plaintiff's motion, and the plaintiff appealed from the judgment to the Appellate Court.

The Appellate Court held that the trial court had improperly denied the plaintiff's motion, determining that an award of economic damages coupled with an award of zero noneconomic damages is inadequate as a matter of law. The Appellate Court reversed the judgment and remanded the case "for further proceedings to determine a reasonable additur for noneconomic damages, to give the parties an opportunity to accept the additur, and, if they do not accept the additur, a new trial is ordered as to all issues." *Childs* v. *Bainer*, 35 Conn. App. 301, 305, 645 A.2d 1041 (1994). We granted the defendant's petition for certification to consider the following question: "Is it an abuse of discretion for a trial court to refuse an additur in a personal injury case in which the jury awarded economic damages but no noneconomic damages?" *Childs* v. *Bainer,* 231 Conn. 924, 648 A.2d 162 (1994). We conclude that the trial court did not abuse its discretion in denying the motion for additur in this case and, therefore, we reverse the judgment of the Appellate Court.

The following facts are relevant to this appeal. The plaintiff commenced an action against the defendant

[2] General Statutes § 52-228b provides: "No verdict in any civil action involving a claim for money damages may be set aside except on written motion by a party to the action, stating the reasons relied upon in its support, filed and heard after notice to the adverse party according to the rules of the court. No such verdict may be set aside solely on the ground that the damages are excessive unless the prevailing party has been given an opportunity to have the amount of the judgment decreased by so much thereof as the court deems excessive. No such verdict may be set aside solely on the ground that the damages are inadequate until the parties have first been given an opportunity to accept an addition to the verdict of such amount as the court deems reasonable."

seeking damages for personal injuries allegedly arising from a rear end collision caused by the defendant. The plaintiff claimed that, as a result of the defendant's negligent driving, the plaintiff "was thrown about the interior of his car and sustained bruises, contusions, lacerations and abrasions about his body and an acute strain/sprain of the cervical and lumbosacral area of the spine and from said injuries has suffered great pain and will continue so to suffer for the rest of his life." The plaintiff claimed that as a direct result of these injuries, he incurred medical expenses for hospitalization, doctor's care, drugs and medication, and would continue to incur such expenses in the future. The plaintiff also claimed a loss of earnings and earning capacity, which losses would also continue in the future. The defendant denied that he had been negligent and that he had caused the accident, stating that any injuries sustained by the plaintiff were the result of the plaintiff's own negligence and carelessness.

It is undisputed that at trial,[3] the plaintiff claimed medical expenses of $5129, lost earnings of $14,000, and damages for pain and suffering. In support of his claims, the plaintiff submitted evidence of an injury to his shoulder, which resolved itself within one week of the collision, a neck injury, which healed within five months of the collision, and a lower back injury, which left him with a 12 percent permanent disability as a result of the collision. The plaintiff did not claim property damage.

The defendant submitted evidence to rebut the plaintiff's claims, including: an emergency room report, which did not disclose the existence of any bruises, contusions, lacerations or abrasions on the plaintiff following the collision; statements made by the plaintiff to emergency

[3] We note that the plaintiff did not file any transcripts in this appeal. Also, the trial exhibits relevant to this appeal were unavailable for our review because they were misplaced by personnel at the Superior Court. The parties, however, submitted copies of these exhibits and stipulated to their accuracy.

room medical staff that his body had not come into contact with any part of his car; evidence that he had returned to work at his nursery and landscaping job the day after the accident; evidence that the plaintiff did not take painkilling medications despite his allegations of significant pain; emergency room and radiology reports on the day of the accident showing that the plaintiff's only complaint had concerned his neck and shoulder; a diagnosis from the plaintiff's doctor that the neck was "doing fine" and that the plaintiff suffered no permanent disability of the neck; and photographs of the plaintiff lifting large cabinets soon after the collision. In short, the extent and duration of the plaintiff's injuries were "hotly contested."

The jury returned a verdict in favor of the plaintiff and awarded him $3649 in economic damages, but did not award any noneconomic damages. Thereafter, the plaintiff requested that the trial court order an additur or, if the defendant failed to accept the additur, set aside the verdict as to damages only. The trial court denied the motion, finding that "the award [was] not manifestly unjust and palpably against the evidence." The plaintiff appealed from the judgment to the Appellate Court.

On appeal, the plaintiff claimed that an award of more than nominal[4] economic damages coupled with an award of zero noneconomic damages in an action seeking damages for personal injuries is inadequate as a matter of law. The Appellate Court agreed with the plaintiff and reversed the trial court's judgment. *Childs* v. *Bainer*, supra, 35 Conn. App. 305. The question before this court is whether the Appellate Court improperly imposed a per se rule that an award of economic damages must be coupled with an award of noneconomic damages. The

[4] " 'Generally, nominal damages are fixed without regard to the extent of harm done and are assessed in some trifling or trivial amount . . . .' " *Creem* v. *Cicero*, 12 Conn. App. 607, 611, 533 A.2d 234 (1987).

defendant argues that the decision to order an additur is a matter of judicial discretion and that the trial court did not abuse its discretion in light of the conflicting and insubstantial evidence of injury presented at trial. We agree with the defendant and reverse the judgment of the Appellate Court.

"In an appeal following certification, the focus of our review is not the actions of the trial court, but the actions of the Appellate Court." (Internal quotation marks omitted.) *Cahn* v. *Cahn*, 225 Conn. 666, 671, 626 A.2d 296 (1993). We must determine, therefore, whether the Appellate Court improperly concluded, as a matter of law, that a plaintiff's personal injury verdict is defective if the jury awards greater than nominal economic damages but zero noneconomic damages.

We accord great deference to a jury's award of damages. "Litigants have a constitutional right to have factual issues determined by the jury. This right embraces the determination of damages when there is room for a reasonable difference of opinion among fair-minded persons as to the amount that should be awarded. . . . This right is 'one obviously immovable limitation on the legal discretion of the court to set aside a verdict, since the constitutional right of trial by jury includes the right to have issues of fact as to which there is room for a reasonable difference of opinion among fair-minded men passed upon by the jury and not by the court.' . . . The amount of a damage award is a matter peculiarly within the province of the trier of fact, in this case, the jury." *Mather* v. *Griffin Hospital*, 207 Conn. 125, 138, 540 A.2d 666 (1988). Similarly, "[t]he credibility of witnesses and the weight to be accorded to their testimony lie within the province of the jury." *Desmarais* v. *Pinto*, 147 Conn. 109, 110, 157 A.2d 596 (1960). "In considering a motion to set aside the verdict, the court must determine whether the evidence, viewed in the light most favorable to the prevailing party, reasonably supports

the jury's verdict. *Campbell* v. *Gould,* 194 Conn. 35, 41, 478 A.2d 596 (1984)." (Internal quotation marks omitted.) *Skrzypiec* v. *Noonan,* 228 Conn. 1, 10, 633 A.2d 716 (1993).

"The trial court's refusal to set aside the verdict or to order an additur is entitled to great weight and every reasonable presumption should be given in favor of its correctness. In reviewing the action of the trial court in denying the motions for additur and to set aside the verdict, our primary concern is to determine whether the court abused its discretion and we decide only whether, on the evidence presented, the jury could fairly reach the verdict they did. The trial court's decision is significant because the trial judge has had the same opportunity as the jury to view the witnesses, to assess their credibility and to determine the weight that should be given to their evidence. Moreover, the trial judge can gauge the tenor of the trial, as we, on the written record, cannot, and can detect those factors, if any, that could improperly have influenced the jury. . . . Our task is to determine whether the total damages awarded falls somewhere within the necessarily uncertain limits of fair and reasonable compensation in the particular case . . . ." (Citations omitted; internal quotation marks omitted.) *Ginsberg* v. *Fusaro*, 225 Conn. 420, 430–31, 623 A.2d 1014 (1993); accord *Skrzypiec* v. *Noonan*, supra, 228 Conn. 10–11; *Malmberg* v. *Lopez*, 208 Conn. 675, 679–80, 546 A.2d 264 (1988).

"If, on the evidence, the jury could reasonably have decided as they did, [the reviewing court] will not find error in the trial court's acceptance of the verdict . . . . However, it is the court's duty to set aside the verdict when it finds that it does manifest injustice, and is . . . palpably against the evidence. . . ." (Internal quotation marks omitted.) *Malmberg* v. *Lopez*, supra, 208 Conn. 679–80. "The only practical test to apply to a verdict is whether the award of damages falls somewhere within

the necessarily uncertain limits of fair and reasonable compensation in the particular case, or whether the verdict so shocks the sense of justice as to compel the conclusion that the jury were influenced by partiality, mistake or corruption." (Internal quotation marks omitted.) *Wood* v. *Bridgeport*, 216 Conn. 604, 611, 583 A.2d 124 (1990). "It is the function of this court to determine whether the trial court abused its discretion in denying [a party's] motion. . . . In reviewing this issue, our sole responsibility is to decide whether, on the evidence presented, the jury could fairly have reached the conclusion it did. *Wu* v. *Fairfield*, 204 Conn. 435, 440, 528 A.2d 364 (1987)." (Citations omitted; internal quotation marks omitted.) *Skrzypiec* v. *Noonan*, supra, 228 Conn. 11.

We have previously explored the parameters of a trial court's discretion in ruling on a motion for additur. We have considered whether: (1) the jury award "shocks the conscience"; *Fazio* v. *Brown*, 209 Conn. 450, 551 A.2d 1227 (1988) (award of $15,570, reduced to $10,899 based upon contributory negligence of plaintiff, so inconsistent with severity of injuries that trial court did not abuse its discretion in granting additur to result in net verdict of $95,200); see *Buckman* v. *People Express, Inc.*, 205 Conn. 166, 530 A.2d 596 (1987) (abuse of discretion to deny motion for remittitur to reduce "exorbitant" award of $51,595.94, where special damages totaled only $1595.94 and plaintiff suffered emotional distress only as result of defendant's failure to allow plaintiff, following his discharge from employment, to continue group health insurance as required by General Statutes § 38-262d); (2) the plaintiff, who has proved substantial injuries, is awarded inadequate damages; *Johnson* v. *Franklin*, 112 Conn. 228, 229, 152 A. 64 (1930) (where jury awards exact amount of special damages and there is no allowance for pain or substantial physical injuries, trial court abused discretion in denying motion to set aside verdict); and (3) the verdict is "inher-

ently ambiguous." *Malmberg* v. *Lopez*, supra, 208 Conn. 675 (abuse of discretion to deny motion to set aside verdict in favor of plaintiff who had been awarded zero damages). We conclude that these considerations were not implicated in this case, and that the plaintiff has failed otherwise to demonstrate an abuse of the trial court's discretion in declining to award an additur or to set aside the verdict.

First, the jury verdict awarding $3649 in economic damages in this case was not so extremely low that it "shocked the conscience." "The test is whether the award falls within the uncertain limits of just damages or whether it is so inadequate that it shocks the sense of justice and compels the conclusion that it was the product of partiality, prejudice, mistake or corruption." *Esaw* v. *Friedman*, 217 Conn. 553, 566, 586 A.2d 1164 (1991); *Malmberg* v. *Lopez*, supra, 208 Conn. 679–80 (direct showing of partiality, prejudice, mistake or corruption is not required but may be inferred if amount awarded shocks sense of justice).

We recently addressed a similar claim in *Ginsberg* v. *Fusaro*, supra, 225 Conn. 430, wherein a defendant, who had filed a counterclaim for damages including medical expenses of $56,859.74, significant pain and suffering, and permanent injury, had been awarded $5000 damages against the plaintiff Miller and zero damages against Ginsberg.[5] The trial court granted Fusaro's motion to set aside the verdict against Ginsberg as to liability and damages and denied her motion to set aside the verdict against Miller. On appeal, Fusaro claimed that the damage award against Miller was inadequate and that the trial court should have ordered an additur or set aside the verdict of $5000 against Miller. We held that

[5] The plaintiffs in *Ginsberg*, Martin Ginsberg and Robert Miller, both dentists, had sued the defendants, Rita Fusaro and John Fusaro, to recover money allegedly owed for dental services. Rita Fusaro counterclaimed against both Miller and Ginsberg, alleging dental malpractice.

"[a]lthough the $5000 verdict is arguably inadequate as a matter of law when compared to Fusaro's claims that, as a result of Miller's negligence, she incurred medical expenses of $56,859.74, experienced great pain and suffering, and sustained a permanent injury, her claims for an additur cannot be sustained." Id., 430. We based our decision in part on the fact that "the issue of whether Fusaro's damages were causally related to the negligence of Miller or were incurred for the cosmetic purpose of correcting Fusaro's preexisting overbite was hotly contested. On the basis of the scant record before us, and the dispute as to whether the damages were causally related to the [injury], we summarily affirm the trial court's refusal to order an additur and its denial of the motion to set aside the verdict against Miller." Id., 432.

In this case, as in *Ginsberg*, it is undisputed that the cause, nature, and extent of the plaintiff's injuries were "hotly contested." Although the plaintiff had claimed back problems, there were pictures of him lifting large cabinets soon after the incident in question. Although he had alleged in his complaint "bruises, contusions, lacerations and abrasions," none were found by the treating medical staff at the hospital where he had been taken immediately following the accident. On the basis of this and other conflicting evidence regarding the injury, the jury could have reasonably concluded that the plaintiff was entitled to only $3649 in damages.

"The existence of conflicting evidence limits the court's authority to overturn a jury verdict. The jury is entrusted with the choice of which evidence is more credible and what effect it is to be given. *Ford* v. *Blue Cross & Blue Shield of Connecticut, Inc.*, 216 Conn. 40, 58, 578 A.2d 1054 (1990)." *Skrzypiec* v. *Noonan*, supra, 228 Conn. 11. "From the vantage point of the trial bench, a presiding judge can sense the atmosphere of a trial and can apprehend far better than we can, on the printed record, what factors, if any, could have

improperly influenced the jury." *Birgel* v. *Heintz*, 163 Conn. 23, 26, 301 A.2d 249 (1972). "If, on the evidence, the jury could reasonably have decided as they did, [the reviewing court] will not find error in the trial court's acceptance of the verdict . . . ." (Internal quotation marks omitted.) *Malmberg* v. *Lopez*, supra, 208 Conn. 679. Because there was evidence in the record tending to support the verdict reached by the jury, the verdict did not "[shock] the sense of justice in that the jury failed to evaluate properly the extent of [the plaintiff's] injuries and the consequences to [him] resulting from the accident." *Birgel* v. *Heintz*, supra, 28.

Second, the plaintiff was not entitled to an additur on the basis of our decision in *Johnson* v. *Franklin*, supra, 112 Conn. 229, wherein we held that a verdict for greater than nominal damages, which equaled the exact amount of medical and lost wages claimed, with no allowance for the substantial noneconomic damages, was inadequate. In *Johnson*, the verdict rendered for each of the three plaintiffs "was for the exact amount of the special damages[6] proved and with no allowance for the pain or the physical injuries suffered which were substantial." Because the award was for more than mere nominal damages, the jury had found that the defendant was liable and that the plaintiff's injuries were substantial. We concluded that where the plaintiffs are entitled to recover damages for their injuries, an award limited to nominal or special damages is "manifestly inadequate" and should be set aside. Id., 232.

The plaintiff's case is distinguishable from *Johnson*. First, in this case the jury did not award the entire amount of claimed economic damages, but only 19 percent of that amount. Second, the evidence of physical

[6] The terms "special damages" and "general damages" have been replaced by statute with the terms "economic damages" and "noneconomic damages," respectively. See General Statutes § 52-572h (a) (1).

injury offered by the plaintiff was neither substantial nor uncontested.[7] Thus, the damages awarded by the jury were not manifestly inadequate, and the plaintiff was not entitled, under the rationale of *Johnson*, to an additur or, in the alternative, to a new trial in accordance with General Statutes § 52-228b.[8]

Third, there was nothing ambiguous about the jury award. See *Malmberg* v. *Lopez*, supra, 208 Conn. 675. In reliance on *Malmberg*, the plaintiff argues that a jury verdict in his favor for $3649 in economic damages and zero in noneconomic damages was manifestly inade-

[7] Although the plaintiff complained of neck pain to the hospital staff immediately after the accident, all subsequent reports by his treating physician, Richard Matza, reflect that he sustained no permanent neck injuries. Furthermore, although there were reports from Matza indicating that the plaintiff suffered spasms of the lower back and that he had a 12 percent permanent partial disability of the lower back, these reports were based on examinations of the plaintiff several months after the accident. Moreover, the radiology report created immediately after the accident shows there already existed a degenerative condition of his back. In light of the plaintiff's employment in the landscaping business and the absence of any reports by him of any injury to his lower back to the hospital staff immediately after the accident, the jury could have reasoned that this permanent disability was a result of his employment and not the defendant's conduct. Finally, because the plaintiff did not ask to submit interrogatories to the jury and has failed to supply this court with a transcript of the trial, he cannot establish that the award of 19 percent of the claimed economic damages was for medical damages as opposed to lost wages. Consequently, we disagree with the dissent that the jury awarded "substantial special damages" for medical expenses reflecting pain and suffering.

[8] The plaintiff also relies on *Jeffries* v. *Johnson*, 27 Conn. App. 471, 476, 607 A.2d 443 (1992), which affirmed the trial court's finding that the verdict was inadequate and concluded that the trial court did not abuse its discretion in concluding that the verdict should be set aside. Because the plaintiff in *Jeffries* met the *Johnson* requirements, however, this reliance is misplaced. First, in *Jeffries*, the jury found the plaintiff's economic damages to be the full amount sought by the plaintiff, but explicitly awarded zero noneconomic damages. Id., 473–74. Second, the Appellate Court stated in *Jeffries* that "where a plaintiff is entitled to recover damages for pain and suffering, an award limited to nominal or special damages is inadequate as a matter of law . . . ." Id., 476. On the basis of the record in this case, the jury could reasonably have concluded that the plaintiff had failed to prove such entitlement.

quate as a matter of law, requiring an additur or, alternatively, a new trial. *Malmberg* is, however, inapposite. In *Malmberg*, the jury returned a verdict for the plaintiff, but awarded zero damages. The plaintiff moved to set aside the verdict, which was denied by the trial court. On appeal, we found that a plaintiff's verdict, coupled with an award of zero damages, was inherently ambiguous. "A plaintiff's verdict with a nominal damage award ordinarily suggests that the jury found that despite the defendant's liability, the plaintiff failed to prove damages. . . . The jury's intent in rendering a plaintiff's verdict with zero damages in a wrongful death action [however,] is far less clear." Id., 681–82.

In the case before us, however, the jury did not award zero damages; rather, it specifically awarded $3649 in economic damages, but declined to award any noneconomic damages. There is no apparent conflict in the verdict to create an ambiguity such as that at issue in *Malmberg*. See *Ginsberg* v. *Fusaro*, supra, 225 Conn. 425–26 (verdict in favor of a defendant on her counterclaim but awarding zero damages, was inconsistent as matter of law).

We have previously determined that a jury may award a plaintiff less than the claimed special damages. *Rickert* v. *Fraser*, 152 Conn. 678, 211 A.2d 702 (1965). In *Rickert*, the jury was confronted with conflicting evidence concerning the plaintiff's injuries. The plaintiff had claimed $755.27 in medical expenses, $2719.20 in lost wages and $46,525.53 for pain and suffering. The jury awarded the plaintiff only $2500 in damages, and this court upheld the trial court's refusal to set aside the verdict because "[a]s to the matter of [the plaintiff's] injuries and the pain and suffering resulting therefrom . . . the medical testimony and opinions were conflicting to such an extent that the jury could have refused to credit the plaintiff's claims." Id., 680–81. Furthermore, we concluded that although medical expenses of $755.27

were unquestioned, "[o]n the basis of the variances in proof as to the plaintiff's ability to work . . . the jury could reasonably have found that her evidence as to lost wages was exaggerated." Id., 680. In accordance with *Rickert*, given the conflicting evidence of the plaintiff's injuries, we find that the jury's award of 19 percent of the economic damages claimed, and an award of zero noneconomic damages, did not mandate an additur.

Finally, we are unpersuaded that the provisions of Tort Reform I and II[9] support the plaintiff's position. General Statutes §§ 52-572h[10] and 52-225d[11] require the fact finder to specify separately the amount of economic damages and the amount of noneconomic damages. These provisions are consistent with our history of recognizing the distinction between different kinds of damages. See *Waterbury Petroleum Products, Inc.* v. *Canaan Oil & Fuel Co.*, 193 Conn. 208, 223 n.16, 477 A.2d 988 (1984).

"Interpreting a statute to impair an existing interest or to change radically existing law is appropriate only

[9] Number 86-338 of the 1986 Public Acts is commonly known as "Tort Reform I," and was codified at General Statutes (Rev. to 1987) §§ 52-225a through 52-225d, 52-251c and 52-572h. Number 87-227 of the 1987 Public Acts, commonly known as "Tort Reform II," revised those sections.

[10] General Statutes § 52-572h (f) provides: "The jury or, if there is no jury, the court shall specify: (1) The amount of economic damages; (2) the amount of noneconomic damages; (3) any findings of fact necessary for the court to specify recoverable economic damages and recoverable noneconomic damages; (4) the percentage of negligence that proximately caused the injury, death or damage to property in relation to one hundred per cent, that is attributable to each party whose negligent actions were a proximate cause of the injury, death or damage to property including settled or released persons under subsection (n) of this section; and (5) the percentage of such negligence attributable to the claimant."

[11] General Statutes § 52-225d (a) (1) provides: "In any civil action wherein the claimant seeks to recover damages resulting from personal injury, wrongful death or damage to property occurring on or after October 1, 1987, and wherein liability is admitted or determined by the trier of fact, the court shall proceed to enter judgment as follows: (1) The trier of fact shall make separate findings for each claimant specifying the amount of any economic damages and noneconomic damages, as defined in subsection (a) of section 52-572h."

if the language of the legislature plainly and unambiguously reflects such an intent. . . . We recognize only those alterations of the common law that are clearly expressed in the language of the statute because the traditional principles of justice upon which the common law is founded should be perpetuated." (Citations omitted.) *Lynn* v. *Haybuster Mfg., Inc.*, 226 Conn. 282, 289–90, 627 A.2d 1288 (1993). As we have discussed, the common law of this state does not recognize the principle that awards limited to economic damages are inadequate as a matter of law and must be set aside, or the principle that a fact finder must award noneconomic damages each time it awards economic damages. Rather, as we have stated numerous times, "[t]he amount of a damage award is a matter peculiarly within the province of the trier of fact"; *Mather* v. *Griffin Hospital,* supra, 207 Conn. 138; and "if, on the evidence, the jury could reasonably have decided as they did, [the reviewing court] will not find error in the trial court's acceptance of the verdict . . . ." (Internal quotation marks omitted.) *Malmberg* v. *Lopez,* supra, 208 Conn. 679. Nothing in the language of §§ 52-225d or 52-572h, the legislative history and circumstances surrounding their enactment, the policies they were designed to implement, or their relationship to existing common law principles governing the same general subject matter suggests that the legislature intended to change our common law or to require that a different rule of law be applied. See, e.g., *Connecticut National Bank* v. *Giacomi*, 233 Conn. 304, 319, A.2d (1995); *Williams Ford, Inc.* v. *Hartford Courant Co.*, 232 Conn. 559, 581, 657 A.2d 212 (1995).

On the contrary, the language chosen by the legislature reflects an intention that juries should separately determine awards of economic and noneconomic damages and does not hint of a requirement that an award of one type of damages necessarily requires an award

of the other type of damages. The thrust of Tort Reform II was to create a distinction between the two kinds of awards. 30 H.R. Proc., Pt. 16, 1987 Sess., pp. 5656–57. The legislature's intent was for the trier of fact to make "two findings," one based on economic damages and the other on noneconomic damages. Id. Each finding is required to be "separate." General Statutes § 52-225d (a) (1). This change was instigated by the insurance industry in order "to obtain necessary information regarding jury behavior in particular areas, such as the assessment of noneconomic damages." P. Gillies, Report of the Governor's Task Force on Insurance Costs and Availability (January 30, 1986) p. 17.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion, BORDEN, NORCOTT and PALMER, Js., concurred.

BERDON, J., dissenting. The majority concludes that a jury award for the plaintiff that consists of $3649 in economic damages but zero noneconomic damages is not ambiguous and, therefore, may be sustained on appeal. I disagree. Like the Appellate Court,[1] I conclude that in a personal injury case, when a plaintiff has alleged and produced evidence to support an award of both economic and noneconomic damages, a jury verdict that consists of substantial economic damages but zero noneconomic damages is ambiguous as a matter of law. Accordingly, the trial court should have set aside the verdict.

At common law, damages in a personal injury action were classified as either "special damages" or "general damages." "Ordinarily, such things as loss of earnings,

[1] See *Childs* v. *Bainer*, 35 Conn. App. 301, 305, 645 A.2d 1041 (1994).

doctors' and hospital bills are referred to as special damages." *Varley* v. *Motyl,* 139 Conn. 128, 134, 90 A.2d 869 (1952); see *Wood* v. *Bridgeport,* 216 Conn. 604, 610, 583 A.2d 124 (1990). General damages, on the other hand, included compensation for conscious pain and suffering. *Kiniry* v. *Danbury Hospital,* 183 Conn. 448, 460, 439 A.2d 408 (1981). In personal injury cases, the court would instruct the jury about these categories of damages. If the jury returned a verdict for the plaintiff, however, it would not break down the monetary award into these separate categories. Rather, it would return a lump sum verdict that included both special and general damages.

In the mid1980s, the legislature rewrote the tort recovery provisions of our civil system in successive legislative enactments known together as Tort Reform.[2] As a result of the latter of these enactments, No. 87-227 of the 1987 Public Acts, the trier of fact in a personal injury action must break down its award of damages into two categories: economic damages and noneconomic damages. Economic damages are defined as "compensation determined by the trier of fact for pecuniary losses including, but not limited to, the cost of reasonable and necessary medical care, rehabilitative services, custodial care and loss of earnings or earning capacity excluding any noneconomic damages." General Statutes § 52-572h (a) (1). Noneconomic damages are defined as "compensation determined by the trier of fact for all nonpecuniary losses including, but not limited to, physical pain and suffering and mental and emotional suffering." General Statutes § 52-572h (a) (2). For the most part, therefore, "economic damages" are akin to special damages, and "noneconomic damages" are akin to general damages.

In *Johnson* v. *Franklin,* 112 Conn. 228, 152 A. 64 (1930), this court addressed a question identical to that

[2] See Public Acts 1986, No. 86-338; Public Acts 1987. No. 87-227.

posed here. In *Johnson*, the jury returned a verdict that awarded substantial special damages, but zero general damages, to each of three plaintiffs. This court concluded that the awards were inadequate as a matter of law. In overturning the trial court's refusal to set aside the verdicts, this court held that "if the plaintiffs were entitled to verdicts those rendered were *manifestly inadequate* and the motion to set them aside should have been granted." (Emphasis added.) Id., 232. Similarly, in *Ginsberg* v. *Fusaro*, 225 Conn. 420, 425, 623 A.2d 1014 (1993), we concluded that a jury verdict that found liability issues in favor of a defendant on her counterclaim against a particular plaintiff but that awarded her zero damages was "inherently ambiguous." We reasoned that "[u]nder these circumstances, we can only speculate as to why the jury failed to award damages in her favor; therefore, the jury's verdict creates an ambiguity." Id., 425–26; see *Malmberg* v. *Lopez*, 208 Conn. 675, 681, 546 A.2d 264 (1988); *Creem* v. *Cicero*, 12 Conn. App. 607, 611, 523 A.2d 234 (1987) ("[a]s a general rule, it is manifestly unjust for the jury to fail to award damages for pain and suffering when it awards special damages").

In my view, this case is squarely controlled by *Johnson* and *Ginsberg*. Although the terminology of *Johnson* involves "special damages" and "general damages," the principles announced therein apply with equal force to the economic and noneconomic damages at issue in this case. Under the rationale of *Johnson*, an award of economic damages without accompanying noneconomic damages cannot stand. Likewise, just as this court in *Ginsberg* found ambiguity in the jury's failure to award damages consistent with its verdict, the same ambiguity exists here, where the jury has awarded economic damages but no noneconomic damages to reflect pain and suffering.[3] On the basis of these clear precedents, there-

[3] My conclusion would be different if the jury had awarded only nominal economic damages, or if the economic damages had been limited solely to

fore, the Appellate Court was correct in reversing the judgment of the trial court and remanding the case for agreement on an additur or, in the alternative, a new trial.[4]

The reasoning behind the majority's attempts to distinguish this case from *Johnson* eludes me.[5] First, the majority suggests that the percentage recovery of the amount of special damages alleged by the plaintiff is a factor. The majority points out that in *Johnson* each plaintiff was awarded an amount equal to his or her entire amount of special damages alleged,[6] but that in this case the plaintiff was awarded only 19 percent of the noneconomic damages he had alleged.[7] I do not

damages without accompanying pain and suffering, such as the cost of a physical examination to ascertain whether the plaintiff was injured.

[4] The Appellate Court remanded the case as follows: "The judgment is reversed and the case is remanded for further proceedings to determine a reasonable additur for noneconomic damages, to give the parties an opportunity to accept the additur, and, if they do not accept the additur, a new trial is ordered as to all issues." *Childs* v. *Bainer*, supra, 35 Conn. App. 305.

[5] In an endeavor to distinguish this case from our well reasoned precedent in *Johnson* v. *Franklin*, supra, 112 Conn. 228, the majority speculates in footnote 7 that the jury could have found that the permanent injury to the lower back was related to his employment. But the majority simply misses the point. In this case, as in *Johnson*, we do not know what the jury found other than that, as a result of the defendant's negligence, the plaintiff sustained substantial special or economic damages in the amount of over $3600, but no pain and suffering or other noneconomic damages. In light of the medical evidence of injuries to the neck and lower back of the plaintiff, as a result of the defendant's negligence, an award of over $3600 for special damages and zero for pain and suffering and other noneconomic damages makes this verdict ambiguous. It is ambiguous because if they did not believe the plaintiff was injured, the jury would not have awarded him the *substantial* special damages. And the suggestion by the majority that the special damages awarded by the jury may have included lost wages does not make the verdict less ambiguous. "We presume that the jury will abide by its duty to make a thoughtful, reasoned decision, applying its common sense and logic to the evidence presented." *Wasfi* v. *Chaddha*, 218 Conn. 200, 211, 588 A.2d 204 (1991). For this reason, the verdict must be set aside.

[6] To the three plaintiffs in *Johnson*, the jury awarded $573.25, $240.57 and $142, respectively. *Johnson* v. *Franklin*, supra, 112 Conn. 229.

[7] The jury awarded $3649 of the $19,129 claimed by the plaintiff.

understand why this makes any difference. In both cases, the jury awarded substantial special damages, but nothing for pain and suffering. That is the significant factor, and that was the basis for this court's decision in *Johnson* to set aside the verdict. Indeed, this case is more compelling than *Johnson*. In *Johnson*, because the jury was not asked to differentiate between special and general damages, the court was required to assume that the amount awarded to each plaintiff, which matched exactly the amount he or she had alleged as special damages, consisted only of special damages. *Johnson* v. *Franklin*, supra, 112 Conn. 229. In this case, however, as a result of the specific jury findings required by § 52-572h, we know for a fact that the jury awarded the plaintiff only economic damages and refused to award noneconomic damages. Under the rationale set forth in *Johnson*, that ambiguity requires that the verdict be set aside.

Second, the majority attempts to distinguish this case on the basis that, in *Johnson*, this court stated that the pain and physical injuries suffered by the plaintiffs had been "substantial." I do not know what the *Johnson* court meant by substantial, but it is undeniable that the $3649 in special damages awarded in this case is not nominal. Moreover, although the evidence was hotly contested, there was medical evidence that the plaintiff had sustained a 12 percent permanent disability to his lower back and that he had suffered from pain.[8] Accordingly,

[8] Three reports of the plaintiff's physician, Richard Matza, were introduced into evidence during the trial. Each of the reports noted that the patient is "being followed along" for cervical and lumbar strain. The first report, dated March 10, 1989, indicated that the plaintiff's "low back has pain. [Physical therapy] definitely helps but the headaches continue." That report also referred to "[t]enderness in the paraspinous muscle region of the low back with spasm in the paraspinous muscle region of the low back" and "[r]esolved cervical strain with persistent low back strain."

The second report, dated May 10, 1989, indicated that the plaintiff's "neck is doing quite good; low back is better. He has some tenderness in the left posterior superior iliac spine." This report also referred to "cervical strain and low back strain."

the majority cannot attempt to distinguish this case from *Johnson* on the ground that the plaintiff had failed to demonstrate "substantial" injuries.

The majority's reliance on another aspect of *Ginsberg* v. *Fusaro*, supra, 225 Conn. 430,[9] and on *Rickert* v. *Fraser*, 152 Conn. 678, 211 A.2d 702 (1965), is misplaced. Both *Ginsberg* and *Rickert* went to trial prior to the legislature's enactment of Tort Reform and, consequently, the juries in those cases had not been required to separate their awards into economic and noneconomic damages. On appeal, therefore, this court was unable to determine whether the jury awards included only special damages, only general damages, or a combination of both. For example, in *Ginsberg*, a dental malpractice case, the injured party claimed special damages in excess of $50,000, along with general damages; we were unable to determine how the jury had apportioned the $5000 it had awarded to her against one of two dentists and whether that amount might have included damages for pain and suffering. Consequently, we affirmed the jury verdict. Likewise, in *Rickert*, although the plaintiff had claimed special damages of $3400, we had no way of determining whether any part of the $2500 awarded by the jury constituted damages for pain and suffering. This

The third report, dated February 7, 1990, concluded that "[h]is neck is doing fine. His low back is still symptomatic. . . . On physical exam, the patient has tenderness in the paraspinous muscle region of the neck and low back with pain . . . . My impression is the patient has improved cervical strain with chronic low back strain which has reached maximum improvement with a 12% permanent, partial disability of the back and none of the neck."

[9] *Ginsberg* was originally a collection case that ripened into a claim of dental malpractice. The plaintiff dentists brought the action against their former patient and her husband, and the patient counterclaimed for negligence. The jury returned a verdict for the patient against both dentists, Robert Miller and Martin Ginsberg. The jury, however, awarded $5000 damages against Miller only and none against Ginsberg. The trial court accepted the jury verdict as to Miller but set aside the verdict as to Ginsberg. We affirmed the trial court's decision on appeal. *Ginsberg* v. *Fusaro*, supra, 225 Conn. 432.

precise distinction was made clear in *Creem* v. *Cicero*, supra, 12 Conn. App. 611 ("there was no reasonable basis upon which the court could have concluded that the jury's verdict was limited to special damages"). These cases, therefore, are not helpful to the majority.

In sum, I agree with the Appellate Court that the trial court should have ordered an additur and, if the parties failed to agree on that sum, the trial court should have set aside the verdict and ordered a new trial.[10] I respectfully dissent.

PARCC, INC. *v.* COMMISSION ON HOSPITALS AND HEALTH CARE
(15100)

Peters, C. J., and Callahan, Borden, Berdon and Palmer, Js.

The plaintiff applied to the commission on hospitals and health care for reauthorization of the construction of a planned ten bed expansion of its nursing home facility. The plaintiff had begun the first phase of its expansion pursuant to a public act (P.A. 89-325, § 3) permitting certain nursing homes under certain circumstances to increase their licensed bed capacity on a one time basis without first obtaining a certificate of need from the defendant. Before the plaintiff began the second phase, however, the legislature determined that there was insufficient need for any additional beds and it passed a public act (P.A. 93-406, § 2) providing that any facility that had not submitted plans for approval by the department of public health and addiction services, the agency responsible for licensing such facilities on or before June 1, 1993, and had not expended at least 25 percent of the project costs could not proceed with its planned additions. Thereafter, the defendant, which had previously found the plaintiff in compliance with P.A. 89-325, § 3, denied the plaintiff's request for reauthorization, and the plaintiff appealed to the trial court. The trial court dismissed the plaintiff's appeal on the ground that the denial was not a final decision in a contested case, and, therefore, was not appealable. On the plaintiff's appeal, *held* that the trial court improperly dismissed the

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[10] I disagree with the remand ordered by the Appellate Court. See footnote 4 of this dissent. Because this is a case of an ambiguous jury verdict, the trial court, in my view, should have set aside the verdict without first ordering an additur. See *Ginsberg* v. *Fusaro*, supra, 225 Conn. 430; *Johnson* v. *Franklin*, supra, 112 Conn. 232.

[*239]

[**638] PER CURIAM. In these two joint appeals, the plaintiffs, Norfolk and Dedham Mutual Fire Insurance Company (Norfolk) and Liberty Mutual Fire Insurance [*240] Company (Liberty), appeal n1 from the judgments of the trial court denying [**639] their applications to vacate an uninsured motorist arbitration award [***2] and granting the applications of the defendant, Craig Wysocki, to confirm the award. The cases were presented to the trial court on the following stipulated facts.

n1 The plaintiffs appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to Practice Book § 4023 and *General Statutes § 51-199 (c).*

In October, 1989, the defendant was operating an all-terrain vehicle, which he owned, on a public road when he collided with another all-terrain vehicle owned and operated by Hans Pedersen. Both all-terrain vehicles were uninsured. The defendant was also the owner of a private passenger motor vehicle that was insured by Liberty for uninsured motorist coverage in the amount of $ 20,000. He was also insured under a private passenger motor vehicle policy issued to his mother by Norfolk that provided uninsured motorist coverage in the amount of $ 40,000. The defendant made uninsured motorist claims against both policies, and a panel of arbitrators awarded [***3] him $ 60,000.

Liberty and Norfolk filed applications to vacate the award, pursuant to *General Statutes § 52-418*, n2 and the [*241] trial court denied the applications to vacate and granted the defendant's applications to confirm the award. Liberty and Norfolk each claim that: (1) Pedersen's all-terrain vehicle was not a "motor vehicle" within the meaning of their respective policies; and (2) even if the all-terrain vehicle was a "motor vehicle," it was not covered for uninsured motorist coverage because of the terms of a certain exclusion in each of their respective policies. The trial court concluded that although an all-terrain vehicle does not meet the statutory definition of a motor vehicle, it does meet the definition of an uninsured motor vehicle found in both policies for purposes of uninsured motorist coverage, and that the exclusion provisions of the policies does not bar coverage. See *Norfolk & Dedham Mutual Fire Ins. Co. v. Wysocki, 45 Conn. Supp. 144, , 702 A.2d 675, 678 (1996).*

n2 *General Statutes § 52-418* provides: "Vacating award. (a) Upon the application of any party to an arbitration, the superior court for the judicial district in which one of the parties resides or, in a controversy concerning land, for the judicial district in which the land is situated or, when the court is not in session, any judge thereof, shall make an order vacating the award if it finds any of the following defects: (1) If the award has been procured by corruption, fraud or undue means; (2) if there has been evident partiality or corruption on the part of any arbitrator; (3) if the arbitrators have been guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy or of any other action by which the rights of any party have been prejudiced; or (4) if the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

"(b) If an award is vacated and the time within which the award is required to be rendered has not expired, the court or judge may direct a rehearing by the arbitrators.

"(c) Any party filing an application pursuant to subsection (a) of this section concerning an arbitration award issued by the State Board of Mediation and Arbitration shall notify said board and the Attorney General, in writing, of such filing within five days of the date of filing."

[***4]

Our examination of the record on appeal, and the briefs and arguments of the parties, persuades us that the judgment of the trial court should be affirmed. Because the trial court's memorandum of decision fully addresses the arguments raised in the present appeal, we adopt the trial court's well reasoned decision as a statement of the facts and the applicable law on these issues. It would serve no useful purpose for us to repeat the discussion therein contained. See *Garrett's Appeal from Probate, 237 Conn. 233, 237-38, 676 A.2d 394 (1996).*

The judgment is affirmed.

The plaintiff's remedy was by way of motion to this court under Practice Book § 4183 (1) for an order to compel the trial court to decide her motion for reconsideration. Accordingly, we decline to review this claim because it is not properly a part of the appeal.

The judgment is affirmed.

In this opinion the other judges concurred.

BARBARA JEANE BLANCATO ET AL. *v.* SEBASTIAN RANDINO
(11398)

LAVERY, LANDAU and SCHALLER, Js.

The plaintiffs sought to recover for personal injuries sustained by the named plaintiff, B, when her car was struck by a truck operated by the defendant. The jury returned a verdict in favor of the defendant, and, from the judgment thereon, the plaintiffs appealed to this court. *Held:*

1. The trial court properly declined to direct a verdict in the plaintiffs' favor; the evidence fully supported the jury's conclusion that the icy condition of the road rather than the defendant's negligence caused the accident.
2. The plaintiffs' claim that the trial court improperly instructed the jury on the law of negligence per se was unavailing; the jury's response to interrogatories indicated that any negligence by the defendant was not the proximate cause of B's injuries.

Argued February 17—decision released April 6, 1993

Action to recover damages for personal injuries sustained in a motor vehicle accident that allegedly resulted from the defendant's negligence, brought to the Superior Court in the judicial district of Middlesex and tried to the jury before *R. O'Connell, J.;* verdict for the defendant; thereafter, the court denied the plaintiffs' motion to set aside the verdict and rendered judgment for the defendant, from which the plaintiffs appealed to this court. *Affirmed.*

The plaintiff brought this action claiming that the defendant's negligence caused her injuries. The defendant denied these allegations and further asserted a special defense claiming that the plaintiff's own negligence caused her injuries. The case proceeded to trial. At the conclusion of the plaintiff's evidence, the plaintiff moved for a directed verdict. The trial court denied the motion.

The court submitted the case to the jury along with written interrogatories. The first interrogatory asked the following: "Was the collision proximately caused by the negligence of the defendant, Sebastian Randino? If you answer 'No,' please report that you have concluded your deliberations, and complete the defendant's verdict form." The jury answered "No" and returned a verdict for the defendant. The plaintiff subsequently filed a motion to set aside the verdict. The trial court denied the motion and this appeal ensued.

I

The plaintiff first claims that the trial court improperly refused to direct a verdict in her favor. We disagree. The limited nature of our review of a trial court's refusal to direct or set aside a verdict is well settled. When reviewing the action of the trial court, we consider the evidence in the light most favorable to sustaining the judgment. *Munson* v. *United Technologies Corporation,* 28 Conn. App. 184, 191, 609 A.2d 1066 (1992). "A directed verdict is justified if on the evidence the jury could not reasonably and legally reach any other conclusion than that embodied in [a verdict for the defendant] . . . or if the evidence is so weak that it would be proper for the court to set aside a verdict rendered for the other party. . . . When a jury has returned a verdict and the trial court has refused to set it aside, [t]he court's decision will be upheld on appeal if, from the evidence presented, the jury could

reasonably have concluded as it did." (Citation omitted; internal quotation marks omitted.) *Hall* v. *Winfrey*, 27 Conn. App. 154, 157–58, 604 A.2d 1334, cert. denied, 222 Conn. 903, 606 A.2d 1327 (1992); *Boehm* v. *Kish*, 201 Conn. 385, 388–89, 517 A.2d 624 (1986).

In responding to the plaintiff's first claim, we focus on the element of causation and do not consider whether the defendant was negligent per se or otherwise negligent. Proximate cause is an essential element to any claim of negligence. *Wu* v. *Fairfield*, 204 Conn. 435, 528 A.2d 364 (1987); *Tesler* v. *Johnson*, 23 Conn. App. 536, 539–40, 583 A.2d 133 (1990), cert. denied, 217 Conn. 806, 584 A.2d 1192 (1991). "Proximate cause is . . . an act or failure to act which is a substantial factor in producing a result." *Sanders* v. *Officers Club of Connecticut, Inc.*, 196 Conn. 341, 349, 493 A.2d 184 (1985). Whether proximate cause exists in a given case is ordinarily a question of fact. *Trzcinski* v. *Richey*, 190 Conn. 285, 295, 460 A.2d 1269 (1983). Further, our case law under the municipal and state highway defect statutes makes abundantly clear that a road condition may qualify as the proximate cause of an injury. See, e.g., *Lukas* v. *New Haven*, 184 Conn. 205, 207, 439 A.2d 949 (1981) (recovery for breach of statutory duty under highway defect statute requires proof by a fair preponderance that defect was sole proximate cause of injuries and damages claimed); *Patrick* v. *Burns*, 5 Conn. App. 663, 668, 502 A.2d 432 (1985), cert. denied, 198 Conn. 805, 504 A.2d 1059 (1986)[2] (evidence of large

[2] Regarding the element of proximate cause, we note that the difference between an action under the highway defect statutes and an ordinary negligence action is that liability under the statutes requires the defect to be the *sole* proximate cause of the injuries. Compare *Lukas* v. *New Haven*, 184 Conn. 205, 207, 439 A.2d 949 (1981) (sole proximate cause), with *Sanders* v. *Officers Club of Connecticut, Inc.*, 196 Conn. 341, 349, 493 A.2d 184 (1985) (proximate cause defined as substantial factor). Still, the highway defect cases are instructive on the relationship between road conditions and the element of causation. For example, in *Patrick* v. *Burns*, 5 Conn. App. 663,

ice patch in path of driver established that highway defect was sole proximate cause of plaintiff's injuries); cf. *Beauton* v. *Connecticut Light & Power Co.*, 125 Conn. 76, 81, 3 A.2d 315 (1938) (damage caused directly and exclusively by "act of God" could not be attributed to negligence).

In this case, the jury found that the defendant's actions did not proximately cause the plaintiff's injuries.[3] We find that the evidence fully supports the jury's conclusion. Evidence established that the defendant's side of the road was covered with ice. The defendant testified that he was driving under the speed limit when he suddenly encountered these treacherous road conditions. Despite his efforts and precautions, however, the defendant lost control of his truck when it slid on the ice. Based on these facts, the jury may well have found that the icy conditions, as opposed to the defendant's act or failure to act, proximately caused the accident. See id. Thus, even if we assume the defendant's negligence, the jury could reasonably have concluded that the layer of ice covering the road, not the defendant's negligence, was a substantial factor causing the accident.[4] We conclude that the trial court properly declined to direct a verdict in the plaintiff's favor.

668, 502 A.2d 432 (1985), cert. denied, 198 Conn. 805, 504 A.2d 1059 (1986), the court held that "the jury could have reasonably concluded . . . that the [plaintiff's] loss of control of her vehicle, her crossing over the center line and, thus, her colliding with [another] vehicle *was caused solely by the ice floe* . . . ."

[3] The dispositive interrogatory was phrased so as to include the elements of negligence *and* causation. Because the plaintiff failed to seek interrogatories which separately would have indicated the jury's findings as to each element, we are free to assume that the jury determined that the plaintiff failed to establish either one of the two elements. *Trzcinski* v. *Richey*, 190 Conn. 285, 297, 460 A.2d 1269 (1983). As stated, we focus on the element of proximate cause without deciding the issue of whether the defendant was negligent per se.

[4] According to the plaintiff, the defendant admitted that his negligence proximately caused her injuries. This claim is unavailing, however, because after carefully reviewing the record and transcripts we have not uncovered any admission regarding proximate cause.

between parties subordinating best interests of child to interests of parents).

I recognize that very complex issues may arise in circumstances in which a child, without a guardian ad litem or next friend, is represented by an attorney appointed pursuant to § 46b-54. Nevertheless, none of these issues has been raised in this appeal. Furthermore, there is no evidence that by advocating the children's entitlement to support in this case, the children's attorney was not acting in their best interests. Therefore, such a conflict is not at issue here and those issues must be left for another day.

Accordingly, I agree with the result.

HARRY CHILDS *v.* FRANK BAINER
(15048)

Borden, Berdon, Norcott, Katz and Palmer, Js.

The plaintiff sought to recover for personal injuries he allegedly sustained in a motor vehicle accident caused by the defendant. At trial, the plaintiff claimed medical expenses of $5129, lost earnings of $14,000 and damages for pain and suffering. The jury returned a verdict in favor of the plaintiff and awarded him $3649 in economic damages but it did not award him any damages for pain and suffering. Thereafter, the trial court denied the plaintiff's motion to set aside the verdict and for an additur and rendered judgment in accordance with the verdict, from which the plaintiff appealed to the Appellate Court. The Appellate Court reversed the trial court's judgment and remanded the case for further proceedings, from which the defendant, on the granting of certification, appealed to this court. *Held* that the Appellate Court improperly concluded, as a matter of law, that a plaintiff's personal injury verdict is defective if the jury awards greater than nominal economic damages but zero noneconomic damages; because the jury could reasonably have reached the verdict that it did, the defendant having contested the cause, nature and extent of the plaintiff's injuries and having introduced substantial evidence to rebut the plaintiff's claims, the trial court did not abuse its discretion in denying the plaintiff's motion for additur.

(One justice dissenting)

Argued May 26—decision released August 15, 1995

Action to recover damages for personal injuries sustained by the plaintiff in a motor vehicle accident allegedly caused by the defendant's negligence, brought to the Superior Court in the judicial district of Waterbury and tried to the jury before *Sylvester, J.*; verdict for the plaintiff; thereafter, the court denied the plaintiff's motion to set aside the verdict and for an additur, and rendered judgment in accordance with the verdict, from which the plaintiff appealed to the Appellate Court, *O'Connell, Landau* and *Freedman, Js.*, which reversed the trial court's judgment and remanded the case for further proceedings, from which the defendant, on the granting of certification, appealed to this court. *Reversed; judgment directed.*

Katherine C. Callahan, with whom, on the brief, were *Karen P. Blado, Robert R. Simpson* and *David A. Sylvestre*, for the appellant (defendant).

James A. Mulhall, Jr., with whom was *Kevin T. Nixon, Sr.*, for the appellee (plaintiff).

KATZ, J. The sole issue on appeal is whether a trial court is required to grant an additur in a personal injury case in which the jury has awarded to the prevailing party economic damages but noneconomic damages. The plaintiff, Harry Childs, had alleged and attempted to prove at trial that the negligent driving of the defendant, Frank Bainer, had caused him to sustain damages resulting from personal injuries. The jury returned a verdict in favor of the plaintiff and awarded him economic damages only.[1] Because the jury had failed to

[1] General Statutes § 52-572h (a) defines "economic damages" as "compensation determined by the trier of fact for pecuniary losses including, but not limited to, the cost of reasonable and necessary medical care, rehabilitative services, custodial care and loss of earnings or earning capacity excluding any noneconomic damages." The same subsection defines "noneconomic damages" as "compensation determined by the trier of fact for all nonpecuniary losses including, but not limited to, physical pain and suffering and mental and emotional suffering."

award noneconomic damages, the plaintiff, pursuant to General Statutes § 52-228b,[2] filed a motion with the trial court for an additur and, alternatively, to set aside the verdict as to damages only. The trial court denied the plaintiff's motion, and the plaintiff appealed from the judgment to the Appellate Court.

The Appellate Court held that the trial court had improperly denied the plaintiff's motion, determining that an award of economic damages coupled with an award of zero noneconomic damages is inadequate as a matter of law. The Appellate Court reversed the judgment and remanded the case "for further proceedings to determine a reasonable additur for noneconomic damages, to give the parties an opportunity to accept the additur, and, if they do not accept the additur, a new trial is ordered as to all issues." *Childs* v. *Bainer*, 35 Conn. App. 301, 305, 645 A.2d 1041 (1994). We granted the defendant's petition for certification to consider the following question: "Is it an abuse of discretion for a trial court to refuse an additur in a personal injury case in which the jury awarded economic damages but no noneconomic damages?" *Childs* v. *Bainer,* 231 Conn. 924, 648 A.2d 162 (1994). We conclude that the trial court did not abuse its discretion in denying the motion for additur in this case and, therefore, we reverse the judgment of the Appellate Court.

The following facts are relevant to this appeal. The plaintiff commenced an action against the defendant

[2] General Statutes § 52-228b provides: "No verdict in any civil action involving a claim for money damages may be set aside except on written motion by a party to the action, stating the reasons relied upon in its support, filed and heard after notice to the adverse party according to the rules of the court. No such verdict may be set aside solely on the ground that the damages are excessive unless the prevailing party has been given an opportunity to have the amount of the judgment decreased by so much thereof as the court deems excessive. No such verdict may be set aside solely on the ground that the damages are inadequate until the parties have first been given an opportunity to accept an addition to the verdict of such amount as the court deems reasonable."

seeking damages for personal injuries allegedly arising from a rear end collision caused by the defendant. The plaintiff claimed that, as a result of the defendant's negligent driving, the plaintiff "was thrown about the interior of his car and sustained bruises, contusions, lacerations and abrasions about his body and an acute strain/sprain of the cervical and lumbosacral area of the spine and from said injuries has suffered great pain and will continue so to suffer for the rest of his life." The plaintiff claimed that as a direct result of these injuries, he incurred medical expenses for hospitalization, doctor's care, drugs and medication, and would continue to incur such expenses in the future. The plaintiff also claimed a loss of earnings and earning capacity, which losses would also continue in the future. The defendant denied that he had been negligent and that he had caused the accident, stating that any injuries sustained by the plaintiff were the result of the plaintiff's own negligence and carelessness.

It is undisputed that at trial,[3] the plaintiff claimed medical expenses of $5129, lost earnings of $14,000, and damages for pain and suffering. In support of his claims, the plaintiff submitted evidence of an injury to his shoulder, which resolved itself within one week of the collision, a neck injury, which healed within five months of the collision, and a lower back injury, which left him with a 12 percent permanent disability as a result of the collision. The plaintiff did not claim property damage.

The defendant submitted evidence to rebut the plaintiff's claims, including: an emergency room report, which did not disclose the existence of any bruises, contusions, lacerations or abrasions on the plaintiff following the collision; statements made by the plaintiff to emergency

[3] We note that the plaintiff did not file any transcripts in this appeal. Also, the trial exhibits relevant to this appeal were unavailable for our review because they were misplaced by personnel at the Superior Court. The parties, however, submitted copies of these exhibits and stipulated to their accuracy.

room medical staff that his body had not come into contact with any part of his car; evidence that he had returned to work at his nursery and landscaping job the day after the accident; evidence that the plaintiff did not take painkilling medications despite his allegations of significant pain; emergency room and radiology reports on the day of the accident showing that the plaintiff's only complaint had concerned his neck and shoulder; a diagnosis from the plaintiff's doctor that the neck was "doing fine" and that the plaintiff suffered no permanent disability of the neck; and photographs of the plaintiff lifting large cabinets soon after the collision. In short, the extent and duration of the plaintiff's injuries were "hotly contested."

The jury returned a verdict in favor of the plaintiff and awarded him $3649 in economic damages, but did not award any noneconomic damages. Thereafter, the plaintiff requested that the trial court order an additur or, if the defendant failed to accept the additur, set aside the verdict as to damages only. The trial court denied the motion, finding that "the award [was] not manifestly unjust and palpably against the evidence." The plaintiff appealed from the judgment to the Appellate Court.

On appeal, the plaintiff claimed that an award of more than nominal[4] economic damages coupled with an award of zero noneconomic damages in an action seeking damages for personal injuries is inadequate as a matter of law. The Appellate Court agreed with the plaintiff and reversed the trial court's judgment. *Childs* v. *Bainer*, supra, 35 Conn. App. 305. The question before this court is whether the Appellate Court improperly imposed a per se rule that an award of economic damages must be coupled with an award of noneconomic damages. The

[4] " 'Generally, nominal damages are fixed without regard to the extent of harm done and are assessed in some trifling or trivial amount . . . .' " *Creem* v. *Cicero*, 12 Conn. App. 607, 611, 533 A.2d 234 (1987).

defendant argues that the decision to order an additur is a matter of judicial discretion and that the trial court did not abuse its discretion in light of the conflicting and insubstantial evidence of injury presented at trial. We agree with the defendant and reverse the judgment of the Appellate Court.

"In an appeal following certification, the focus of our review is not the actions of the trial court, but the actions of the Appellate Court." (Internal quotation marks omitted.) *Cahn* v. *Cahn*, 225 Conn. 666, 671, 626 A.2d 296 (1993). We must determine, therefore, whether the Appellate Court improperly concluded, as a matter of law, that a plaintiff's personal injury verdict is defective if the jury awards greater than nominal economic damages but zero noneconomic damages.

We accord great deference to a jury's award of damages. "Litigants have a constitutional right to have factual issues determined by the jury. This right embraces the determination of damages when there is room for a reasonable difference of opinion among fair-minded persons as to the amount that should be awarded. . . . This right is 'one obviously immovable limitation on the legal discretion of the court to set aside a verdict, since the constitutional right of trial by jury includes the right to have issues of fact as to which there is room for a reasonable difference of opinion among fair-minded men passed upon by the jury and not by the court.' . . . The amount of a damage award is a matter peculiarly within the province of the trier of fact, in this case, the jury." *Mather* v. *Griffin Hospital*, 207 Conn. 125, 138, 540 A.2d 666 (1988). Similarly, "[t]he credibility of witnesses and the weight to be accorded to their testimony lie within the province of the jury." *Desmarais* v. *Pinto*, 147 Conn. 109, 110, 157 A.2d 596 (1960). "In considering a motion to set aside the verdict, the court must determine whether the evidence, viewed in the light most favorable to the prevailing party, reasonably supports

the jury's verdict. *Campbell* v. *Gould,* 194 Conn. 35, 41, 478 A.2d 596 (1984)." (Internal quotation marks omitted.) *Skrzypiec* v. *Noonan,* 228 Conn. 1, 10, 633 A.2d 716 (1993).

"The trial court's refusal to set aside the verdict or to order an additur is entitled to great weight and every reasonable presumption should be given in favor of its correctness. In reviewing the action of the trial court in denying the motions for additur and to set aside the verdict, our primary concern is to determine whether the court abused its discretion and we decide only whether, on the evidence presented, the jury could fairly reach the verdict they did. The trial court's decision is significant because the trial judge has had the same opportunity as the jury to view the witnesses, to assess their credibility and to determine the weight that should be given to their evidence. Moreover, the trial judge can gauge the tenor of the trial, as we, on the written record, cannot, and can detect those factors, if any, that could improperly have influenced the jury. . . . Our task is to determine whether the total damages awarded falls somewhere within the necessarily uncertain limits of fair and reasonable compensation in the particular case . . . ." (Citations omitted; internal quotation marks omitted.) *Ginsberg* v. *Fusaro*, 225 Conn. 420, 430–31, 623 A.2d 1014 (1993); accord *Skrzypiec* v. *Noonan*, supra, 228 Conn. 10–11; *Malmberg* v. *Lopez*, 208 Conn. 675, 679–80, 546 A.2d 264 (1988).

"If, on the evidence, the jury could reasonably have decided as they did, [the reviewing court] will not find error in the trial court's acceptance of the verdict . . . . However, it is the court's duty to set aside the verdict when it finds that it does manifest injustice, and is . . . palpably against the evidence. . . ." (Internal quotation marks omitted.) *Malmberg* v. *Lopez*, supra, 208 Conn. 679–80. "The only practical test to apply to a verdict is whether the award of damages falls somewhere within

the necessarily uncertain limits of fair and reasonable compensation in the particular case, or whether the verdict so shocks the sense of justice as to compel the conclusion that the jury were influenced by partiality, mistake or corruption." (Internal quotation marks omitted.) *Wood* v. *Bridgeport*, 216 Conn. 604, 611, 583 A.2d 124 (1990). "It is the function of this court to determine whether the trial court abused its discretion in denying [a party's] motion. . . . In reviewing this issue, our sole responsibility is to decide whether, on the evidence presented, the jury could fairly have reached the conclusion it did. *Wu* v. *Fairfield*, 204 Conn. 435, 440, 528 A.2d 364 (1987)." (Citations omitted; internal quotation marks omitted.) *Skrzypiec* v. *Noonan*, supra, 228 Conn. 11.

We have previously explored the parameters of a trial court's discretion in ruling on a motion for additur. We have considered whether: (1) the jury award "shocks the conscience"; *Fazio* v. *Brown*, 209 Conn. 450, 551 A.2d 1227 (1988) (award of $15,570, reduced to $10,899 based upon contributory negligence of plaintiff, so inconsistent with severity of injuries that trial court did not abuse its discretion in granting additur to result in net verdict of $95,200); see *Buckman* v. *People Express, Inc.*, 205 Conn. 166, 530 A.2d 596 (1987) (abuse of discretion to deny motion for remittitur to reduce "exorbitant" award of $51,595.94, where special damages totaled only $1595.94 and plaintiff suffered emotional distress only as result of defendant's failure to allow plaintiff, following his discharge from employment, to continue group health insurance as required by General Statutes § 38-262d); (2) the plaintiff, who has proved substantial injuries, is awarded inadequate damages; *Johnson* v. *Franklin*, 112 Conn. 228, 229, 152 A. 64 (1930) (where jury awards exact amount of special damages and there is no allowance for pain or substantial physical injuries, trial court abused discretion in denying motion to set aside verdict); and (3) the verdict is "inher-

ently ambiguous." *Malmberg* v. *Lopez*, supra, 208 Conn. 675 (abuse of discretion to deny motion to set aside verdict in favor of plaintiff who had been awarded zero damages). We conclude that these considerations were not implicated in this case, and that the plaintiff has failed otherwise to demonstrate an abuse of the trial court's discretion in declining to award an additur or to set aside the verdict.

First, the jury verdict awarding $3649 in economic damages in this case was not so extremely low that it "shocked the conscience." "The test is whether the award falls within the uncertain limits of just damages or whether it is so inadequate that it shocks the sense of justice and compels the conclusion that it was the product of partiality, prejudice, mistake or corruption." *Esaw* v. *Friedman*, 217 Conn. 553, 566, 586 A.2d 1164 (1991); *Malmberg* v. *Lopez*, supra, 208 Conn. 679–80 (direct showing of partiality, prejudice, mistake or corruption is not required but may be inferred if amount awarded shocks sense of justice).

We recently addressed a similar claim in *Ginsberg* v. *Fusaro*, supra, 225 Conn. 430, wherein a defendant, who had filed a counterclaim for damages including medical expenses of $56,859.74, significant pain and suffering, and permanent injury, had been awarded $5000 damages against the plaintiff Miller and zero damages against Ginsberg.[5] The trial court granted Fusaro's motion to set aside the verdict against Ginsberg as to liability and damages and denied her motion to set aside the verdict against Miller. On appeal, Fusaro claimed that the damage award against Miller was inadequate and that the trial court should have ordered an additur or set aside the verdict of $5000 against Miller. We held that

[5] The plaintiffs in *Ginsberg*, Martin Ginsberg and Robert Miller, both dentists, had sued the defendants, Rita Fusaro and John Fusaro, to recover money allegedly owed for dental services. Rita Fusaro counterclaimed against both Miller and Ginsberg, alleging dental malpractice.

"[a]lthough the $5000 verdict is arguably inadequate as a matter of law when compared to Fusaro's claims that, as a result of Miller's negligence, she incurred medical expenses of $56,859.74, experienced great pain and suffering, and sustained a permanent injury, her claims for an additur cannot be sustained." Id., 430. We based our decision in part on the fact that "the issue of whether Fusaro's damages were causally related to the negligence of Miller or were incurred for the cosmetic purpose of correcting Fusaro's preexisting overbite was hotly contested. On the basis of the scant record before us, and the dispute as to whether the damages were causally related to the [injury], we summarily affirm the trial court's refusal to order an additur and its denial of the motion to set aside the verdict against Miller." Id., 432.

In this case, as in *Ginsberg*, it is undisputed that the cause, nature, and extent of the plaintiff's injuries were "hotly contested." Although the plaintiff had claimed back problems, there were pictures of him lifting large cabinets soon after the incident in question. Although he had alleged in his complaint "bruises, contusions, lacerations and abrasions," none were found by the treating medical staff at the hospital where he had been taken immediately following the accident. On the basis of this and other conflicting evidence regarding the injury, the jury could have reasonably concluded that the plaintiff was entitled to only $3649 in damages.

"The existence of conflicting evidence limits the court's authority to overturn a jury verdict. The jury is entrusted with the choice of which evidence is more credible and what effect it is to be given. *Ford* v. *Blue Cross & Blue Shield of Connecticut, Inc.*, 216 Conn. 40, 58, 578 A.2d 1054 (1990)." *Skrzypiec* v. *Noonan*, supra, 228 Conn. 11. "From the vantage point of the trial bench, a presiding judge can sense the atmosphere of a trial and can apprehend far better than we can, on the printed record, what factors, if any, could have

improperly influenced the jury." *Birgel* v. *Heintz*, 163 Conn. 23, 26, 301 A.2d 249 (1972). "If, on the evidence, the jury could reasonably have decided as they did, [the reviewing court] will not find error in the trial court's acceptance of the verdict . . . ." (Internal quotation marks omitted.) *Malmberg* v. *Lopez*, supra, 208 Conn. 679. Because there was evidence in the record tending to support the verdict reached by the jury, the verdict did not "[shock] the sense of justice in that the jury failed to evaluate properly the extent of [the plaintiff's] injuries and the consequences to [him] resulting from the accident." *Birgel* v. *Heintz*, supra, 28.

Second, the plaintiff was not entitled to an additur on the basis of our decision in *Johnson* v. *Franklin*, supra, 112 Conn. 229, wherein we held that a verdict for greater than nominal damages, which equaled the exact amount of medical and lost wages claimed, with no allowance for the substantial noneconomic damages, was inadequate. In *Johnson*, the verdict rendered for each of the three plaintiffs "was for the exact amount of the special damages[6] proved and with no allowance for the pain or the physical injuries suffered which were substantial." Because the award was for more than mere nominal damages, the jury had found that the defendant was liable and that the plaintiff's injuries were substantial. We concluded that where the plaintiffs are entitled to recover damages for their injuries, an award limited to nominal or special damages is "manifestly inadequate" and should be set aside. Id., 232.

The plaintiff's case is distinguishable from *Johnson*. First, in this case the jury did not award the entire amount of claimed economic damages, but only 19 percent of that amount. Second, the evidence of physical

[6] The terms "special damages" and "general damages" have been replaced by statute with the terms "economic damages" and "noneconomic damages," respectively. See General Statutes § 52-572h (a) (1).

injury offered by the plaintiff was neither substantial nor uncontested.[7] Thus, the damages awarded by the jury were not manifestly inadequate, and the plaintiff was not entitled, under the rationale of *Johnson*, to an additur or, in the alternative, to a new trial in accordance with General Statutes § 52-228b.[8]

Third, there was nothing ambiguous about the jury award. See *Malmberg* v. *Lopez*, supra, 208 Conn. 675. In reliance on *Malmberg*, the plaintiff argues that a jury verdict in his favor for $3649 in economic damages and zero in noneconomic damages was manifestly inade-

[7] Although the plaintiff complained of neck pain to the hospital staff immediately after the accident, all subsequent reports by his treating physician, Richard Matza, reflect that he sustained no permanent neck injuries. Furthermore, although there were reports from Matza indicating that the plaintiff suffered spasms of the lower back and that he had a 12 percent permanent partial disability of the lower back, these reports were based on examinations of the plaintiff several months after the accident. Moreover, the radiology report created immediately after the accident shows there already existed a degenerative condition of his back. In light of the plaintiff's employment in the landscaping business and the absence of any reports by him of any injury to his lower back to the hospital staff immediately after the accident, the jury could have reasoned that this permanent disability was a result of his employment and not the defendant's conduct. Finally, because the plaintiff did not ask to submit interrogatories to the jury and has failed to supply this court with a transcript of the trial, he cannot establish that the award of 19 percent of the claimed economic damages was for medical damages as opposed to lost wages. Consequently, we disagree with the dissent that the jury awarded "substantial special damages" for medical expenses reflecting pain and suffering.

[8] The plaintiff also relies on *Jeffries* v. *Johnson*, 27 Conn. App. 471, 476, 607 A.2d 443 (1992), which affirmed the trial court's finding that the verdict was inadequate and concluded that the trial court did not abuse its discretion in concluding that the verdict should be set aside. Because the plaintiff in *Jeffries* met the *Johnson* requirements, however, this reliance is misplaced. First, in *Jeffries*, the jury found the plaintiff's economic damages to be the full amount sought by the plaintiff, but explicitly awarded zero noneconomic damages. Id., 473–74. Second, the Appellate Court stated in *Jeffries* that "where a plaintiff is entitled to recover damages for pain and suffering, an award limited to nominal or special damages is inadequate as a matter of law . . . ." Id., 476. On the basis of the record in this case, the jury could reasonably have concluded that the plaintiff had failed to prove such entitlement.

quate as a matter of law, requiring an additur or, alternatively, a new trial. *Malmberg* is, however, inapposite. In *Malmberg*, the jury returned a verdict for the plaintiff, but awarded zero damages. The plaintiff moved to set aside the verdict, which was denied by the trial court. On appeal, we found that a plaintiff's verdict, coupled with an award of zero damages, was inherently ambiguous. "A plaintiff's verdict with a nominal damage award ordinarily suggests that the jury found that despite the defendant's liability, the plaintiff failed to prove damages. . . . The jury's intent in rendering a plaintiff's verdict with zero damages in a wrongful death action [however,] is far less clear." Id., 681–82.

In the case before us, however, the jury did not award zero damages; rather, it specifically awarded $3649 in economic damages, but declined to award any noneconomic damages. There is no apparent conflict in the verdict to create an ambiguity such as that at issue in *Malmberg*. See *Ginsberg* v. *Fusaro,* supra, 225 Conn. 425–26 (verdict in favor of a defendant on her counterclaim but awarding zero damages, was inconsistent as matter of law).

We have previously determined that a jury may award a plaintiff less than the claimed special damages. *Rickert* v. *Fraser*, 152 Conn. 678, 211 A.2d 702 (1965). In *Rickert*, the jury was confronted with conflicting evidence concerning the plaintiff's injuries. The plaintiff had claimed $755.27 in medical expenses, $2719.20 in lost wages and $46,525.53 for pain and suffering. The jury awarded the plaintiff only $2500 in damages, and this court upheld the trial court's refusal to set aside the verdict because "[a]s to the matter of [the plaintiff's] injuries and the pain and suffering resulting therefrom . . . the medical testimony and opinions were conflicting to such an extent that the jury could have refused to credit the plaintiff's claims." Id., 680–81. Furthermore, we concluded that although medical expenses of $755.27

were unquestioned, "[o]n the basis of the variances in proof as to the plaintiff's ability to work . . . the jury could reasonably have found that her evidence as to lost wages was exaggerated." Id., 680. In accordance with *Rickert*, given the conflicting evidence of the plaintiff's injuries, we find that the jury's award of 19 percent of the economic damages claimed, and an award of zero noneconomic damages, did not mandate an additur.

Finally, we are unpersuaded that the provisions of Tort Reform I and II[9] support the plaintiff's position. General Statutes §§ 52-572h[10] and 52-225d[11] require the fact finder to specify separately the amount of economic damages and the amount of noneconomic damages. These provisions are consistent with our history of recognizing the distinction between different kinds of damages. See *Waterbury Petroleum Products, Inc.* v. *Canaan Oil & Fuel Co.*, 193 Conn. 208, 223 n.16, 477 A.2d 988 (1984).

"Interpreting a statute to impair an existing interest or to change radically existing law is appropriate only

[9] Number 86-338 of the 1986 Public Acts is commonly known as "Tort Reform I," and was codified at General Statutes (Rev. to 1987) §§ 52-225a through 52-225d, 52-251c and 52-572h. Number 87-227 of the 1987 Public Acts, commonly known as "Tort Reform II," revised those sections.

[10] General Statutes § 52-572h (f) provides: "The jury or, if there is no jury, the court shall specify: (1) The amount of economic damages; (2) the amount of noneconomic damages; (3) any findings of fact necessary for the court to specify recoverable economic damages and recoverable noneconomic damages; (4) the percentage of negligence that proximately caused the injury, death or damage to property in relation to one hundred per cent, that is attributable to each party whose negligent actions were a proximate cause of the injury, death or damage to property including settled or released persons under subsection (n) of this section; and (5) the percentage of such negligence attributable to the claimant."

[11] General Statutes § 52-225d (a) (1) provides: "In any civil action wherein the claimant seeks to recover damages resulting from personal injury, wrongful death or damage to property occurring on or after October 1, 1987, and wherein liability is admitted or determined by the trier of fact, the court shall proceed to enter judgment as follows: (1) The trier of fact shall make separate findings for each claimant specifying the amount of any economic damages and noneconomic damages, as defined in subsection (a) of section 52-572h."

if the language of the legislature plainly and unambiguously reflects such an intent. . . . We recognize only those alterations of the common law that are clearly expressed in the language of the statute because the traditional principles of justice upon which the common law is founded should be perpetuated." (Citations omitted.) *Lynn* v. *Haybuster Mfg., Inc.*, 226 Conn. 282, 289–90, 627 A.2d 1288 (1993). As we have discussed, the common law of this state does not recognize the principle that awards limited to economic damages are inadequate as a matter of law and must be set aside, or the principle that a fact finder must award noneconomic damages each time it awards economic damages. Rather, as we have stated numerous times, "[t]he amount of a damage award is a matter peculiarly within the province of the trier of fact"; *Mather* v. *Griffin Hospital*, supra, 207 Conn. 138; and "if, on the evidence, the jury could reasonably have decided as they did, [the reviewing court] will not find error in the trial court's acceptance of the verdict . . . ." (Internal quotation marks omitted.) *Malmberg* v. *Lopez*, supra, 208 Conn. 679. Nothing in the language of §§ 52-225d or 52-572h, the legislative history and circumstances surrounding their enactment, the policies they were designed to implement, or their relationship to existing common law principles governing the same general subject matter suggests that the legislature intended to change our common law or to require that a different rule of law be applied. See, e.g., *Connecticut National Bank* v. *Giacomi*, 233 Conn. 304, 319, A.2d (1995); *Williams Ford, Inc.* v. *Hartford Courant Co.*, 232 Conn. 559, 581, 657 A.2d 212 (1995).

On the contrary, the language chosen by the legislature reflects an intention that juries should separately determine awards of economic and noneconomic damages and does not hint of a requirement that an award of one type of damages necessarily requires an award

of the other type of damages. The thrust of Tort Reform II was to create a distinction between the two kinds of awards. 30 H.R. Proc., Pt. 16, 1987 Sess., pp. 5656–57. The legislature's intent was for the trier of fact to make "two findings," one based on economic damages and the other on noneconomic damages. Id. Each finding is required to be "separate." General Statutes § 52-225d (a) (1). This change was instigated by the insurance industry in order "to obtain necessary information regarding jury behavior in particular areas, such as the assessment of noneconomic damages." P. Gillies, Report of the Governor's Task Force on Insurance Costs and Availability (January 30, 1986) p. 17.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion, BORDEN, NORCOTT and PALMER, Js., concurred.

BERDON, J., dissenting. The majority concludes that a jury award for the plaintiff that consists of $3649 in economic damages but zero noneconomic damages is not ambiguous and, therefore, may be sustained on appeal. I disagree. Like the Appellate Court,[1] I conclude that in a personal injury case, when a plaintiff has alleged and produced evidence to support an award of both economic and noneconomic damages, a jury verdict that consists of substantial economic damages but zero noneconomic damages is ambiguous as a matter of law. Accordingly, the trial court should have set aside the verdict.

At common law, damages in a personal injury action were classified as either "special damages" or "general damages." "Ordinarily, such things as loss of earnings,

[1] See *Childs* v. *Bainer*, 35 Conn. App. 301, 305, 645 A.2d 1041 (1994).

doctors' and hospital bills are referred to as special damages." *Varley* v. *Motyl*, 139 Conn. 128, 134, 90 A.2d 869 (1952); see *Wood* v. *Bridgeport*, 216 Conn. 604, 610, 583 A.2d 124 (1990). General damages, on the other hand, included compensation for conscious pain and suffering. *Kiniry* v. *Danbury Hospital*, 183 Conn. 448, 460, 439 A.2d 408 (1981). In personal injury cases, the court would instruct the jury about these categories of damages. If the jury returned a verdict for the plaintiff, however, it would not break down the monetary award into these separate categories. Rather, it would return a lump sum verdict that included both special and general damages.

In the mid1980s, the legislature rewrote the tort recovery provisions of our civil system in successive legislative enactments known together as Tort Reform.[2] As a result of the latter of these enactments, No. 87-227 of the 1987 Public Acts, the trier of fact in a personal injury action must break down its award of damages into two categories: economic damages and noneconomic damages. Economic damages are defined as "compensation determined by the trier of fact for pecuniary losses including, but not limited to, the cost of reasonable and necessary medical care, rehabilitative services, custodial care and loss of earnings or earning capacity excluding any noneconomic damages." General Statutes § 52-572h (a) (1). Noneconomic damages are defined as "compensation determined by the trier of fact for all nonpecuniary losses including, but not limited to, physical pain and suffering and mental and emotional suffering." General Statutes § 52-572h (a) (2). For the most part, therefore, "economic damages" are akin to special damages, and "noneconomic damages" are akin to general damages.

In *Johnson* v. *Franklin*, 112 Conn. 228, 152 A. 64 (1930), this court addressed a question identical to that

[2] See Public Acts 1986, No. 86-338; Public Acts 1987. No. 87-227.

posed here. In *Johnson*, the jury returned a verdict that awarded substantial special damages, but zero general damages, to each of three plaintiffs. This court concluded that the awards were inadequate as a matter of law. In overturning the trial court's refusal to set aside the verdicts, this court held that "if the plaintiffs were entitled to verdicts those rendered were *manifestly inadequate* and the motion to set them aside should have been granted." (Emphasis added.) Id., 232. Similarly, in *Ginsberg* v. *Fusaro*, 225 Conn. 420, 425, 623 A.2d 1014 (1993), we concluded that a jury verdict that found liability issues in favor of a defendant on her counterclaim against a particular plaintiff but that awarded her zero damages was "inherently ambiguous." We reasoned that "[u]nder these circumstances, we can only speculate as to why the jury failed to award damages in her favor; therefore, the jury's verdict creates an ambiguity." Id., 425–26; see *Malmberg* v. *Lopez*, 208 Conn. 675, 681, 546 A.2d 264 (1988); *Creem* v. *Cicero*, 12 Conn. App. 607, 611, 523 A.2d 234 (1987) ("[a]s a general rule, it is manifestly unjust for the jury to fail to award damages for pain and suffering when it awards special damages").

In my view, this case is squarely controlled by *Johnson* and *Ginsberg*. Although the terminology of *Johnson* involves "special damages" and "general damages," the principles announced therein apply with equal force to the economic and noneconomic damages at issue in this case. Under the rationale of *Johnson*, an award of economic damages without accompanying noneconomic damages cannot stand. Likewise, just as this court in *Ginsberg* found ambiguity in the jury's failure to award damages consistent with its verdict, the same ambiguity exists here, where the jury has awarded economic damages but no noneconomic damages to reflect pain and suffering.[3] On the basis of these clear precedents, there-

[3] My conclusion would be different if the jury had awarded only nominal economic damages, or if the economic damages had been limited solely to

fore, the Appellate Court was correct in reversing the judgment of the trial court and remanding the case for agreement on an additur or, in the alternative, a new trial.[4]

The reasoning behind the majority's attempts to distinguish this case from *Johnson* eludes me.[5] First, the majority suggests that the percentage recovery of the amount of special damages alleged by the plaintiff is a factor. The majority points out that in *Johnson* each plaintiff was awarded an amount equal to his or her entire amount of special damages alleged,[6] but that in this case the plaintiff was awarded only 19 percent of the noneconomic damages he had alleged.[7] I do not

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damages without accompanying pain and suffering, such as the cost of a physical examination to ascertain whether the plaintiff was injured.

[4] The Appellate Court remanded the case as follows: "The judgment is reversed and the case is remanded for further proceedings to determine a reasonable additur for noneconomic damages, to give the parties an opportunity to accept the additur, and, if they do not accept the additur, a new trial is ordered as to all issues." *Childs* v. *Bainer*, supra, 35 Conn. App. 305.

[5] In an endeavor to distinguish this case from our well reasoned precedent in *Johnson* v. *Franklin*, supra, 112 Conn. 228, the majority speculates in footnote 7 that the jury could have found that the permanent injury to the lower back was related to his employment. But the majority simply misses the point. In this case, as in *Johnson*, we do not know what the jury found other than that, as a result of the defendant's negligence, the plaintiff sustained substantial special or economic damages in the amount of over $3600, but no pain and suffering or other noneconomic damages. In light of the medical evidence of injuries to the neck and lower back of the plaintiff, as a result of the defendant's negligence, an award of over $3600 for special damages and zero for pain and suffering and other noneconomic damages makes this verdict ambiguous. It is ambiguous because if they did not believe the plaintiff was injured, the jury would not have awarded him the *substantial* special damages. And the suggestion by the majority that the special damages awarded by the jury may have included lost wages does not make the verdict less ambiguous. "We presume that the jury will abide by its duty to make a thoughtful, reasoned decision, applying its common sense and logic to the evidence presented." *Wasfi* v. *Chaddha*, 218 Conn. 200, 211, 588 A.2d 204 (1991). For this reason, the verdict must be set aside.

[6] To the three plaintiffs in *Johnson*, the jury awarded $573.25, $240.57 and $142, respectively. *Johnson* v. *Franklin*, supra, 112 Conn. 229.

[7] The jury awarded $3649 of the $19,129 claimed by the plaintiff.

understand why this makes any difference. In both cases, the jury awarded substantial special damages, but nothing for pain and suffering. That is the significant factor, and that was the basis for this court's decision in *Johnson* to set aside the verdict. Indeed, this case is more compelling than *Johnson*. In *Johnson*, because the jury was not asked to differentiate between special and general damages, the court was required to assume that the amount awarded to each plaintiff, which matched exactly the amount he or she had alleged as special damages, consisted only of special damages. *Johnson* v. *Franklin*, supra, 112 Conn. 229. In this case, however, as a result of the specific jury findings required by § 52-572h, we know for a fact that the jury awarded the plaintiff only economic damages and refused to award noneconomic damages. Under the rationale set forth in *Johnson*, that ambiguity requires that the verdict be set aside.

Second, the majority attempts to distinguish this case on the basis that, in *Johnson*, this court stated that the pain and physical injuries suffered by the plaintiffs had been "substantial." I do not know what the *Johnson* court meant by substantial, but it is undeniable that the $3649 in special damages awarded in this case is not nominal. Moreover, although the evidence was hotly contested, there was medical evidence that the plaintiff had sustained a 12 percent permanent disability to his lower back and that he had suffered from pain.[8] Accordingly,

[8] Three reports of the plaintiff's physician, Richard Matza, were introduced into evidence during the trial. Each of the reports noted that the patient is "being followed along" for cervical and lumbar strain. The first report, dated March 10, 1989, indicated that the plaintiff's "low back has pain. [Physical therapy] definitely helps but the headaches continue." That report also referred to "[t]enderness in the paraspinous muscle region of the low back with spasm in the paraspinous muscle region of the low back" and "[r]esolved cervical strain with persistent low back strain."

The second report, dated May 10, 1989, indicated that the plaintiff's "neck is doing quite good; low back is better. He has some tenderness in the left posterior superior iliac spine." This report also referred to "cervical strain and low back strain."

the majority cannot attempt to distinguish this case from *Johnson* on the ground that the plaintiff had failed to demonstrate "substantial" injuries.

The majority's reliance on another aspect of *Ginsberg* v. *Fusaro*, supra, 225 Conn. 430,[9] and on *Rickert* v. *Fraser*, 152 Conn. 678, 211 A.2d 702 (1965), is misplaced. Both *Ginsberg* and *Rickert* went to trial prior to the legislature's enactment of Tort Reform and, consequently, the juries in those cases had not been required to separate their awards into economic and noneconomic damages. On appeal, therefore, this court was unable to determine whether the jury awards included only special damages, only general damages, or a combination of both. For example, in *Ginsberg*, a dental malpractice case, the injured party claimed special damages in excess of $50,000, along with general damages; we were unable to determine how the jury had apportioned the $5000 it had awarded to her against one of two dentists and whether that amount might have included damages for pain and suffering. Consequently, we affirmed the jury verdict. Likewise, in *Rickert*, although the plaintiff had claimed special damages of $3400, we had no way of determining whether any part of the $2500 awarded by the jury constituted damages for pain and suffering. This

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The third report, dated February 7, 1990, concluded that "[h]is neck is doing fine. His low back is still symptomatic. . . . On physical exam, the patient has tenderness in the paraspinous muscle region of the neck and low back with pain . . . . My impression is the patient has improved cervical strain with chronic low back strain which has reached maximum improvement with a 12% permanent, partial disability of the back and none of the neck."

[9] *Ginsberg* was originally a collection case that ripened into a claim of dental malpractice. The plaintiff dentists brought the action against their former patient and her husband, and the patient counterclaimed for negligence. The jury returned a verdict for the patient against both dentists, Robert Miller and Martin Ginsberg. The jury, however, awarded $5000 damages against Miller only and none against Ginsberg. The trial court accepted the jury verdict as to Miller but set aside the verdict as to Ginsberg. We affirmed the trial court's decision on appeal. *Ginsberg* v. *Fusaro*, supra, 225 Conn. 432.

precise distinction was made clear in *Creem* v. *Cicero*, supra, 12 Conn. App. 611 ("there was no reasonable basis upon which the court could have concluded that the jury's verdict was limited to special damages"). These cases, therefore, are not helpful to the majority.

In sum, I agree with the Appellate Court that the trial court should have ordered an additur and, if the parties failed to agree on that sum, the trial court should have set aside the verdict and ordered a new trial.[10] I respectfully dissent.

PARCC, INC. *v.* COMMISSION ON HOSPITALS AND HEALTH CARE
(15100)

Peters, C. J., and Callahan, Borden, Berdon and Palmer, Js.

The plaintiff applied to the commission on hospitals and health care for reauthorization of the construction of a planned ten bed expansion of its nursing home facility. The plaintiff had begun the first phase of its expansion pursuant to a public act (P.A. 89-325, § 3) permitting certain nursing homes under certain circumstances to increase their licensed bed capacity on a one time basis without first obtaining a certificate of need from the defendant. Before the plaintiff began the second phase, however, the legislature determined that there was insufficient need for any additional beds and it passed a public act (P.A. 93-406, § 2) providing that any facility that had not submitted plans for approval by the department of public health and addiction services, the agency responsible for licensing such facilities on or before June 1, 1993, and had not expended at least 25 percent of the project costs could not proceed with its planned additions. Thereafter, the defendant, which had previously found the plaintiff in compliance with P.A. 89-325, § 3, denied the plaintiff's request for reauthorization, and the plaintiff appealed to the trial court. The trial court dismissed the plaintiff's appeal on the ground that the denial was not a final decision in a contested case, and, therefore, was not appealable. On the plaintiff's appeal, *held* that the trial court improperly dismissed the

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[10] I disagree with the remand ordered by the Appellate Court. See footnote 4 of this dissent. Because this is a case of an ambiguous jury verdict, the trial court, in my view, should have set aside the verdict without first ordering an additur. See *Ginsberg* v. *Fusaro*, supra, 225 Conn. 430; *Johnson* v. *Franklin*, supra, 112 Conn. 232.

1 of 100 DOCUMENTS

NORFOLK AND DEDHAM MUTUAL FIRE INSURANCE COMPANY v. CRAIG WYSOCKI; LIBERTY MUTUAL FIRE INSURANCE COMPANY v. CRAIG WYSOCKI

(SC 15624), (SC 15625)

SUPREME COURT OF CONNECTICUT

243 Conn. 239; 702 A.2d 638; 1997 Conn. LEXIS 434

October 1, 1997, Argued

November 11, 1997, Officially Released

PRIOR HISTORY:
[***1] Application, in each case, to vacate an arbitration award of uninsured motorist benefits to the defendant, brought to the Superior Court in the judicial district of Middlesex, where the defendant filed a motion, in each case, to confirm the award, and where the cases were consolidated and tried to the court, Stanley, J.; judgment, in each case, denying the application to vacate and granting the application to confirm the award, from which the plaintiffs filed separate appeals.

DISPOSITION:
Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff insurers sought review of a decision of the Superior Court in the Judicial District of Middlesex (Connecticut), which denied the insurers application to vacate an arbitration award in favor of defendant insured and granted the insured's motion to confirm the award.

OVERVIEW: While riding an all-terrain vehicle, the insured was struck an injured by another all-terrain vehicle. Both all-terrain vehicles were uninsured. The insured was covered under two automotive policies from the insurers that each contained uninsured motorist coverage. The insured made uninsured motorist claims on the two policies and a panel of arbitrators awarded him $ 60,000. The insurers filed an application to vacate the awards and argued that the all-terrain vehicles did not meet the definition of a motor vehicle under the policies and that the all-terrain vehicles were subject to an exclusion. The trial court concluded that although an all-terrain vehicle did not meet the statutory definition of a motor vehicle, it did meet the definition of an uninsured motor vehicle found in both policies for purposes of uninsured motorist coverage, and that the exclusion provisions of the policies does not bar coverage. The court affirmed the decision of the trial court. Because the trial court's memorandum of decision fully addressed the arguments raised in the appeal, the court adopted the trial court's well reasoned decision as a statement of the facts and the applicable law on the issues.

OUTCOME: The court affirmed the trial court's decision in favor of the insured.

COUNSEL:
David A. Sylvestre, with whom, on the brief, was Charles J. Wood, Jr., for the appellant in Docket No. 15624 (plaintiff Norfolk and Dedham Mutual Fire Insurance Company).

Ruth Beardsly, for the appellant in Docket No. 15625 (plaintiff Liberty Mutual Fire Insurance Company).

John L. Boccalatte, for the appellee in both cases (defendant).

JUDGES:
Borden, Berdon, Norcott, Katz and Palmer, Js.

OPINION:

[*239]

[**638] PER CURIAM. In these two joint appeals, the plaintiffs, Norfolk and Dedham Mutual Fire Insurance Company (Norfolk) and Liberty Mutual Fire Insurance [*240] Company (Liberty), appeal n1 from the judgments of the trial court denying [**639] their applications to vacate an uninsured motorist arbitration award [***2] and granting the applications of the defendant, Craig Wysocki, to confirm the award. The cases were presented to the trial court on the following stipulated facts.

n1 The plaintiffs appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to Practice Book § 4023 and *General Statutes § 51-199 (c).*

In October, 1989, the defendant was operating an all-terrain vehicle, which he owned, on a public road when he collided with another all-terrain vehicle owned and operated by Hans Pedersen. Both all-terrain vehicles were uninsured. The defendant was also the owner of a private passenger motor vehicle that was insured by Liberty for uninsured motorist coverage in the amount of $ 20,000. He was also insured under a private passenger motor vehicle policy issued to his mother by Norfolk that provided uninsured motorist coverage in the amount of $ 40,000. The defendant made uninsured motorist claims against both policies, and a panel of arbitrators awarded [***3] him $ 60,000.

Liberty and Norfolk filed applications to vacate the award, pursuant to *General Statutes § 52-418*, n2 and the [*241] trial court denied the applications to vacate and granted the defendant's applications to confirm the award. Liberty and Norfolk each claim that: (1) Pedersen's all-terrain vehicle was not a "motor vehicle" within the meaning of their respective policies; and (2) even if the all-terrain vehicle was a "motor vehicle," it was not covered for uninsured motorist coverage because of the terms of a certain exclusion in each of their respective policies. The trial court concluded that although an all-terrain vehicle does not meet the statutory definition of a motor vehicle, it does meet the definition of an uninsured motor vehicle found in both policies for purposes of uninsured motorist coverage, and that the exclusion provisions of the policies does not bar coverage. See *Norfolk & Dedham Mutual Fire Ins. Co. v. Wysocki, 45 Conn. Supp. 144, , 702 A.2d 675, 678 (1996).*

n2 *General Statutes § 52-418* provides: "Vacating award. (a) Upon the application of any party to an arbitration, the superior court for the judicial district in which one of the parties resides or, in a controversy concerning land, for the judicial district in which the land is situated or, when the court is not in session, any judge thereof, shall make an order vacating the award if it finds any of the following defects: (1) If the award has been procured by corruption, fraud or undue means; (2) if there has been evident partiality or corruption on the part of any arbitrator; (3) if the arbitrators have been guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy or of any other action by which the rights of any party have been prejudiced; or (4) if the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

"(b) If an award is vacated and the time within which the award is required to be rendered has not expired, the court or judge may direct a rehearing by the arbitrators.

"(c) Any party filing an application pursuant to subsection (a) of this section concerning an arbitration award issued by the State Board of Mediation and Arbitration shall notify said board and the Attorney General, in writing, of such filing within five days of the date of filing."

[***4]

Our examination of the record on appeal, and the briefs and arguments of the parties, persuades us that the judgment of the trial court should be affirmed. Because the trial court's memorandum of decision fully addresses the arguments raised in the present appeal, we adopt the trial court's well reasoned decision as a statement of the facts and the applicable law on these issues. It would serve no useful purpose for us to repeat the discussion therein contained. See *Garrett's Appeal from Probate, 237 Conn. 233, 237-38, 676 A.2d 394 (1996).*

The judgment is affirmed.

The plaintiff's remedy was by way of motion to this court under Practice Book § 4183 (1) for an order to compel the trial court to decide her motion for reconsideration. Accordingly, we decline to review this claim because it is not properly a part of the appeal.

The judgment is affirmed.

In this opinion the other judges concurred.

BARBARA JEANE BLANCATO ET AL. *v.* SEBASTIAN RANDINO
(11398)

LAVERY, LANDAU and SCHALLER, Js.

The plaintiffs sought to recover for personal injuries sustained by the named plaintiff, B, when her car was struck by a truck operated by the defendant. The jury returned a verdict in favor of the defendant, and, from the judgment thereon, the plaintiffs appealed to this court. *Held:*

1. The trial court properly declined to direct a verdict in the plaintiffs' favor; the evidence fully supported the jury's conclusion that the icy condition of the road rather than the defendant's negligence caused the accident.
2. The plaintiffs' claim that the trial court improperly instructed the jury on the law of negligence per se was unavailing; the jury's response to interrogatories indicated that any negligence by the defendant was not the proximate cause of B's injuries.

Argued February 17—decision released April 6, 1993

Action to recover damages for personal injuries sustained in a motor vehicle accident that allegedly resulted from the defendant's negligence, brought to the Superior Court in the judicial district of Middlesex and tried to the jury before *R. O'Connell, J.;* verdict for the defendant; thereafter, the court denied the plaintiffs' motion to set aside the verdict and rendered judgment for the defendant, from which the plaintiffs appealed to this court. *Affirmed.*

Alexandra Davis, with whom were *Mary Rebecca Knack,* certified legal intern, and, on the brief, *Wesley W. Horton,* for the appellants (plaintiffs).

Karen P. Blado, with whom were *Medina K. Jett* and, on the brief, *David Sylvestre,* for the appellee (defendant).

SCHALLER, J. The plaintiffs appeal from the judgment of the trial court, rendered after a jury trial, rejecting their claims of negligence and loss of consortium.[1] The plaintiff contends that the trial court improperly (1) refused to direct a verdict in her favor, and (2) charged the jury that negligence per se is rebuttable by a showing of reasonableness. We affirm the judgment of the trial court.

The jury reasonably could have found the following facts. On January 9, 1988, the plaintiff, Barbara Blancato, and the defendant, Sebastian Randino, were driving their respective vehicles on Ridgewood Road in Middletown shortly after a heavy snowfall. The defendant was traveling down a hill toward a sharp curve to his right. The plaintiff had passed the curve and was heading up the hill.

Temperatures that day never rose above the freezing mark, and ice covered the surface of the road on the defendant's side. From the crest of the hill, the defendant's pick-up truck began to slide uncontrollably on the ice. The plaintiff stopped her car near the bottom of the hill several feet away from a driveway. Despite the defendant's effort to maneuver his truck to the shoulder of the road, the truck slid across the center line of the road and collided with the plaintiff's car.

[1] The plaintiff Sebastian Blancato's claim for loss of consortium is derivative of that of the named plaintiff. We will refer to the named plaintiff as the plaintiff in this opinion.

The plaintiff brought this action claiming that the defendant's negligence caused her injuries. The defendant denied these allegations and further asserted a special defense claiming that the plaintiff's own negligence caused her injuries. The case proceeded to trial. At the conclusion of the plaintiff's evidence, the plaintiff moved for a directed verdict. The trial court denied the motion.

The court submitted the case to the jury along with written interrogatories. The first interrogatory asked the following: "Was the collision proximately caused by the negligence of the defendant, Sebastian Randino? If you answer 'No,' please report that you have concluded your deliberations, and complete the defendant's verdict form." The jury answered "No" and returned a verdict for the defendant. The plaintiff subsequently filed a motion to set aside the verdict. The trial court denied the motion and this appeal ensued.

I

The plaintiff first claims that the trial court improperly refused to direct a verdict in her favor. We disagree. The limited nature of our review of a trial court's refusal to direct or set aside a verdict is well settled. When reviewing the action of the trial court, we consider the evidence in the light most favorable to sustaining the judgment. *Munson* v. *United Technologies Corporation,* 28 Conn. App. 184, 191, 609 A.2d 1066 (1992). "A directed verdict is justified if on the evidence the jury could not reasonably and legally reach any other conclusion than that embodied in [a verdict for the defendant] . . . or if the evidence is so weak that it would be proper for the court to set aside a verdict rendered for the other party. . . . When a jury has returned a verdict and the trial court has refused to set it aside, [t]he court's decision will be upheld on appeal if, from the evidence presented, the jury could

reasonably have concluded as it did." (Citation omitted; internal quotation marks omitted.) *Hall* v. *Winfrey,* 27 Conn. App. 154, 157–58, 604 A.2d 1334, cert. denied, 222 Conn. 903, 606 A.2d 1327 (1992); *Boehm* v. *Kish,* 201 Conn. 385, 388–89, 517 A.2d 624 (1986).

In responding to the plaintiff's first claim, we focus on the element of causation and do not consider whether the defendant was negligent per se or otherwise negligent. Proximate cause is an essential element to any claim of negligence. *Wu* v. *Fairfield,* 204 Conn. 435, 528 A.2d 364 (1987); *Tesler* v. *Johnson,* 23 Conn. App. 536, 539–40, 583 A.2d 133 (1990), cert. denied, 217 Conn. 806, 584 A.2d 1192 (1991). "Proximate cause is . . . an act or failure to act which is a substantial factor in producing a result." *Sanders* v. *Officers Club of Connecticut, Inc.,* 196 Conn. 341, 349, 493 A.2d 184 (1985). Whether proximate cause exists in a given case is ordinarily a question of fact. *Trzcinski* v. *Richey,* 190 Conn. 285, 295, 460 A.2d 1269 (1983). Further, our case law under the municipal and state highway defect statutes makes abundantly clear that a road condition may qualify as the proximate cause of an injury. See, e.g., *Lukas* v. *New Haven,* 184 Conn. 205, 207, 439 A.2d 949 (1981) (recovery for breach of statutory duty under highway defect statute requires proof by a fair preponderance that defect was sole proximate cause of injuries and damages claimed); *Patrick* v. *Burns,* 5 Conn. App. 663, 668, 502 A.2d 432 (1985), cert. denied, 198 Conn. 805, 504 A.2d 1059 (1986)[2] (evidence of large

[2] Regarding the element of proximate cause, we note that the difference between an action under the highway defect statutes and an ordinary negligence action is that liability under the statutes requires the defect to be the *sole* proximate cause of the injuries. Compare *Lukas* v. *New Haven,* 184 Conn. 205, 207, 439 A.2d 949 (1981) (sole proximate cause), with *Sanders* v. *Officers Club of Connecticut, Inc.,* 196 Conn. 341, 349, 493 A.2d 184 (1985) (proximate cause defined as substantial factor). Still, the highway defect cases are instructive on the relationship between road conditions and the element of causation. For example, in *Patrick* v. *Burns,* 5 Conn. App. 663,

ice patch in path of driver established that highway defect was sole proximate cause of plaintiff's injuries); cf. *Beauton* v. *Connecticut Light & Power Co.*, 125 Conn. 76, 81, 3 A.2d 315 (1938) (damage caused directly and exclusively by "act of God" could not be attributed to negligence).

In this case, the jury found that the defendant's actions did not proximately cause the plaintiff's injuries.[3] We find that the evidence fully supports the jury's conclusion. Evidence established that the defendant's side of the road was covered with ice. The defendant testified that he was driving under the speed limit when he suddenly encountered these treacherous road conditions. Despite his efforts and precautions, however, the defendant lost control of his truck when it slid on the ice. Based on these facts, the jury may well have found that the icy conditions, as opposed to the defendant's act or failure to act, proximately caused the accident. See id. Thus, even if we assume the defendant's negligence, the jury could reasonably have concluded that the layer of ice covering the road, not the defendant's negligence, was a substantial factor causing the accident.[4] We conclude that the trial court properly declined to direct a verdict in the plaintiff's favor.

668, 502 A.2d 432 (1985), cert. denied, 198 Conn. 805, 504 A.2d 1059 (1986), the court held that "the jury could have reasonably concluded . . . that the [plaintiff's] loss of control of her vehicle, her crossing over the center line and, thus, her colliding with [another] vehicle *was caused solely by the ice floe* . . . ."

[3] The dispositive interrogatory was phrased so as to include the elements of negligence *and* causation. Because the plaintiff failed to seek interrogatories which separately would have indicated the jury's findings as to each element, we are free to assume that the jury determined that the plaintiff failed to establish either one of the two elements. *Trzcinski* v. *Richey*, 190 Conn. 285, 297, 460 A.2d 1269 (1983). As stated, we focus on the element of proximate cause without deciding the issue of whether the defendant was negligent per se.

[4] According to the plaintiff, the defendant admitted that his negligence proximately caused her injuries. This claim is unavailing, however, because after carefully reviewing the record and transcripts we have not uncovered any admission regarding proximate cause.

II

The plaintiff's second claim is that the trial court improperly instructed the jury on the law of negligence per se. The plaintiff submitted a request to charge that included instructions on the law of negligence per se. The plaintiff sought these instructions in light of evidence that the defendant had violated provisions of our General Statutes pertaining to vehicle highway use. The statutes in question concern traveling unreasonably fast, traveling on the wrong side of the road and failing to pass oncoming traffic on the right. General Statutes §§ 14-218a, 14-230 and 14-231. The court granted the plaintiff's request and instructed the jury accordingly. The defendant objected.

In response to the defendant's objection, the court supplemented its charge to the jury stating as follows: "[I]f one of the parties proves that the other party has violated the law, they have proven negligence per se. The burden of proof then shifts to that other party to show that there was some condition or some circumstance that prevented that party from following along. So it's not absolute, in and of itself, the failure to follow the law."

Our conclusion in part I that the jury reasonably could have found that any negligence on the part of the defendant was not the proximate cause of the plaintiff's injuries is fully dispositive of the plaintiff's claim of improper instruction. Even if we assume that the trial court improperly instructed the jury on the issue of negligence per se, the plaintiff has not explained how this instruction prejudiced her case. To the contrary, the jury's response to the dispositive interrogatory indicates that negligence was not central to the verdict. Rather, according to the jury, the defendant's acts or omissions were not the proximate cause of the plain-

tiff's injuries.[5] Thus, even if we assume that the negligence per se instruction was defective, it had no bearing on the verdict. We conclude that the trial court's instructions, even if improper, did not prejudice the plaintiff. See, e.g., *Kelley* v. *Bonney,* 221 Conn. 549, 586, 606 A.2d 693 (1992) ("[e]ven if the instruction were improper, it could not have affected the result of this case").

The judgment is affirmed.

In this opinion the other judges concurred.

MOBIL OIL CORPORATION *v.* ZONING COMMISSION OF THE TOWN OF STRATFORD ET AL.
(11514)

DUPONT, C. J., DALY and LAVERY, Js.

The plaintiff appealed to the trial court from a decision by the defendant zoning commission of the town of Stratford denying its application for a special permit to convert its gasoline station from full service to self-service with an additional repair bay. The trial court rendered judgment sustaining the appeal and remanding the case to the commission for further proceedings. On the plaintiff's appeal to this court, *held* that the trial court, having determined that there was no basis for the commission's denial of the permit, should have ordered that the application be approved; accordingly, the case was remanded to the trial court with direction to render judgment ordering approval.

Argued February 9—decision released April 6, 1993

Appeal from the decision by the named defendant denying the plaintiff's application for a special case permit, brought to the Superior Court in the judicial district of Fairfield and tried to the court, *Leheny, J.;* judgment sustaining the plaintiff's appeal, from which the plaintiff, on the granting of certification, appealed to this court. *Reversed in part; judgment directed.*

[5] See footnote 3, supra.

AUG 03 1994

CNA INSURANCE COMPANIES

Fifty Staniford Street, Boston, Massachusetts 02114

John J. Carlino
Director
Claims Legal Services
617 720-9716
Fax 617-367-5867

August 1, 1994

David A. Sylvestre
Law Offices of Grant H. Miller, Jr.
29 South Main Street Suite 310N
Hartford CT 06107

Dear David:

Congratulations on your upcoming fifth anniversary with CNA. I can remember when you were doing some good work for us as a law clerk and I appreciate your continuing efforts as a Trial Attorney in the staff counsel operation. Staff counsel is indeed fortunate to have you as a member and I have personally enjoyed the association.

Wishing you continued success.

Best Personal Regards,

John J. Carlino

OLD DOMINION
FREIGHT LINE, INC.

February 16, 1999

To Whom it May Concern
Trucking Industry Defense Association

RE: David A. Sylvestre, Esq.
P.O. Box 6091
Wallingford, CT 06492-0089

Gentlemen:

Mr. Sylvestre has advised us that he wishes to join the Trucking Industry Defense Association and requires references from his business associates.

Mr. Sylvestre handles all trucking defense matters for Old Dominion Freight Line, Inc. in the state of Connecticut. In the past few years he has successfully represented us in several matters and we have been very pleased with the outcome.

We would not hesitate to call on him for future needs and would recommend him for defense purposes.

With best regards, I am

Very truly yours,

Joel B. McCarty, Jr.
Sr. Vice President,
General Counsel/Secretary

JBM/ag