

DOCKET NO. DBD CV-23-6045641-S : SUPERIOR COURT
FRANK DINUCCI : J.D. OF DANBURY
V. : AT DANBURY
363 PEQUOT LLC : APRIL 26, 2024

MEMORANDUM OF DECISION

The plaintiff, Frank DiNucci, filed a complaint dated March 16, 2023 alleging that the defendant was negligent in the care of the premises causing the plaintiff to fall due to slippery conditions of the parking lot.” The plaintiff alleged in the complaint that on February 23, 2021, he fell on ice while walking from the parking lot to his office and sustained injuries. The defendant did not appear and was defaulted for failure to appear on May 2, 2023. This court conducted a hearing in damages on March 22, 2024. The plaintiff appeared and testified as to his fall and the injuries and damages which he alleges were caused by the negligence of the defendant.¹

“Upon default, the plaintiff ordinarily becomes entitled to recover damages. . . The right to further substantial damages remains to be established by the plaintiff at a hearing in damages.” (Citations omitted.) *Kloter v. Carabetta Enterprises, Inc.*, 186 Conn. 460, 464, 442 A.2d 63 (1982). The burden of proof for an award of more than nominal damages is a preponderance of the evidence. *Whitaker v. Taylor*, 99 Conn. App. 719, 734-34, 916 A.2d 834 (2007). “[T]he burden of proving damages is on the party claiming them.” *Gargano v. Heyman*, 203 Conn. 616, 620, 525 A.2d 1343 (1987).

As a result of the default, the court proceeded with a Hearing in Damages. The defendant did not appear for the hearing. The plaintiff presented evidence and testimony from which the court makes the following findings of fact. On February 23, 2021, the plaintiff was walking on the area from the parking lot at and fell on the sidewalk in front of the defendant’s business. The fall was caused by an icy condition on the walkway. The plaintiff introduced photos of the fall because there was a camera on the building nearby which documented the fall. (Exh.1). The plaintiff was able to get up and walked to his place of business where he attempted to work but left when his injuries were becoming more pronounced. The plaintiff did not immediately seek medical attention but on February 24, 2021, he sought medical attention at Norwalk Hospital. His medical records from the hospital indicate he complained that he hit the back of his head and his left side.

¹ At the hearing, the plaintiff provided Exhibits 1 through 6 which documents were not marked as full exhibits because they contained some personal identifying information which caused the court to seal the exhibits. (D.E. #105). The court ordered new exhibits to be filed redacting this information which the plaintiff did on the same date. (D.E. #106).

(Ex. 3). The hospital records consisted of the CT scan of his spine which showed “no intracranial bleeding or fractures.” Id. The final diagnosis was a “concussion and acute cervical sprain.” Id. The plaintiff incurred charges for the care at Norwalk Hospital in the amount of \$5,236.62. Thereafter, he received an evaluation from Dr. Dario Zagar on March 17, 2021. (Ex. 5). The plaintiff had one visit with Dr. Zagar and received a bill for his services in the amount of \$575. (Ex. 5). Dr. Zagar did not make any findings of permanent injury and indicated in his records that the plaintiff had head pain which improved after the first few days. The plaintiff was still complaining about some pain in his back and difficulty with some of his tasks. However, there are no medical findings that he has any permanent disability as a result of the fall. The plaintiff provided the court with his testimony about ongoing sporadic pain. Other than the hospital visit and the treatment with Dr. Zagar there were no other visits or bills for his medical treatment. Thus, the economic damages as a result of the fall are \$5,811.70. The plaintiff also requests non-economic damages for the pain and suffering and ongoing pain that he has endured and still endures. The plaintiff is 73 years of age and has a life expectancy for a man of the same age of 12.36 years. The court finds that an award of non-economic damages is awarded for the pain and suffering in the amount of \$6,000.

Based upon the upon the court finds that the plaintiff is entitled to a judgment in the amount of \$11,811.70.

THE COURT

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Brazzel-Massaró, J.T.R.