

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-30379  
Summary Calendar

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MARY ANN MOLAISSON and EARL MOLAISSON,  
  
Plaintiffs-Appellants,  
  
versus  
  
UNITED STATES OF AMERICA,  
  
Defendant-Appellee.

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Appeal from the United States District Court for  
the Eastern District of Louisiana  
(CA 93 478 L/D)

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March 21, 1995

Before REAVLEY, HIGGINBOTHAM and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Mary Ann and Earl Molaison filed suit under the Federal Tort Claims Act for damages sustained as a result of an automobile accident between Ms. Molaison and William Geiger, an employee of the United States Army Corps of Engineers. Following a bench trial, the district court concluded that the collision was the sole fault of Mr. Geiger. The court also concluded, however,

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

that Ms. Molaison's complaints of severe depression were not a result of the accident and that she was malingering with respect to some of her complaints of problems allegedly stemming from the accident. The court awarded \$69,295.51 in damages to Ms. Molaison and \$5,000 to Mr. Molaison. The Molaisons appeal, contending that the court's conclusion that Ms. Molaison was malingering was incorrect. We affirm.

#### DISCUSSION

Ms. Molaison contends that as a result of the accident in March of 1991, she has headaches, pain in the neck, shoulders and arm, numbness of both hands, low back pain associated with "shocks" of pain into her legs and feet, incontinence of urine, forgetfulness and depression. Several experts testified at trial regarding these complaints.

The district court gave great weight to the testimony of Dr. Richard Levy, an expert in neurosurgery, concluding that, as of October 26, 1993, Ms. Molaison had no residual neurological impairment stemming from the 1991 accident. The court gave diminished weight to the testimony of Ms. Molaison's orthopedic specialist, Dr. Earl Rozas, stating that he relied too heavily on Ms. Molaison's subjective complaints. The district court concluded that Ms. Molaison's testimony regarding the limitations on her ability to resume her normal daily activities and the pain she suffers as a result of the accident was contradictory.

Dr. Robert Newman, a defense witness and a psychiatrist, after examining Ms. Molaison, testified that in his opinion Ms.

Molaison was exaggerating her complaints and was a malingerer. Another expert witness, Dr. William Black, a neuropsychologist, gave Ms. Molaison a Hendler Screening Test which put Ms. Molaison in the category of persons exaggerating pain. Based on this evidence, the district court concluded that Ms. Molaison was malingering.

Ms. Molaison contends that the district court erred as a matter of law in not giving appropriate weight to the testimony of her treating physicians. As Molaison points out, "[i]t is well settled that the testimony of the treating physician is entitled to greater weight than the testimony of a physician who examines the patient only once or twice." Berthelot v. Imes, 459 So. 2d 1384, 1388 (La.Ct.App. 1984)(citations omitted). As the court in Berthelot went on to note, however, "the weight afforded such testimony is largely dependent upon the physician's qualifications and the facts upon which his opinion is based . . . . Credibility evaluations and factual resolutions are the province of the trier of fact." Id. (citations omitted). "[T]he treating physician's testimony is not irrebuttable, as the trier of fact is required to weigh the testimony of all the medical witnesses." Freeman v. Rew, 557 So.2d 748, 751 (La.Ct.App.) (citations omitted), writ denied, 563 So.2d 1154 (La. 1990); see also Killebrew v. Abbott Lab., 352 So.2d 332, 335 (La.Ct.App. 1977) (holding that a trial court's findings "will not be disturbed merely based on a conclusion that the trial judge failed to accord greater weight to one expert (albeit a

treating physician) than to another expert."), affirmed, 359 So.2d 1275 (La. 1978).

The district court explained at length its reasons for according greater weight to the defense experts' testimony and according less weight to the testimony of Ms. Molaison's experts. The court explained that the testimony of Ms. Molaison's psychiatrist, Dr. Milton Harris, that Ms. Molaison was not a malingerer and suffered from depression was refuted by Dr. Harris' own records concerning Molaison's condition. In addition, the court noted that the testimony of Molaison's neuropsychologist, Dr. William Black, was contradicted by the results of the neuropsychological test administered to Ms. Molaison by Dr. Black. In giving greater weight to the opinion of Dr. Robert Newman than to the opinion of Dr. Richard Morse, Molaison's psychiatrist, regarding the possibility that Ms. Molaison was exaggerating her complaints, the court specifically found that Dr. Newman's evaluation was the most thorough and relied on objective reasons for support.

The district court's judgment was not clearly erroneous. It is supported by evidence in the record. The relative weight given to the evidence was not incorrect as a matter of law.

AFFIRMED.