FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.

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September 9, 2026

In the Court of Appeals of Georgia

A26A1643. TRANSCONTINENTAL CARRIERS, INC. et al. v. BENNETT.

BARNES, Presiding Judge.

Lewis Bennett brought this tort action after a tractor-trailer owned by defendant Transcontinental Carriers, Inc., and driven by the late James Evans, a Transcontinental employee, ran another tractor-trailer driven by Bennett into a guardrail off Interstate 75, injuring Bennett. On appeal from the judgment entered on a jury verdict in Bennett's favor, Transcontinental, its insurer, and Evans's administrator ("defendants") argue that the trial court erred when it allowed Bennett to introduce evidence of his injuries in the first part of the trial, when it denied their motion for mistrial concerning the testimony of Bennett's expert, when it submitted

Bennett's claim for attorney fees to the jury, and when it entered judgment on the verdict. We find no error and affirm.

Because "[t]he jury is the final arbiter of the facts," the evidence "must be construed by the trial and appellate courts in the light most favorable to upholding the jury verdict." *Khalia, Inc. v. Rosebud*, 353 Ga. App. 350, 350 (836 SE2d 840) (2019) (quotation marks omitted). Thus viewed in favor of the verdict and judgment, the record shows that on July 1, 2020, Evans was driving a tractor-trailer for Transcontinental northbound on I-75 in Houston County when he overtook Bennett's vehicle and then failed to maintain his lane, moving from a left lane into Bennett's right or "slow" lane, and forcing Bennett across the emergency lane and into a guardrail. The impact of the collision, including the sudden shifting of the 43,000-pound load in Bennett's vehicle, caused Bennett's head to "whiplash," moving "left and right, up and down," "like a bobblehead." Evans did not stop his vehicle after running Bennett off the road, but continued for several miles, with Bennett following behind, until several police vehicles forced Evans off an exit ramp and boxed him in. Police later determined that Evans had been driving on I-75 for some time before the collision and that “multiple” 911 calls had reported his truck’s weaving from side to side and running other vehicles off the road.

The investigating officer observed signs of intoxication on Evans and a diabetes treatment kit in his truck. Evans admitted that the insulin supplies in the kit were his and that he had not taken his insulin that day, but denied being diabetic. The officer instructed Evans to test his own blood sugar, which Evans did, showing a very high result and indicating “diabetic shock” and a “medical emergency.” Evans was taken by ambulance to a nearby hospital, which confirmed his very high blood sugar levels and that he had not taken insulin for at least two days. Although Evans had received extensive education on the necessity of using insulin to manage his Type 1 diabetes (which was diagnosed in 1995), his medical records document a long history of neglecting insulin treatment, notwithstanding a gangrenous infection requiring surgery in 2016, and of misleading his doctors and employers as to his condition and insulin use. According to the endocrinologist who reviewed Evans’s medical records, Evans was required to take insulin four times daily. Evans died in August 2021.

Although Transcontinental ostensibly required all of its drivers to comply with federal Motor Carrier Safety Regulations (“FMCSR”), which authorizes diabetic drivers to operate commercial vehicles only when their condition was properly controlled, it never investigated any of them further than requiring the presentation of a medical examiner's certificate, did not note the presence of testing equipment in Evans's truck, and did not remove Evans from service after this incident. Bennett did not report any injuries to officers at the scene, but he began to feel nausea soon after being released, with his symptoms worsening until he was admitted to an emergency room a few days later for spinal cord surgery. He later required further treatment and surgery, including for "permanent" spinal cord injury and bladder dysfunction, and developed gait problems requiring the use of a four-point walker.

In October 2020, Bennett filed this suit against Transcontinental, its insurer Occidental Fire & Casualty Company, and Evans, asserting claims of negligence, vicarious liability, and direct action against Occidental. In its responses to discovery, Transcontinental admitted liability for Evans's actions under the doctrine of respondeat superior. Although it later sought to withdraw this admission, the trial court rejected this attempt, and Transcontinental has not asserted error on appeal as to that ruling.

The June 2025 trial was trifurcated as required by the newly enacted OCGA § 51-12-15. The first phase addressed causation and fault, the second addressed damages, and the third took up Bennett's claim for attorney fees under OCGA § 13-6-11. The jury returned a verdict that Evans was 30% and Transcontinental 70% at fault and that Bennett was due $7 million in damages and $1,546,500 in attorney fees. The trial court entered judgment on the verdict, and this appeal followed.[1]

1. Defendants first argue that the trial court erred in allowing Bennett to introduce evidence of the extent and persistence of his injuries in the first phase of the trifurcated trial. Specifically, they assert that when the trial court authorized Bennett to introduce evidence of the development, effects, and persistence of his injuries, all over defendants' objections, it effectively erased the statute's distinction between the subjects of the trial's first phase, limited to the determination of fault, and its second phase, where these matters would have to be addressed in calculating monetary damages.

"A trial court's rulings with respect to evidence relevancy will not be reversed absent abuse of discretion. Moreover, if the evidence offered by a party is of doubtful

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[1] We thank the Georgia Trial Lawyers' Association for their amicus brief.

relevancy, it should nevertheless be admitted and its weight left to the jury." *Lindsey v. Turner*, 279 Ga. App. 595, 597 (2) (631 SE2d 799) (2006) (citation modified).

OCGA § 51-12-15, which became effective two months before this trial,[2] provides as follows:

> (a) In any action to recover damages for *bodily injury or wrongful death*, any party may elect, by written demand prior to the entry of the pretrial order, to have fault and any award of damages determined at trial in the following manner:
> (1) In the first phase of the trial, the trier of fact shall determine *the fault of each defendant, and if the trier of fact finds that any defendant is at fault for the plaintiff's injuries* or wrongful death, the trier of fact shall further determine through an appropriate form of the verdict *the percentages of fault of all persons or entities that contributed to such injuries* or wrongful death as provided in Code Section 51-12-33, *prior to any determination of the total amount of damages to be awarded*, if any such findings are required. *The evidence and arguments of counsel in the first phase of the trial shall be limited to the issues provided for in this paragraph*;
> (2) If the trier of fact finds in the first phase of the trial that any defendant is at fault for the plaintiff's injuries or wrongful death, the trial shall be recommenced immediately with the same judge and the same

[2] See Ga. L. 2025, p. 19, § 8, effective April 21, 2025.

> jury. *In the second phase of the trial, the trier of fact shall determine all compensatory damages to be awarded to the plaintiff, if any, and the evidence and arguments of counsel shall be limited to this issue*; and
> (3) If the trier of fact finds in the second phase of the trial that any compensatory damages are to be awarded to the plaintiff, the trial may be recommenced immediately with the same judge and the same jury for such further proceedings as may be required, including, but not limited to, proceedings provided for in subsection (d) of Code Section 51-12-5.1 concerning *punitive damages and proceedings to determine liability for, and the amount of, any attorney's fees, court costs, or expenses of litigation* that may be awarded by the trier of fact as provided by law.

(Emphasis supplied.) Whereas under OCGA § 9-11-42 (b), trifurcation in civil cases is at the option of the trial court, OCGA § 51-12-15 now requires a trial court in personal injury and wrongful death cases to trifurcate the trial upon timely written demand. See OCGA § 51-12-15 (a).

Defendants argue that the trial court erred when it allowed Bennett to describe the extent and persistence of his physical injuries in the first phase of the trial, only reserving evidence concerning "permanent" injuries for the second phase. As OCGA § 51-12-15 provides, however, the first phase was concerned with determining whether "any defendant is *at fault for the plaintiff's injuries* or wrongful death," including "the percentages of fault of all persons or injuries that contributed to such injuries or wrongful death" as provided by the apportionment statute, OCGA § 51-12-33, after which the second phase would take up the question of "all compensatory damages to be awarded to the plaintiff, if any[.]" Id. at (a) (1), (2) (emphasis supplied). It is well established, moreover, that proving "fault" under the apportionment statute "refers to a breach of a legal duty that a defendant owes with respect to a plaintiff that is a *proximate cause of the injury for which the plaintiff now seeks to recover damages*." *Zaldivar v. Prickett*, 297 Ga. 589, 595 (1) (774 SE2d 688) (2015) (emphasis supplied). Establishing liability thus requires "evidence that the injuries were proximately caused by the [defendant's] breach of the duty," with those necessarily specific "injuries [being] the probable or natural consequence of that breach" and "reasonably . . . anticipated, apprehended, or foreseen." *McEntyre v. Sam's East*, 313 Ga. 429, 435 (2) (b) (870 SE2d 385) (2022) (citation modified). As we held in *Lindsay*, for example, a defendant is entitled to a full cross-examination on the subject of that plaintiff's injuries as part of the inquiry into whether the defendant is actually at fault as to them. 297 Ga. App. at 597 (2) ("Given the contested factual issues," including a plaintiff's claim of "ongoing pain relating to [a] collision," a trial court did not err "in permitting [a defendant] to thoroughly cross examine [that plaintiff] about other incidents that might have caused injury to his neck, back, or elbow"). In short, each jury must assess under the facts of an individual case, with the necessarily wide scope given as to any relevant evidence, whether the defendants' breach of a duty is the proximate cause of a plaintiff's specific injuries.

Here, defendants conceded that OCGA § 15-12-15 required the jury "to determine in the first phase if [Bennett] was, in fact, injured," meaning that "[he suffered] a central cord syndrome injury to his spinal cord as a result of [the] incident." That fundamental injury arguably caused Bennett's other symptoms, including ongoing neurological deficits and bladder dysfunction. Defendants' strategy was to argue that the impact of Bennett's truck with the guardrail was insufficient as a matter of law to be the proximate cause of this injury and constellation of symptoms. But a contention that an impact was "too minor" to amount to the proximate cause of Bennett's injuries was for the jury, not the trial court, to resolve, going as it did to the question of "fault" in phase one. See *Dailey v. Echols*, 265 Ga. App. 459, 461 (594 SE2d 658) (2004); *Burchfield v. Madrie*, 241 Ga. App. 39, 42 (524 SE2d 798) (1999).

We also reject defendants' contention that authorizing evidence of the extent and persistence of a plaintiff's injuries has the effect of eviscerating the statute. On the contrary, the trifurcation enforced by this trial court excluded the jury from hearing any evidence as to the extent of "compensatory damages" until the second phase of the trial, such that the jury would consider "fault" for plural "injuries" alone, without any foreknowledge of the extent of the compensation sought, in its first phase. OCGA § 51-12-15 (a) (1), (a) (2).

Because, under the longstanding Georgia law cited above, proving fault requires proving both injuries and proximate causation under the facts of an individual case, this trial court did not abuse its discretion when it authorized Bennett to detail his injuries and their extent in the aftermath of the accident at issue in the first phase of this trial. OCGA § 51-12-15 (a) (1). Whether to accept his assertions on these subjects as well as each defendant's liability concerning them remained, of course, for the jury to decide, as did the calculation of the economic impact of those injuries in the trial's second phase. There was no error here.

2. Defendants also argue that the trial court abused its discretion when it denied their motion for mistrial concerning the testimony of Bennett's expert concerning

Evans' diabetes having the effect of disqualifying him, under the relevant federal regulations, from operating a commercial vehicle.

In ruling on a motion for mistrial, a trial judge "has a broad discretion, dependent on the circumstances of each case, which will not be disturbed unless manifestly abused. Unless it is apparent that a mistrial is essential to preservation of the right to a fair trial, the discretion of the trial judge will not be interfered with." *Woods v. Heath*, 372 Ga. App. 22, 26-27 (1) (903 SE2d 705) (2021).

The record shows that at a pretrial hearing concerning Bennett's motion in limine to prohibit expert witnesses from stating conclusions of law, defendants argued that their own experts would limit their testimony to "what a motor carrier is supposed to do to comply with" the Federal Motor Carrier Regulations and "whether our client did comply with those." The trial court granted the motion in part, holding that experts would be barred from "stat[ing] conclusions of law." When plaintiff's expert later testified that Evans did not comply with "regulatory standards" in continuing to drive in his condition and cited a section of the regulations, defendants objected. The trial court responded that the expert should limit his testimony to the standard of care and that the court was responsible for determining the meaning of the regulations. When the expert proceeded to testify that Evans was not qualified under the regulations, the trial court ruled that although the expert could talk about the regulations and his interpretation of their relationship to the standard of care, he could not apply them to Evans's conduct or claim that they were violated. The trial court then gave a curative instruction that the jury was not required to accept expert testimony and that the jury alone would decide if any regulations were violated.

When the expert later began testifying to the ways in which the trucking industry responded to regulations concerning insulin-dependent drivers, the trial court reminded him that "the purpose of your testimony is to provide [evidence] on the standard of care that is owed" and redirected him to that subject. Defendants then moved, for the first time, for a mistrial on the ground that the expert's testimony was "just back-door testimony [as to Evans's violations of the standard of care] masked as industry standards," but also gave the trial court the option of dismissing the witness. The trial court denied the motion and allowed the testimony to continue on the ground that although the expert had "gone sideways" in responding too broadly to counsel's questions concerning the regulations and standard of care, the problem did not require a mistrial to be declared.

This record shows that the trial court was vigilant in policing this witness, gave a proper curative instruction, and corrected him when he veered into the improper subject of a specific violation of a federal regulation. The case cited by defendants for the proposition that a new trial is warranted is also inapposite, being both a reversal of a trial court's exclusion of an expert's causation testimony as not sufficiently persuasive on motion for summary judgment – a matter properly left to a jury – and an affirmance of the same trial court's exclusion of testimony concerning a legal conclusion. See *Fireman's Fund Ins. Co. v. Holder Constr. Group*, 362 Ga. App. 367, 373-374 (1) (a), (b) (868 SE2d 485) (2022). Here, Georgia law supports the conclusion that this trial court did not abuse its discretion in denying the motion for mistrial when it gave a proper curative instruction, when plaintiff's counsel did not solicit the improper testimony, and when the trial court responded promptly to defendants' objections to that testimony, which was cumulative of other evidence authorizing the factual inference that Evans's uncontrolled diabetes left him unqualified to drive. See *Allen v. State*, 315 Ga. 524, 533-534 (4) (c) (883 SE2d 746) (2023) (trial court did not abuse its discretion in denying a motion for mistrial when it responded to improper but cumulative character evidence, which was not elicited by counsel, with a curative instruction; "juries are presumed to follow curative instructions in the absence of proof to the contrary") (quotation marks omitted).

3. Defendants also argue that the trial court erred in allowing the jury to consider Bennett's claim for attorney fees and other expenses of litigation under OCGA § 13-6-11, which authorizes recovery for bad faith actions in "the transaction underlying the cause of action being litigated." *Alston & Bird, LLP v. Hatcher Mgmt. Holdings*, 312 Ga. 350, 359 (3) (862 SE2d 295) (2021) (citation modified) (superseded in part by statute on other grounds). Defendants also argue that the trial court erred in authorizing testimony concerning customary contigency fee arrangements, including percentages, in personal injury litigation.

(a) As the Supreme Court of Georgia has held, evidence sufficient to warrant punitive damages will also support a jury's finding of bad faith under OCGA § 13-6-11, *Taylor v. Devereux Found.*, 316 Ga. 44, 89-90 (VII) (885 SE2d 671) (2023), and Georgia courts have consistently held that a history of impaired driving can amount to "wilful misconduct, wantonness, [or] that entire want of care which raises the presumption of concious indifference to the consequences," thus justifying a punitive damages claim. *Moore v. Thompson*, 255 Ga. 236, 237 (336 SE2d 749) (1985) (wreck involving driving under the influence of alcohol) (superseded in part by statute on other grounds); *Dagne v. Schroeder*, 336 Ga. App. 36, 39-40 (3) (783 SE2d 426) (2016) (pattern of erratic highway driving that put others in danger); *Carter v. Spells*, 229 Ga. App. 441, 442 (494 SE2d 279) (1997) (collision resulting from a known pattern of dangerous driving); *J. B. Hunt Transp. v. Bentley*, 207 Ga. App. 250, 255-257 (2), (3) (427 SE2d 499) (1992) (truck driver's erratic driving, including repeated failure to maintain lane over "10 to 20 miles," was sufficient to warrant punitive damages against both the driver and its employer, which was consciously indifferent to the consequences of exposing the public to exhausted drivers). Here, Evans's history of conscious disregard for the dangers of driving without the medication he knew was essential for his own and others' safety was sufficient to support this jury's finding of bad faith under OCGA § 13-6-11. See, e.g., *David C. Joel, P.C. v. Chastain*, 254 Ga. App. 592, 597-598 (4) (562 SE2d 746) (2002) (law firm was liable for attorney fees under OCGA § 13-6-11 due to misconduct of its employees).

(b) As defendants concede, moreover, Bennett's contigency fee agreement was not introduced at trial, and OCGA § 9-15-16 (b) bars only the introduction of such an agreement "as proof of the reasonableness of the fees." As our Supreme Court has held, Bennett was authorized to establish the reasonableness of counsel's fees by the means he used here – testimony that a specific percentage fee was reasonable and customary under the work circumstances detailed here. See *Cayamcela v. Advocacy Trust*, — Ga. — (2) (932 SE2d 64) (2026). No error has been shown.

4. Defendants also argue that the trial court erred in failing to correct the judgment to reflect that Transcontinental was only 70% responsible for the accident. But on the issue of damages, and under the doctrine of respondeat superior, "the principal is entirely responsible for the agent's negligence, and fault cannot be apportioned between the principal and the agent/tortfeasor." *Eliezer v. Mosley*, 369 Ga. App. 102, 108 (891 SE2d 555) (2023) (citation modified); see also *Quynn v. Hulsey*, 310 Ga. 473, 479-480 (850 SE2d 725) (2020) (even though an employee "would not necessarily be responsible for the satisfaction of damages apportioned to the jury to his employer based on the employer's negligence," the "employer would be liable for the negligence of its employee acting withing the course of his employment") (emphasis supplied). Likewise, the trial court did not err when it made the judgment effective against Transcontinental's insurer in an amount above the policy limits because that issue was not raised in the trial court until after the filing of

defendants' notice of appeal. See *Designs Unlimited v. Rodriguez*, 267 Ga. App. 847, 847 (601 SE2d 381) (2004) (given that appellate courts are courts "for the correction of errors of law committed in the trial courts," "[f]airness to the trial court and to the parties demands that legal issues be asserted in the trial court").

Judgment affirmed. Markle and Hodges, JJ., concur.