Opinion issued June 4, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-18-01085-CV

JULIO EDWIN MARTINEZ, LONE STAR DISPOSAL (TEXAS), LLC, AND LONE STAR DISPOSAL, L.P., Appellants

V.

JENNIFER KWAS, Appellee

On Appeal from the 113th District Court
Harris County, Texas
Trial Court Case No. 2016-53729

O P I N I O N

Appellee Jennifer Kwas sued appellants Julio Edwin Martinez, Lone Star Disposal (Texas), LLC, and Lone Star Disposal, L.P. (collectively, Lone Star) for injuries she sustained when a dump truck, owned by Lone Star and driven by Martinez, struck the ambulance in which she was riding as a paramedic for the City

of La Porte, Texas. A jury found both Martinez and Lone Star negligent and awarded Kwas $400,000 in past damages and $700,000 for her future pain and mental anguish. The jury further found that Lone Star was grossly negligent, and it awarded Kwas $250,000 in punitive damages based on that finding. The trial court rendered judgment based on the jury's verdict.

On appeal, Lone Star argues in its first three issues that the trial court erred in admitting evidence of certain motor vehicle citations issued to Lone Star drivers and in allowing Kwas's accident reconstruction expert to give "speculative" opinions. Lone Star further argues in its fourth and fifth issues that the evidence was insufficient to support the jury's finding of gross negligence and award of damages for future pain and mental anguish.

We affirm.

Background

In December 2015, Kwas, who was a paramedic, was working with a patient in the back of an ambulance that was traveling through the intersection of the Beltway 8 feeder road and Vista Road when a dump truck, owned by Lone Star and driven by Martinez, crashed into the ambulance.

Witnesses observed various aspects of the crash. Some witnesses saw the ambulance approach with its lights flashing. Some also heard the sirens. Several witnesses testified that the ambulance approached the intersection, blew its air horn,

and slowed or paused before observing that the cars at the intersection had stopped. The ambulance proceeded into the intersection a short way until it saw the dump truck quickly approaching the intersection. The ambulance driver stopped as soon as he saw the truck. Witnesses testified that it was clear the truck would not be able to stop in time and that the driver swerved away from the ambulance, appeared to over-correct, and then tipped over on top of the ambulance, spilling its load of broken concrete onto the ambulance and the roadway.

Other witnesses testified that they saw the dump truck pass stopped cars in the left lane of the intersection, and one witness stated that the collision could have been avoided if the truck driver had heeded the warning lights and sirens. Specifically, Michael Sharp, who saw the ambulance approach the intersection and stopped, testified about his observations. He stated that he saw the ambulance pass by him and saw "the driver of the dump truck swerve one way and then swerve the other, kind of countering, I guess, not to hit somebody else. And then it stopped and it crushed the front of the ambulance." He clarified that the truck had tipped over, stating, "When the dump truck, I guess, noticed there was somebody in his lane, he turned. And then when he turned back to the—so he turned right. Then he turned back to the left. When that happened, all the weight, I guess, shifted" and the truck fell over. Sharp stated that the truck "landed" and crushed concrete "just went everywhere" when the truck stopped on its side.

Regarding the crash itself, Martinez testified that he never heard the ambulance sirens. He stated that he was stopped at the intersection behind another dump truck and two smaller vehicles, and he started to go when the light turned green. He testified that his view of the intersection from the direction the ambulance was coming was blocked by "the wall" or embankment along the roadway. He had previously told an investigator that he saw the cars to his right stop at the green light and wondered why they were stopping, but at trial he testified that he did not notice any cars stopping at the intersection. When he finally saw the ambulance, he "wasn't able to stop the truck because the ambulance was coming too fast," so he swerved in an attempt to avoid the collision, resulting in the truck turning over. He stated, "[A]ll of a sudden, I saw the ambulance right in front of my truck at a stop. . . . I wanted to apply the brakes. I applied the brakes all the way. But, no, when I saw that it wasn't responding, that's when I did that crazy thing I did," attempting a sharp right turn to avoid a collision. When asked if he thought the weight of his truck caused the accident, Martinez testified that he would not have been able to stop in time, even if his truck had been empty.

Officer C.D. Williams, a police officer with the City of Pasadena's Commercial Vehicle Enforcement Unit, investigated the crash and testified regarding his findings. He supervised the city crew that loaded up the broken concrete back into the truck's roll-off container once the truck had been set upright

by a wrecker. He also weighed the truck and completed a "DOT inspection report," a report that is filed with the Department of Transportation (DOT), as part of his investigation. Officer Williams testified that "Texas law allows for [that particular truck] to be a certain weight on certain axles. And once we weighed it, we determined that the truck was overweight." Specifically, he testified that the truck was allowed 44,000 pounds on "tandem axles"—i.e. the two rear axles of the three-axle truck—but it weighed 54,600 pounds. He also testified that the truck was over the allowable total weight—the "allowable gross weight is 64,000 for the truck," but its gross weight was 67,750 pounds. Officer Williams recorded these weights in his DOT inspection report. He testified that the report was not a citation, but a "warning" that was sent to the Department of Public Safety (DPS).

Officer Williams testified that, in his opinion, trucking companies should train and supervise their employees not to haul overweight loads and that companies are required by law to ensure that their trucks comply with weight limits. Officer Williams testified that one of the reasons that the State of Texas restricts the weight of certain trucks is for the safety of "the motoring public." He testified that the weight of the truck affects stopping distance, and overweight loads can also cause damage to the trucks themselves or the roadways. He testified that driving big trucks that are overweight is dangerous because "[i]t takes a greater distance to stop" and can ultimately lead to crashes.

Both Kwas and Lone Star presented testimony from accident reconstruction specialists. Chandler Benton Randle testified on behalf of Lone Star that, based on his calculations, the "assumed overweight condition of the vehicle" did not contribute to the crash or rollover. Lone Star's theory at trial was that Martinez would have crashed, even if his truck had been empty, and that the crash occurred because the ambulance ran the red light at the intersection under unsafe conditions, without verifying that the intersection was clear. James Evans, Kwas's accident reconstruction expert, opined, however, that Martinez failed to keep a proper lookout and failed to yield the right-of-way to an emergency vehicle, and he opined that the overweight load of the truck was a factor in reaching his conclusion.

Brett Sarver testified as the representative of Lone Star. He testified new hires would receive forms setting out key policies and that, if the new employee needed help, a Spanish-speaking supervisor or dispatcher would "[g]o through all the forms with them." Sarver testified that forms are provided in Spanish and in English. Martinez, however, testified that when he was hired, he was given documents only in English. He stated that he was not able to read the documents Lone Star gave him and that he had been "careless" about signing the forms without reading them. He also stated that no one from Lone Star discussed the documents with him or asked if he understood what he was signing.

The weight of the truck was a significant issue at trial. Sarver testified that weight restrictions were an important safety issue, but Lone Star left determinations about the weight of the loads up to its drivers. He testified that Lone Star's drivers were experienced, that they were supervised closely before being allowed to haul loads on their own, and that they were trained in how to deal with suspected overweight loads, such as by calling the dispatcher. Sarver further testified that it was "impractical" to expect drivers to be able to weigh the loads they picked up—customers were responsible for loading the containers that got picked up and the drivers "can't carry scales in [the] trucks. We don't have—the trucks are not—you know, they're just not designed for that." He testified that Lone Star did not provide scales to its drivers, even though Evans and Randle had both testified that the truck Martinez was driving at the time of the crash had technologically advanced onboard scales that were capable of functioning.

Martinez testified that he did not receive any training from Lone Star regarding the weight of his loads or other safety issues. Martinez testified that he did not know how much weight he was hauling on the day of the crash. He stated that Lone Star told him not to haul overweight loads, but it never provided him with any means to weigh his loads or with any additional training on the matter. Martinez testified that he knew the weight of a truck impacted its ability to stop and turn. He testified that he had a lot of experience driving "roll-off" dump trucks, which

involved a separate container that would be loaded with material. After loading, the container would be pulled or rolled onto the bed of the dump truck and hauled. Martinez testified that he believed it was safe to haul a load as long as his truck could pull the roll-off container onto the bed of the truck.

There was also evidence that drivers who refused to pick up overweight loads would have their pay for that load cut in half. However, drivers who hauled overweight loads and received citations would lose their one-dollar safety bonus. Martinez testified that he had received a citation for hauling an overweight load in June 2015. Lone Star had hired a lawyer to get the citation dismissed, and it had not provided any additional training or supervision following this ticket.

Sarver also testified regarding citations, and, during this testimony, Kwas introduced evidence of DPS records demonstrating that multiple Lone Star drivers had been issued overweight citations between 2012 and 2015.

Kwas testified regarding her perceptions of the accident, including that she believed the ambulance driver proceeded safely at the intersection and that she was injured when the truck rolled over and dumped its load of concrete onto the ambulance. Kwas stated that when the crash occurred, she felt the ambulance "jerk" because she was unrestrained at the time, caring for a patient. She testified that she "felt some kind of contact" and then she felt another contact, which she thought must have been "the concrete coming on the box of the ambulance" and that was when

she "flew into the back of the stretcher." Kwas testified that she sustained serious injuries to the left side of her chest, requiring treatment at a trauma center. She testified that she experienced a lot of pain and that it was four to six months before she was able to begin returning to her normal activities. She also stated that she experienced sleeplessness and anxiety because of the accident. She ultimately decided she could no longer work as a paramedic in an ambulance because of the stress and anxiety caused by the accident.

Ultimately, the jury found, in answer to a broad-form negligence question, that both Martinez's and Lone Star's negligence were proximate causes of the crash, but it found no negligence on the part of the ambulance driver. The jury apportioned 35% of the liability to Martinez and 65% of the liability to Lone Star. The jury awarded $1.1 million in damages to Kwas, including $700,000 for future pain and mental anguish. And the jury found that Lone Star was grossly negligent and awarded Kwas $250,000 in punitive damages. The trial court rendered judgment on the jury's verdict.

Evidentiary Issues

Lone Star's first three appellate issues challenge the trial court's rulings on the admission of evidence.

A. Standard of Review

The Texas Rules of Evidence provide for the general admissibility of all evidence having any tendency to make a fact of consequence more or less probable. TEX. R. EVID. 401–402; *Diamond Offshore Servs. Ltd. v. Williams*, 542 S.W.3d 539, 544 (Tex. 2018). We review a trial court's admission of evidence for abuse of discretion. *Caffe Ribs, Inc. v. State*, 487 S.W.3d 137, 142 (Tex. 2016); *see Williams*, 542 S.W.3d at 545 ("The trial court has extensive discretion in evidentiary rulings, and we will uphold decisions within the zone of reasonable disagreement."); *Gharda USA, Inc. v. Control Solutions, Inc.*, 464 S.W.3d 338, 347–48 (Tex. 2015) (holding that courts review trial court's rulings admitting expert testimony, including rulings on reliability of expert testimony, for abuse of discretion). A trial court abuses its discretion when it acts without regard for any guiding rules. *Caffe*, 487 S.W.3d at 142.

"Trial court error is reversible only when harmful, that is, if the error 'probably caused the rendition of an improper judgment.'" *Williams*, 542 S.W.3d at 551 (quoting TEX. R. APP. P. 44.1(a)). Because "[t]his standard is less a precise measurement and more a matter of judgment," courts "review the entire record to assess the importance of the excluded evidence, and exclusion is likely harmful if the evidence is crucial to a key issue." *Id.*

B. Overweight Load Citations

In its first issue, Lone Star asserts that the trial court erred in admitting evidence of "dismissed motor vehicle citations" issued to Lone Star drivers for overweight loads, arguing that the inadmissible evidence was "inflammatory" and "probably caused the jury's very disproportionate allocation of responsibility to Lone Star[.]" Lone Star asserts that the citations are merely "accusations" against the individual drivers, and, as such, are no evidence of violations of the Transportation Code by Lone Star.

1. Relevant Facts

During a pretrial conference, the issue of this evidence was considered by the trial court when Kwas indicated that she intended to present evidence of Lone Star's "DOT violations in the public record," stating that there were 20 overweight violations recorded since 2012. Lone Star responded that the website showed "the dismissals for probably 90 percent of those 20 that she's claiming." The parties further discussed Lone Star's violations or citations:

> [Lone Star]: [T]hey were dismissed, so they're inadmissible as evidence in the court anyway. And they have no relevance with respect to what Mr. Martinez [the driver] did or didn't do that day [of the accident]. And certainly whatever happened to him after the accident would have no relevance as to this case to try to show a pattern and practice.

> [Kwas]: Your Honor, I'm not trying to enter these in for pattern and practice. I'm trying to get the knowledge element of gross [negligence].

The trial court asked for supplemental briefing from the parties on this issue. In that briefing, Kwas asserted that she intended to introduce "public records of Commercial Motor Vehicle (CMV) Inspection Reports, which identify Lone Star's various Department of Transportation (DOT) violations under the Transportation Code, including overweight violations." She presented the affidavit of the custodian of records for the Motor Carrier Bureau of the Texas Department of Public Safety, certifying that the attached information, "consisting of 21 page(s) issued to Lone Star Disposal LP, is a full, true and correct copy(s) of the official record, report or entry currently on file in the Motor Carrier Bureau of the Texas Department of Public Safety." The records were reports from various law enforcement agencies, such as the Harris County Sheriff Department and Baytown Police Department, indicating various violations of the Transportation Code by Lone Star drivers.

Kwas argued that these documents were admissible pursuant to Rule of Evidence 803(8), that they were presumed admissible, and that they were relevant because they showed Lone Star's subjective awareness of safety problems associated with its drivers hauling overweight loads prior to the accident. Kwas further asserted that the evidence of past similar incidents to the crash—i.e., drivers hauling overweight loads—was admissible. Lone Star challenged the admissibility of these

documents on several grounds, including, as it asserts on appeal, that the violations identified in these records are not evidence that Lone Star or its drivers actually violated the Transportation Code. Lone Star also argued that the evidence was irrelevant under Rule of Evidence 401 and was unfairly prejudicial under Rule of Evidence 403.

The trial court ultimately ruled, before trial began and outside the jury's presence, that the DPS records could "be presented in testimony from whoever may be the appropriate person, except for those records relating to matters after this incident." The trial court determined that Lone Star could then talk about "the dismissals."

Lone Star argues that the trial court erred in allowing Kwas to question Martinez and Lone Star's president, Brett Sarver, "about 8 pre-collision citations to Lone Star drivers for overweight loads" because those citations "were all dismissed but were presented and accepted as proof of the violations charged." This includes a record demonstrating that Martinez was himself cited for hauling an overweight load approximately six months before the crash. Martinez testified that Lone Star hired a lawyer, and the underlying citation was ultimately dismissed.

Sarver testified about Lone Star's policy toward monitoring the weight of the trucks and the violations by other Lone Star drivers. He testified that the clients load boxes with debris and that the clients are responsible for ensuring that the load is not

overweight. Sarver further testified that Lone Star also relies on its drivers who "go through considerable driver training." The following exchange then occurred:

> [Kwas]: And when a violation comes in on a particular driver for a weight violation, what is Lone Star's process for handling that?
>
> [Sarver]: It depends on the violation.
>
> [Kwas]: What if a driver gets an "overweight" violation?
>
> [Sarver]: You're talking in general terms. If you could show me a ticket, I could give you an example.
>
> [Kwas]: Have you seen the ticket that Mr. Martinez received on June 3, 2015?
>
> . . . .
>
> [Sarver]: Can you show me the one you're asking [about]?
>
> [Kwas]: This is the June 3, 2015. But my question is more general. When your drivers receive "overweight" violations, what's the first step Lone Star takes?

Sarver went on to testify that the company would review the citation, discuss it with the driver to understand what had happened and the surrounding circumstances. He also testified that Lone Star would hire a lawyer and contest moving violations and "every out-of-service violation." The questioning continued:

> [Kwas]: Sir, you asked if I could show you some specific tickets, so I'm going to do that now. Do you recall receiving several prior "overweight" violations throughout the years?
>
> [Sarver]: Specific examples? No. But have we? Yes.

. . . .

[Kwas]: I'll show you what's been preadmitted as Exhibit 10, Intervenor 10. This is an "overweight" violation received on March 22, 2012. . . . [D]o you recall if you hired a lawyer to fight this one?

[Sarver]: No I don't. Can I see the bottom of the ticket?

[Kwas]: Does it look there that [sic] your driver received an "overweight" violation for driving over the 44,000-pound tandem axle restriction? And it looks like he was 6400 pounds overweight.

[Sarver]: That's what the ticket says. But we need to find out how it was weighed, if the scales were certified, and what was the disposition of this ticket.

[Kwas]: I'll represent to you that I'm only putting up the ones that you didn't contest for some reason. For whatever reason, you didn't contest this one. Do you recall why?

[Sarver]: I do not. I do not.

Kwas continued through a list of several more overweight citations received by Lone Star drivers between 2012 and 2014 and asked, "So, sir, Lone Star knows its drivers are hauling overweight, right? We've seen that from the DOT violations?" Sarver answered, "No, we don't know on a daily basis[.] Again, we rely on their training." Sarver asserted that drivers were trained prior to working on their own, were experienced, and were evaluated for "a myriad of things." Kwas asked whether Lone Star disciplined or retrained Martinez after he received an overweight citation in June 2015, and Sarver testified that he did not know "specifically what recourse was taken in this instance."

2. Analysis

Lone Star argues that the trial court erred in allowing evidence of "dismissed" citations because they constituted no evidence that Lone Star actually violated the Transportation Code. However, the record indicates that only a portion of the citations reported to DPS's Motor Carrier Bureau and maintained as public records were actually dismissed. The record indicates that Kwas's questioning of Sarver focused on non-dismissed citations or citations that Lone Star had not challenged. Lone Star's broad complaint about these citations does not distinguish between the various outcomes for the citations, nor does it distinguish between specific, objectionable citations and ones that Lone Star did not challenge at trial. *See Speier v. Webster Coll.*, 616 S.W.2d 617, 619 (Tex. 1981) ("A general objection to a unit of evidence as a whole, . . . which does not point out specifically the portion objected to, is properly overruled if any part of it is admissible."); *Austin v. Weems*, 337 S.W.3d 415, 423 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (holding that when exhibit contains both admissible and inadmissible evidence, objecting party has burden to identify specific portions of exhibit that are objectionable).

Furthermore, the context in which the evidence was admitted during Martinez's and Sarver's testimony indicates that the evidence was not presented to prove violations of the Transportation Code or even to prove fault in the underlying crash, but rather to show Lone Star's knowledge of and policy for handling of the

overweight citations its drivers received in the time leading up to the crash. Multiple witnesses, including Officer Williams, testified that at least one purpose behind weight restrictions is safety, and the alleged overweight violations were just one piece of evidence that Kwas presented to establish that Lone Star's training and equipping of its drivers was insufficient to ensure safety.

In addition to overweight citations, Kwas points to Sarver's specific testimony that contradicts his general statement that Lone Star drivers had proper training. Sarver testified that it was the customer's responsibility—not Lone Star's or its drivers'—to load the containers that Lone Star drivers hauled and to ensure they were the correct weight. He also testified that it was "impractical" for Lone Star to equip its drivers with scales so that they could weigh the loads and that Lone Star instead relied on drivers' "experience" to know when loads were overweight or unsafe to haul. Martinez also contradicted Sarver's testimony that Lone Star provided safety training. Martinez testified that he did not receive training or instruction from Lone Star that he could understand and that no one from the company ever addressed the issue of overweight loads either before or after his June 2015 citation or the December 2015 crash. And Evans and Randle both testified that the trucks contained onboard scales, but neither Martinez nor Sarver indicated that Lone Star used these scales or trained drivers in how to use them.

More broadly, Kwas provided evidence of company policies that at least implicitly encouraged drivers to take overweight loads and of Lone Star's failure to provide drivers like Martinez the tools or information necessary to comply with safety regulations. Drivers lost more pay for refusing overweight loads than they did for receiving citations for hauling overweight loads. Although Sarver testified that Lone Star would address concerns regarding driver safety after a driver received a citation, Martinez testified that he was never disciplined or retrained following his overweight violation in June 2015. Rather, the company hired a lawyer to have the citation dismissed.

Thus, the evidence in this case is distinguishable from cases relied upon by Lone Star, such as *Isaacs v. Plains Transport Co.* and *Switzer v. Johnson*. In *Isaacs*, the Supreme Court of Texas held that "evidence that one or another party to an automobile collision was given a ticket by a peace officer charging the commission of a penal offense is not admissible in a civil suit growing out of the same incident." 367 S.W.2d 152, 153 (Tex. 1963) (citing *Condra Funeral Home v. Rollin*, 314 S.W.2d 277 (Tex. 1958)); *see also Switzer v. Johnson*, 432 S.W.2d 164, 166–67 (Tex. App.—Houston [1st Dist.] 1968, no writ) ("In the trial of a civil negligence action arising from an auto accident, it is improper to show that an investigating officer has or has not filed criminal charges or given a traffic ticket as a result of that accident. To hold otherwise would be to permit the jury to consider extra-judicial

conclusions which are based on penal provisions, which apply a different yardstick from that used in determining civil fault."). The *Issacs* court further held, "And while proper proof of a plea of guilty to the offense may be admissible in a suit against the person so charged, as an admission, we know of no sound basis for holding that it necessarily follows that it is admissible against his employer." *Issacs*, 367 S.W.2d at 153 (internal citations omitted).

Here, Martinez and Lone Star were both defendants, and none of the citations referenced during their testimony were given in connection with the crash. Thus, the complained-of records in this case did not present the same type of danger identified in *Switzer* of "permit[ting] the jury to consider extra-judicial conclusions which are based on penal provisions" in determining liability for the crash itself. *See* 432 S.W.2d at 167. Rather, the citations admitted into evidence were one part of Kwas's evidence illustrating Lone Star's policies and practices in connection with safety regulations, its knowledge that its drivers were hauling overweight loads, and its disregard of any risk associated with hauling overweight loads. These facts were relevant to Kwas's negligence and gross negligence claims against Lone Star.

This Court has held that evidence of a defendant's driving record may be admissible for some purposes, such as showing the context of a driver's actions at the time of the accident. *See Castro v. Sebesta*, 808 S.W.2d 189, 195 (Tex. App.—Houston [1st Dist.] 1991, no writ); *see also, e.g.*, *Harbin v. Fisher*, No. 07-18-00167-

CV, 2019 WL 2462346, at *3 (Tex. App.—Amarillo June 12, 2019, no pet.) (mem. op.) (recognizing that driving record and accident history are relevant to show recklessness). And Texas courts have held that evidence of a defendant's policies or practices relating to safety regulations are relevant to establishing negligence or gross negligence. *See Rayner v. Dillon*, 501 S.W.3d 143, 147 (Tex. App.—Texarkana 2016, pet. dism'd) (identifying evidence of gross negligence as including, among other things, "proof of repeated incidents of log book falsification" and "a Federal Department of Transportation (DOT) audit . . . that reflected forty-eight safety-related violations by [defendant truck company's] drivers, thirty-four of which were critical" and employers' knowledge of drivers' repeated safety violations); *Dalworth Trucking Co. v. Bulen*, 924 S.W.2d 728, 732 (Tex. App.—Texarkana 1996, no pet.) (evidence of gross negligence included evidence obtained from trucking company's software system used "to analyze data from its drivers' daily logs to determine whether the drivers were complying with federal regulations and company safety policies"); *see also Kilday v. Saskie*, No. B14-92-00863-CV, 1994 WL 273414, at *3 (Tex. App.—Houston [14th Dist.] May 12, 1994, writ denied) (memo. op., not designated for publication) (holding in negligent entrustment context that "previous driving record or driving habits may show incompetence, recklessness or intemperance"). Thus, evidence of prior citations and how those incidents were addressed by Lone Star was relevant to Kwas's claims that

Lone Star was negligent and grossly negligent in training and supervising its drivers to ensure that they were hauling safe loads. *See* TEX. R. EVID. 401–02 (providing that relevant evidence tends to make facts of consequence more or less probable than they would be without that evidence and is generally admissible); *see also In re Commitment of Barrientos*, No. 01-17-00649-CV, 2018 WL 3384563, at *5 (Tex. App.—Houston [1st Dist.] July 12, 2018, pet. denied) (mem. op.) ("Texas law presumes that relevant evidence is admissible.").

Lone Star also argues, in a conclusory way, that this evidence was "inflammatory." To the extent Lone Star is attempting to argue that this evidence was unfairly prejudicial under Rule of Evidence 403, we disagree. Under Rule of Evidence 403, relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." TEX. R. EVID. 403. "Factors considered when applying the Rule 403 balancing test include the probative value of the evidence, the potential of the evidence to impress the jury in some irrational way, the time needed to develop the evidence, and the proponent's need for the evidence." *In re Commitment of Barrientos*, 2018 WL 3384563, at *5; *see Williams*, 542 S.W.3d at 547–48. Here, evidence of prior overweight citations to Lone Star's drivers was probative of and necessary to establish Lone Star's subjective awareness of concerns

related to overweight loads. The citations did not relate to the crash itself. They were only a small portion of Sarver's testimony and the other evidence presented by Kwas, which addressed Lone Star's training, supervision, and safety measures in a broader context. We conclude that this evidence was not "inflammatory" or unfairly prejudicial. *See Williams*, 542 S.W.3d at 549 ("Testimony is not inadmissible on the sole ground that it is 'prejudicial' because in our adversarial system, much of a proponent's evidence is legitimately intended to wound the opponent. Rather, *unfair* prejudice is the proper inquiry. 'Unfair prejudice' within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.") (internal quotations omitted).

Finally, Lone Star argues in the alternative, that "[e]ven if prior overweight citations *were* proof of Transportation Code violations, that would not give rise to negligence *per se*." It then goes on to acknowledge that "[t]he court's charge does not, and did not need to, refer to negligence *per se*," but, it asserts, "the only basis to include Lone Star in a negligence question (i.e., the only argument for a duty breached by Lone Star) was violation of Transportation Code weight limits at the time of the collision." Lone Star is incorrect that its only duty to Kwas arose out of a negligence per se theory. As Lone Star observes in its brief, the charge did not ask the jury to find Lone Star negligent per se based on Transportation Code violations. Rather, Kwas's theory of liability against Lone Star was based on the company's

own negligence and gross negligence in training, equipping, and supervising its employee, Martinez.

We overrule Lone Star's first issue on appeal.

In its third issue, Lone Star asserts that the error in admitting evidence of the citations was highly prejudicial and probably caused the rendition of an improper judgment. Because we have concluded that the trial court did not abuse its discretion in admitting this evidence, we need not evaluate this contention of harm from the admission of the evidence. Thus, we overrule Lone Star's third issue.

C. Accident Reconstruction Expert

In its second issue, Lone Star argues that the trial court erred in allowing Kwas's accident reconstruction expert, Evans, to give a "speculative" opinion about the effect of an overweight load in causing the Lone Star truck to be unable to stop and to roll on its side. Lone Star argues that Evans's testimony was conclusory and, thus, no evidence in support of Kwas's claims.

1. Relevant Facts

Evans, a professional engineer, served as Kwas's accident reconstruction expert.[1] Evans testified that he inspected the truck and ambulance involved in the crash, inspected and measured the scene of the crash, reviewed and evaluated reports and photographs from the crash, and considered witness statements and testimony

[1] Lone Star does not challenge Evans's qualifications.

in reconstructing the crash. He used computer programs to recreate the crash sequence based on data such as the final resting place of the vehicles, skid marks, the truck's weight, and "drag factors" for the road surface. Evans summarized his conclusions as follows:

- Based on reconstruction work and witness testimony, "the ambulance lights were illuminated and its sirens were on prior to the accident"; the ambulance driver "stopped and saw that the vehicles [at the intersection] had come to a stop and then slowly entered the intersection. He then emergency-braked when he saw the [truck] coming towards him."

- The truck "was traveling approximately 40 miles an hour prior to Mr. Martinez braking, based on accident reconstruction calculation and witness testimony."

- Martinez "could not have been stopped at the red light and accelerated to 20 miles an hour, as he testified. A speed of 20 miles an hour is also not sufficient to leave the tire marks and slide to rest, as occurred in this accident."

- Martinez "had ample time to observe the ambulance and to stop his truck to avoid this accident, based on witness accounts of the timing of the accident and my reconstruction work. Mr. Martinez said he did not see the ambulance lights or hear the sirens, and Mr. Martinez appeared not to have been keeping a proper lookout."

Evans also testified based on his review of the documentation from the DOT Officer, who inspected the truck after the crash and who made note of the weight of the truck, that "this dump truck was overweight": "[I]ts total gross vehicle weight was overweight, and also it was overweight on the rear axles." Evans concluded,

"Mr. Martinez's truck was overloaded and, therefore, would not stop as quickly as a truck appropriately loaded." He testified:

> [Kwas]: [A]s an engineer, you have some opinions about what the weight of a truck does to the handling and braking of an overloaded dump truck?
>
> [Evans]: Yes. Yeah.
>
> [Kwas]: What are those opinions?
>
> [Evans]: Well, I mean, the heavier vehicle, especially if it's overloaded more than it's supposed to be, what it's designed for, different things—you know, heavier weight—it takes longer to stop. And if it's overloaded, especially when that load's up high, it's more likely to tip over, you know. It messes with the handling of the vehicle. The heavier something is, especially when it starts getting overloaded—it's not going to handle as well[.]
>
> [Kwas]: Does that have something to do with the center of gravity?
>
> [Evans]: Correct. Particularly in a case like this where—when you've got a load that's in this dump bed, in the roll-off bed—it's up really high—because it's—you know, the roll bed, and everything, adds height to this thing off the ground. And the more load you put in it, the higher it raises the center of gravity, which means it's also more likely to tip over, so. . . .
>
> [Kwas]: And was that found, in your opinion, as the accident reconstructionist, to be the cause of this crash?
>
> . . . .
>
> [Evans]: Definitely. It has to be taken into account with all the other information I reviewed. Yes.
>
> [Kwas]: And did you come up with a final opinion about Mr. Martinez's actions in this case?

[Evans]: Yes. My last, you know, opinion was that Mr. Martinez failed to yield the right of way to an emergency vehicle.

2. Analysis

Lone Star generally cites the testimony set out above, asserting that Evans "tossed off *ipse dixit* opinions about causation and dismissed as unnecessary the calculations needed to support them." We disagree.

A qualified expert witness "may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." TEX. R. EVID. 702. "Expert testimony is admissible if (1) the expert is qualified, and (2) the testimony is relevant and based on a reliable foundation." *Cooper Tire & Rubber Co. v. Mendez*, 204 S.W.3d 797, 800 (Tex. 2006). To be competent evidence, an expert's opinion must have a demonstrable and reasoned basis on which to evaluate the opinion. *Rogers v. Zanetti*, 518 S.W.3d 394, 405 (Tex. 2017). "When an expert's opinion is based on assumed facts that vary materially from the actual, undisputed facts, the opinion is without probative value and cannot support a verdict or judgment." *Id.* (quoting *Burroughs Wellcome Co. v. Crye*, 907 S.W.2d 497, 499 (Tex. 1995)).

Evans's testimony identified a relationship between the weight of the truck and a loss of maneuverability as a cause of the crash. He testified that Martinez caused the accident by failing to keep a proper lookout and failing to yield the right-

of-way to an emergency vehicle. He testified that the weight of the truck was one of the data points he used in reconstructing the accident. He also testified that the fact that the truck was overweight generally increased braking time and affected maneuverability and that those facts "ha[d] to be taken into account with all the other information [he] reviewed." His opinion, thus, was based on facts taken from reports and documentation at the scene and his knowledge as an engineer and accident reconstruction specialist. This constitutes a "demonstrable and reasoned basis on which to evaluate [his] opinion." *See id.*; *see also Windrum v. Kareh*, 581 S.W.3d 761, 769 (Tex. 2019) ("Experience alone may provide a sufficient basis for an expert opinion.").

Lone Star argues that "[a]greed facts and calculations conclusively establish the overweight part of the Lone Star's truck load was not a cause of the *collision*," and that Evans's opinion to the contrary is baseless. This assertion mischaracterizes the record. As outlined above, Evans testified that the crash was caused by Martinez's failure to keep a proper lookout and his failure to yield the right-of-way to an emergency vehicle, and he asserted that the weight of the truck was a factor that "ha[d] to be taken into account with all the other information [he] reviewed" in making his conclusion. There was evidence that Martinez's inability to maneuver, caused at least in part by the fact that the load was overweight, was what caused the truck to dump over and spill its load onto the ambulance. Lone Star failed to point

to any portion of Evans's actual testimony that was based on assumed facts or that was based on facts that varied materially from the actual, undisputed facts. *See Rogers*, 518 S.W.3d at 405; *Gharda USA*, 464 S.W.3d at 349 (holding that expert testimony is not reliable if there is too great "an analytical gap" between data on which expert relies and opinion offered and that analytical gap exists if expert's opinion is based on assumed facts that vary materially from facts in record).

Lone Star's argument also ignores testimony regarding the significance of the truck's weight that was admitted through other sources, which Lone Star does not challenge on appeal. Officer Williams testified that the truck was overweight, that the weight of the truck affected its stopping distance, stating, "Any vehicle that's heavier takes a greater distance to stop" as a matter of "basic physics" and "common sense." He also testified that the weight of the truck would "affect its ability to handle evasive maneuvers" and that trucks that are "thousands of pounds overweight" were dangerous. Martinez himself acknowledged that heavier trucks take longer to brake. The nature of the crash itself was also discussed by numerous witnesses. Sharp testified that he could see the dump truck pass his stopped car and realized that the dump truck would not be able to stop in time. He stated that the truck swerved to avoid the collision, but the weight in the truck shifted and the truck dumped over, spilling its entire load of crushed concrete onto the ambulance and roadway. Kwas herself testified that she believed it was the impact from the rollover and lost load of

concrete that caused her to be thrown around the ambulance box, crushing the left side of her chest.

Lone Star argues that its own expert, Randle, testified that the fact that the truck was overweight did not cause the crash or cause the truck to roll over. This expert's opinions and calculations, however, do not render Evans's opinions that the weight was a factor in decreasing Martinez's braking ability and maneuverability unreliable or inadmissible. Rather, those differences present questions of weight and credibility to be determined by the jury. *See Banks v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 233 S.W.3d 64, 67–68 (Tex. App.—Dallas 2007, pet. denied) (holding that it is within province of jury to weigh opinion evidence and judgment of experts); *Hutchison v. Pharris*, 158 S.W.3d 554, 568 (Tex. App.—Fort Worth 2005, no pet.) (holding that "[i]n a 'battle of competing evidence,' it is the sole prerogative of the jury to determine weight and credibility of the witnesses" and "the jury is authorized to disbelieve expert witnesses").

Finally, as part of its second issue, Lone Star argues that even if Evans's expert testimony supported a conclusion that the overweight load caused the rollover of the Lone Star truck, there is no evidence that the rollover was what injured Kwas. It argues that Kwas's injuries were caused by the impact between its truck and the ambulance and that the rollover did nothing to add to the harm that occurred because of the impact. And it argues that, without evidence from Evans or another source

that the overweight load caused the collision, there was no basis for submitting a separate negligence question against Lone Star.

This argument, however, disregards Kwas's theory of the case, which asserted that Lone Star was negligent in supervising and training its drivers. Kwas presented testimony from both Sarver and Martinez regarding Lone Star's training (or lack thereof) on key safety issues such as weight restrictions and its supervision and guidance to its drivers. Lone Star's argument also disregards evidence, including Kwas's own testimony and witness accounts of the crash, that a significant portion of her injury occurred when the dump truck rolled over and dumped its overweight load of crushed concrete onto the ambulance and roadway. Accordingly, these arguments are likewise unavailing.

We overrule Lone Star's second issue.

Sufficiency of the Evidence

Lone Star argues that the evidence in support of the jury's findings on Lone Star's gross negligence and damages for Kwas's future physical pain and mental anguish was insufficient.

A. Standard of Review

We will sustain a legal-sufficiency challenge only if (1) there is a complete absence of evidence of a vital fact; (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact; (3) the

evidence offered to prove a vital fact is no more than a mere scintilla; or (4) the evidence conclusively establishes the opposite of a vital fact. *City of Keller v. Wilson*, 168 S.W.3d 802, 810 (Tex. 2005). We review no-evidence points by considering the evidence in the light most favorable to the verdict, disregarding evidence contrary to the verdict unless a reasonable jury could not. *Anderson v. Durant*, 550 S.W.3d 605, 616 (Tex. 2018); *City of Keller*, 168 S.W.3d at 822.

"More than a scintilla of evidence exists when reasonable and fair-minded people could reach different conclusions based on the evidence." *Anderson*, 550 S.W.3d at 616 (citing *Burbage v. Burbage*, 447 S.W.3d 249, 259 (Tex. 2014)). It is the jury's role to evaluate the credibility of the witnesses and reconcile any inconsistencies or conflicts in the evidence, and the jury may "believe all or any part of the testimony of any witness and disregard all or any part of the testimony of any witness." *Id.* (quoting *Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 774–75 (Tex. 2003)); *see City of Keller*, 168 S.W.3d at 819–20. "We must uphold the jury verdict if any reasonable version of the evidence supports it." *Anderson*, 550 S.W.3d at 616.

In a factual sufficiency review, we consider and weigh all of the evidence. *Choice! Power, L.P. v. Feeley*, 501 S.W.3d 199, 209 (Tex. App.—Houston [1st Dist.] 2016, no pet.); *see Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580, 615 (Tex. 2016). When an appellant challenges the factual sufficiency of

evidence supporting an adverse finding on which it did not have the burden of proof at trial, we set aside the verdict only if the evidence supporting the finding is so weak, or so contrary to the overwhelming weight of all the evidence, as to make the verdict clearly wrong and manifestly unjust. *Crosstex N. Tex. Pipeline*, 505 S.W.3d at 615; *Choice! Power*, 501 S.W.3d at 209.

B. Gross Negligence

In its fourth issue, Lone Star asserts that the evidence was insufficient to support the jury finding that it was grossly negligent.

Gross negligence consists of both objective and subjective elements. *U-Haul Int'l, Inc. v. Waldrip*, 380 S.W.3d 118, 137 (Tex. 2012). Gross negligence requires a showing that (1) when viewed objectively from the actor's standpoint, the act or omission complained of involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and (2) the actor had actual, subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety, or welfare of others. TEX. CIV. PRAC. & REM. CODE § 41.001(11); *Boerjan v. Rodriguez*, 436 S.W.3d 307, 311 (Tex. 2014) (per curiam).

Under the objective component, "extreme risk" is not a remote possibility or even a high probability of minor harm, but rather the likelihood of the plaintiff's serious injury. *U-Haul*, 380 S.W.3d at 137. Under the subjective element, actual

awareness means the defendant knew about the peril, but its acts or omissions demonstrated that it did not care. *Boerjan*, 436 S.W.3d at 311. However, awareness of an extreme risk does not require proof that the defendant anticipated the precise manner in which the injury would occur or the identity of the person who would be injured. *See U-Haul*, 380 S.W.3d at 139.

Both elements of gross negligence must be proven by clear and convincing evidence, *U-Haul*, 380 S.W.3d at 137–38, and may be proven by circumstantial evidence, *Boerjan*, 436 S.W.3d at 311. In reviewing the legal sufficiency of the evidence supporting a finding that must be proven by clear and convincing evidence, we must consider "all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true." *Diamond Shamrock Ref. Co. v. Hall*, 168 S.W.3d 164, 170 (Tex. 2005).

Lone Star argues that there was no evidence that its trucks presented an extreme degree of risk to other motorists or that it had actual, subjective awareness of the extreme risk but consciously disregarded that risk. Kwas argues, however, that it presented adequate evidence of "numerous safety-related issues."

At trial, Kwas presented evidence regarding Lone Star's deficiencies in training and supervising its drivers. Sarver testified that it was important for Lone Star drivers to understand their responsibilities and procedures, and he testified that

Lone Star provided copies of its policies and procedures and training to new hires. Martinez, however, testified that he was never given the policies or paperwork in Spanish and he did not understand the English-language documents he was given. He stated that he was "careless" in signing policy and procedure paperwork that he did not understand. He testified that no one from Lone Star explained what the paperwork meant or provided him training beyond what he had as a licensed truck driver.

Kwas presented evidence of company policies that undermined driver safety. There was evidence that drivers were paid only half of their typical "per-box" pay if they refused an overweight load, but if they made an overweight haul, they only risked losing their one-dollar safety bonus if they received a citation. Sarver testified that weight limits were important for safety reasons, and Officer Williams and other witnesses also testified that regulations, such as weight limits, were created for safety reasons. Evans testified that the weight of the truck was a factor in its inability to stop and in its lack of maneuverability, and the nature of the crash itself supported an inference that the weight of the truck's load was a factor in the crash and in causing Kwas's injuries.

Despite the agreed importance of safety regulations, Sarver stated that Lone Star depended on its drivers to comply with safety regulations and weight restrictions in particular. Martinez testified that he was not given any particular training or tools

to check the weight on his loads, and he believed that if his truck could pull the loaded box onto the truck bed, the load was safe to haul. Sarver testified that there was no practical way to equip its drivers to weigh their loads, but Evans testified that the truck Martinez was driving at the time of the crash was equipped with onboard scales.

Kwas presented evidence of the records on file with the Department of Public Safety regarding Lone Star's drivers. Sarver testified generally that if a driver received a citation, Lone Star would address the concerns and a supervisor would speak with the driver about the reasons for the citation. He challenged the basis for several of the citations involved and asserted that some of them were dismissed, but the evidence also demonstrated that not all of the citations had been dismissed. And Martinez contradicted Sarver's testimony, stating that no one from Lone Star had offered any additional training or other follow-up after he received a citation for hauling an over-weight load in June 2015 or after the crash in December 2015. He testified only that Lone Star obtained a lawyer to get his June 2015 citation dismissed, and he continued picking up loads as he had done before.

We conclude that this evidence of Lone Star's training practices and policies, viewed objectively from Lone Star's standpoint, demonstrates its failure to adequately train, supervise, and equip its drivers. We further conclude that this failure by Lone Star involved an extreme degree of risk, considering the probability

and magnitude of the potential harm to others that could result from untrained or unsupervised drivers hauling overweight loads in their dump trucks. *See Boerjan*, 436 S.W.3d at 311. And, we conclude that this evidence, including Sarver's and Martinez's testimony, established that Lone Star was aware of the importance of training and safety policies, including training on weight restrictions, but nevertheless did not provide the necessary training or equipment, either to new hires or in response to citations received by its drivers. There was sufficient evidence that Lone Star had actual, subjective awareness of the risks involved in its failure to adequately train and supervise its drivers that it disregarded. *See id.* ("Under the subjective element, actual awareness means the defendant knew about the peril, but its acts or omissions demonstrated that it did not care.").

Lone Star asserts that its drivers' weight violations are insufficient to support the jury's findings on gross negligence. Lone Star asserts that the load weights were the drivers' responsibility, as evidenced by the fact that citations were to the individual drivers and that the "pre-accident overweight citations issued to Lone Star drivers are a miniscule percentage of Lone Star's hauls." This assertion ignores the other evidence presented during trial regarding Lone Star's supervision and training of its drivers and is not so overwhelming as to support a conclusion that the jury could not have formed a firm belief or conviction that Lone Star was grossly negligent.

We conclude that the evidence presented at trial supports a conclusion that the jury could have formed a firm belief or conviction that Lone Star was grossly negligent in its training and supervision of its drivers, including Martinez. *See Hall*, 168 S.W.3d at 170.

We overrule Lone Star's fourth issue.

C. Future Pain and Mental Anguish

In its fifth issue, Lone Start asserts that the evidence was insufficient to support the jury's award of $700,000 to Kwas for future physical pain and mental anguish.

1. Relevant law

Personal injury damages fall within two broad categories: economic and non-economic damages. *Golden Eagle Archery*, 116 S.W.3d at 763; *Thompson v. Stolar*, 458 S.W.3d 46, 60–61 (Tex. App.—El Paso 2015, no pet.). "Where the award is based on non-empirical damages such as mental anguish and pain and suffering, the court will generally leave that determination to the discretion of the jury." *Thompson*, 458 S.W.3d at 60. The presence or absence of pain is an inherently subjective question for which the plaintiff bears the burden of production and persuasion. *Thompson*, 458 S.W.3d at 61; *see Enright v. Goodman Distribution, Inc.*, 330 S.W.3d 392, 398 (Tex. App.—Houston [14th Dist.] 2010, no pet.). Moreover, "[t]he process of awarding damages for amorphous, discretionary injuries such as

mental anguish or pain and suffering is inherently difficult because the alleged injury is a subjective, unliquidated, nonpecuniary loss." *HCRA of Tex., Inc. v. Johnston*, 178 S.W.3d 861, 871 (Tex. App.—Fort Worth 2005, no pet.). When the existence of some pain and mental anguish has been established, "there is no objective way to measure the adequacy of the amount awarded as compensation, which is generally left to the discretion of the fact finder." *Pentes Design, Inc. v. Perez*, 840 S.W.2d 75, 80 (Tex. App.—Corpus Christi 1992, writ denied).

The amount of evidence necessary to affirm a judgment is far less than that necessary to reverse a judgment. *GTE Mobilnet of S. Tex. Ltd. v. Pascouet*, 61 S.W.3d 599, 616 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). The jury generally has great discretion in considering evidence on the issue of damages. *McGalliard v. Kuhlmann*, 722 S.W.2d 694, 697 (Tex. 1986); *Lanier v. E. Foundations, Inc.*, 401 S.W.3d 445, 455 (Tex. App.—Dallas 2013, no pet.). As a general principle, we need to remain mindful that the amount of damages awarded is uniquely within the jury's discretion. *Mo. Pac. R.R. Co. v. Roberson*, 25 S.W.3d 251, 257 (Tex. App.—Beaumont 2000, no pet.).

2. Analysis

Lone Star does not challenge the wording of the jury question at issue or the accompanying instructions, so we will measure sufficiency of the evidence against the question as submitted. *See Osterberg v. Peca*, 12 S.W.3d 31, 55 (Tex. 2000);

Badall v. Durgapersad, 454 S.W.3d 626, 634 (Tex. App.—Houston [1st Dist.] 2014, pet. denied). Relevant here, the jury charge asked the jury to determine what sum of money, if any, would compensate Kwas for her "[p]hysical pain and mental anguish that, in reasonable probability, [she] will sustain in the future." Thus, we assess the jury's damages award in light of both physical pain or mental anguish. *See Turner v. Duggin*, 532 S.W.3d 473, 484 (Tex. App.—Texarkana 2017, no pet.) ("Since the Turners lodged no objection to the lack of segregation in the jury charge of the mental anguish damages from the question pertaining to physical pain damages, we cannot now differentiate between the award of one kind of damage from the other."); *Scott's Marina at Lake Grapevine Ltd. v. Brown*, 365 S.W.3d 146, 161 (Tex. App.—Amarillo 2012, pet. denied) (holding that appellants were limited to challenging sufficiency of damages award as a whole when they failed to challenge trial court's charge asking jury to award lump sum for both physical pain and mental anguish).

Kwas presented evidence that would support the jury's finding that she will, in reasonable probability, suffer physical pain in the future. *See Primoris Energy Servs. Corp. v. Myers*, 569 S.W.3d 745, 761 (Tex. App.—Houston [1st Dist.] 2018, no pet.) ("A plaintiff may recover for future physical pain if a jury can reasonably infer that he will feel physical pain [as a result of his injuries] in the future."). Kwas testified regarding the nature of her injuries from the crash, stating that she "could not breathe at the time" and "thought [her] left side was crushed." She was removed

from the scene of the crash by ambulance to a helicopter landing zone and was then transported by helicopter to a trauma center. She had injuries including fractured ribs and damage to her spleen. She had a laceration to her leg that became infected. After she was discharged from the hospital, she was still "very short of breath" and "couldn't move around." She testified that, after the accident, she was in a tremendous amount of pain. She "couldn't work" and "couldn't barely move." Kwas testified that it was "several months before [she] could even stand up straight."

Although there was evidence that her injuries improved over time, the nature of the crush injuries to her chest and the broken bones that she experienced support an inference that she would, in reasonable probability, suffer some physical pain into the future. *See Myers*, 569 S.W.3d at 761 ("[P]hysical pain may be established by circumstantial evidence."); *Figueroa v. Davis*, 318 S.W.3d 53, 62 (Tex. App.—Houston [1st Dist.] 2010, no pet.) (damages for pain and suffering are speculative and each case must be judged on its own facts); *Gen. Motors Corp. v. Burry*, 203 S.W.3d 514, 551 (Tex. App.—Fort Worth 2006, pet. denied) ("The presence or absence of pain, either physical or mental, is an inherently subjective question.").

And even if Kwas had not presented evidence supporting a reasonable inference that her broken bones and other injuries would continue to cause her pain in the future, she also presented evidence supporting a jury finding that she will, in reasonable probability, suffer mental anguish in the future. We will not differentiate

between the award for future physical pain and future mental anguish when Lone Star, as the complaining party, lodged no objection to the jury charge's lack of segregation between these damages. *See Turner*, 532 S.W.3d at 484.

To support an award of mental anguish damages, the plaintiff's evidence must describe "the nature, duration, and severity of their mental anguish, thus establishing a substantial disruption in the plaintiff['s] daily routine." *See Fifth Club, Inc. v. Ramirez*, 196 S.W.3d 788, 797 (Tex. 2006) (quoting *Parkway Co. v. Woodruff*, 901 S.W.2d 434, 444 (Tex. 1995)). To support an award for future mental anguish, a plaintiff must demonstrate "a reasonable probability" that she will "suffer compensable mental anguish in the future." *Adams v. YMCA of San Antonio*, 265 S.W.3d 915, 917 (Tex. 2008). The Supreme Court of Texas has held that "some types of disturbing or shocking injuries have been found sufficient to support an inference that the injury was accompanied by mental anguish." *Ramirez*, 196 S.W.3d at 797; *Parkway*, 901 S.W.2d at 445; *see also Manning v. Golden*, 12-12-00232-CV, 2014 WL 806326, at *5 (Tex. App.—Tyler Feb. 28, 2014, no pet.) ("For example, as early as 1888, the court recognized that serious bodily injury 'involving fractures, dislocations, etc., and results in protracted disability and confinement to bed' necessarily resulted in some degree of physical and mental suffering.") (quoting *Brown v. Sullivan*, 10 S.W. 288, 290 (Tex. 1888)).

At the time of the accident, Kwas testified that she was afraid that she was going to die. Following the accident, she continued to suffer extreme pain due to the crush injuries to the left side of her chest, resulting in broken ribs and internal injuries. She could not stand up straight or move, and she found her resulting inability to provide for her family to be the most distressing part of her injury. She visited her primary care physician for treatment because she was anxious and not sleeping.

Kwas also presented evidence that this anxiety continued to have an impact on her life and her future. She testified that she became a paramedic in 2001 and that it was a meaningful career for her. She testified that, despite her previous plans to advance her career as a paramedic and the work that she put into obtaining her certifications, she eventually "took a different position because I didn't think it was fair to my partner or my patient that I couldn't be 100 percent in the back of the ambulance" because she "was worried about what was going on on the outside." She indicated that she resigned because she had anxiety "every day" that she had to step foot in an ambulance and because she was "mentally messed up going to work." She testified that when she began working in La Porte as a paramedic, her "goal was to be chief," but she worked at the time of trial in business development at an imaging facility. She testified, "I know that I've given up 26 years of what I've done. I don't think that's right." She testified that, although she had considered herself physically

and mentally strong, she felt that she had lost some of that belief, stating, "[I]f I was as strong as I was, I would still be working as a paramedic."

Contrary to Lone Star's assertion that this evidence does not meet the *Parkway* standard, this is evidence that her mental anguish endured for a period of years, at least from the time of the accident in 2015 until the time of trial in 2018, and that it resulted in her seeking medical treatment from her general practitioner for sleeplessness. The jury could also have inferred that her distress was severe and substantially disrupted her daily routines based on Kwas's testimony that her response of anxiety and distress following the accident changed her perception of herself, leading her to think that she was not the strong person she had previously imagined herself to be, and her testimony that her mental state compelled her to quit a career that she loved because of daily anxiety and being "mentally messed up." *See Adams*, 265 S.W.3d at 917; *Ramirez*, 196 S.W.3d at 797; *Parkway*, 901 S.W.2d at 444; *see also Badall*, 454 S.W.3d at 640 (holding that evidence of "painful emotions such as grief, severe disappointment, indignation, wounded pride, shame, despair, public humiliation, or a combination of any or all of those feelings" can support finding of compensable mental anguish).

Finally, Lone Star argues that, "[s]upposing there were evidence of future physical pain and mental anguish, it would be insufficient to support the $700,000 award." We disagree. We recognize that "the process of awarding damages for

amorphous, discretionary injuries such as mental anguish or pain and suffering is inherently difficult because the alleged injury is a subjective, unliquidated, nonpecuniary loss." *Burry*, 203 S.W.3d at 551. "Once the existence of some . . . mental anguish . . . has been established, there is no objective way to measure the adequacy of the amount awarded as compensation." *Figueroa*, 318 S.W.3d at 62. While the law is clear that there must be some evidence to justify the amount awarded, *see Hancock v. Variyam*, 400 S.W.3d 59, 68 (Tex. 2013), where the record demonstrates that the jury engaged in careful consideration of what amount to assess, we will defer to the jury's determinations. *See, e.g.*, *Serv. Corp. Int'l v. Aragon*, 268 S.W.3d 112, 121–22 (Tex. App.—Eastland 2008, pet. denied) (holding that jury demonstrated level of care when it awarded different amounts for different categories of nonpecuniary damages and stating, in affirming award, that "[i]t is also evident that the jury did not simply pick numbers at random but gave careful consideration to this issue"). Here, the jury gave consideration to the issue of nonpecuniary damages by awarding different amounts for past physical pain and mental anguish, future physical pain and mental anguish, and punitive damages.

We also observe that the amount awarded is not disproportionately large when weighed against the effect of the crash on Kwas's life and the resulting effect on her mental state, which led her to abandon a career path that had previously been meaningful to her and for which she had spent years training and gaining experience.

The award of $700,000 for future physical pain and mental anguish is not out of line with other awards in cases involving the effects of dramatic life events. *See, e.g.*, *Diamond Offshore Servs. Ltd. v. Williams*, 510 S.W.3d 57, 79 (Tex. App.—Houston [1st Dist.] 2015) (upholding award of $3.4 million for future pain and mental anguish resulting from back injury that made it difficult for plaintiff to participate in life activities he previously could), *rev'd on other grounds*, 542 S.W.3d 539 (Tex. 2018); *Wackenhut Corrections Corp. v. de la Rosa*, 305 S.W.3d 594, 636–37 (Tex. App.—Corpus Christi 2009, no pet.) (upholding award of $2 million for future mental anguish for each of decedent's children), *abrogated on other grounds*, *Zorrilla v. Aypco Constr. II, LLC*, 469 S.W.3d 143 (Tex. 2015).

We overrule Lone Star's fifth issue.

Conclusion

We affirm the judgment of the trial court.

Richard Hightower
Justice

Panel consists of Justices Keyes, Lloyd, and Hightower.