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(Cite as: 46 So.3d 94)

C

District Court of Appeal of Florida,
Third District.
ALLSTATE PROPERTY AND CASU-
ALTY INSURANCE COMPANY, Appel-
lant,
v.
Juan M. FLORES, Appellee.

No. 3D09-2445.
Sept. 29, 2010.

Background: Insured brought action against his underinsured motorist (UIM) carrier, seeking coverage arising out of an automobile accident. After award of summary judgment to insured as to liability, a jury awarded insured no damages. The Circuit Court, Miami-Dade County, [Gisela Cardonne Ely, J.](#), granted insured's motion for new trial. Insurer appealed.

Holding: The District Court of Appeal, [Rothenberg, J.](#), held that trial court did not abuse its discretion by granting insured a new trial.

Affirmed.

West Headnotes

[1] Appeal and Error 30 ¶977(3)

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower
Court
30k976 New Trial or Rehearing
30k977 In General
30k977(3) k. Grant of new
trial in general. [Most Cited Cases](#)

When reviewing the order granting a new trial, an appellate court must recognize the broad discretionary authority of the tri-

al judge and apply the reasonableness test to determine whether the trial judge committed an abuse of discretion.

[2] Appeal and Error 30 ¶901

30 Appeal and Error
30XVI Review
30XVI(G) Presumptions
30k901 k. Burden of showing er-
ror. [Most Cited Cases](#)

Appeal and Error 30 ¶948

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower
Court
30k948 k. Burden of showing
grounds for review. [Most Cited Cases](#)

On appeal from the trial court's grant of a new trial, the appellant faces a heavy burden, and must establish that the trial court's abuse of discretion is clear from the record.

[3] Damages 115 ¶191

115 Damages
115IX Evidence
115k183 Weight and Sufficiency
115k191 k. Expenses. [Most Cited
Cases](#)

New Trial 275 ¶75(4)

275 New Trial
275II Grounds
275II(F) Verdict or Findings Con-
trary to Law or Evidence
275k75 Inadequate Damages
275k75(4) k. Actions for per-
sonal injuries. [Most Cited Cases](#)

Trial court did not abuse its discretion in action by insured against his underinsured motorist (UIM) carrier by granting

insured a new trial after jury awarded insured no damages on his claim for UIM benefits, even if there was evidence to support jury's conclusion that insured's injuries were not caused by his automobile accident, where there was no evidence that any of the diagnostic tests performed on insured were not reasonable or necessary to determine whether the accident caused the injuries.

*95 Kubicki Draper and Caryn L. Bellus, Miami, and Wendi M. Weiner, for appellant.

Manuel Vega, Jr., Coral Gables; Ross & Girten and Lauri Waldman Ross and Theresa Girten, Miami, for appellee.

Before RAMIREZ, C.J., and COPE and ROTHENBERG, JJ.

ROTHENBERG, J.

The defendant, Allstate Property and Casualty Insurance Company ("Allstate"), appeals from an order granting the plaintiff, Juan M. Flores ("the plaintiff"), a new trial. Finding no abuse of the trial court's discretion, we affirm.

In November 2006, the plaintiff's vehicle was struck from behind while he was stopped at a Miami intersection. Nine days later, the plaintiff sought medical attention, which included a series of diagnostic tests. Thereafter, the plaintiff sued Allstate, his underinsured motorist insurance carrier. The trial court entered summary judgment in favor of the plaintiff on liability, and the matter proceed to a jury trial on damages.

The jury determined that the accident was not a legal cause of any injuries to the plaintiff and awarded zero damages. The

trial court granted the plaintiff's subsequent motion for a new trial, finding that the jury verdict was "contrary to the manifest weight of the evidence that plaintiff required some reasonable diagnostic testing." This appeal followed.

[1][2] "When reviewing the order granting a new trial, an appellate court must recognize the broad discretionary authority of the trial judge and apply the reasonableness test to determine whether the trial judge committed an abuse of discretion." *Brown v. Estate of Stuckey*, 749 So.2d 490, 497-98 (Fla.1999). In such a case, the appellant faces a "heavy burden," and must establish that the trial court's abuse of discretion is "clear from the record." *Id.* at 496; see *Castlewood Int'l Corp. v. LaFleur*, 322 So.2d 520, 522 (Fla.1975) (holding that there must be a strong showing to upset an order granting a new trial, a heavy burden rests on those seeking to overturn such an order, and any abuse of discretion must be patent from the record).

[3] In granting the plaintiff a new trial, the trial court relied on *Sparks-Book v. Sports Authority, Inc.*, 699 So.2d 767, 768 (Fla. 3d DCA 1997). In *Sparks-Book*, this Court reversed an order denying the plaintiff's motion for a new trial, holding that "[a]t a minimum, the plaintiff was entitled to recover for those medical expenses incurred for necessary diagnostic testing which [were] reasonably necessary to determine whether the accident caused her injuries." *Id.* Allstate correctly notes that there was record evidence to support the jury's conclusion that the plaintiff's injuries were not caused by the subject accident. However, no evidence was presented that any of the diagnostic tests that were performed were not reasonable or necessary to determine whether the accident caused the

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plaintiff's complained-of *96 injuries. Thus, we agree with the trial court that *Sparks-Book* controls.^{FN1}

FN1. The trial court's finding and our affirmance on appeal does not present a conflict with *Plana v. Sainz*, 990 So.2d 554 (Fla. 3d DCA 2008), because in *Plana* there was conflicting expert testimony as to whether the diagnostic tests performed were necessary or appropriate.

Accordingly, because Allstate cannot establish that the trial court's decision to grant the plaintiff a new trial was unreasonable, or point to a patent abuse of the trial court's discretion, we affirm.

Affirmed.

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