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VERONICA HANDY, ESQUIRE

CLERK OF THE COURT

For Publication

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

<b>COASTAL AIR TRANSPORT, INC.,</b>	)	<b>S. Ct. Civ. No. 2020-0027</b>
Appellant/Defendant,	)	Re: Super. Ct. Civ. No. 044/2004 (STX)
	)	
<b>v.</b>	)	
	)	
<b>AUBIN SCOTLAND,</b>	)	
Appellee/Plaintiff.	)	
	)	

On Appeal from the Superior Court of the Virgin Islands  
Division of St. Croix  
Superior Court Judge: Hon. Robert A. Molloy

Considered: May 13, 2021  
Filed: December 23, 2021

Cite as 2021 VI 23

**BEFORE:** **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

**APPEARANCES:**

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**SWAN, Associate Justice.**

¶ 1 Aubin Scotland (“Scotland”) filed a lawsuit against Coastal Air Transport, Inc. (“Coastal Air”) seeking damages for bodily injuries he allegedly sustained on January 18, 2004, while

deplaning one of Coastal Air's passenger aircraft. After a bench trial, the Superior Court entered judgment in favor of Scotland and against Coastal Air on the issue of negligence and awarded Scotland damages for past and present medical expenses, pain and suffering, and future pain and suffering. Coastal Air timely filed its notice of appeal. Finding no clear error as explicated below, we affirm the Superior Court's March 10, 2020 judgment.

### **I. BACKGROUND AND PROCEDURAL POSTURE**

¶2 On February 9, 2004, Scotland filed a complaint against Coastal Air which alleged negligence and sought damages for the personal injuries he allegedly sustained on St. Croix on January 18, 2004, when he was disembarking a Coastal Air flight from Dominica, West Indies. On March 2, 2004, Scotland amended his complaint by changing the name of the defendant from Coastal International Airways, Inc. to Coastal Air Transport. On May 4, 2004, Michael W. Foster ("Foster"), acting pro se, filed Coastal Air's answer in which he denied liability and raised defenses, including failure to state a claim upon which relief can be granted, Scotland's contributory negligence, assumption of the risk and recklessness. The Superior Court struck Foster's May 4, 2004 answer, because Coastal Air is a corporation, and the answer was not filed by an attorney. On March 3, 2009, more than four years later, Flavia E. Logie, an attorney, filed an answer on behalf of Coastal Air, which is identical to Foster's stricken answer, and which denied any liability or fault but raised the same defenses previously raised by Coastal Air. Extensive discovery, motion practice, and other pretrial proceedings, including continuances, ensued.

¶3 At the end of pretrial proceedings on April 20, 2018, the parties jointly filed a proposed final pretrial order that the Superior Court accepted on May 7, 2018. Pursuant to the order, the Superior Court would adjudicate Scotland's claim of negligence and Coastal Air's affirmative

defenses of contributory negligence, equitable estoppel, laches, and things or persons outside Defendant's control.<sup>1</sup>

¶4 The parties waived their right to a jury trial and the case was set for a bench trial in the Superior Court on November 19, 2018. Specifically, the court proceeded to adjudicate Scotland's claim of negligence and Coastal Air's defense of contributory negligence, equitable estoppel, laches, and things or persons outside Coastal Air's control. At trial, both parties were represented by counsel, and Scotland and Foster were present. The court heard testimony from three witnesses namely Carol Gardener-Denise ("Gardener-Denise"), Foster, and Scotland.

¶5 During trial, the Superior Court made detailed findings of fact. Critical and relevant to the issues Coastal Air raises on appeal, the court found that Scotland was a 43 year old man, and he arrived at approximately 1:00 p.m. on St. Croix on January 18, 2004, aboard Coastal Air on flight 442 from Dominica. Foster, who was an experienced pilot, had flown several different aircrafts over several years, including United States Army aircraft, and he piloted the nine-seater Cessna 404 airplane on flight 442. At one time Foster was the president and owner of Coastal Air. Upon arrival of the flight on St. Croix, Foster exited the airplane through the crew door and circumnavigated the aircraft to the side to open the main cabin door so the passengers could exit the airplane. According to the evidence presented, Scotland was seated closest to the passengers' exit door of the airplane and was the first passenger to disembark the airplane. Once the passenger door is opened, the staircase, which is embedded in the door and connected to the airplane by cables secured by clevis bolts, is lowered to the ground. The last step is lowered approximately a foot above the ground.

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<sup>1</sup> The Superior Court highlighted the inconsistency in the defenses Coastal Air raised in its answer versus those referenced in the joint pretrial order and noted that the May 7, 2018 joint pretrial order may have superseded the defenses Coastal Air had raised in its answer.

The staircase for the airplane was designed to sustain a maximum weight of 1,500 pounds. When Scotland exited the airplane and simultaneously stepped on the stairs, the clevis bolts holding the staircase to the airplane broke, the staircase fell and hit the ground and Scotland fell while attempting to disembark the airplane. Foster saw when Scotland fell as he was exiting the airplane. Scotland regained his composure from the fall, unassisted, and was able to depart the airport terminal unassisted.

¶6 Because of the incident, Coastal Air had to arrange to have the plane serviced to repair the cables and clevis bolts for the staircase. The court further found that there was no wear or corrosion on or around the clevis bolts. Foster was unable to confirm whether the clevis bolts had been replaced previously, but he believed that they may have been the original bolts that were installed on the plane when it was manufactured approximately twenty-five years before the accident.

¶7 Gardner-Denise testified that when she went to pick-up Scotland from the airport, she noticed that he seemed to be in excruciating pain and experiencing discomfort. Scotland went to the hospital emergency room two days later, on January 20, 2004, and January 31, 2004, complaining of pain in his leg and back from the fall. During trial, Scotland presented evidence that he also sought and received other medical care and treatment for the pain in his leg and back caused by the fall. In May 2004, Scotland received medical treatment from the Williams Chiropractic Clinic. Scotland also received medical treatment in Dominica in 2007 for back pain. In 2008 on St. Croix, Scotland was treated for “backpain radiating to the right leg for months” and was diagnosed with sciatica later the same year. (J.A. 25.) Because of the pain and discomfort in his leg and back, Scotland experienced difficulties maintaining gainful employment. Scotland also provided evidence that he unsuccessfully utilized a brace to alleviate the pain but his efforts were futile because his pain persisted and remained unabated. Scotland personally incurred \$11,331.16

in medical bills, because he was uninsured. From the testimony Gardener-Denise offered at trial, the Superior Court found that after the fall Scotland was unable to be active, to exercise, to walk around the neighborhood and to assist his mother in her garden.

¶8 After consideration of the trial evidence, the Superior Court concluded that Scotland and Gardener-Denise were more credible than Foster. The Superior Court further concluded that Coastal Air was negligent because it breached its duty of care to Scotland, and it was also determined that this breach was the proximate cause of the accident that resulted in his back injuries.

¶9 In its determination of Coastal Air's affirmative defenses raised, the Superior Court found all the defenses specious and meritless, and that Coastal Air had failed to sustain its burden of proof.

¶10 The Superior Court further awarded Scotland \$11,432.08 for past medical expenses and \$30,000 in pain and suffering for a total amount of \$41,432.08. In granting Scotland damages, the Superior Court reasoned that "it is only reasonable to assume that, in all likelihood, the pain and suffering will persist as Scotland gets older." (J.A. 34.)

## II. JURISDICTION

¶11 This Court has jurisdiction over this appeal pursuant to title 4, section 32(a) of the Virgin Islands Code, which provides that "[t]he Supreme Court shall have jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law." "A final judgment is one that ends the litigation on the merits and leaves nothing to do but execute the judgment." *Caribbean Healthways Inc. v. James*, 55 V.I. 691, 696-97 (V.I. 2011) (quoting *Rojas v. Two/Morrow Ideas Enters., Inc.*, 53 V.I. 684, 691 (V.I. 2010)). Because the Superior Court's March 10, 2020 judgment ended the litigation on the merits and disposed of the entire subject of the litigation, it constitutes a final order within the meaning of section 32. *See*

*Sealey-Christian v. Sunny Isle Shopping Ctr., Inc.*, 52 V.I. 410, 418 (V.I. 2009); *Bryant v. People*, 53 V.I. 395, 401 (V.I. 2010).

### III. STANDARD OF REVIEW

¶12 The standard of review for this Court's examination of the Superior Court's application of law is plenary, while the trial court's findings of fact are reviewed for clear error. *Ramirez v. People*, 56 V.I. 409, 416 (2012) (citing *Blyden v. People*, 53 V.I. 637, 646–47 (V.I. 2010)). Under this standard, the Court must “accept the factual determination of the fact finder unless that determination ‘either (1) is completely devoid of minimum evidentiary support displaying some hue of credibility or (2) bears no rational relationship to the supportive evidentiary data.’” *Haines v. Liggett Group, Inc.*, 975 F.2d 81, 91-92 (3d Cir. 1992) (citation omitted); *St. Thomas-St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007). Additionally, the Superior Court's ruling on the adequacy of damages “will not be disturbed absent a showing of a manifest abuse of discretion by the trial court,” *Seafarers Int'l Union of North America v. Thomas*, 42 F. Supp. 2d 547, 555 (D.V.I. App. Div. 1999), for an appellate court's “review of a damage award is ‘exceedingly narrow.’” *Semper v. Santos*, 845 F.2d 1233, 1236 (3d Cir. 1988) (quoting *Williams v. Martin Marietta Alumina, Inc.*, 817 F.2d 1030, 1038 (3d Cir. 1987)).

### IV. DISCUSSION

#### A. There is no Clear Error in the Superior Court's Adjudication of the Case.

¶13 On appeal, Coastal Air argues that the Superior Court's judgment entered in favor of Scotland and against it on the cause of action for negligence is not supported by substantial evidence in the record. On the other hand, Scotland argues that the Superior Court's findings of fact and conclusions of law should not be set aside since it is not clearly erroneous and that the record before this Court supports the Superior Court's finding of liability. After a careful and

thorough review of the record, we conclude that the Superior Court is correct in finding that Coastal Air was negligent.

¶14 This Court has previously established that the elements of negligence are 1) legal duty of care to the plaintiff; 2) A breach of that duty of care by the defendant; 3) constituting fault and legal cause of; 4) damages to plaintiff. *Machado v. Yacht Haven U.S.V.I.* 61 V.I. 373, 380 (V.I. 2014). In considering this rule, we must examine the record to determine whether Scotland satisfied all the necessary elements of a cause of action for negligence. Here, the evidence reveals that Scotland was a passenger on Coastal Air. Coastal Air is a common carrier, since it holds itself out for hire by members of the general public for the purpose of providing them safe transportation from one location to another. *See, e.g., Lowrey v. Montgomery Kone, Inc.*, 42 P.3d 621, 627 (Ariz. Ct. App. 2002) (the class of common carrier contains such disparate members such as airplane, taxis, horse-drawn carriages, and elevators). As a common carrier, Coastal Air owed the passengers, including Scotland, a duty to exercise reasonable care. To successfully satisfy this duty, Coastal Air was required to conduct reasonably frequent inspections of the component parts of the airplane, including the nuts, bolts, and cables and to keep its equipment in good repair. The evidence presented by Scotland further established that Scotland was the first to exit the airplane. When Scotland stepped on the stairs of the aircraft, the clevis bolt broke or dislodged, and, the staircase fell and impacted the ground, causing Scotland to fall while disembarking the airplane. More evidence adduced at trial confirmed that after the incident Coastal Air took the airplane for servicing to repair the cables and clevis bolts on the staircase. The evidence further reveals that there was no wear or corrosion on or around the clevis bolts and that Foster, the owner of Coastal Air, believed that the clevis bolts may have been the original bolts that were installed on the Cessna 404 when it was manufactured approximately twenty-five years before the flight.

¶15 Scotland was injured because of the fall. Specifically, Scotland presented undisputed evidence, corroborated at trial, that he sustained injuries to his leg and back, causing bodily pain, for which he sought and received medical treatment. In its determination of Coastal Air's negligence, the Superior Court concluded that "staircases do not ordinarily detach from planes absent a party's negligence or the act of an intervening third-party," ultimately concluding that Coastal Air was negligent. (J.A. 27.)

¶16 Accordingly, the record reveals that there is sufficient evidence to find Coastal Air negligent. Coastal Air has a duty as a common carrier to maintain its equipment in good repair, including the component parts of the airplane. The evidence discloses that Coastal Air breached its duty of care to Scotland when the clevis bolts on the airplane's staircase broke, causing the staircase to detach and Scotland to fall and injure his back and leg. The evidence presented is irrefutable and incontestable that the proximate cause of the accident was the clevis bolts breaking and the staircase falling due to Coastal Air's negligence in failing to maintain the clevis bolts for the safety of its passengers. Without Coastal Air's negligence, Scotland would not have fallen to the ground and sustained injuries to his leg and back. We agree with the Superior Court that the affirmative defenses Coastal Air raised including equitable estoppel, laches, persons or things outside one's control and comparative negligence are insufficient and its arguments fail to refute the evidence presented at trial to defeat Scotland's cause of action for negligence. Accordingly, because there is sufficient evidence to prove the elements of negligence to support Scotland's case, the Superior Court correctly concluded that Coastal Air was negligent in properly maintaining its aircraft.

**B. The Superior Court's Award of Damages Was Reasonable and Not Clearly Erroneous.**

¶17 Coastal Air argues that the award of monetary damages is unsupported by substantial evidence in the record. Specifically, Coastal contends that Scotland presented no credible evidence other than his self-serving statements that he suffered injury from the incident. To the contrary, Scotland argues that the Superior Court's award of damages should be affirmed because there is sufficient evidence on the record to support an award of monetary damages.

¶18 The record shows that Scotland sought damages for physical pain and suffering (past, present, and future), mental anguish (past, present, and future), loss of enjoyment of life, permanent injuries, and medical expense (past, present, and future). The parties stipulated to the admission of Scotland's medical records and medical bills. Scotland submitted evidence of an airline ticket from Coastal Air to Scotland for flight 442 from Dominica to St. Croix on January 18, 2004; medical records from the Juan F. Luis Hospital & Medical Center on St. Croix, U.S. Virgin Islands for his visits to the emergency room, that were occasioned by the accident; medical records from William Chiropractic Clinic; medical records from the Rehabilitation Center at Beeston Hill; prescription records for medication he purchased; and medical records for treatment he received from the Medical Division of the Ministry of Health & Social Security in Dominica. The Superior Court found that Scotland incurred \$2,803.16 in past medical expenses from the Governor Juan F. Luis Hospital & Medical Center for care he received between January 2004 and August 2008; \$797 for care received in May 2004 at the Williams Chiropractic Clinic; \$7,728 for care received from January 2004 to July 2004 at the Rehabilitation Center at Beeston Hill and \$103.92 for prescriptions. Accordingly, the Superior Court awarded Scotland \$11,432.08 in past

medical expenses. There is ample evidence in the record to support the Superior Court's award of \$11,432.08 to Scotland for past medical expenses.

¶19 The Superior Court also found that Scotland met his burden of proof for pain and suffering. The Superior Court credited Scotland's testimony regarding his employment at Kmart from 2014 to 2016 and his reduced physical activities. This evidence was further corroborated by Scotland's medical records which demonstrated that Scotland was in serious pain after the fall, and that he was prescribed pain medication and received injections of ketorolac in 2004 and 2008. Based on this evidence, the Superior Court awarded Scotland \$20,000 for past pain and suffering and \$10,000 for future pain and suffering. The Superior Court's grant of \$20,000 to Scotland for past pain and suffering is supported by sufficient evidence in the record.

¶20 On the issue of future pain and suffering, we said in *Corriette v. Morales* that,

[w]hen a person has suffered physical harm that is more or less permanent in nature . . . he is entitled to recover damages not only for harm already suffered, but also for that which probably will result in the future. For harm to body, feelings or reputation, compensatory damages reasonably proportioned to the intensity and duration of the harm can be awarded without proof of amount other than evidence of the nature of the harm . . . The discretion of the judge or jury determines the amount of recovery, the only standard being such an amount as a reasonable person would estimate as fair compensation. In these cases the trier of fact can properly award substantial damages as compensation for harms that normally flow from the tortious injury even without specific proof of their existence, such as pain from a blow or humiliation from a scar. Evidence to prove that the harm is greater or less than that which ordinarily follows is admissible. The most that can be done is to note such factors as the intensity of the pain or humiliation, its actual or probable duration and the expectable consequences. Since these factors are all indefinite it is impossible to require anything approximating certainty of amount even as to past harm.

¶21 It is well-settled that in an action for personal injury, future pain and suffering on behalf of the injured person in consequence of the injury constitute a proper element of the damages which may be allowed, provided there is requisite certainty or probability that such pain and suffering will result.

¶22 Generally, damages for future pain and suffering cannot be recovered in a personal injury action if there is no evidence that pain and suffering will continue in the future or no evidence from which damages therefore can be calculated. All damages, however, are subject to some uncertainties.

¶23 Scotland needs only offer evidence of the nature of the harm for a jury to properly award him damages for future pain and suffering. *See* RESTATEMENT (SECOND) OF TORTS § 912. Specific proof of Scotland's pain and suffering is not required if the complained of backpain was the type that "normally flows from the tortious injury." *Corriette*, 50 V.I. at 213; *See also* RESTATEMENT (SECOND) OF TORTS § 912 cmt. h. In this bench trial, the Superior Court judge was presented with documentary medical evidence and the testimonies of Scotland and Gardener-Denise, each of which directly or indirectly establish that future pain is likely to result from Scotland's fall. Given all the evidence offered by Scotland, we conclude that there was sufficient evidence supporting the Superior Court's award of damages of future pain and suffering to Scotland.

## V. CONCLUSION

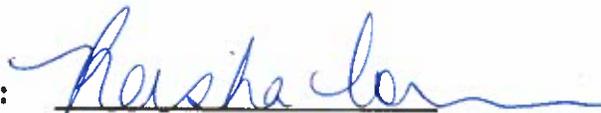
¶24 Because there was sufficient evidence to find Coastal Air negligent and the award of damages to Scotland for past medical expenses, for past pain and suffering, and for future pain and suffering were fair and reasonable, we affirm the Superior Court's May 10, 2020, judgment.

**DATED this 23rd day of December 2021.**

  
**IVE ARLINGTON SWAN**  
**Associate Justice**

**ATTEST**

**VERONICA J. HANDY, ESQ.**  
**Clerk of the Court**

By:   
**Deputy Clerk**

Dated: 12/23/2021