

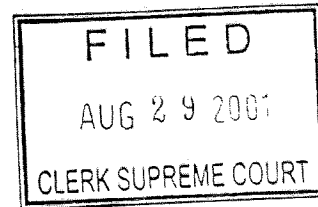
IN THE COURT OF APPEALS OF IOWA

No. 1-461 / 00-1523
Filed August 29, 2001

CHRISTOPHER LEE JOHNSON,
Plaintiff-Appellant,

vs.

GEORGE ROBERT VANNOTE,
Defendant-Appellee.



Appeal from the Iowa District Court for Carroll County, Joel E. Swanson,
Judge.

The plaintiff appeals from a judgment entered on a jury verdict in
defendant's favor in plaintiff's action for damages for personal injuries suffered in
an automobile accident. **AFFIRMED.**

Michael R. Mundt of Mundt, Franck & Schumacher, Denison, for appellant.

Jeffrey R. Minnich of Neu, Minnich, Comito & Neu, P.C., Carroll, for
appellee.

Considered by Mahan, P.J., Zimmer and Hecht, JJ.

MAHAN, P.J.

The plaintiff, Christopher Johnson, appeals from a judgment entered on a jury verdict in defendant's favor in plaintiff's action for damages for personal injuries suffered in an automobile accident. The jury found the defendant, George Vannote, negligent, but determined his negligence was not a proximate cause of Johnson's injuries. The plaintiff contends the trial court erred in (1) denying his motion for a new trial, (2) admitting into evidence his entire medical history, and (3) failing to grant a new trial based on defense counsel's violation of a motion in limine. We affirm.

Background Facts and Proceedings. On November 2, 1998, Johnson approached an intersection with a flashing yellow light as he drove north in Carroll County. Vannote was approaching the same intersection in a motor home, driving east. The east-west road on which Vannote was traveling had a stop sign and a flashing red light. Vannote testified he stopped at the stop sign before pulling into the intersection. As Johnson described the accident, Vannote slowed down, but then stepped on the gas and accelerated through the intersection. The vehicles collided. Johnson testified his speed on impact was forty-five to fifty miles per hour. Vannote eventually pled guilty to failure to yield the right of way.

Johnson did not experience pain immediately following the accident. At the scene of the accident, he informed Vannote he was okay. Johnson returned to his home after the accident. He began experiencing pain as the day progressed. The following afternoon, Johnson visited his chiropractor, Dr.

Anderson, complaining of headache, neck pain and stiffness, dizziness, back pain, and a feeling of pins and needles in his arms. Dr. Anderson observed muscle spasms and a limited and painful range of motion. Johnson returned to Dr. Anderson on November 16, 1998, and saw him regularly thereafter for treatment.

On November 6, 1998, Johnson went to see his family doctor, Dr. Flood. The doctor observed contusions on Johnson's skull and chest. He ordered x-rays and prescribed pain medication. He did not place any physical limitations or restrictions on Johnson. Johnson did not visit Dr. Flood again for several months. Dr. Flood eventually referred Johnson to a specialist. The specialist injected fluid into Johnson's spine to relieve his pain. Johnson was referred to another specialist, Dr. Hagan, for MRI tests. A neurosurgeon, Dr. Greene, examined Johnson to determine if surgery was appropriate. Dr. Greene proposed a nerve block procedure and referred Johnson for physical therapy.

Johnson filed suit in March 1999, seeking damages from Vannote for personal injuries suffered in the accident. At trial, in September 2000, Johnson testified he rarely experienced a day without pain following the November 1998 accident. He regularly takes over-the-counter pain medication. He occasionally has trouble sleeping, but goes to work every day. He lies down on a couch at work two or three times a day. Approximately once a week, he wakes up with his right arm completely numb and experiences tingling in his right hand.

An extensive pre-accident medical history was presented at trial. In particular, it revealed Johnson was involved in four motor vehicle accidents prior

to November 1998. X-rays taken after Johnson's first accident, in March 1984, revealed slightly narrowed disc spacing and early degenerative changes in the lower lumbar spine. After his second accident, in November 1986, Johnson experienced numbness and tingling in his arms and headaches. He saw a neurologist, a physical therapist, and other specialists. He saw Dr. Dierenfield, a chiropractor, for one year before switching to a second chiropractor, Dr. Oatman. He complained of numbness in his arm, headaches, neck and shoulder pain, and low back pain. He had the same complaints after his third accident in August 1990. After his fourth accident in October 1998, he complained to Dr. Anderson, his chiropractor since 1994, of neck pain and stiffness. Johnson lost four days of work after the accident.

The jury found Vannote negligent, but determined his negligence was not a proximate cause of Johnson's injuries. The court denied Johnson's motion for new trial. Johnson appeals.

Standard of Review. Our scope of review is for the correction of errors at law. Iowa R. App. P. 4; *Millis v. Hute*, 587 N.W.2d 625, 629 (Iowa Ct. App. 1998). In ruling on a motion for new trial, the district court has broad but not unlimited discretion to determine if the verdict effectuates substantial justice among the parties. Iowa R. App. P. 14(f)(3); *Vaughan v. Must, Inc.*, 542 N.W.2d 533, 542 (Iowa 1996). We review the district court's denial of a motion for new trial for abuse of discretion. *Johnson v. Knoxville Cmty. Sch. Dist.*, 570 N.W.2d 633, 635 (Iowa 1997); *Ten Hagen v. DeNooy*, 563 N.W.2d 4, 10 (Iowa Ct. App. 1997). "We will not find abuse of discretion unless it is shown that the trial court's

discretion was exercised on grounds clearly untenable or to an extent clearly unreasonable." *Ten Hagen*, 563 N.W.2d at 7 (quoting *Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 13 (Iowa 1990)). Generally, we are reluctant to interfere with a jury verdict and give considerable deference to a trial court's decision not to grant a new trial. *Condon Auto Sales & Serv., Inc. v. Crick*, 604 N.W.2d 587, 594 (Iowa 1999).

Substantial Evidence. Johnson argues the jury's verdict is not supported by substantial evidence. He argues based on the evidence presented, no reasonable jury could conclude Vannote's fault was not a proximate cause of his injuries. He contends the district court should have ruled, as a matter of law, proximate cause was established. We disagree.

Questions of negligence and proximate cause are ordinarily for the jury. Iowa R. App. P. 14(f)(10); *Boham v. City of Sioux City*, 567 N.W.2d 431, 435 (Iowa 1997). Only in exceptional cases may these questions be taken from the jury and decided as a matter of law by the court. *Ten Hagen*, 563 N.W.2d at 7. Even though fault is established, it does not necessarily follow that proximate cause exists. *Id.* Proximate cause must be separately determined. *Id.* In order to prove defendant's conduct in fact caused plaintiff's damages, a plaintiff must prove (1) the damages would not have occurred but for the defendant's negligence; and (2) defendant's conduct was a "substantial factor" in bringing about the harm. *City of Cedar Falls v. Cedar Falls Cmty. Sch. Dist.*, 617 N.W.2d 11, 17 (Iowa 2000).

The court instructed the jury on negligence and proximate cause, without objection from either party.¹ The jury received medical evidence of Johnson's pre-existing conditions. Dr. Cotton, defendant's expert, examined Johnson and reviewed his pre- and post-accident records, and opined the accident was not the proximate cause of Johnson's current symptoms. Dr. Greene, one of Johnson's treating physicians, admitted he was not aware of Johnson's pre-accident medical or chiropractic history when he concluded the accident probably caused Johnson's injuries. During cross-examination, Dr. Greene indicated a review of past medical records would be important prior to forming an opinion on causation. From this and other evidence before it, the jury could have concluded Vannote's fault was not a substantial factor in producing damage to Johnson and the symptoms Johnson suffered would have been incurred even though Vannote was negligent. See *Ten Hagen*, 563 N.W.2d at 9.

Sufficient evidence was presented for the jury to conclude Vannote was negligent in his actions, but his negligence was not a proximate cause of injury to

¹ The instructions related to proximate cause read as follows:

Instruction 17. The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct.

"Substantial" means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

Instruction 18. If you find Christopher Johnson had a medical condition before this incident and this condition was aggravated or made active by this incident causing further suffering and disability, then he is entitled to recover damages caused by the aggravation. He is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries which he now has which were not caused by Defendant's actions.

Johnson. We conclude the district court did not abuse its discretion by denying Johnson's motion for new trial on this issue.

Admission of Evidence. We generally review the admission of evidence under an abuse of discretion standard. *Lovick v. Wil-Rich*, 588 N.W.2d 688, 692 (Iowa 1999). Johnson argues the district court abused its discretion in admitting defendant's exhibit "B", plaintiff's entire medical history. At trial, he objected to the admission of the entire exhibit because it contained some irrelevant material.

Evidence is relevant if it has a tendency to make a consequential fact more or less probable than it would be without the evidence. Iowa R. Evid. 401; *Mercer v. Pittway Corp.*, 616 N.W.2d 602, 612 (Iowa 2000). Even relevant evidence, however, is not admissible "if its probative value is substantially outweighed by the danger of unfair prejudice." Iowa R. Evid. 403; *Mercer* 616 N.W.2d at 612. Although a presumption of prejudice arises when the district court has received irrelevant evidence over a proper objection, the presumption is not sufficient to require reversal if the record shows a lack of prejudice. *McClure v. Walgreen Co.*, 613 N.W.2d 225, 235 (Iowa 2000).

Johnson's specific objection to exhibit "B", while not articulated before the district court, appears directed toward the admission of Dr. Flood's records, which covered a period of time from 1968 to 1999. The same records, however, were also contained in plaintiff's exhibit "11", which was offered by Johnson and admitted into evidence. Even if we assume exhibit "B" contained irrelevant evidence, a conclusion we do not reach, Johnson has failed to show prejudice. We affirm the district court on this issue.

Motion in Limine. Prior to trial, Johnson filed a motion in limine, arguing all facts concerning his 1986 motor vehicle accident and the lawsuit arising out of the accident should be excluded from trial. The hearing and ruling on Johnson's motion were not recorded, and Johnson did not submit a supplemental record pursuant to Iowa Rule of Appellate Procedure 10(c). The parties differ as to the content of the district court's ruling on Johnson's motion in limine. Johnson contends the district court overruled the motion, but precluded mention of the lawsuit concerning injuries Johnson sustained in the 1986 accident. Vannote claims the court ruled evidence of the amount of settlement from the prior lawsuit could not be offered, but did not prohibit evidence of the lawsuit itself.

At trial, the jury heard the following testimony during cross-examination of Johnson:

Q. And then as I understand it, your second car accident was this November 1986 accident? A. Yes, that I do remember.

Q. And as I see it you were complaining of numbness and tingling of your arm and headaches? A. Yes, I was.

Q. And there was a diagnosis of traumatic cervical neuritis, do you remember that? A. I don't remember Dr. Flood saying that but I'm sure it's possible.

Q. Okay. And, in fact, from that car accident there was a lawsuit?

[Johnson's counsel]: Objection, Your Honor. I think that's totally irrelevant and immaterial to anything involved in this case.

The Court: Sustained.

Q. Well, let me rephrase that. You went to several specialists? A. I think I did do that, yes.

Q. You saw Dr. Paulus here in – A. Here in Carroll, yes, I did.

Q. And you went to a neurologist in Omaha? A. Yes, I did.

Q. And you received physical therapy? A. Yes, I did.

Q. And, in fact, isn't it true that you had numbness in both of your arms from that accident? A. I don't remember having it in

both my arms but yes, I did have it in one of my arms. I believe it was my left.

Q. Well, I guess you gave a deposition back in April of 1989 in the deposition, Page 17, Line 3, and the question was asked and this wasn't by me, this was by an attorney named Tom Eller, do you remember that? A. Yes, I remember the name.

Q. I think your attorney Michael Mundt was there too? A. Yes, he was.

Johnson contends the question about the prior lawsuit posed by Vannote's attorney amounts to misconduct, and should be the basis for granting a new trial. We disagree.

Vannote's attorney made no reference to any prior claim amount, recovery or other type of injury compensation. The reference to the prior lawsuit set up questions into Johnson's prior injury and his testimony in a deposition given in that lawsuit. The evidence of Johnson's prior injuries was relevant to the determination of proximate cause. Moreover, Johnson's attorney made reference to a deposition from the prior lawsuit during the deposition of Dr. Cotton, Vannote's expert witness. Dr. Cotton's videotaped deposition was played for the jury and admitted into evidence at trial. Such reference to a prior deposition likely would alert the jury of a prior lawsuit. The use of the term "lawsuit" one time by Vannote's attorney was not misconduct. We affirm the district court on this issue.

AFFIRMED.