IN THE COURT OF APPEALS OF IOWA

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No. 7-217 / 96-711

LOIS D. COLTON, MARVIN V. COLTON, MARTHA JO KISLER, DAVID D. KISLER, and **MORGAN KISLER,** A Minor, by Martha Jo Kisler, Her Parent and Next Friend,
Appellants.

vs.

CLEAR D. BROOKS and **LENORA A. BROOKS,**
Appellees.

FILED
AUG 22 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Des Moines County, William L. Dowell, Judge.

Plaintiffs appeal the district court's order denying their motion for new trial or additur in this personal injury case. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Timothy D. Roberts of Anderson, Roberts & Porth, P.L.C., Burlington, and Charles W. Brooke of Brooke & O'Brien, P.L.C., Davenport, for appellants.

John D. Stonebraker and Patricia Rhodes Cepican of McDonald, Stonebraker & Cepican, P.C., Davenport, for appellees.

Heard by Sackett, P.J., Vogel, J., and Schlegel, S.J.*, but decided by Habhab, C.J., and Sackett, Cady, Huitink, Streit, and Vogel, JJ.

*Senior judge from the Iowa Court of Appeals serving by order of the Iowa Supreme Court.

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VOGEL, J.

Lois D. Colton, Marvin V. Colton, Martha Kisler, David D. Kisler[1], and Morgan Kisler[2] ("Plaintiffs") appeal the district court's order denying their motion for new trial or additur in this personal injury case.

Scope of review. We review the district court's legal conclusions for errors at law. Iowa R. App. P. 4. We review a ruling on a new trial motion based on a claim of inadequate damages for an abuse of discretion. *Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 891 (Iowa 1996). We will not find an abuse of discretion unless the trial court exercised its discretion on clearly untenable grounds or to an extent clearly erroneous. *Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 13 (Iowa 1990).

Background facts. On July 17, 1992, Lois Colton was driving a car with Martha Kisler, and Martha's two-month-old daughter, Morgan Kisler, as passengers. The car was rear-ended by a car driven by Clear Brooks.

Lois, Lois's husband, Marvin, Martha, Martha's husband, David, and Morgan, by Martha filed a petition against defendants Brooks and the car's owner, Lenora

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[1] David Kisler and Marvin Colton did not preserve error on their consortium claim as they did not join in Martha and Lois's motion for a new trial or additur, which was the issue appealed.

[2] Plaintiff Morgan Kisler's appeal has been dismissed.

Brooks, alleging negligence. The defendants admitted that Clear was negligent in his operation of the car.

Following trial the jury awarded medical expenses of $4692 to Martha, $827.36 to Lois, and $80.65 to Morgan. It did not award any other damages.

Motion for new trial. Martha and Lois filed a motion for new trial or for additur alleging the verdict was inadequate, inconsistent, and not supported by the evidence because past medical expenses were awarded but no damages for past pain and suffering, lost wages, future medical expenses or injury to the body.

The district court denied the motion. It noted that its ruling on the defendants' motion in limine precluded plaintiffs from offering specific dollar amounts of non-economic damages not disclosed through discovery and that the court had limited plaintiffs to arguing what would be fair and reasonable based on the evidence presented at trial. The court explained that in closing arguments plaintiffs did not argue for fair and reasonable damages but rather told the jury they would not "insult" them by offering suggestions for damages. The court concluded that under these circumstances, a "rational trier of fact could have disallowed damages for past and future pain and suffering and been consistent with the evidence."

A general rule of law has emerged from Iowa case law establishing that a new trial should be granted when the jury awards a plaintiff damages for medical expenses incurred to relieve pain and suffering, but awards nothing for pain and suffering. *See Cowan v. Flannery*, 461 N.W.2d 155, 156 (Iowa 1990) (holding the district court's

denial of motion for new trial based upon an inadequate and inconsistent award constituted an abuse of discretion). The Iowa Supreme Court in *Cowan* affirmed the Iowa Court of Appeals in reversing the district court's denial of a motion for a new trial. The court stated:

> It is illogical to award past and future medical expenses incurred to relieve headache, neck and back pain and then allow nothing for such physical and mental pain and suffering. Having determined that these medical expenses were recoverable, there seems no way for the jury to disallow recovery for the appellant's pain and suffering for the same injuries. Although the award may be adequate, a special verdict award of nothing for pain and suffering is inconsistent and unsupported by the evidence.

Id. at 160. Moreover, the *Shewry* court concluded there was no "logical ground on which the jury could award plaintiff the cost of medical services made necessary by his pain and suffering and yet allow him nothing for the pain and suffering." *Shewry v. Heuer*, 121 N.W.2d 529, 532 (Iowa 1963). *Accord Webster v. City of Colfax*, 93 N.W.2d 91, 93 (Iowa 1958) (holding an award for medical expenses only was inadequate under the record and that the verdict "was clearly contrary to the evidence."); *Albee v. Barry*, 119 N.W.2d 230 (Iowa 1963).

The conclusion drawn is juries should under normal circumstances be instructed that if they award past medical expenses, incurred to any extent to relieve pain and suffering, they must also award some amount for past pain and suffering. If they award future medical expenses to any extent to relieve pain and suffering, they should also award some amount for future pain and suffering. This instruction would generally alleviate the problem that gave rise to the appeal on this issue.

In this case, the stipulated past medical expenses for Martha totaled $5332, for among other things chiropractic treatment to relieve pain in her shoulders, neck, and persistent headache. For Lois, past medical expenses totaled $827.36 for treatment of headaches and a sore neck. Additionally, there was substantial evidence in the record for the amount of Martha's lost wages. The jury verdicts awarding nothing for pain and suffering for Martha and Lois and nothing for Martha's lost wages are therefore contrary to the evidence. *See Webster*, 93 N.W.2d at 93. We accordingly find the district court abused its discretion in denying plaintiffs Martha and Lois a new trial.

Regarding Martha's and Lois's future medical expenses, there was insufficient evidence offered. Hence, the verdicts denying damages for future medical expenses for future pain and suffering are not inconsistent, and we affirm.

When the liability of a defendant is clearly established, the new trial may be limited to the issue of damages only. *Householder v. Town of Clayton*, 221 N.W.2d 488, 493 (Iowa 1962); *see Witte v. Vogt*, 443 N.W.2d 715, 717 (Iowa 1989) (finding there was not reason for resubmission of issue of liability as jury found defendant 100% liable; remand should be on damages only). Liability was admitted by the defendant and we affirm on that issue.

We affirm the trial court's denial of consortium claims as to Marvin and David for failure to preserve this issue on appeal. We reverse the trial court's denial of a new trial. We remand for a new trial limited to damages for past pain and suffering

suffered by Martha and Lois and lost wages of Martha. We affirm all other findings of the trial court. We do not retain jurisdiction.

Costs shall be equally divided between appellants and appellees.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.