FILED
OCT 29 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-279 / 90-1715

SHIRLEY F. MORTER, Individually and on behalf of SAMUEL MORTER, JOSHUA MORTER and MELISSA MORTER; and HARVEY B. MORTER,

Plaintiffs-Appellants,

vs.

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RICHARD L. FITZGERALD,

Defendant-Appellee.

Appeal from the Iowa District Court for Scott County, Jack L. Burns, Judge.

Plaintiffs appeal from the district court's refusal to grant them a new trial following an adverse jury verdict. **AFFIRMED.**

Arthur L. Buzzell, Davenport, and Stephen W. Newport, Davenport, for appellants.

J. Hobart Darbyshire of Carlin, Hellstrom & Bittner, Davenport, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

Plaintiffs-appellants appeal the trial court's refusal to grant a new trial in their action against defendant-appellee. Plaintiffs sought damages as a result of an accident where the automobile plaintiff Shirley F. Morter was driving collided with an automobile owned and operated by the defendant Richard L. Fitzgerald. The jury found the defendant was at fault in the accident but rejected plaintiffs' claim they were damaged as a result of the defendant's fault. We affirm.

Shirley F. Morter brought this action individually and on the benefit of her minor children Samuel Morter, Joshua Morter, and Melissa Morter. Harvey B. Morter, her husband, is also a plaintiff. Harvey and the minor children claimed loss of consortium because of their wife and mother's injury.

Plaintiffs first contend the trial court should have granted them a new trial because of juror misconduct. Plaintiffs claimed the jury was guilty of misconduct when one of the jurors told another juror the plaintiff was of the Mormon religion. Plaintiffs presented an affidavit of jury foreperson Kimberly Lyman who thought Shirley was of the Mormon religion. Lyman's affidavit stated she had disclosed this to other members of the jury. Plaintiffs Shirley and Harvey Morter filed an affidavit they were not Mormon and they believed being labeled a Mormon had a negative and prejudicial connotation in the community.

In ruling on a motion for new trial, the trial court has broad but not unlimited discretion. We will interfere only where there is a clear abuse of discretion. See Houvenagle v. Wright, 340 N.W.2d 783, 785 (Iowa App. 1983); Harris v. Deere & Co., 263 N.W.2d 727, 729 (Iowa 1978).

The plaintiffs rightfully argue, and the trial court and this court agree, that evidence of the plaintiffs' religion is not relevant or admissible. The trial court found the plaintiffs have not shown they were prejudiced by the evidence. We agree.

Plaintiffs next contend the trial court should have granted a new trial because there was a finding defendant was at fault in the accident, but there also was a finding plaintiffs did not suffer damages as a result of defendant's negligence. Plaintiffs contend the evidence is uncontroverted Shirley was injured in the accident. The trial court found, and we agree, while there was evidence to support a finding she was injured in the accident, there also was contradictory evidence. A jury, as a trier of fact, can accept or reject all or part of the testimony of any witness. See Young v. Gibson, 423 N.W.2d 208, 210 (Iowa App. 1988); Kautman v. Mar-Mac Community School Dist., 255 N.W.2d 146, 148 (Iowa 1977). The plaintiff had been in an accident prior to this one, she slipped and fell on the morning of this accident, and she had a subsequent accident. She had earlier been treated for injuries

similar to the ones she complained of as coming from the accident. The trial court did not abuse its discretion.

Plaintiffs also contend the trial court erred in assessing certain fees and costs against them.

On September 17, 1990, the defendant had made an offer to confess judgment in the sum of $25,000. The offer was not accepted by the plaintiffs.

Iowa Code section 625.14 provides:

> The Clerk shall tax in favor of the party recovering costs the allowance of the party's witnesses, the fees of officers, the compensation of referees, the necessary expenses of taking depositions by commission or otherwise, and any further sum for any other matter which the Court may have awarded as costs in the progress of the action, or may allow.

The trial court taxed costs and included in the costs the cost of a physical examination of plaintiff, an expert fee for reviewing the plaintiff's medical records, expert deposition fees, reporter's fee for expert witness depositions, and service of process fees. We review for an abuse of discretion. See Vorthman v. Keith E. Myers Enterps, 296 N.W.2d 772, 779 (Iowa 1980).

The challenged costs were accrued after the confession of judgment was filed. The penalty to the plaintiff for refusing a defendant's offer is the cost of the trial. See Sheer Constr. Inc. v. Hodgman and Sons, Inc., 326 N.W.2d 328, 333 (Iowa 1982). We find no abuse of discretion. We affirm.

AFFIRMED.