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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-570 / 92-600

SALLY A. FELDHACKER and DUANE FELDHACKER,

Appellees,

vs.

WOMEN'S HEALTH SERVICE, P.C., and JAMES F. PATTEN,

Appellants.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Defendants appeal a district court ruling granting plaintiff's motion for new trial concerning jury's award of damages. **AFFIRMED.**

Glenn Goodwin and John D. Hilmes of Duncan, Jones, Riley & Finley, Des Moines, for appellants.

Marc A. Humphrey and Kathleen J. Beebout of Humphrey and Haas, P.C., Des Moines, for appellees.

Heard by Oxberger, C.J., Hayden, J., and Keefe, S.J.* Schlegel, J., takes no part.

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

HAYDEN, J.

As an expectant mother, Sally Feldhacker sought the services of Women's Health Service, P.C., and its employee, Dr. James Patten, M.D. Sally's pregnancy progressed normally until she was ready to deliver the baby. Signs of fetal distress necessitated emergency delivery procedures. Dr. Patten performed an episiotomy, delivered the baby, and then repaired the episiotomy. An episiotomy is an incision through the anal sphincter muscle. This muscle controls the passage of bowels and gas. Dr. Patten's initial repair of the incision was appropriate.

At Sally's first follow-up exam with Dr. Patten, she complained of difficulty controlling the passage of bowels and gas. She also complained of pain and bleeding in the area of the episiotomy repair. The repair had broken down. Dr. Patten placed Sally on antibiotics to prevent a possible infection.

At a return visit, it became apparent the breakdown had worsened, and Dr. Patten scheduled surgery for a second repair. Apparently, Dr. Patten's planned technique was relatively new and innovative because it reduced the time between the first and second repair. He claims he informed Sally of the nature of the planned repair and its risks and he documented this in his records. Sally claims she was not given sufficient information.

Dr. Patten's second repair broke down as well. Some of Sally's symptoms returned. As a result, she saw a

colo-recto specialist, and he performed a third repair. Although her condition improved, she continued to experience some problems with incontinence.

Subsequently, Sally and her husband, Duane, brought suit against Women's Health Service, P.C., and Dr. Patten seeking damages for Sally's injuries and Duane's loss of consortium. After trial, the jury returned a verdict awarding $75,000 to Sally for her injuries, consisting of $35,000 for future medical expenses, $20,000 for past loss of function of mind and body, and $20,000 for past pain and suffering. The jury awarded nothing for future loss of function of mind and body and future pain and suffering. The jury returned a verdict awarding Duane nothing for his loss of consortium claim.

Thereafter, the Feldhackers moved for a new trial on the issue of damages on the ground the jury verdict was inconsistent as a matter of law. The basis of the plaintiffs' motion was the jury's verdict was inconsistent as a matter of law because it failed to award damages for future loss of body function and future pain and suffering even though it awarded damages for future medical expenses. The district court agreed and ordered a new trial on the issue of damages. Patten appeals.

I. Directed Verdict Motion. Patten argues the district court erred in not granting a directed verdict based on insufficient expert testimony. In order to establish a prima facie case of medical malpractice a

plaintiff must establish by competent evidence the applicable standard of care, a violation of that standard, and develop a causal relationship between the violation and the alleged harm. Kosburg v. Washington Hosp. Center, Inc., 394 F.2d 947, 949 (8th Cir. 1968); Oswald v. LeGrand, 453 N.W.2d 634, 635 (Iowa 1990) (citation omitted). Patten contends there was no expert testimony on causation and therefore he was entitled to a directed verdict. In considering the propriety of a motion for directed verdict the court views the evidence in the light most favorable to the party against whom the motion was made. Beitz v. Horak, 271 N.W.2d 755, 757 (Iowa 1978) (citation omitted); Iowa R. App. P. 14(f)(2). Patten's argument is without merit. Sally provided sufficient expert testimony as to the causal connection between any negligence and the injuries which resulted. Dr. Stanley Warner and Dr. Wendell Downing both testified as experts for the appellee. Dr. Warner testified as to the standard of care in repairing a fourth-degree laceration breakdown. He asserted Dr. Patten did not wait long enough before attempting the repair surgery, thus not allowing the tissue to heal properly. Dr. Downing testified Sally would not suffer from ongoing continence and infections had she only undergone two rather than three surgeries. He stated the medical probability of success decreased with each additional surgery. Viewing this evidence in the light most favorable to the plaintiff, the testimony indicates a

causal connection between the early re-repair and the injuries suffered by the Sally. We affirm the district court on this issue.

II. New Trial. Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. We are slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 14(f)(4). The district court's grant of a new trial will not be disturbed in the absence of an abuse of discretion. Kiner v. Reliance Ins. Co., 463 N.W.2d 9, 13 (Iowa 1990) (citation omitted); Iowa R. App. P. 14(f)(3).

Sally contends the jury verdict was inconsistent because the jury awarded future medical expenses but awarded nothing for future loss of body and mind or future pain and suffering. In Cowan v. Flannery the Iowa Supreme Court held the jury's verdict was inconsistent for failing to award past and future damages for pain and suffering when the jury awarded past and future medical expenses. Cowan v. Flannery, 461 N.W.2d 155, 160 (Iowa 1990). The court remanded and ordered a new trial on damages. Id.

We have not adopted an inflexible rule that every verdict awarding only damages for medical expenses in a personal injury action is inadequate as a matter of law. Id. at 159. However, evidence in this case supports a finding the jury verdict was inconsistent as a matter of law. Sally testified she continues to suffer from urinary tract infections, yeast infections, and incontinence since

the surgery. Other witnesses testified to the pain and discomfort Sally suffered when the area of tissue began to breakdown and the ongoing problems she experiences.

The jury awarded future medical expenses. Because this award of damages was in response to an ongoing medical condition (incontinence and infections caused by incontinence), it is illogical to award future medical expenses to address an ongoing loss of body function but award nothing for future loss of body function or future pain and suffering. Id. at 160; Shewry v Heuer, 121 N.W.2d 529, 532 (Iowa 1963). The jury could not award damages to Sally for medical expenses and then deny recovery for the very injuries which necessitated the medical expenses. Id. We hold the jury's verdict was inconsistent for failing to award damages for future loss of body and mind and future pain and suffering when it awarded future medical expenses. The jury award is inadequate under the record and not in accord with the evidence. This justifies the granting of a new trial on damages only.

Patten requests if a new trial is granted it should be limited to future damages. He argues the district court granted a new trial on the basis the jury was inconsistent in awarding future medical expenses without awarding anything for future pain and suffering or future loss of bodily function. We disagree with appellant's argument. The Iowa Supreme Court has stated a new trial on damages only should be used with caution. Schmatt v. Arenz, 176

N.W.2d 771, 775 (Iowa 1970) (citing Larimer v. Platte, 243 Iowa 1167, 1176, 53 N.W.2d 262, 267-68 (Iowa 1952)). Patten is requesting this court to go a step beyond granting a new trial on damages only. He argues if we grant a new trial we should limit the trial to future damages only. We can find no Iowa case and neither party cites to any authority which provides for the division of past and future damages when a new trial is ordered. The district court did not abuse its discretion in granting a new trial on all damages. We conclude a new trial be held on the issue of damages, including past and future damages, to Sally.

The jury found negligence on the part of Dr. Patten was the proximate cause of the injuries and damages sustained by Sally. The liability of Patten has been established, and there is no evidence the jury verdict was the result of a compromise of trading off liability for reduced damages. Vorthman v. Keith E. Meyers Enters., 296 N.W.2d 772, 778 (Iowa 1980). We conclude it would be unfair to require a new trial on all issues. See id. We conclude the new trial shall be on the issue of past and future damages to Sally only.

III. Cost of Appendix. Patten contends the plaintiff included superfluous materials in the appendix and requests Sally be held responsible for the cost of producing such materials pursuant to Iowa Rule of Appellate Procedure 15(b). Iowa Rule of Appellate Procedure 15(b) states:

> Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by appellant, but if appellant considers that parts of the record designated by appelle- for inclusion are unnecessary for the determination of the issues presented, appellant may so advise the appellee and appellee shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case, but if either party shall cause matters to be unnecessarily included in the appendix the appropriate appellate court may impose the cost of producing such parts on that party.

Iowa R. App. P. 15(b). The appendix contains 431 pages. Appellee designated seventy-five percent of the appendix but cited to only a small fraction of the designated materials. It was unnecessary to include the depositions of Dr. Downing and Dr. Wendell in their entirety. Appellee designated these depositions but only cited to seven pages. Our examination of the appendix reveals 110 unnecessary pages. This constitutes approximately one fourth of the appendix contents. We remind the parties the entire record is available for examination by this court. Appellee is assessed twenty-five percent of the cost to produce the appendix. The appendix cost $562.60 to produce; appellee will pay $140.65. The remaining costs on appeal are assessed to appellants.

AFFIRMED.