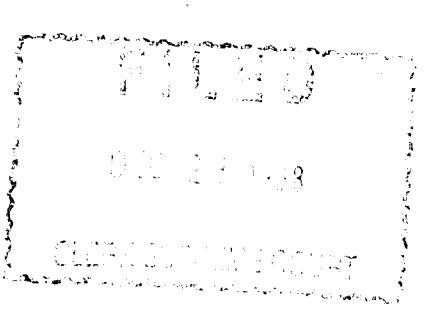
IN THE COURT OF APPEALS OF IOWA

No. 8-560 / 97-2072
Filed December 28, 1998



JENNIFER HENRICHSEN,
Appellant,

vs.

MARK GODFREDSON,
Appellee.

Appeal from the Iowa District Court for Woodbury County, James D. Scott, Judge.

Mark Godfredson appeals from an adverse verdict in a personal injury action.

AFFIRMED.

Shelley A. Horak, Iowa City, for appellant.

Rodney Vellinga and James E. Walker of Corbett, Anderson, Corbett, Poulson, Flom & Vellinga, Sioux City, for appellee.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

STREIT, P.J.

Mark Godfredson beat Jennifer Henrichsen and left her unconscious and half-clothed along the roadside. The jury so found this and awarded Jennifer $24,041.22 in compensatory damages and $45,000 in punitive damages due to his assault. Godfredson appeals the damage award as excessive, claims the trial court erred in admitting hearsay testimony, and in instructing the jury. We affirm on all issues.

I. Background & Facts.

Jennifer Henrichsen and Mark Godfredson lived together for approximately fifteen months. Shortly after the relationship ended, Godfredson accompanied Henrichsen and her aunt to a bar. Henrichsen and Godfredson had several drinks. Godfredson became jealous and angry when another man noticed Henrichsen and commented on her attractiveness.

Godfredson and Henrichsen left the bar in Godfredson's Jeep. Henrichsen claims while driving away, Godfredson beat her, tore her shirt off, pushed her from his vehicle, and left her, unconscious, along the roadside. Henrichsen, found unconscious and topless along the roadside, was taken to the hospital. She was treated for injuries to her head, neck, and extremities.

Henrichsen sued Godfredson for assault claiming compensatory and punitive damages. A jury awarded Henrichsen $24,041.22 in compensatory damages and $45,000 in punitive damages. Godfredson appeals.

II. Motion for Directed Verdict.

Godfredson contends substantial evidence does not support Henrichsen's claim he assaulted her. He claims the evidence was insufficient to submit the issue to the jury and the trial court erred in denying his motion for directed verdict.

We review a trial court's grant or denial of a motion for directed verdict for correction of errors of law. *Nesbit v. Myers*, 576 N.W.2d 613, 614 (Iowa App. 1998). We view the evidence in the light most favorable to the nonmoving party, in this case the plaintiff, and afford her every legitimate inference we can reasonably deduce from the evidence. *Id.* We must determine whether reasonable minds could differ on the issue presented and, if such is the case, the refusal to direct the verdict was appropriate. *Id.*

There is no doubt Henrichsen received extensive injuries to her face and neck. Godfredson contends she received the injuries from jumping out of his vehicle when it was moving. Henrichsen claims she was beaten unconscious and left along the roadside. Godfredson argues Henrichsen's testimony at her deposition contradicts her testimony at trial and for this reason he was entitled to a directed verdict. Henrichsen's testimony at trial was sufficient to take her claim of assault to the jury. She testified Godfredson began to beat her while they were driving in the car. She remembers crouching over and falling in his lap. That was her last memory. She was found by the police along the roadside. Henrichsen's doctor testified her injuries were consistent with a beating rather than a fall onto a flat surface. The weight and

credibility of this testimony was for the jury to decide. *State v. McPhillips*, 580 N.W.2d 748, 754 (Iowa 1998) A jury, as a trier of fact, can accept or reject all or part of the testimony of any witness. *Ward v. Loomis Bros., Inc.*, 532 N.W.2d 807, 812 (Iowa App. 1995). At minimum, reasonable minds could differ on how Henrichsen sustained her injuries. For this reason, a directed verdict was not appropriate.

III. Admission of Alleged Hearsay Testimony.

Godfredson contends the trial court erred in admitting Henrichsen's testimony that a police officer told her she was found topless by the Horizon restaurant. The trial court admitted the testimony, holding it was not hearsay because it was not used to prove the truth of the matter asserted. Godfredson also contends on appeal that the trial court erred in admitting Henrichsen's medical bills on hearsay grounds.

We review the admissibility of evidence under Iowa Rule of Evidence 803 for abuse of discretion. *State v. Weaver*, 554 N.W.2d 240, 247 (Iowa 1996). If hearsay is admitted, prejudice to the non-offering party is presumed unless the contrary is affirmatively established. *State v. McKettrick,* 480 N.W.2d 52, 60 (Iowa 1992); *State v. Horn*, 282 N.W.2d 717, 724 (Iowa 1979). Admission of hearsay alone is not a valid ground for reversal in cases where the State upholds its burden of proving the challenged evidence did not impact upon the jury's verdict of guilty. *State v. Rice,*543 N.W.2d 884, 887, (Iowa 1996). Furthermore, prejudice is not established where substantially similar evidence has been admitted but not objected to. *Id.* This is clearly such a case.

Because Henrichsen was unconscious, she did not know where she was found or what condition she was in when found. The statements of the third parties filled in that gap. Godfredson's own version of events detailed that Henrichsen was half-dressed when he left her. Her condition was not a matter in dispute—only how she became so. There was no prejudice by this testimony. The trial court's evidentiary ruling is affirmed.

Godfredson did not lodge any objection to Henrichsen's medical bills at trial, except for Exhibit No. 6 to which he objected on grounds of lack of foundation. Issues not properly preserved at trial may not be raised for the first time on appeal. *Ward*, 532 N.W.2d at 812. Godfredson has waived his hearsay objection.

IV. Jury Instructions.

Godfredson contends the trial court erred in admitting instructions on future pain and suffering and punitive damages to the jury. We review alleged error regarding the submission of or refusal to submit jury instructions for correction of errors at law. Iowa R. App. P. 4; *State v. Simpson*, 528 N.W.2d 627, 630 (Iowa 1995).

Litigants are entitled to have their legal theories submitted to the jury if they are supported by the pleadings and substantial evidence in the record. *Thompson v. City of Des Moines*, 564 N.W.2d 839, 846 (Iowa 1997). Evidence is substantial when reasonable minds would accept it as adequate to reach the conclusion. *Smith v. Air Feeds, Inc.*, 556 N.W.2d 160, 165 (Iowa App. 1996). If a requested instruction states

a correct rule of law which applies to the facts of the case, and the concept is not already contained in the court's instructions, the requested instruction, or the court's own instruction with the same legal substance, should be submitted to the jury. *Erickson v. Des Moines Water Works*, 421 N.W.2d 155, 157 (Iowa App. 1988). If the trial court errs in submitting or refusing to submit an instruction, we will reverse only when the error has caused prejudice. *See Coker v. Abell-Howe, Co.*, 491 N.W.2d 143, 143 (Iowa 1992).

To have her punitive damage claim submitted to the jury, the plaintiff had to prove by clear, convincing, and satisfactory evidence that defendant's conduct constituted willful and wanton disregard for her rights or safety. *See Spaur v. Owens-Corning Fiberglass Corp.*, 510 N.W.2d 854, 867 (Iowa 1994). There is evidence the defendant, a 235-pound man, beat Henrichsen, a 120-pound, five-foot tall woman until she was unconscious. He then left her, topless, along the roadside in the middle of the night. Henrichsen suffered broken teeth, a concussion, and a fractured orbital rim, along with numerous abrasions and scratches. This evidence was sufficient to show Godfredson's willful and wanton disregard for Henrichsen's rights and safety. The trial court did not err in submitting a punitive damage claim to the jury. Likewise, the evidence was sufficient to submit a claim of future mental pain and suffering to the jury. The trial court's jury instructions are affirmed.

V. Motion for New Trial & Motion for Judgment Notwithstanding the Verdict.

Godfredson contends he is entitled to a new trial because the damage award was excessive. We review the granting or denial of a motion for new trial for abuse of discretion. *Magnusson Agency v. Public Entity Nat. Co.-Midwest*, 560 N.W.2d 20, 30 (Iowa 1997).

An aggrieved party may be granted a new trial where the jury award is excessive or inadequate damages appear to have been influenced by passion or prejudice, or where the verdict is not sustained by sufficient evidence, or are contrary to law. Iowa R. Civ. P. 244(d) and (f). *Neumann v. Service Parts Headquarters*, 572 N.W.2d 175, 177 (Iowa App. 1997). A jury awarded Henrichsen $24,041.22 in compensatory damages and $45,000 in punitive damages. "Damages awarded should be sufficient to right the wrong done to the injured party." *Yoch v. City of Cedar Rapids*, 353 N.W.2d 95, 99 (Iowa App. 1984). The test for adequacy is "what will fairly and reasonably compensate an injured party for the injury sustained." *Householder v. Town of Clayton*, 221 N.W.2d 488, 493 (Iowa 1974). The verdict is adequate if it bears a reasonable relationship to the loss suffered. *Blume v. Auer*, 576 N.W.2d 122, 125 (Iowa App. 1997) (citation omitted).

Henrichsen was beaten about her head until she was unconscious. The physical evidence shows her shirt was torn in shreds, and several of the buttons were popped off. She was found by a police officer, topless and unconscious on the

roadside. She was physically injured and emotionally traumatized by this event. She had trouble sleeping, eating, and working. In light of these circumstances, the damages were not excessive but reasonable to compensate Henrichsen.

Godfredson contends he was entitled to a judgment notwithstanding the verdict on the same grounds upon which he sought a directed verdict. We review a district court's grant or denial of a motion for judgment notwithstanding the verdict for the correction of errors at law. *Bell v. Community Ambulance Serv. Agency*, 579 N.W.2d 330, 333 (Iowa 1998). A motion for judgment notwithstanding the verdict must stand or fall on the grounds raised in the motion for directed verdict. *Id.* For the same reasons we affirmed the trial court's denial of Godfredson's motion for directed verdict, we affirm the trial court's denial of his motion for judgment notwithstanding the verdict.

AFFIRMED.