IN THE COURT OF APPEALS OF IOWA

No. 1999-471 (9-728) / 98-2112
Filed March 29, 2000

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CLERK SUPREME COURT

PHYLLIS BRUNOW, Individually and as Parent and Next Friend of SUNSHINE HEINE, BRANDY ANN BRUNOW, and JOSEPH ALLEN BRUNOW, Minor Children and JERRY BRUNOW,
Plaintiffs-Appellants,

vs.

IOWA WEST RACING ASSOCIATION, A Non-Profit Corporation d/b/a/ BLUFFS RUN CASINO,
Defendant-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, James S. Heckerman, Judge.

Plaintiffs appeal the denial of their motion for a new trial in this tort suit resulting from a slip and fall. **REVERSED AND REMANDED.**

Randall J. Shanks of Shanks Law Firm, Council Bluffs, for appellants.

Joseph D. Thornton, R. Laubenthal, and Paul M. Shotkoski of Smith Peterson Law Firm, Council Bluffs, for appellee.

Considered by Huitink, P.J., and Streit and Miller, JJ.

PER CURIAM

Plaintiffs appeal the denial of their motion for a new trial in this tort suit resulting from a slip and fall. They contend the district court abused its discretion in admitting evidence of a prior settlement concerning a personal injury claim of the plaintiff, Phyllis Brunow. We reverse and remand.

On February 14, 1995, Brunow went to Bluffs Run Casino with her husband, Jerry Brunow, and some friends. As she left her husband's vehicle, Brunow slipped on some ice and fell to the ground. Brunow filed suit against the casino, claiming she injured her back due to the fall. Brunow's children and husband claimed loss of consortium.

Brunow had previously injured her back in a car accident in June 1994. In February 1995 she was still suffering some effects from the car accident and had been to physical therapy earlier in the day before she fell at the casino. She claimed her injuries from the fall at the casino were in addition to and more severe than her previous injuries.

During the trial defendant presented a settlement letter from Brunow's attorney outlining her injuries from the car accident. It also presented a copy of the settlement check for $50,000 she received. Plaintiffs objected, claiming the evidence was irrelevant. The district court determined the evidence was relevant because of the similarity of the injuries.

The case was tried to a jury. The jury found the defendant was not at fault, and did not proceed any further on the verdict form. Plaintiffs sought a new trial, claiming the court erred in admitting evidence of the settlement agreement. The district court denied the motion for a new trial.

We review the trial court's determination of the relevancy of evidence for an abuse of discretion. *Iowa Mut. Ins. Co. v. McCarthy*, 572 N.W.2d 537, 544 (Iowa 1997). The party claiming an abuse of discretion must show the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Waits v. United Fire & Cas. Co.*, 572 N.W.2d 565, 569 (Iowa 1997).

The issue in the present case is similar to that presented in *Nepple v. Weifenbach*, 274 N.W.2d 728, 730 (Iowa 1979), where evidence of the plaintiff's settlement from prior injuries was admitted as evidence. The supreme court determined evidence of the prior settlements was inadmissable because it was not relevant. *Nepple*, 274 N.W.2d at 733. The court stated:

> It is likely that the prior settlements included such items as loss of earnings and medical expense; and in the case of the plaintiff's tort claim, the additional items of pain and suffering. None of these would have a direct bearing on what injuries plaintiff had suffered which were still in existence at the time of his last injury.

Id. The court also noted the size of the settlement could be based on factors which had no bearing on the extent of residual injuries, such as whether the issue of liability was easily determinable. *Id.*

In addition to being irrelevant, evidence of a prior settlement may be prejudicial because it could cause a jury to consider a plaintiff to be accident prone, or litigious, or both. *Id.; see also Mays v. C. Mac Chambers Co., Inc.*, 490 N.W.2d 800, 802-03 (Iowa 1992). The court concluded, "Other evidence of pre-existing injuries with more probative value, e.g., medical testimony, would generally be available, and would involve less likelihood of prejudice." *Id.* at 734.

We determine the district court abused its discretion in admitting evidence of Brunow's settlement agreement regarding her prior injuries. The evidence was irrelevant, because it is unknown what factors might have influenced the amount of the settlement. The settlement agreement could very well have caused confusion regarding the issues to be considered in the present case. In addition to be being irrelevant, we find the evidence was prejudicial because of the likelihood it presented plaintiffs as litigious people. Based on all of these factors, we determine the motion for new trial should have been granted.

We reverse the decision of the district court and remand for a new trial. Costs of this appeal are assessed to defendant.

REVERSED AND REMANDED.