

IN THE COURT OF APPEALS OF IOWA

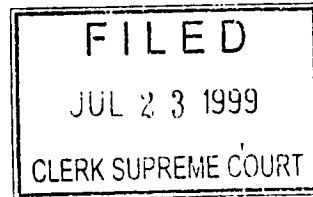
No. 1999-88 (9-275) / 98-1382

Filed July 23, 1999

CARA ANN LUESEBRINK,
Appellant,

vs.

**RENEE L. SCHULTE, KENNETH
SCHULTE and JULIE SCHULTE,**
Appellees.



Appeal from the Iowa District Court for Woodbury County, Michael S. Walsh,
Judge.

Cara Luesebrink appeals a judgment in favor of defendants entered after a jury
trial in a tort action arising out of a motor vehicle accident. **AFFIRMED.**

Steven J. Andreasen of Gildemeister, Willia & Keane, L.L.P., Sioux City, for
appellant.

Alan Fredregill, Jeff W. Wright, and Daniel B. Shuck of Heidman, Redmond,
Fredregill, Patterson, Plaza & Dykstra, L.L.P., Sioux City, for appellees.

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

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HUITINK, P.J.

Cara Luesebrink appeals a judgment in favor of defendants entered after a jury trial in a tort action arising out of a motor vehicle accident. We affirm.

I. Background Facts and Procedure.

This action arises from a motor vehicle accident which occurred on September 19, 1996. Cara Luesebrink alleges she was injured in a multiple-car collision caused by the negligence of Renee Schulte. The vehicle driven by Schulte was owned by Kenneth and Julie Schulte. After a jury trial, the jury returned a special verdict in favor of the Schultes. The jury found Schulte was at fault but her negligence was not a proximate cause of Luesebrink's claimed injuries. Luesebrink filed post-trial motions for a new trial and judgment notwithstanding the verdict. She argued the verdict was not supported by sufficient evidence and that Schultes' attorney engaged in misconduct during the course of the trial. The district court denied the motions.

On appeal, Luesebrink argues the record does not support the jury's verdict because overwhelming evidence at trial demonstrated she suffered injuries as a result of the accident. She also asserts Schultes' trial counsel engaged in misconduct that unfairly influenced the jury.

II. Standard of Review.

Sufficiency of the evidence is reviewed for correction of error at law. Iowa R. App. P. 4. When considering a motion for judgment notwithstanding the verdict, the

district court must view the evidence in the light most favorable to the party against whom the motion is directed. *Watson v. Lewis*, 272 N.W.2d 459, 461 (Iowa 1978). In reviewing the propriety of the district court's ruling on such a motion, we view the evidence in the same manner. Accordingly, we must determine whether there is sufficient evidence to generate a jury question. *Id.* at 463. As previously noted, "If there is substantial evidence to support the claim or defense, the motion for directed verdict or for judgment notwithstanding the verdict should be denied. Conversely, without such evidence, a directed verdict or judgment notwithstanding the verdict is appropriate." *Valadez v. City of Des Moines*, 324 N.W.2d 475, 477-78 (Iowa 1982). Evidence is substantial when a reasonable mind would find the evidence presented adequate to reach the same findings. *Johnson v. Dodgen*, 451 N.W.2d 168, 171 (Iowa 1990); *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988); *see also Larsen v. United Fed. Sav. & Loan Ass'n*, 300 N.W.2d 281, 283 (Iowa 1981) ("If reasonable minds could differ on the issue, it was properly submitted to the jury").

The standard of review of a denial of a motion for new trial depends on the grounds for new trial asserted in the motion and ruled upon by the court. *Ladeburg v. Ray*, 508 N.W.2d 694, 696 (Iowa 1993). If the motion and ruling are based on a discretionary ground, the trial court's decision is reviewed on appeal for an abuse of discretion. *Id.* In ruling on motions for new trial, the court has broad but not unlimited discretion to determine if the verdict effectuates substantial justice among the parties. Iowa R. App. P. 14(f)(3).

III. Sufficiency of the Evidence.

Luesebrink contends she is entitled to judgment notwithstanding the verdict because the jury was presented with uncontroverted facts that she sustained damages as a result of the collision with the Schultes' vehicle. She asserts the jury's verdict therefore is unreasonable and the district court abused its discretion in overruling her post-trial motions. We disagree.

Our review of the record convinces us there was substantial evidence presented by both parties detailing the cause and extent of Luesebrink's injuries. Although Luesebrink contends the Schultes' expert, Dr. Alan Fruin, testified she sustained injuries as a result of the September 19, 1996, accident, the record indicates otherwise. Dr. Fruin testified as follows:

Q. In any of those X Rays, did you find any significant abnormalities? A. No.

Q. Did you find any abnormalities that you could relate to the accident of September 19, 1996? A. No.

Q. In those X Rays, did you find any evidence of any degenerative changes that you could attribute to the accident of September 19, 1996? A. Well, there are degenerative changes, but they are of life-long duration or develop over a lifetime. There are no degenerative changes that are specifically related to this accident, no.

Q. Doctor, do you have an opinion as to whether the plaintiff has lost any function of her body as a result of the 9-16-96 accident? A. Yes.

Q. What is that opinion? A. She has not.

Q. Do you have an opinion if Cara Luesebrink will have any loss of body -- function to her body in the future? A. From this accident?

Q. Yes, sir. A. I have an opinion.

Q. What's your opinion? A. That she will not.

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Only one question and answer from Dr. Fruin supports Luesebrink's position on appeal:

Q. Doctor, do you have an opinion as to whether plaintiff has suffered any pain and suffering as a result of this accident on September 19th, 1996? A. I believe she has had some pain. Suffering I don't know about.

It is the province of the jury to believe all, part, or none of the testimony from any witness. See *Welte v. Bello*, 482 N.W.2d 437, 442 (Iowa 1992); *Burger v. Omaha & C.B. St. Ry. Co.*, 139 Iowa 645, 117 N.W. 35 (Iowa 1908). The jury was so instructed in jury instruction number six, without objection from either party.¹ We find the jury could reasonably have believed from the balance of Dr. Fruin's testimony that there was no causal connection between Luesebrink's claimed damages and the collision with the Schultes' vehicle. Accordingly, the jury's verdict is supported by substantial evidence.

IV. Attorney Misconduct.

Luesebrink claims she was prejudiced by defense counsel's misconduct in closing argument. She argues counsel improperly argued she was referred to her physician by her attorney in an effort to manufacture damages for her case. Additionally, she contends it was improper for defense counsel to imply her attorney's

¹ Jury Instruction Number Six provides, in pertinent part:

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witness' testimony.

name was blotted out on Dr. Kruse's medical records as the referring party of record. She maintains this argument was improper because it was not based on fact, but solely upon counsel's personal opinion.

A trial court has considerable discretion in determining whether alleged misconduct was in fact prejudicial. *Vaughan v. Must, Inc.*, 542 N.W.2d 533, 542-43 (Iowa 1996). An abuse of this discretion is shown only where "such discretion was exercised by the court on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Morrison*, 323 N.W.2d 254, 256 (Iowa 1982). In this case, Luesebrink's contentions regarding defense counsel's actions are not supported in the record.² The district court, in its ruling on the parties' proposed bill of exceptions noted that defense counsel did not use the explicit language Luesebrink attributes to the argument on appeal. Additionally, our review of the record indicates much of defense counsel's argument was derived from evidence presented to the jury over no objection. We find the district court did not abuse its discretion in denying Luesebrink's motion for new trial on these grounds. We therefore affirm.

AFFIRMED.

² Closing arguments in this case were not recorded, and Luesebrink did not object to defense counsel's closing argument.