IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

No. 8-549 / 97-1839
Filed February 24, 1999

RONALD H. HANSON and **MARGARET A. HANSON,** Husband and Wife,
Appellants,

vs.

LOMA Y. LUSTHOFF and **CHARLES M. LUSTHOFF,** Wife and Husband,
Appellees.

Appeal from the Iowa District Court for Black Hawk County, Margaret L. Lingreen, Judge.

Plaintiffs appeal the district court's denial of their motion for new trial in this personal injury case. **AFFIRMED.**

Jay A. Nardini of the Nardini Law Office, Cedar Falls, for appellants.

Gene Yagla and Karla J. Shea of Yagla, McCoy & Riley, Waterloo, for appellees.

Considered by Huitink, P.J., and Vogel and Zimmer, JJ.

VOGEL, J.

Plaintiffs, Ronald and Margaret Hanson, appeal the district court's denial of their motion for new trial in this personal injury case. They argue the jury's finding the vehicle accident was not a proximate cause of his injuries was not supported by the record; therefore, the district court erred in denying their motion for new trial. We affirm.

On July 25, 1994, Ronald Hanson was involved in an automobile collision with Loma Lusthoff. Lusthoff's car struck the driver's side of Hanson's sport utility vehicle as she started into an intersection after a stop. At the time of the accident Hanson said he wasn't injured and did not seek medical attention. His car was driveable, and he left the scene to go to the barbershop.

When Hanson arrived home he was not feeling well. His wife insisted he go to the doctor. Hanson went to the Medical Associates in Cedar Falls where he complained of pain to his neck, left shoulder, lumbar spine, and the ball of his left foot. Hanson was referred to orthopedic physician Dr. Crouse whom he saw on August 8, 1994. Crouse determined Hanson had a contusion injury. Crouse treated Hanson for approximately a year and then referred him to Dr. Manshadi.

After evaluating Hanson in September 1995, Manshadi believed Hanson had suffered a closed head injury and referred him to neuropsychologist Dr. Haban. After Hanson told him about the accident, Haban also determined Hanson suffered a closed

head injury as a result of the collision. Hanson told both Manshadi and Haban he hit his head against the car in the accident.

In May 1996, Hanson and his wife filed a petition against Loma Lusthoff and her husband alleging Loma's negligence was the cause of Hanson's injuries. Following trial the jury returned a general verdict in favor of the Lusthoffs.

The Hansons filed a motion for new trial arguing the verdict was not supported by the evidence and failed to effectuate substantial justice. The district court denied the motion. It cited evidence of the comparative sizes of the parties' vehicles and their speeds at the time of impact and determined the jury could have found the force of impact insufficient to cause Hanson's injuries. It also cited evidence showing Hanson's injuries predated the accident. The court explained there was evidence that Hanson did not complain of injury or pain immediately following the accident and the opinion of his expert witnesses was based upon incorrect or incomplete information provided by Hanson. Finally, the court noted there was evidence Hanson's alleged health condition did not result in his loss of employment and Hanson's credibility was questionable.

On appeal, the Hansons argue the district court erred in denying their motion for new trial. They assert the evidence did not support the jury's finding the accident was not a proximate cause of at least some of Hanson's damages. The Hansons contend the jury may have been swayed by passion or prejudice because of such factors as the age of defendants and Hanson's high salary.

We review the denial of a motion for new trial for abuse of discretion. *Shepherd Components, Inc. v. Brice Petrides-Donohue & Assocs., Inc.*, 473 N.W.2d 612, 618 (Iowa 1991). If a jury verdict is not supported by sufficient evidence and the verdict fails to effectuate substantial justice, a new trial may be ordered. *Thompson v. Rozeboom*, 272 N.W.2d 444, 446 (Iowa 1978). The reason for granting a new trial must fairly appear in the record. *Bredberg v. Pepsico, Inc.*, 551 N.W.2d 321, 326 (Iowa 1996). We must also accord weight to the fact the trial court, aided by seeing and hearing the witnesses, observing the jury and having before it all incidents of the trial, did not deem it appropriate to interfere. *Kautman v. Mar-Mac Community School Dist.*, 255 N.W.2d 146, 147-48 (Iowa 1977); *Olsen v. Drahos*, 229 N.W.2d 741, 743 (Iowa 1975).

Hanson argues the evidence of the magnitude of the accident does not support the jury's finding it did not cause *any* of his injuries. He testified at trial, however, he did not think his current medical problems were caused in the accident. He had received medical care for similar conditions prior to the accident. He had gained 100 pounds in the previous six years and weighed nearly 300 pounds at the time of trial. In conducting a factual inquiry into causation, the court looks to two components: (1) whether the harm would not have occurred *but for* the negligence of the defendant, and (2) whether the negligence of the defendant was a *substantial factor* in bringing about the harm. *Gerst v. Marshall*, 549 N.W.2d 810, 817 (Iowa 1996) (emphasis added). This inquiry has been referred to as a determination of proximate cause. *Id.*

at 815. The word "substantial" is used to denote that the defendant's conduct has such an effect in producing the harm as to lead a reasonable person to regard it as a cause. *Delaney v. Gansemer*, 567 N.W.2d 664, 667 n.2 (Iowa App. 1997) (citing *Pedersen v. Kuhr*, 201 N.W.2d 711 (Iowa 1972)).

The testimony of the parties concerning the accident is not consistent. The jury weighed the credibility of the witnesses. We are prohibited from weighing the evidence or the credibility of the witnesses. *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988). Hanson provides no evidence to support his argument the jury must have based its verdict on passion or prejudice based on the age of Mrs. Lustoff and his high salary at John Deere. *See* Iowa R. Civ. P. 244(d).

Hanson also claims the trial court applied the wrong standard to the evidence when ruling on his motion for a new trial. The court stated, "In ruling on a Motion for New Trial, the evidence must be viewed in the light most favorable to the successful party. *Miller v. Young*, 168 N.W.2d 45 (Iowa 1969)." Hanson argues that standard applies to motions for directed verdict or JNOV, not motions for a new trial, but cites no support for his argument and offers no other standard for motions for a new trial. *See* Iowa R. App. P. 14(a)(3). We find no Iowa civil case law explicitly describing how the trial court is to view the evidence when ruling on a motion for new trial. In our abuse-of-discretion review, we must determine if the verdict is supported by sufficient evidence and the verdict effectuates substantial justice between the parties. Iowa R. Civ. P. 244.

Hanson left work and drove to get his hair cut. He was driving about 20 mph down a slight hill on Rownd Street to the intersection with Hawthorne. The intersection has a flashing yellow light on Rownd and a flashing red light on Hawthorne. As he entered the intersection, ". . .all of a sudden, out of nowhere -- this car just came flying out of nowhere and hit me. I tried to avoid it. . . . The impact was real hard. I thought for a minute -- because my vehicle was higher, I could feel my vehicle go over. I thought I was going to tip over on my side. . . . I felt that she had run the stoplight." "I had -- the force from when she hit me had pushed me over and kind of across the console. My [seat]belt was still holding me across the waist, but my butt was kind of against the door. . . ." Lustoff, who was 67 or 68 at the time of the accident, testified she was in no hurry. She stopped at the flashing red light, looked up and down, saw nothing and proceeded. "I saw nothing; and as I just barely proceeded, his car was there and I just kind of coasted into him." The air bag in her car did not deploy. Her seat belt did not lock. Hanson's sport utility vehicle hooked on the hood of her car and swung it to the left. The damage to her car was worse than the damage to his. At the time of the accident, Hanson said he did not hit his head. He later told Dr. Manshadi he hit the right side of his head on the column by the door. He told Dr. Haban he hit the left side of his face. At trial he testified he didn't know what happened, but he did not believe he had a head injury, "I didn't come up with the diagnosis. I disagree with it, and I disagree with all of it." We conclude

substantial evidence supports the jury's findings. Consequently, the trial court did not abuse its discretion in denying the motion for a new trial.

AFFIRMED.