FILED
MAR 30 1995
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-513 / 93-1926

MIKE TREINEN and JULIE A. TREINEN,

Appellants,

vs.

RONALD LEE DICKS,

Appellee.

Appeal from the Iowa District Court for Buena Vista County, Tom Hamilton, Judge.

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

Steven D. Jordening of Metcalf, Thompson & Phipps, Remsen, for appellants.

John Werner of Grefe & Sidney, Des Moines, and Redge O. Berg, Spencer, for appellee.

Considered by Donielson, C.J., and Hayden and Habhab, JJ.

HAYDEN, J.

Mike and Julie Treinen, brother and sister, filed suit against Ronald Dicks for injuries they suffered as a result of an automobile accident which occurred on August 22, 1990. During trial defendant admitted he was negligent and his negligence was the proximate cause of plaintiffs' injuries. Therefore, the district court did not submit the issue of negligence to the jury, but only the issue of damages.

At trial, both sides presented testimony from chiropractors as to extent of the injuries sustained by plaintiffs. The plaintiffs' chiropractor, Dr. Frederick Mousel, testified Mike had suffered posttraumatic cervical injury and would continue to suffer from headaches, neck pain, and upper back pain. He gave Mike a disability rating of eight to twelve percent of the whole person. Mike testified he tended to get a stiff neck, especially when he drove, and he would then take Advil, an over-the-counter medication. Dr. John P. McCarthy, the defense chiropractor, testified Mike had no permanent injuries due to the accident.

Dr. Mousel testified Julie had cervical sprain-strain syndrome and chronic headaches. He gave Julie a disability rating of twenty-four percent of the whole person. Julie testified the headaches decreased her recreational activities and caused her to take Advil every day. Dr. McCarthy testified Julie's medical records showed she had

complained of headaches prior to the accident. He stated he believed she received no permanent injuries due to the accident.

The jury returned general verdicts awarding Mike $102,000 and awarding Julie $138,000. Defendant filed a motion for new trial or remittitur.

The district court granted the motion for new trial. The court noted plaintiffs were not seeking damages for care by medical doctors, hospital care, or prescription drugs. Additionally, there was no claim for loss of past earnings and no mathematical evidence presented as to the value of lost future earnings. Based on these findings, the court determined the verdicts were flagrantly excessive and so out of reason as to shock the court's sense of justice. The court found the verdicts were lacking in evidentiary support and should be set aside.

Furthermore, the court found it had not submitted the correct jury verdict forms. The jury form which was submitted did not require an itemization of damages. The court concluded this was not a sufficient reason, in itself, to grant a new trial, but was a supporting factor in its conclusion. Plaintiffs appealed the decision to grant a new trial.

Trial courts have broad discretion in passing on motions for new trials. Iowa-Illinois Gas & Elec. Co. v. Black & Veatch, 497 N.W.2d 821, 828 (Iowa 1993). Only when the evidence clearly shows an abuse of discretion will we

interfere with the trial court's ruling on such a motion. Id. In order to show an abuse of discretion, one generally must show the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. Pratt v. Piper, 500 N.W.2d 716, 716 (Iowa App. 1993).

We are slower to interfere with a trial court's grant of a new trial than with its denial of one. Iowa R. App. P. 14(f)(4). However, there must be some support in the record for granting a new trial. Lappe v. Blocker, 220 N.W.2d 570, 572 (Iowa 1974). The reason given for granting a new trial need not rise to the level of reversible error. Id. One valid reason for granting a new trial under Iowa Rule of Civil Procedure 244(d) is where excessive or inadequate damages appear to have been influenced by passion or prejudice.

Generally, the amount of damages to be awarded are peculiarly a jury, not a court, function. Waddell v. Peet's Feeds, Inc., 266 N.W.2d 29, 32 (Iowa 1978). A verdict may be set aside only where it is: (1) flagrantly excessive or inadequate; (2) so out of reason as to shock the conscience or sense of justice; (3) raises a presumption it is the result of passion, prejudice, or other ulterior motive; or (4) lacking in evidential support. Schmitt v. Jenkins Truck Lines, Inc., 170 N.W.2d 632, 659 (Iowa 1969). The real question in most cases is the amount and sufficiency of evidence to support the award made. Id.

We find no abuse of discretion in the district court's decision to grant a new trial. We believe there is insufficient evidence in the record to support the jury's award of damages. Neither Mike nor Julie showed any loss of past earnings or future earnings due to their injuries. Mike stated he wanted a career fitting cattle, which involves trimming hair to give cattle their best appearance. However, he stated he had accepted a job selling cattle and this job involved some cattle fitting. Julie testified she wanted a career in fashion merchandising and was presently working in a bank. While both testified their injuries had prevented them from following their career choice, there was no evidence their present careers were less financially rewarding or were expected to be less financially rewarding in the future.

Furthermore, the plaintiffs were seeking very small damages for actual medical expenses. Mike's medical expenses were $1387, which included chiropractic examinations, Advil, and mileage to visit the chiropractor. Julie's medical expenses were $1572 for the same things. Based on these medical expenses and the fact there was no loss of earning capacity, the jury's verdicts of $102,000 for Mike and $138,000 for Julie were excessive and were not supported by the evidence presented at the trial.

We affirm the decision of the district court to grant a new trial. At the new trial, the court should submit to the jury a verdict form which requires an itemization of damages. Costs of this appeal are assessed to plaintiffs.

AFFIRMED.