FILED
JUL 26 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

373

**JEANETT LIECHTI, Next Friend and Conservator of JAMIE LIECHTI,**

Plaintiff-Appellant,

vs.

**CHARLES A. FANGMAN, F.X. McCABE, ROBERT Q. CHRISTENSEN and FAMILY HEALTH CENTER, a Partnership,**

Defendants-Appellees.

9-225
88-1248

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Appeal from the Iowa District Court for Carroll County (29656), Louie F. Beisser, Judge.

Plaintiff appeals a jury verdict in favor of the defendant doctors. **AFFIRMED.**

Jerry R. Foxhoven and Thomas J. McCann of Peddicord, Wharton, Thune, Foxhoven & Spencer, Des Moines, for plaintiff-appellant.

John A. McClintock & Chester C. Woodburn III of Hansen, McClintock & Riley, Des Moines, for defendants-appellees.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

**PER CURIAM**

In this medical malpractice action, the jury returned a verdict in favor of the defendant doctors. The plaintiff has appealed from the resulting judgment. We affirm.

Jamie Liechti was born in October 1978. At the age of eight weeks she was hospitalized for a disease which proved to be meningitis. The disease progressed to the point Jamie suffered severe brain damage. She is now profoundly retarded, suffers from convulsions and partial paralysis, and she will never be able to care for herself.

Jamie's mother, acting as her next friend and conservator, filed the present medical malpractice action against three doctors who cared for Jamie in the early stages of her illness. The primary specifications of negligence were delay in diagnosis and a delay in administering the specialized antibiotics necessary to treat meningitis. A jury returned a verdict in favor of the defendant doctors, and the plaintiff has appealed from the resulting judgment.

On appeal plaintiff contends the jury's verdict was not supported by the evidence. She also challenges two evidentiary rulings and the court's refusal to instruct the jury that it should avoid speculating on the existence of liability insurance. Finally, she contends she is entitled to a new trial because of bias on the part of a juror. Additional facts are incorporated in the body of the

opinion. Our scope of review is for errors at law. Iowa R. App. P. 4.

I. Plaintiff contends the trial court erred in failing to give plaintiff's requested jury instruction regarding the consideration of insurance. The proposed instruction stated:

> The existence or lack of insurance covering either plaintiff or the defendant has nothing, whatsoever, to do with the issues to be decided by you. You should not speculate as to the existence or lack of insurance, the type or amount thereof, or the effect of its existence or nonexistence upon the parties. Your verdict should be confined solely to the evidence submitted to you in conformance with these instructions.

Plaintiff argues the courts of this state are required to give an instruction similar to the one proffered by plaintiff. She claims such an instruction is necessary here because of an incident which occurred during untranscribed voir dire.

The parties and the trial court all apparently agree while plaintiff was questioning the venire regarding the issue of responsibility, one juror stated she would have a different standard in a car accident case "because people have insurance for that." Despite the prospective juror in question being struck from the panel, plaintiff now argues her statement tainted the entire panel, because in effect, they were told a different standard exists for doctors because they lack insurance. Thus, the argument is the taint could have been dissipated if the trial court had given the proposed instruction.

As a general rule, our courts have found it improper for the subject of liability insurance to be raised before the jury. See Price v. King, 225 Iowa 114, 122 N.W.2d 318 (1963). However, the Iowa Supreme Court has held:

> It remains true in personal injury or death action evidence is generally inadmissible which informs the jury the defendant is insured against liability. It is generally improper for the subject of liability insurance to be raised in any way before the jury. However, it is no longer true that we will presume prejudice if the jury learns or is given reason to suspect insurance companies interested in the results of the trial.

Evans v. Howard R. Green, 231 N.W.2d 907, 914 (Iowa 1975).

Thus, under our law, absent a showing of prejudice, the introduction of insurance into a negligence case will not be critical. Carter v. Wiese Corp., 360 N.W.2d 122, 130 (Iowa App. 1984). To show prejudice, the complaining party must show the jury improperly relied on such evidence in arriving at a verdict. Id. Because this court believes the proposed instruction should have been given is not enough. The appellant must prove the trial court abused its discretion in failing to do so. Id. We find plaintiff has not met her burden here.

In this case, the reference to insurance was made during voir dire. No comment regarding insurance was made by either party during trial or after the jury had been sworn. In addition, the jury was instructed to base their verdict only upon the evidence received at trial. Absent a showing to the contrary, we presume the jury followed the

proffered instructions. See Hoekstra v. Farm Bureau Mut. Ins. Co., 382 N.W.2d 100, 110 (Iowa 1986). Under these facts, we hold the trial court did not abuse its discretion by failing to submit the proposed instruction to the jury.

II. The plaintiff next argues the evidence discovered following the trial shows misconduct on the part of the juror. The issue arose when plaintiff discovered a flier put together some weeks following the trial which indicated one of the defendants, Dr. Fangman, was supporting one of the jurors' husband in his campaign for county supervisor. Plaintiff argues this relationship warrants a new trial. We disagree.

Plaintiff cites a number of cases to support her assertion. These cases generally hold courts must uphold the integrity of our jury system by eliminating the possibility of tainted jury verdicts or even the appearance of impropriety which would undermine the confidence in our jury system. See Daniels v. Bloomquist, 258 Iowa 301, 138 N.W.2d 868 (1965).

We agree with plaintiff public confidence in our jury system must be carefully preserved. However, here there is no impropriety or even the appearance of impropriety which we are mandated to guard against.

Affidavits were submitted by the juror and her husband. In her affidavit the juror stated she had no knowledge of any activities at the time of the trial,

between her husband and Dr. Fangman. Her husband indicates in his affidavit that he, at no time prior to or during the trial, had any contact with Dr. Fangman and as far as he knew, Dr. Fangman was not a supporter of his until after the trial. Plaintiff offers no evidence which in any way controverts these statements. From this evidence the trial court determined there was no juror bias or prejudice and we agree.

III. Plaintiff next argues the verdict should be reversed because it was not supported by sufficient evidence.

It is for the jury to determine fact questions and to judge the weight and credibility of testimony. Becker v. D & E Distributing Co., 247 N.W.2d 727, 730 (Iowa 1976). For us to invade the province of the jury a verdict must: (1) be flagrantly excessive or inadequate; or (2) so out of reason to shock the conscience or sense of justice; or (3) raise a presumption it is the result of passion, prejudice, or other ulterior motive; or (4) be lacking in evidential support. Schmitt v. Jenkins Trucking Lines, Inc., 170 N.W.2d 632, 659 (Iowa 1969).

We determine the trial court did not abuse its discretion by overruling plaintiff's motion for a new trial on this issue. Sufficient evidence existed here to support the jury's verdict.

The trial court had an opportunity both during the trial and upon hearing plaintiff's motion for a new trial, to determine whether the verdict effectuated substantial justice between the parties and whether the verdict was sustained by sufficient evidence. The trial court determined it did. After our review of the record, we concur and hold the trial court did not abuse its broad discretion in refusing plaintiff a new trial.

**IV.** Plaintiff next argues the trial court erred in overruling plaintiff's objection to defendants' cross-examination of one of the plaintiff's expert witnesses. Plaintiff argues the questioning was calculated by defendants to bring about an answer regarding the duty owed by doctors which was contrary to Iowa law. We find plaintiff's claim to be without merit.

The scope of cross-examination is within the trial court's discretion and we will reverse only for an abuse of discretion and then only if prejudice has resulted. Avery v. Harms Implement Co., 270 N.W.2d 646, 650 (Iowa 1978).

On review of the record, it is clear no reversible error was committed by the trial court. First, the expert never actually answered the complained-of question. Second, the response he did make could not be considered prejudicial to the plaintiff. Finally, the expert had already answered a similar question from plaintiff's attorney during direct examination. Therefore, we

determine no error has occurred and affirm the trial court on this issue.

**V.** In light of our holdings above, it is not necessary to address plaintiff's final assignment of error, because it goes exclusively to the issue of damages.

**AFFIRMED.**