

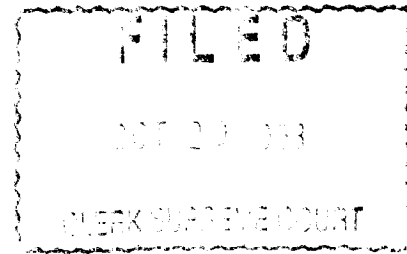
IN THE COURT OF APPEALS OF IOWA

No. 8-504 / 98-0121
Filed October 29, 1998

KAREN LONG,
Appellee,

vs.

JONATHAN ROGERS,
Appellant.



Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Defendant appeals from the district court judgment entered following a jury verdict in favor of plaintiff on her claim for damages arising from an automobile accident. **AFFIRMED.**

Jason D. Walke, Donald L. Carr II, and Jill Mataya Corry of Sullivan & Ward, P.C., Des Moines, for appellant.

Kevin E. Hobbs of Harding, Harding, Griffin, Rosien & Hobbs, Des Moines, for appellee.

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

HUITINK, J.

Jonathan Rogers appeals from a jury verdict in favor of Karen Long on her claim for damages arising from an automobile accident. We affirm.

I. Background Facts and Proceedings.

The parties were involved in an automobile accident on November 1, 1994. Karen Long's vehicle was rear-ended by a vehicle operated by Jonathan Rogers as she slowed to make a left turn off of Army Post Road in Des Moines. Long filed suit against Rogers and the driver of another car, Michael Crane, who was also involved in the accident. Long made claims for past and future medical bills, past and future loss of wages, and past and future pain and suffering.

Rogers admitted negligence in causing the accident. The only issues at trial were the extent of Crane's negligence and the amount of Long's damages. The jury returned a verdict finding Rogers one hundred percent at fault and awarding Long \$1200 in past medical bills, \$4500 in past pain and suffering, \$8000 in future pain and suffering, and \$3000 in lost wages.

Rogers moved for a judgment notwithstanding of the verdict, claiming the awards for lost wages and past medical bills were not supported by the evidence, and the court had erroneously instructed the jury on the claim for past pain and suffering. The district court granted the motion with respect to the medical expenses, but overruled it with respect to the other claims.

Rogers appeals. He again contends the evidence was insufficient to support the award for lost wages. Rogers also contends the court erred by instructing the jury it had to award past pain and suffering if it awarded past medical bills.

II. Standard of Review.

Denial by the trial court of a motion for directed verdict is reviewed for correction of errors of law. *Spaur v. Owens-Corning Fiberglass Corp.*, 510 N.W.2d 854, 858 (Iowa 1994). A judgment notwithstanding the verdict must stand or fall on the grounds stated in the motion for directed verdict. *Faught v. Budlong*, 540 N.W.2d 33, 35 (Iowa 1995). We review a denial of a motion for judgment notwithstanding the verdict under the same standards as a denial of a directed verdict. *Id.*

The evidence is viewed in the light most favorable to the nonmovant and it is determined whether sufficient evidence existed to warrant submission of the issues to a jury. *Smith v. Smithway Motor Xpress, Inc.*, 464 N.W.2d 682, 684 (Iowa 1990). To grant a directed verdict, a trial court must find the evidence, when considered in the light most favorable to the opposing party, is insufficient as a matter of law to sustain the allegations brought. *Nash v. Schultz*, 417 N.W.2d 241, 243 (Iowa App. 1987). The trial court is vested with considerable discretion in determining whether evidence is sufficient to submit the issue to the jury. *Oberreuter v. Orion Industries, Inc.*, 398 N.W.2d 206, 209 (Iowa App. 1986).

We also consider whether reasonable minds could differ on the issues in controversy. *Spaur*, 510 N.W.2d at 858. If they could, the issue should be submitted

to the jury. *Schiltz v. Cullen-Schiltz & Assoc., Inc.*, 228 N.W.2d 10, 17 (Iowa 1975).

To successfully resist a motion for directed verdict the plaintiffs must show merely there is evidence sufficient to submit the question to the jury; they do not need to prove their claims. *Miller v. Young*, 168 N.W.2d 45, 51 (Iowa 1969).

We review jury instructions to decide if they are a correct statement of the law and are supported by substantial evidence. *Collister v. City of Council Bluffs*, 534 N.W.2d 453, 454 (Iowa 1995).

III. The Merits.

A. Lost Wage Claim.

Rogers contends the evidence presented to the jury is insufficient as a matter of law to support the jury's award of lost wages. He argues the sole evidence establishing a loss of wages is Long's testimony that she missed approximately six weeks of work. Rogers contends that because there was no evidence as to her hourly wage and no evidence demonstrating how she calculated her damages, the jury was left to speculate whether any damages were sustained. We disagree.

We find there was sufficient evidence presented to warrant submission of the lost wage claim to the jury. Rogers never disputed Long missed approximately six weeks of work. Rogers himself introduced Long's income tax returns for the years surrounding the period in which Long was injured. Long testified as to the duties of her employment and also about the people who had to do her work in her absence.

Based upon this evidence, the jury could have determined what lost wage damages Long had sustained, if any. We therefore affirm on this issue.

B. Jury Instruction.

Rogers contends the court erred by instructing the jury it had to award damages for past pain and suffering if it awarded past medical expenses.¹ Rogers asserts this is an incorrect statement of the law. He contends an award of past medical bills without a corresponding award of pain and suffering is not inconsistent. He also points out the award for past medical bills in this case was set aside by the trial court in its ruling on Rogers' motion for judgment notwithstanding of the verdict.²

We review a trial court's formulation of jury instructions for errors of law. Iowa R. App. P. 4; *State v. Kellogg*, 542 N.W.2d 514 (Iowa 1996); *State v. Breitbach*, 488 N.W.2d 444, 449 (Iowa 1992). We will not grant a reversal on the basis of error in giving or refusing to give a particular jury instruction unless the action results in prejudice to the defendant. *Rudolph v. Iowa Methodist Medical Ctr*, 293 N.W.2d 550, 555 (Iowa 1980).

When a jury finds sufficient evidence to award past medical expenses for treatment of pain and discomfort, it is inconsistent and illogical not to award damages for such past pain and suffering. *Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543

¹ Question No. 6 in the jury's special verdict form contained an instruction which stated: "If you award any damages for past medical expenses you must award some amount of damages in No. 2 for past physical pain and suffering."

² Long has not cross-appealed on this issue.

N.W.2d 889, 892 (Iowa 1996); *Cowan v. Flannery*, 461 N.W.2d 155, 160 (Iowa 1990). We believe the language of Question No. 6 accurately states the law on this issue. Moreover, there is substantial evidence Long endured pain and suffering from her injuries sustained in the accident. Rogers was accordingly not prejudiced by the district court's instruction.

Roger's claim that an award of past pain and suffering is unjustified in the absence of an award of past medical expenses is also without merit. *See Foggia v. Des Moines Bowl-O-Mat, Inc.* 543 N.W.2d 889, 892 (Iowa 1996).

AFFIRMED.