

IN THE COURT OF APPEALS OF IOWA

No. 0-657 / 90-554

FILED

JAN 29 1991

CLERK SUPREME COURT

MARALYNE S. DROTTZ,

Appellant,

90

vs.

ANTHONY JOSEPH HOPPER and RONALD D. CARR,

Appellees.

Appeal from the Iowa District Court for Marion County,
Jerrold W. Jordan, Judge.

Drottz sued Hopper and Carr for damages for personal injuries resulting from a motor vehicle accident. The defendants admitted liability and stipulated to the amount of medical expenses, \$5,805.44. The district court entered judgment based on a jury verdict for \$14,206. Drottz appeals contending that the verdict is inadequate. She also claims that the court should have submitted to the jury her requested special interrogatories. **AFFIRMED.**

Oscar E. Jones, Des Moines, for appellant.

William D. Scherle of Hanson, McClintock & Riley,
Des Moines, for appellees.

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

SCHLEGEL, J.

The plaintiff, Maralyne Drottz, was involved in a motor vehicle accident with a vehicle owned by defendant Ronald Carr and driven by defendant Anthony Hopper. Drottz sued Carr and Hopper for damages resulting from the accident. Carr and Hopper admitted liability and filed a confession of judgment in the amount of \$30,000. The parties stipulated to the amount of Drottz's medical expenses, amounting to \$5,805.44. Drottz, however, refused to accept the confession of judgment. The case proceeded to jury trial on the sole issue of damages. The jury returned a verdict awarding Drottz \$14,206.

Drottz appeals. She claims she is entitled to a new trial because of the inadequacy of the verdict. She contends that the inadequate damages were influenced by passion or prejudice. She also contends that the verdict was inconsistent and contrary to the law and the instructions. Finally, she argues that the district court erred by failing to submit to the jury her requested special interrogatories requiring the jury to enumerate the amount awarded for each type of damage. We affirm.

Our review is for the correction of errors at law. Iowa R. App. P. 4. We are bound by findings of fact in a law action if supported by substantial evidence. Iowa R. App. 14(f)(1).

Drottz first contends the verdict was so inadequate as to entitle her to a new trial. Drottz argues her lost

earnings as of the time of trial were \$7,200 and that her medical bills totaled \$5,806.45. Drottz maintains the jury's award of \$14,206.45 leaves only \$1,200 for loss of body function and physical and mental pain. We disagree.

Our courts have recognized that the inadequacy of damages may be cause for setting aside a jury verdict. Kaiser v. Stathas, 263 N.W.2d 522, 524 (Iowa 1978). The trial court has considerable discretion in ruling on a motion for new trial on the ground of inadequacy of the verdict. Id. Such discretion, however, is not unlimited. Id. Our task is to determine whether the trial court abused its discretion in not granting a new trial in light of the award made, not whether a higher verdict would have been justified under the evidence presented at trial. Yoch v. City of Cedar Rapids, 353 N.W.2d 95, 98 (Iowa App. 1984). In making this determination, we are mindful that precedents in this area are of little value, and each case must be decided on its own unique factual situation. Kaiser, 263 N.W.2d at 525.

We recognized in Yoch four circumstances under which we would reduce or set aside a jury award: (1) the award is flagrantly excessive or inadequate; (2) it is so out of reason as to shock the conscience or sense of justice; (3) a presumption is raised the award was based on passion, prejudice, or other ulterior motive; and (4) it is lacking in evidentiary support. 353 N.W.2d at 98. Generally, if the award is supported by the evidence, the other criteria

will hardly arise. Id. We must ensure that the verdict fairly and adequately compensates a plaintiff for the damages suffered. Waddell v. Peet's Feeds, Inc., 266 N.W.2d 29, 32 (Iowa 1978).

Drottz maintains that as a result of the accident, she has received spinal injury and that as a result of the accident, she suffers from neck pain, back pain and recurring headaches. Drottz argues that her damage is permanent, and that it will affect her future employability. She alleges that she cannot stand for long periods of time, bend over or twist without aggravating her condition. She also argues that she could no longer perform her duties at the Raceway Motel as manager due to her injuries, and could no longer participate in her favorite form of recreation, auto racing. Drottz also points out that her car has been repossessed and her home subjected to foreclosure. Drottz maintains that she would be homeless if not for the support of her boyfriend.

The record, however, also shows that the examination of Dr. Boulden revealed that Drottz had good left and right lateral bending, her extension was good with some discomfort, with some limitation of forward flexion and rotation. Dr. Boulden testified Drottz had some left posterior thigh discomfort, but did not cause significant pain. Dr. Boulden also testified Drottz did not complain of any upper back or neck injuries at the time of her initial visit only two months after the accident had

occurred. Nor did Drottz complain of recurring headaches. Dr. Boulden diagnosed Drottz's injury as a myofascial pain from the soft tissues of her back. Dr. Boulden recommended an exercise program designed to loosen up the lumbar area of the spine and rehabilitate the soft tissues around the spine to regain full mobility. Dr. Boulden opined that Drottz had a ninety-five percent chance of complete recovery. Drottz, however, only attended one physical therapy session.

Following her examination with Dr. Boulden, Drottz sought the advice and treatment of a number of chiropractors for her alleged headaches, neck and back pain. Another examination taken approximately one year after the accident revealed a mild early degeneration of the L5 disk. Despite her complaints of headaches, neck and back pain, Drottz was told her condition was such that she could return to work with certain limitations. Drottz, however, has not returned to work and has made only two attempts in eighteen months to seek other employment. Drottz has made no further appointments for medical help even though she claims she still experiences considerable pain.

At trial Drottz testified she was requested by the owner of the Raceway Motel to quit her job at the French Way Cleaners. The owner of the motel, John DeHaan, testified he hired Drottz on the basis she quit her job at the cleaners, but that Drottz was not under contract as she

had claimed. DeHaan testified Drottz never indicated that she was unable to perform her required tasks and quit basically over a dispute as to her use of the motel telephone for long distance calls. The record shows Drottz does help her boyfriend's father with some office work.

Upon examination of the record we find there is substantial evidence to support the jury verdict. Though Drottz undoubtedly suffered some injury as a result of the accident, there is substantial evidence in the record indicating Drottz's injuries are not as severe as she would have the jury believe, and that she has not followed a consistent course of treatment to rehabilitate her injuries. Though she has expressed a willingness to go back to work, Drottz has made virtually no attempt to find new employment in the nearly two years since the accident, even though all the physicians who examined her have determined that she can go back to work. A jury is not required to accept and give effect to testimony which it finds unreliable, although it may be uncontradicted. Kaiser, 263 N.W.2d at 526. "Testimony may be unimpeached by any direct evidence to the contrary and yet be so contrary to natural laws, inherently improbable or unreasonable or so contrary within itself, as to be subject to rejection by the court or the jury as trier of the facts." Yoch, 353 N.W.2d at 98, citing Kaiser, 263, N.W.2d at 526.

In the present case the medical bills were stipulated to be \$5,806.45. The entire jury award was \$14,206.45,

thus leaving \$8,400 to be apportioned for lost earnings and pain and suffering. The evidence concerning Drottz's back and neck pain was seriously questionable, and given Drottz's failure to seek employment, we find the jury verdict generous under the facts of the present case.

We likewise reject Drottz's argument that the jury award was inflamed by passion and prejudice stemming from the fact she is living with her boyfriend. Drottz has not cited this court to, nor can we find any, evidence that the jury was inflamed by the fact that Drottz was living with her boyfriend without benefit of marriage, a situation which is commonplace in today's society. Any suggestion that the jury might have viewed Drottz in a bad light because of her living arrangements is completely speculative at best.

Drottz next contends the trial court erred in failing to submit her requested special interrogatories to the jury. Drottz submitted the special interrogatories in order for the jury to enumerate the amount awarded for each of the damages alleged to have been suffered as a result of the accident. Eight different damages were listed, including lost wages, loss of future earning capacity, physical and mental pain and suffering, and loss of the function of the mind and body. Drottz maintains that had the jury been afforded the opportunity to itemize and specify amounts for each individual item of damages, the jury could have determined the present value of her losses. We find this issue has no merit.

Iowa Rule of Civil Procedure 205 provides that "[t]he court may require that the verdict consist wholly of special written findings on each issue of fact." Our courts have recognized that this rule is permissive and not mandatory. Beachel v. Long, 420 N.W.2d 482, 487 (Iowa App. 1988) (emphasis added). The trial court has discretion regarding the form and content of instructions. Id. Given our earlier findings, we find no abuse of discretion in this case and hold Drottz was not entitled to a new trial.

AFFIRMED.