IN THE COURT OF APPEALS OF IOWA

No. 0-505 / 99-1878
Filed September 27, 2000

AMY S. KORESH,
Appellant,

vs.

JOE PETERS and ROBERT FRANZEN, d/b/a GETAWAY LOUNGE,
Appellees.

FILED
SEP 27 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Mitchell County, Bryan H. McKinley, Judge.

Personal injury plaintiff appeals following the trial court's denial of her motion for new trial. **AFFIRMED.**

Robert E. Walker of the Walker Law Office, P.C., Fort Dodge, for appellant.

David E. Schrock of DeVries, Price & Davenport, Mason City, for appellees.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

VOGEL, P.J.

Personal injury plaintiff, Amy Koresh, appeals following a jury trial in which she was awarded $2,742.45 in damages. We find the jury verdict is not so shocking or contrary to the evidence as to make the trial court's failure to grant a new trial an abuse of discretion. We affirm.

Background facts. On the night of January 23, 1997, Koresh, a passenger in Jerri Dugan's vehicle, was injured when the Dugan truck was struck from behind by Joe Peters' vehicle. Koresh sustained neck and back injuries from the impact. She sought medical treatment following the incident, including emergency care, three office visits to her physician, and chiropractic treatment for about one year. She was unable to work for a period of approximately two months following the accident. She commenced a lawsuit to recover damages including medical costs, loss of income, and pain and suffering incurred from the accident. The jury found each driver partially liable for the accident. They awarded Koresh $700 for her medical expenses, $1,942.45 for loss of income[1], and $100 for pain and suffering. Koresh moved for a new trial, alleging the verdict was contrary to the evidence submitted and it failed to administer justice. The trial court denied the motion and Koresh now appeals.

Scope of review. We review a ruling on a motion for new trial for an abuse of discretion. *Kuta v. Newberg*, 600 N.W.2d 280, 284 (Iowa 1999). 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.*

---

[1] Koresh does not appeal the amount awarded for loss of income.

Rozeboom, 272 N.W.2d 444, 446 (Iowa 1978). The reason for granting a new trial must fairly appear in the record. *Id.*

New trial. Koresh asserts the award is inadequate to compensate her for the damages incurred as a result of the car accident. Koresh alleges she incurred $4,550.68 in past medical expenses and will require chiropractic treatment in the future. She further alleges she suffered extreme physical and mental pain from her injuries and the jury award fails to administer justice. Koresh claims the jury verdict of $700 for medical expenses and $100 for pain and suffering was contrary to the medical testimony and evidence submitted regarding her past physical and mental pain and suffering.

Our appellate courts have previously outlined the freedom a jury has to accept or reject the evidence presented to it, stating:

> While the jury as the trier of fact is not warranted in arbitrarily or capriciously rejecting the testimony of a witness, neither is it required to accept and give effect to testimony which it finds to be unreliable, although it may be uncontradicted. Testimony may be unimpeached by any direct evidence to the contrary and yet be so contrary to natural laws, inherently improbable or unreasonable, opposed to common knowledge, inconsistent with other circumstances established in evidence, or so contradictory within itself, as to be subject to rejection by the court or by the jury as trier of the facts.
>
> This court has also said: "The court is not required to accept as a verity uncontradicted testimony, but might well scrutinize closely such testimony as to its credibility, taking into consideration all the circumstances throwing light thereon, such as the interest of the witnesses, remote or otherwise." *Kaiser v. Stathas*, 263 N.W.2d 522, 526 (Iowa 1978).

Miller v. Eichhorn, 426 N.W.2d 641, 642 (Iowa App. 1988).

At first blush, the jury verdict appears to be inadequate to do justice in this case. However, with closer examination of the conflicting testimony, the verdict can be reconciled with the facts presented to the jury. Dr. Klinkel provided chiropractic services to Koresh and testified she had some level of permanent impairment and loss of bodily function attributable to the collision. He also stated that she would require monthly chiropractic treatments for the rest of her life. This was offset by testimony of Koresh's physician, Dr. Ryal, who did not find any permanent impairment or loss of function resulting from her injuries. He further testified that following his examination of Koresh, he expected her to be fully recovered by late March of 1997 or approximately two months following the accident. In his report dated March 7, 1997, Dr. Ryal stated:

> As far as pain goes, she's really not feeling much pain at this point, it's more stiffness and a little bit of soreness. . . There's pain with anterior flexion of the low back. She has full range of motion of the neck with minimal discomfort. Only complaints of soreness and stiffness in the low back and neck.

Koresh returned to her full-time job duties with no restrictions for lifting or physical activities after a two-month absence. Koresh testified she is now unable to perform some of the physical activities she enjoyed prior to the accident, including dancing, snowmobiling, housework, or helping her father in his business. This was countered by her testimony that she successfully performs a physically demanding job, working substantial overtime with the absence of any lifting or other restrictions. In addition, she now enjoys activities such as weight training using low weights with high repetitions and walking several miles each day. A witness testified that she had seen Koresh at a nightclub dancing within

one month following the accident and several more times in the months immediately following the accident. The jury was free to accept or reject any of this evidence in judging the credibility of witnesses and arriving at the verdict. *Field v. Palmer*, 592 N.W.2d 347, 353 (Iowa 1999).

> The amount of damages awarded is peculiarly a jury, not a court function. The jury's verdict should not be set aside or altered unless the plaintiff proves the verdict: (1) is flagrantly excessive or inadequate; or (2) is so out of reason as to shock the conscience or sense of justice; or (3) raises a presumption it is the result of passion, prejudice or other ulterior motive; or (4) is lacking in evidential support.

Gorden v. Carey, 603 N.W.2d 588, 590 (Iowa 1999) (citations omitted).

The $700 medical expense award can be reconciled with the evidence[2]. The jury was free to accept or reject the testimony of the various witnesses and award medical expenses accordingly, based on the disputed need for the expenses incurred. In addition, the testimony regarding past pain and suffering was contradicted and the jury was therefore free to award an amount commensurate with the evidence it accepted as most credible.

We find the jury verdict can be reconciled to the evidence presented. Therefore, the trial court did not abuse its discretion in denying the motion for a new trial. We affirm.

AFFIRMED.

---

[2] While the exhibits and testimony are less than clear, we find Koresh's initial emergency room visit totaled $225; the CT scan was $147; Dr. Ryal's office visits of 2/19, 2/26 and 3/07 totaled $125 and prescription medication was $125. These expenses total $622.