

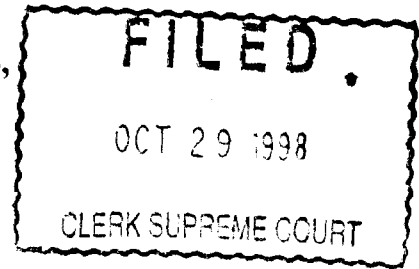
IN THE COURT OF APPEALS OF IOWA

No. 8-471 / 97-1465

JAMES D. HESSENIUS AND SHAREEN HESSENIUS,
Appellants,

vs.

JOSEPH J. PICKAR,
Appellee.



Appeal from the Iowa District Court for Tama County, Patrick R. Grady,
Judge.

James and Shareen Hessenius appeal a district court judgment, following a jury trial, which rejected their action for damages against Joseph Pickar resulting from an automobile accident. **AFFIRMED.**

John Riccolo and David L. Baker of Riccolo & Baker, P.C., Cedar Rapids, for appellants.

Donald L. Carr II and Jason D. Walke of Sullivan & Ward, P.C., Des Moines, for appellee.

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

VOGEL, J.

James and Shareen Hessenius appeal a district court judgment, following a jury trial, which rejected their action for damages against Joseph Pickar. We find substantial evidence to support the jury's verdict finding no proximate cause and no abuse of discretion by the trial court in denying the motion for new trial. We therefore affirm.

Background facts. On February 10, 1994, James Hessenius and Pickar were involved in an motor vehicle accident at an intersection in Dysart, Iowa. James and his wife, Shareen, filed an action against Pickar to recover for James's personal injuries and Shareen's loss of consortium. At the conclusion of trial, the jury found Pickar to be at fault in the accident, but also found that his fault was not the proximate cause of any damages that might have been sustained by James and Shareen. The trial court denied the Hessenius's motion for a new trial. They now appeal.

Motion for new trial. We review the grant or denial of a motion for new trial for abuse of discretion. *Magnusson Agency v. Public Entity*, 560 N.W.2d 20, 30 (Iowa 1997). If a jury verdict is supported by sufficient evidence and the verdict effectuates substantial justice, no new trial is necessary. *Id.*

Proximate cause. The Hesseniuses assert that the trial court erred in refusing to grant them a new trial because the evidence was undisputed that James was injured in the accident and incurred medical expenses as a result. Because Pickar was found to be at fault and medical expenses were introduced into evidence, the Hesseniuses

claim the jury was confused in failing to return a verdict awarding medical damages. Pickar asserts that the jury's finding on the issue of causation is supported by the evidence and emphasizes that the jury never reached the question of damages.

Proximate cause is ordinarily a question for the jury. Iowa R. App. P. 14(f)(10); *see also Boham v. City of Sioux City, Iowa*, 567 N.W.2d 431, 435 (Iowa 1997). Proximate cause includes both cause in fact and legal causation. *Hagen v. Texaco Refining & Marketing, Inc.*, 526 N.W.2d 531, 537 (Iowa 1995); *State v. Marti*, 290 N.W.2d 570, 584-85 (Iowa 1980). The factual component of proximate cause is met upon proof that a defendant's conduct was a substantial factor in producing the damages and the damages would not have occurred except for the defendant's conduct. *See Hagen*, 526 N.W.2d at 537; *Johnson v. Interstate Power Co.*, 481 N.W.2d 310, 323 (Iowa 1992).

Even though fault is established, it does not necessarily follow that proximate cause exists. *Ten Hagen v. DeNooy*, 563 N.W.2d 4, 7 (Iowa App. 1997) (citing *Oak Leaf Country Club, Inc. v. Wilson*, 257 N.W.2d 739, 746 (Iowa 1977)). Proximate cause must be separately determined. *Id.*

Here, the jury was presented with considerable evidence refuting that the accident was the proximate cause of an injury to James Hessenius. Hessenius suffered a back injury in 1983 which required surgery in 1984 and 1986. Although he claimed at trial that he had not had any appreciable back problems since the final surgery in 1986, he was given a 15% *permanent* impairment rating by his doctor at that time.

Furthermore, although Hessenius claimed he had never had numbness in his leg prior to the accident, he told a doctor after the accident that he had experienced problems with numbness in his leg ever since his surgery in 1984. In addition, Hessenius did not claim to be injured immediately after the accident, and when he went to the doctor the day after the accident, he complained of bronchitis in addition to low back pain and numbness. It is possible the jury found that Hessenius's motivation to seek medical attention was primarily due to his bronchitis rather than the accident. Furthermore, although there was medical testimony supporting Hessenius's causation argument, the testimony was premised upon Hessenius's complaints. Coupled with Hessenius's prior history of back pain, there was substantial evidence for the jury to conclude that the accident did not proximately cause the damages Hessenius sought. Hessenius also made no claims for lost wages and continued to pursue many physical activities after the accident.

We find sufficient evidence in the record to support the jury's finding on the issue of proximate cause and no abuse of discretion by the trial court in denying the Hessenius's motion for new trial.

AFFIRMED.