FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CHARLES A. RENKEN,	)	
Plaintiff-Appellee,	)	Filed August 27, 1986
vs.	)	270
PAT KELHOWER,	)	6-208 85-1721
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Sioux County (15935) - Edwin L. Mitchell, Judge.

Defendant appeals a judgment for plaintiff in a negligence action. **AFFIRMED.**

Bryan J. Arneson of Bikakis, Vohs, Storm & Arneson, Sioux City, Iowa, for defendant-appellant.

Edward J. Keane and Stuart J. Cochrane of Margolin, Gildemeister, Willia, Mugan & Keane, Sioux City, Iowa, for plaintiff-appellee.

Considered by Donielson, P.J., Schlegel, and Sackett, JJ.

SCHLEGEL, J. 271

Defendant, Pat Kelhower, appeals a judgment for plaintiff, Charles Renken, in a negligence action asserting that the trial court erred: (1) in allowing Dr. Keltz to testify as an expert witness; (2) in instructing the jury that they may award damages for future pain and suffering; (3) in admitting into evidence a letter by a medical doctor not called as a witness; (4) in failing to instruct the jury that an award for future losses must be reduced to its present cash value; and (5) that the jury's award was excessive and was the result of passion and prejudice. We affirm the trial court and do not find that the jury's award was excessive.

The defendant, Pat Kelhower, was a thirteen-year-old boy on the date of the event in question. On that date Kelhower, a passenger in the box of a moving pickup truck, allegedly amused himself and two young companions by throwing plastic bags filled with water at other vehicles traveling on the highway. One of these water-filled bags hit the windshield of a pickup driven by Charles Renken. The windshield shattered, causing Renken to suffer an eye injury.

Renken later filed the present suit against Kelhower. The suit was tried to a jury, which awarded Renken $35,000. Kelhower has appealed from the resulting judgment.

Our review is for corrections of errors at law. Iowa R. App. P. 4. The findings of fact by the jury are binding upon us if supported by substantial evidence.

I.

We are first asked to decide if the trial court erred in permitting the expert witness to testify. The witness, Dr. Keltz, is a licensed optometrist in the State of Iowa and in her professional capacity deals with the causes of

damage to and disease of the eye. Defendant argues that Dr. Keltz was not qualified by her skill, experience, training, or education to testify as to plaintiff's eye injury. We cannot agree with the defendant. The authority defendant cites is not persuasive. In fact, Lowman v. Kuecker, 246 Iowa 1227, 71 N.W.2d 586 (1955), cited by defendant, suggests that experts in the area of health care do not have to be medical doctors as long as they are qualified in their particular field and limit their testimony to that special field. Lowman, 71 N.W.2d at 588. The trial court concluded that Dr. Keltz was competent to testify concerning her opinion of plaintiff's injury. We are committed to a liberal rule on the admission of opinion testimony. Robeson v. Dilts, 170 N.W.2d 408, 413 (Iowa 1969). The admission of opinion evidence rests largely in the sound discretion of the trial court and considerable leeway is allowed in the admission of such evidence since it remains an opinion which the trier of fact is at liberty to reject. Wadle v. Jones, 312 N.W.2d 510, 515 (Iowa 1981). Instructions No. 10 and 11 carefully explain the nature of opinion testimony and the nature of the practice of optometry. No error was made by the trial court in admitting Dr. Keltz's testimony nor in instructing the jury concerning such testimony.

II.

Defendant asserts that the trial court erred in instructing the jury that they could award damages to plaintiff for past and future pain and suffering. Instruction 24 said:

> The necessary damages for injuries to the person, for pain and suffering, if any you find, will be such amount as will fairly and reasonably compensate therefor. If you find that injuries will cause the Plaintiff pain and suffering in the future, you should determine and allow such further sum as paid now in advance will fairly and reasonably compensate for such pain and suffering as the evidence shows, with reasonable certainty, will result in the future from such injuries.

Defendant claims that there was insufficient evidence to generate a jury question. As we said in section I, supra, Dr. Keltz's testimony, though not of a medical doctor, was admissible. The expert testimony of such a witness, combined with other evidence presented by the plaintiff, can be sufficient to allow the court to give an instruction to the jury permitting recovery for future pain and suffering. See Rogers v. Jefferson, 226 Iowa 1047, 285 N.W. 701 (1939). Additionally, the rule in Iowa as stated in Mabrier v. A.M. Servicing Corp. of Raytown, 161 N.W.2d 180, 183 (1968), is that when pain is suffered right up to the time of trial and there is evidence plaintiff has not fully recovered, future pain and suffering may be submitted to the jury without medical testimony. As a matter of law the evidence introduced was sufficient to justify the submission to the jury of the issue of damages for future pain and suffering.

III.

We next address the issue of the trial court's admission into evidence of the letter from Dr. Womack to Dr. Keltz:

> Dear Dr. Keltz: I saw Mr. Renken on the 29th day of August. You are familiar with his history. On exam, the corneal foreign body was noted. This was approximately one-third into the cornea. This was removed with a modest amount of difficulty. We have patched his eye and ask that he check in with you over the next twenty-four to forty-eight hours. We will start him on some Garamycin for seven days, four times a day, following discontinuing of the patching. Thank you for allowing us the opportunity to assist Mr. Renken. Please let us know if we can be of further assistance. Sincerely, Larry Womack, M.D.

Defendant charges that this letter was inadmissible hearsay and the admission of the letter over defendant's objection was prejudicial. The trial court's ruling on admissibility of the evidence was based upon the exception to the hearsay rule, Iowa Rule of Evidence 803(1). Defendant's assignment of error is that rule 803(6) does not provide an exception when one health practitioner's testimony

is used as a foundation to admit the medical records of another health practitioner's testimony. Defendant's reliance on Madison v. Colby, 348 N.W.2d 202, 204 (Iowa 1984), is misplaced since in Madison the foundational requisites were not established. In this case there was testimony, albeit brief, that Dr. Keltz relied on these types of reports in the normal course of her profession. Furthermore, the health practitioner in Madison whose out-of-court statement was contested, was reporting statements made by the patient. In the present case, the letter from Dr. Womack only reports the doctor's own procedures. In re Estate of Poulos, 229 N.W.2d 721 (Iowa 1975), is also inapposite since, again, the out-of-court statement included recitals of statements of others, including the patient. In re Estate of Poulos, 229 N.W.2d at 727. In addition, we agree with plaintiff that Iowa Rule of Evidence 703 also provides a basis for permitting the letter to be admitted into evidence. In State v. Henze, 356 N.W.2d 538 (Iowa 1984), the Supreme Court of Iowa held that rule 703 will permit a health practitioner to give opinion testimony based on records prepared by other doctors if the records are facts or data of a type reasonably relied upon in forming medical opinions. State v. Henze, 356 N.W.2d at 539-40. Furthermore, even if the letter was inadmissible hearsay, we believe that substantially the same evidence is in the record elsewhere, specifically through the testimony of Dr. Keltz. The letter could have been at worst, cumulative evidence. See State v. Gilmore, 259 N.W.2d 846, 858 (Iowa 1977); State v. Nims, 357 N.W.2d 608, 609 (Iowa 1984). We find that the trial court committed no error by admitting the letter from Dr. Womack into evidence.

IV.

The defendant's next assignment of error is that the trial court erred in refusing to submit an instruction to the jury that any award for future pecun-

iary loss must be reduced to its present cash value. Proposed instruction No. 3 read, in part:

> Any award of damages for future pecuniary loss must be reduced to its present cash value.
>
> Present cash value is the present sum of money which, together with the interest earned thereon when invested so as to yield the highest interest rate of return of a good, sound investment, consistent with reasonable security, will pay the equivalent of future damages at the times, in the amounts, and for the period that you find such future damages will be incurred with reasonable certainty.

The trial court should submit to the jury all pleaded issues supported by substantial evidence and it constitutes error to instruct on an issue having no substantial evidentiary support. Hoekstra v. Farm Bureau Mutual Insurance Co., 382 N.W.2d 100, 107 (Iowa 1986). Claims for pain, loss of earnings, and future loss of income are separate and distinct elements of recovery and should be submitted as such to the jury. Franken v. City of Sioux Center, 272 N.W.2d 422, 428 (Iowa 1978). Where plaintiff is not requesting a claim for pecuniary loss it would have been error to instruct the jury on such an issue. The record does not show that plaintiff asked for pecuniary loss as a part of his damages. Under Iowa law, damages for injuries to the person, pain and suffering, are incapable of pecuniary measurement and must be left to the sound judgment of the fact finder. Schnebly v. Baker, 217 N.W.2d 708, 726 (Iowa 1974). On the other hand, pecuniary loss such as loss of future earnings can be measured. Id. at 725.

The trial court, instead of defendant's proposed instruction No. 3, gave instruction no. 25:

> If after a careful and impartial consideration of all the evidence in the case, you find Plaintiff [sic] to recover damages, it will then be your duty to determine the amount of the damages, if any, sustained by him as a result of injury to his property or to his person. . . .

> The measure of damages for injuries to the person, for pain and suffering, if any you find, will be such amount as will fairly and reasonably compensate therefor. If you find that injuries will cause the Plaintiff pain and suffering in the future, you should determine and allow such further sum as paid now in advance will fairly and reasonably compensate for such pain and suffering as the evidence shows, with reasonable certainty, will result in the future from such injuries.
>
> The damages, if any you find, for injuries to the person, for pain and suffering cannot be measured by any exact or mathematical standard, but the amount must rest in the sole discretion of the jury. Such discretion must not be exercised arbitrarily or out of passion, sympathy or prejudice for or against any party, but must be based upon a fair, intelligent, dispassionate, and impartial consideration of the evidence.

We believe that this instruction did adequately present the law on present cash value as requested by the defendant and embodied in Iowa Uniform Jury Instruction 3.9. See Tucker v. Tolerton & Warfield Co., 249 Iowa 405, 412, 86 N.W.2d 822, 827 (1957). The trial court is free to draft jury instructions in its own language as long as the instructions fairly cover the issues. Hoekstra v. Farm Bureau Mutual Insurance Co., 382 N.W.2d 100, 108 (Iowa 1986). The trial court committed no error in rejecting defendant's proposed instruction No. 3 and in giving instruction 25.

V.

Finally, defendant claims that the verdict was excessive, influenced by passion and prejudice. An allowance for damages is primarily an issue for the jury and we will not intervene unless it appears that the verdict is not within the evidence. Haumersen v. Ford Motor Co., 257 N.W.2d 7, 16 (Iowa 1977). we will only invade the provence of the jury if the damage amount is flagrantly excessive or inadequate, shocks the conscience or the sense of justice, raises a presumption of passion or prejudice on part of the fact finder, or is lacking in evidential support. Carter v. Wiese Corp., 360 N.W.2d 122, 133 (Iowa App.

1984). A new trial may be awarded if a jury award is excessive or unsupported by sufficient evidence. Iowa R. Civ. P. 244(d)-(l). Given the expert testimony and the rest of the evidence presented, we are convinced that the dollar figure arrived at was well within the evidence contained in the record. Injuries to the eye such as described in plaintiff's evidence are very serious and the pain and inconvenience suffered therefrom have not here been compensated for in an excessive or unreasonable amount. See Vohs v. Shorthill, 130 Iowa 538, 107 N.W. 417 (1906). The verdict is upheld on appeal.

For all of the above reasons we would affirm the judgment of the trial court.

AFFIRMED.