

IN THE COURT OF APPEALS OF IOWA

No. 8-270 / 97-0587

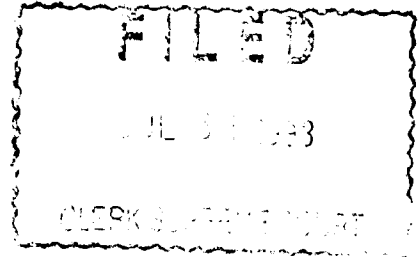
GERALD D. AUTEN and RUTH E. AUTEN,

Plaintiffs-Appellants,

vs.

DEPOSITORS INSURANCE COMPANY,

Defendant-Appellee.



Appeal from the Iowa District Court for Webster County, William C. Ostlund,
Judge.

Plaintiffs appeal the district court's denial of their motion for new trial in their
action against insurer for recovery of underinsured motorist benefits. **AFFIRMED.**

Jerry L. Schnurr III, Fort Dodge, for appellants.

Mark S. Brownlee of Kersten Brownlee Hendricks, L.L.P., Fort Dodge, for
appellee.

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

MAHAN, J.

Gerald and Ruth Auten appeal the trial court's denial of their motion for a new trial. They contend the trial court erred because the verdict is contrary to the weight of the evidence and does not effectuate justice. We affirm.

In October 1993, Gerald stopped at a stop light at an intersection in Fort Dodge. When the light changed, he proceeded into the intersection and was broadsided by Sharon Akker. Gerald told the people at the accident scene he was fine and went home. According to Gerald, later that night his neck started throbbing and he had a terrible headache with pain down his shoulder and into his arm. Gerald's daughter took him to the emergency room where a doctor determined Gerald had full range of motion with muscle tenderness. The emergency room doctor gave Gerald a soft collar and prescribed heat to the neck, increasing activity as could be tolerated, and two Advil every four hours as needed. Gerald testified the pain in his neck and arm continued to get worse. He also testified he experienced numbness, tingling, and weakness in his arm.

Gerald visited Dr. Jugal Raval, a neurologist, who found the median nerve was not functioning properly. An MRI was performed and showed degenerative disk changes and arthritic changes. The MRI showed some spontaneous fusion in the cervical spine. By June 1994, the muscles in Gerald's left arm were beginning to atrophy.

The injuries allegedly suffered in the accident were not the first back and neck problems Gerald has suffered. In 1975, Dr. Hayne performed surgery on Gerald's lower back made necessary due to pinched nerves and bone growth around a disk. Gerald contends the surgery was successful and he did not suffer any problems with his lower back after the surgery. In 1979, Gerald experienced neck and back problems. Dr. Hayne recommended Gerald get rid of his small rough-riding pickup. Gerald claims when he did get rid of the pickup, his neck and back improved. In 1981, an X-ray during a physical showed degenerative changes in Gerald's neck. No treatment was recommended. In 1985, Gerald pulled a muscle in his left arm, shoulder, and neck. Gerald contends the problem resolved itself and he experienced no problems with his neck between then and the time of the accident.

Dr. Patrick Hitchon testified a person with Auten's degenerative changes is more likely to develop symptoms as a result of an accident or severe trauma to the neck than is a person who has not suffered the degenerative changes. Hitchon indicated the condition of Auten was progressive and potentially pain-producing. Hitchon testified that with or without the occurrence of the accident he would "have expected Mr. Auten's cervical disk degeneration to worsen and produce symptoms of pain and stiffness (in the neck, arms, and shoulders) with physical activity." He further indicated it was "difficult to confirm" whether or not the motor vehicle accident on October 17, 1993, contributed to Auten's current condition. He concluded in defendant's exhibit P that the "operative treatment described in my

communication is one for the narrowing of the spine secondary to degenerative process of the cervical spine and not one related to injury."

At the close of the evidence, the trial court instructed the jury:

If you find Gerald Auten had a degenerative cervical disc disease making him more susceptible to injury than a person in normal health, then Gerald Auten is entitled to recover for all injuries and damages which are experienced by Gerald Auten proximately caused by the motor vehicle accident of October 17, 1993, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.

The jury found the accident was not a proximate cause of plaintiffs' injuries.

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.* We will not find an abuse of discretion unless such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Selestian*, 515 N.W.2d 356, 358 (Iowa App. 1994).

Plaintiffs challenge the jury's determination that the accident was not a proximate cause of their damages. They are not challenging the inadequacy of an award of damages.

The eggshell plaintiff rule is a rule of damages, but it is equally a rule of proximate cause. *Benn v. Thomas*, 512 N.W.2d 537, 539 (Iowa 1994).

A tortfeasor whose act, superimposed upon a prior latent condition, results in an injury may be liable in damages for the full disability. This rule deems the injury, and not the dormant condition, the proximate cause of the plaintiff's harm.

Id. The eggshell plaintiff rule rejects the limit of foreseeability that courts ordinarily require in the determination of proximate cause. *Id.* Once the plaintiff establishes the defendant caused some injury to the plaintiff, the rule imposes liability for the full extent of those injuries, not merely those that were foreseeable to the defendant. *Id.* at 539-40.

We find it is not uncommon for a person involved in an accident to fail to realize he or she is injured until hours after the accident occurred. In this instance, Auten indicated he was fine at the scene of the accident and contends he did not realize he was injured until a couple of hours after the accident when his wife, a nurse, suggested he go to the hospital. We find it troublesome the jury did not award Auten damages for the initial medical expenses incurred at the hospital. However, we also recognize the jury has the right to choose not to believe the plaintiff's testimony. The jury could have found Auten was not a credible witness. The jury could also have believed Auten decided to go to the hospital after talking with his wife because he realized he had a potential tort claim.

While the eggshell plaintiff rule would allow Auten to collect for any injury caused by the accident, even if he was in a "weakened" condition caused by the degeneration, we find the jury could have rationally decided his post-accident

situation was the result of his severe pre-existing condition, that he did not suffer any further injury as a result of the accident, and no damages were warranted.

For these reasons, we find the trial court did not abuse its discretion when it denied Auten's motion for a new trial.

AFFIRMED.