IN THE COURT OF APPEALS OF IOWA

No. 6-125 / 94-1955

LOREN GARR, and TERESA GARR, Each, Individually and as Parents and Next Friends of **WALTER GARR, a Minor Child,**

Plaintiffs-Appellants,

vs.

JOE SIMMONS and TONDA SIMMONS,

Defendants-Appellees.

FILED
AUG 30 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Jasper County, Peter A. Keller, Judge.

The plaintiffs challenge the decision of the district court which failed to award damages for scar excision surgery for their minor child who was bitten by a dog. **AFFIRMED.**

James W. Cleverley Jr. of Johnson and Cleverley, Newton, for appellants.

B.C. Clayton and Michael K. Jacobsen of Diehl & Clayton, Newton, for appellees.

Considered by Sackett, C.J., Habhab, and Huitink, JJ.

PER CURIAM

This is an appeal by plaintiffs claiming the amount of damages awarded by the district court in this dog bite case were inadequate, because the court did not include damages for scar excision surgery. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On July 14, 1992, Walter Garr, who was then six years old, was bitten on the arm and torso by an akita hound, Bear, which was owned by Joe and Tonda Simmons. Walter's parents, Loren and Teresa Garr, brought suit on behalf of the minor child for damages caused by the dog bites. The case was tried to the court. The district court awarded Walter $26,500 and awarded his parents $9,025 for loss of consortium. Plaintiffs have appealed the award of damages.

Plaintiffs believe the district court should have included an amount for scar excision surgery in the award of damages. During the trial, Dr. Eugene Cherny, a plastic surgeon, stated that if Walter decided to improve his appearance, then scar revision treatment would be appropriate. Dr. Cherny testified some of Walter's scars could be treated with dermabrasion, and this treatment would cost about $4,000. He stated that if Walter requested further treatment, then scar excision surgery could be performed. Dr. Cherny estimated the cost of this surgery would be about $20,000. Dr. Cherny did not recommend any scar revision treatment before Walter was twelve years old.

The district court included an award of $4,000 for dermabrasion. The court found, however, that the evidence of Walter's future medical treatment for scar excision surgery was too speculative to award damages for this expense. The court concluded plaintiffs failed to show the surgery was medically necessary or probable to occur.

This case was tried at law, and our review is for correction of errors at law. Iowa R. App. P. 4. Under this limited extent of review, the findings of fact by the trial court have the effect of a special verdict and are equivalent to a jury verdict. *Tewes v. Pine Lane Farms, Inc.*, 522 N.W.2d 801, 804 (Iowa 1994). An award of damages must be supported by substantial evidence. *Matthess v. State Farm Mut. Auto. Ins. Co.*, 521 N.W.2d 699, 703 (Iowa 1994).

Where it is speculative or uncertain whether damages have been sustained, or will be sustained, recovery is denied. *O'Tool v. Hathaway*, 461 N.W.2d 161, 165 (Iowa 1990). Plaintiffs are required to show a reasonable basis from which damages may be inferred or approximated. *Ballard v. Amana Society, Inc.*, 526 N.W.2d 558, 561 (Iowa 1995).

In the present case, it was uncertain whether Walter would undergo scar excision surgery. Dr. Cherny admitted any scar revision treatment was not medically necessary, and would only be performed if Walter decided to reduce the appearance of the scars on his arm and torso. The court did award damages for dermabrasion, which was the less intrusive and less expensive treatment. We affirm the district

court's conclusion there was insufficient evidence in the record to show Walter would ever have scar excision surgery.

We affirm the decision of the district court. Costs of this appeal are assessed to plaintiffs.

AFFIRMED.