IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

THOMAS F. McMANUS,

Plaintiff-Appellee,

vs.

KERRY RAY CARMAN and PAUL WAYNE CARMAN,

Defendants-Appellants.

Filed November 20, 1984

151

4-371
84-47

Appeal from the Iowa District Court for Polk County - George W. Bergeson, Judge.

Defendants appeal from an order setting aside a jury verdict in their favor and granting plaintiff a new trial in a negligence action. AFFIRMED.

Thomas J. Logan of Hopkins & Huebner, Des Moines, Iowa, for defendants-appellants.

Bruce E. Bergman of Davis, Baker & Bergman, Des Moines, Iowa, for plaintiff-appellee.

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

HAYDEN, J.

Defendants appeal from an order setting aside a jury verdict in their favor and granting plaintiff a new trial in a negligence action.

On February 14, 1980, plaintiff, Thomas McManus, driving a car owned by his father, stopped to make a left turn and was struck from the rear by a vehicle driven by defendant, Kerry Carman, and owned by his father, defendant Paul Carman. Plaintiff had been injured in a similar collision on December 13, 1979. After a jury trial the jury returned special verdicts finding that the second accident resulted entirely from the negligence of defendant Kerry Carman, but that his negligence was not a proximate cause of plaintiff's injuries. The trial court sustained plaintiff's motion for a new trial on the grounds that the evidence was insufficient to support the jury's verdict and that the verdict failed to effectuate substantial justice between the parties.

Our review of this action at law is on assigned error. Iowa R. App. P. 4. The trial court has considerable discretion in ruling on motions for new trials and we will only interfere when there has been a clear abuse of that discretion. Houvenagle v. Wright, 340 N.W.2d 783, 785 (Iowa Ct. App. 1983). We are slower to interfere with a trial court's grant of a new trial than with its denial of one. Lappe v. Blocker, 220 N.W.2d 570, 572 (Iowa 1974). Under Iowa Rule of Civil Procedure 244(f) a new trial may be warranted if the verdict is "not sustained by sufficient evidence, or is contrary to law." A trial court may also grant a new trial when the verdict does not effectuate substantial justice between the parties. Thompson v. Rozeboom, 272 N.W.2d 444, 446 (Iowa 1978). Even "where the evidence is conflicting the order of a trial court granting a new trial on the ground that the verdict is contrary to the evidence will not be reversed unless it clearly appears there has been an abuse of the discretion lodged in the trial court." Brunssen v. Parker, 227 Iowa 1364, 1365, 291 N.W. 535 (1940). However, where the verdict is supported by sufficient evidence a trial court abuses its discretion by

granting a new trial simply because it would have reached a different result. Lappe v. Blocker, 220 N.W.2d at 570.

In the present case we find that there was no abuse of discretion. Plaintiff testified that the injuries from the first accident were considerably lower in his back than were the injuries from the second accident. Dr. Hach, a general practitioner, examined plaintiff on several occasions and testified as to his injuries. At the time he was treating plaintiff Dr. Hach was unaware that there had been two separate accidents. However, Dr. Hach concluded:

> Since he didn't get better, I still think there is a relationship that the second accident aggravated the complaints of the first one, or let's say maybe it didn't aggravate it, but at least he didn't get better after the accident, because he had actually pretty much during the whole time the same complaints.

Dr. Bakody, a neurosurgeon, also treated plaintiff. He stated that plaintiff had different complaints resulting from the two accidents and more severe pain following the second accident. Dr. Bakody opined that plaintiff had suffered spinal sprain as a result of the two accidents.

The weight of the evidence indicates that plaintiff was injured to some extent by the second accident. It is for the jury to decide the degree of injury proximately caused by defendants' negligence. However, in view of the evidence presented in this case, we hold that the trial court did not abuse its discretion in granting plaintiff a new trial where the jury verdict indicates that none of plaintiff's injuries were caused by the second accident.

AFFIRMED.