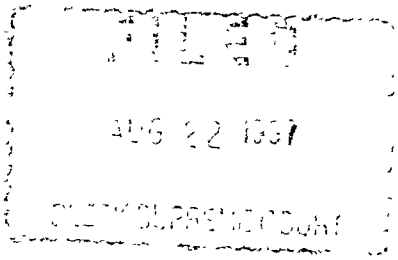
IN THE COURT OF APPEALS OF IOWA

No. 7-270 / 96-0574

000295



CONNIE L. TOILLION, Individually
and as Mother and Next Friend of
AMY R. TOILLION,
Plaintiffs-Appellants,

vs.

EMCASCO INSURANCE COMPANY,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

Amy Toillion appeals from an adverse judgment in her suit against EMCASCO Insurance Company for underinsured motorist benefits. **AFFIRMED.**

Michael J. Galligan and Richard H. Doyle of Michael J. Galligan Law Firm, P.C., Des Moines, for appellants.

Kenneth R. Munro and Elizabeth A. Nigut of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee.

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

HUITINK, J.

Plaintiff Amy R. Toillion appeals from an adverse judgment in an action for underinsured motor vehicle benefits against the defendant EMCASCO Insurance Company. We affirm.

I. Background Facts and Proceedings.

These proceedings stem from an automobile accident occurring in Des Moines on October 27, 1992, in which Toillion was seriously injured. The record indicates she was a passenger in a vehicle driven by her friend Jane O'Neal that collided with a vehicle driven by Darryl Blythe. Both drivers were at fault.

Toillion was taken to Mercy Hospital where she was diagnosed with nasal and dental injuries. Toillion's medical care included extensive reconstructive dental surgeries and she will require continued medical treatment for the rest of her life. Toillion is unable to eat solid foods and has experienced weight loss. She has also suffered cosmetic and organic disfigurement as a result of her injuries. Her medical expenses as of the date of trial were $21,174.03. Her future expenses are estimated to exceed $10,000. Toillion settled with the two drivers' insurers for the limits of each driver's liability coverage for a combined coverage of $150,000.

EMCASCO provided underinsured motorist coverage for Toillion with a limit of $300,000. This action was initiated on Toillion's behalf in October 1994 against

EMCASCO for damages up to the limits of her underinsured coverage.[1] Following a trial in March 1996, the jury returned a $149,174.03 verdict. Since the verdict was less than the $150,000 already paid to Toillion by the two drivers, judgment was entered in favor of EMCASCO.

Toillion appeals challenging the trial court's refusal to submit her proposed jury instruction defining physical and mental pain and suffering. She argues the instruction submitted deprived the jury of any real opportunity to fully assess her damages and, accordingly, denied her a fair trial.

II. Standard of Review.

When the question is whether the trial court erred in refusing to give a requested instruction, our review is limited to the correction of legal errors. Iowa R. App. P. 4; *see Sanders v. Ghrist,* 421 N.W.2d 520, 521 (Iowa 1988).

III. Pain and Suffering Instruction.

Toillion requested the following jury instruction defining physical and mental pain and suffering:

> Physical pain and suffering may include, but is not limited to, unpleasant feelings, bodily distress or unease, bodily suffering, sensations or discomfort.

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[1] At the time of trial, Amy was an adult but apparently the caption was not amended to reflect her status as an individual plaintiff. She indicates in her brief that only her individual claims were submitted to the jury and no claims were submitted on behalf of her mother Connie Toillion.

> Mental pain and suffering may include, but is not limited to mental anguish, nervousness, worry, anxiety, irritability, disappointment, depression, apprehension, embarrassment, loss of enjoyment of life, a feeling of emotional distress.

Toillion adopted these definitions from the former Iowa Uniform Civil Jury Instruction No. 200.12 which was in effect from 1986 until 1991.

The trial court declined to submit Toillion's proposed instruction and instead submitted revised Iowa Uniform Civil Jury Instruction No. 200.12. The revised instruction provides:

> Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort.
>
> Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

Iowa Uniform Jury Instr. No. 200.12. Toillion objected urging that mental pain and suffering, as it applied to her case, included the additional descriptions reflected in her proposed instruction. The trial court overruled her objections and submitted the revised Instruction No. 200.12.

Toillion argues the court erred in submitting the revised uniform instruction which she claims did not meet the "precise demands of the case." In support of her proposed instruction, she cites evidence in the record describing the discomfort, ridicule, poor self-esteem, and diminished enjoyment of her high school years she endured as a result of her injuries. Toillion contends the jury could not properly

evaluate these damages with the "virtually meaningless" pain and suffering definition used by the trial court.

Toillion also argues there has been no change in the law prompting the re-draft of the uniform instruction and thus her requested instruction correctly states the law. *See Poyzzer v. McGraw,* 360 N.W.2d 748, 753 (Iowa 1985) (loss of enjoyment of life is a factor to be considered as part of future pain and suffering); *Holmquist v. Volkswagen of America, Inc.,* 261 N.W.2d 516, 526 (Iowa App. 1977) (pain and suffering included mental anguish, sense of loss, burden, inconvenience, and embarrassment which person who is materially crippled or disabled can never escape). She cites *Brant v. Bockholt,* 532 N.W.2d 801 (Iowa 1995), in which the court did not edit a pain and suffering instruction including "bodily suffering, sensation or discomfort, mental pain, including mental anguish, anxiety, embarrassment, loss of enjoyment of life, a feeling of uselessness, or other emotional distress." *Id.* at 804.

Jury instructions are designed to explain the applicable law to the jurors so the law may be applied to the facts proven at trial. *Mosell v. Estate of Marks,* 526 N.W.2d 179, 182 (Iowa App. 1994). The trial court must give requested jury instructions when they correctly state the law applicable to the facts of the case and the legal concept is not embodied in other instructions. *Olson v. Prosoco, Inc.,* 522 N.W.2d 284, 287 (Iowa 1994). The trial court is free to phrase jury instructions in its

own words so long as the instructions fully and fairly inform the jury of the issues and the applicable law. *Ort v. Klinger,* 496 N.W.2d 265, 268 (Iowa App. 1992).

The definition of physical and mental pain and suffering expressed by the court's instruction is a correct statement of Iowa law. The definition was taken verbatim from Iowa Uniform Civil Jury Instruction No. 200.12. We are reluctant to disapprove of the use of uniform jury instructions. *State v. Weaver,* 405 N.W.2d 852, 855(Iowa 1987); *Ness v. H.M. Iltis Lumber Co.,* 256 Iowa 588, 594, 128 N.W.2d 237, 240 (1964). The terms "bodily suffering or discomfort" and "mental anguish or loss of enjoyment of life" satisfactorily convey the meaning Toillion sought to impress upon the jury in considering the extent of her damages. Accordingly, we find no error in the court's refusal to submit Toillion's proposed instruction. The judgment of the district court is affirmed.

AFFIRMED.