IN THE COURT OF APPEALS OF IOWA

No. 1-439 / 00-1170
Filed August 29, 2001

FILED
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CLERK SUPREME COURT

MARK S. NEW and LISA A. NEW,
Plaintiffs-Appellees,

vs.

TITAN TIRE CORPORATION,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge.

Defendant corporation appeals from the district court's denial of its motion for judgment notwithstanding verdict and motion for new trial following an adverse jury verdict in the plaintiffs' personal injury case. **AFFIRMED.**

Gene R. La Suer and Diane M. Stahle of Davis, Brown, Koehn, Shors & Roberts, Des Moines, for appellant.

Erik A. Luthens of Luthens Law Offices, P.C., West Des Moines, for appellees.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

The defendant, Titan Tire Corporation, appeals from the district court's denial of its motion for judgment notwithstanding verdict and motion for new trial following an adverse jury verdict in the plaintiffs' personal injury case. Titan Tire contends the district court erred in admitting expert testimony on loss of future income damages where the expert relied upon data that allegedly had no basis in fact. We affirm.

Background Facts and Proceedings. Titan Tire owns and operates a tire manufacturing plant in Des Moines. Mark and Lisa New at all times relevant have been residents of El Dorado, Arkansas. In January 1999, Mark New was a self-employed truck driver. He owned his own truck and drove for a company based in Akron, Ohio.

On January 8, 1999, Mark sustained injuries when he fell into a service pit while delivering a load in Des Moines at a facility owned by Titan Tire. Mark and his wife, Lisa, filed suit against Titan Tire, seeking damages for Mark's personal injuries and lost income. Lisa sought damages for loss of consortium. The case proceeded to trial before a jury in May 2000.[1]

Prior to trial, the News identified Wayne Newkirk, Ph.D., an economist, as an expert who would testify concerning Mark's loss of income due to the incident at issue. The News served Titan Tire with a copy of Dr. Newkirk's detailed written report concerning Mark's past and future loss of income. Titan Tire

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[1] Titan Tire admitted fault at trial, thus leaving the degree of fault and amount of damages for the jury to determine.

conducted a discovery deposition of Dr. Newkirk. Titan Tire never designated any expert witness for trial.

After a two-day trial, the jury awarded damages to Mark in the amount of $293,071[2] and to Lisa in the amount of $35,000. Titan Tire filed post-trial motions seeking a judgment notwithstanding the verdict, or in the alternative, a new trial. The court denied the post-trial motions. Titan Tire appeals.

Expert Witness Testimony. The admissibility of expert opinion testimony is a matter committed to the sound discretion of the district court. *Kirk v. Union Pacific R.R.*, 514 N.W.2d 734, 738 (Iowa Ct. App. 1994). "We will not reverse the trial court's receipt [of expert opinion evidence] absent a manifest abuse of that discretion to the prejudice of the complaining party." *Leaf v. Goodyear Tire & Rubber Co.*, 590 N.W.2d 525, 531 (Iowa 1999) (quoting *Iowa-Illinois Gas & Elec. Co. v. Black & Veatch*, 497 N.W.2d 821, 827 (Iowa 1993)). "We are committed to a liberal rule on the admission of opinion testimony, and only in clear cases of abuse would the admission of such evidence be found to be prejudicial." *Id.* To show an abuse of discretion, one must show the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Kirk*, 514 N.W.2d at 738 (quoting *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976)). "As long as there is some support in the record for the trial court's action, we will not reverse." *Id.* (quoting *Hunter v. Board of Trustees*, 481 N.W.2d 510, 519 (Iowa 1992)).

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[2] The total included: past medical expenses, $27,000; past lost income, $16,071; future lost income, $100,000; past pain and suffering, $25,000; future pain and suffering, $50,000; past loss of function, $25,000; and future loss of function, $50,000.

Titan Tire argues the admission of Dr. Newkirk's future lost wages testimony prejudiced Titan Tire and amounted to the admission of testimony with no basis in fact. The News disagree, and add that Titan Tire failed to preserve error on the issue. We need not address the preservation of error issue, because we agree with the News on the merits.

Iowa Rule of Evidence 702 provides as follows:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

Iowa R. Evid. 702.

"[I]f an expert makes some flawed assumptions in testifying, that fact goes to the weight to be given the opinion, not to its admissibility." *Olson v. Nieman's, Ltd.*, 579 N.W.2d 299, 309 (Iowa 1998). The weight and credibility of testimony are matters for the jury. *Oak Leaf Country Club, Inc. v. Wilson*, 257 N.W.2d 739, 747 (Iowa 1977). The rule applies even though there are contradictions or inconsistencies in the testimony of a particular witness. *Id.*

Dr. Newkirk testified at trial concerning Mark's past and future loss of income.[3] In reaching his conclusions, he relied upon Mark's tax returns, his 1999 W-2, and information from Lisa regarding Mark's recent employment. He also relied upon economic data from Iowa and Arkansas. In his final written report, Dr. Newkirk estimated Mark's future loss of income at between $261,488 and

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[3] Dr. Newkirk, an expert in the field of economics, has testified in court on numerous occasions relative to loss of income issues. Titan Tire did not object to Dr. Newkirk's testimony on the basis of his qualification to testify as an expert.

$425,202.[4] During his testimony, Dr. Newkirk explained the figures in his written report were based on Iowa data. After the completion of his final report, he examined data for the State of Arkansas and determined tractor-trailer operators in Iowa make approximately two dollars an hour more than those in Arkansas. Therefore, Dr. Newkirk estimated his original projections of future loss of income, based on Iowa data, should be lowered to between $171,488 and $317,202 to reflect the Arkansas data. The jury awarded Mark $100,000 for future loss of income.

Titan Tire contends the court erred by allowing Dr. Newkirk to testify as to future loss of income based upon Iowa earnings data. It argues the testimony had no basis in fact because Mark New never resided in Iowa. Moreover, it claims Titan Tire was prejudiced because the jury heard and was allowed to consider a much higher damage figure with no factual basis. We disagree.

Dr. Newkirk clearly explained during his testimony the necessity of reducing the figures in his report to account for wage differences between tractor-trailer drivers in Iowa and Arkansas. He gave specific figures and provided those numbers to the jury. Dr. Newkirk's opinions were subject to cross-examination by Titan Tire. Titan Tire did not offer its own expert testimony. Titan Tire's objections at trial went to the weight of the evidence, not its admissibility.

Moreover, Titan Tire has failed to show prejudice by the admission of Dr. Newkirk's testimony. The jury awarded Mark $100,000 for future loss of income,

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[4] The values reflect the present value of future earnings, based on a forty- to fifty-hour workweek.

a figure substantially lower than all of Dr. Newkirk's projections. The district court did not err in admitting Dr. Newkirk's testimony.

AFFIRMED.