IN THE COURT OF APPEALS OF IOWA

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TERESA ROLLINS, A Minor, By **CHARLOTTE ROLLINS**, Her Mother and Next Friend, and **CHARLOTTE ROLLINS**, Individually,

Plaintiffs-Appellees,

vs.

SEARS, ROEBUCK AND CO., NORTHERN ELECTRIC, and **SUNBEAM CORPORATION**,

Defendants-Appellants.

Filed August 26, 1982

2-180
2-67248

Appeal from Pottawattamie District Court - J. C. Irvin, Judge.

Defendants appeal from the judgment entered on plaintiffs' jury verdict in this personal injury action arising out of an electric mattress pad fire. On appeal, defendants assert that: (1) the jury instruction concerning circumstantial evidence of a defect unduly emphasized plaintiffs' theory; (2) the trial court should have instructed the jury that "the manufacturer of a product is not a guarantor that no one will get hurt using the article"; (3) there was not sufficient evidence of future embarrassment and humiliation of plaintiff Teresa Rollins to submit that element of damages to the jury; (4) there was not sufficient evidence of any injury to plaintiff Charlotte Rollins to submit that element of damages to the jury; (5) there was not an adequate foundation for the opinion of plaintiffs' expert witness as to the cause of the fire; and (6) the trial court abused its discretion in overruling defendants' motion for new trial which was based on alleged jury misconduct in considering the establishment of a trust fund for plaintiff Teresa Rollins. AFFIRMED.

Philip Willson of Smith, Peterson, Beckman & Willson, Council Bluffs, for defendants-appellants.

F. J. Kraschel of Kraschel & Comes, Council Bluffs, for plaintiffs-appellees.

Heard en banc.

Defendants appeal from the judgment entered on plaintiffs' jury verdict in this personal injury action arising out of an electric mattress pad fire. On appeal, defendants assert that: (1) the jury instruction concerning circumstantial evidence of a defect unduly emphasized plaintiffs' theory; (2) the trial court should have instructed the jury that "the manufacturer of a product is not a guarantor that no one will get hurt using the article"; (3) there was not sufficient evidence of future embarrassment and humiliation of plaintiff Teresa Rollins to submit that element of damages to the jury; (4) there was not sufficient evidence of any injury to plaintiff Charlotte Rollins to submit that element of damages to the jury; (5) there was not an adequate foundation for the opinion of plaintiffs' expert witness as to the cause of the fire; and (6) the trial court abused its discretion in overruling defendants' motion for new trial which was based on alleged jury misconduct in considering the establishment of a trust fund for plaintiff Teresa Rollins. We affirm.

In this ordinary action at law, our review is on assigned errors. Iowa R. App. P. 4.

I.

In the second week of January 1977, plaintiff Charlotte Rollins received an electric mattress pad which she had ordered through the Sears, Roebuck and Co. catalog department. The pad was manufactured by Northern Electric, a subsidiary of Sunbeam Corporation and sold through Sears. The packaging contained a two-year warranty, but no washing instructions. Plaintiff followed the instructions set out in the catalog to wash the pad before its initial use. Plaintiff used it on her bed for three days and then stored it. On March 1, 1977, Charlotte removed the pad from storage, washed it once again, and placed it on the bed of her daughter, Teresa. Since the mattress pad was designed to fit a king-sized bed, it extended approximately four inches over the edge of all four sides of her double-sized bed.

Teresa went to bed the night of March 1st with the pad operating on the low setting. Charlotte was awakened around 3:00 A.M., March 2nd by an odor similar to that of burning plastic. She went to Teresa's room and found the lower half of Teresa's bed, including the blankets and pad, on fire. Charlotte removed the burning blankets and pad to the outside of the house and extinguished the flames, burning her hands in the process. Teresa followed her mother's instructions and administered cold water to her legs. Charlotte called a physician who instructed them further in how to treat Teresa's burns. Two days later, Teresa was taken to the hospital where she remained for sixteen days with first and second degree burns on her legs.

Charlotte brought suit individually and on behalf of her daughter, Teresa, seeking damages for injuries suffered as a result of the fire. The jury returned a verdict in the amount of $100,000 for the minor plaintiff, Teresa, and $10,000 for Charlotte. Teresa remitted $35,000 of her award. Thereafter, the court entered judgment for plaintiffs in the sum of $65,000 for Teresa and $10,000 for Charlotte. We affirm.

II.

Defendants' first contention is that the trial court erred by giving plaintiffs' instruction number 19 to the jury. Instruction 19 specifically states that plaintiffs were relying on circumstantial evidence to establish the defect in the product. Defendants objected to Instruction 19 as prejudicial because it specifically discussed plaintiffs' theory of circumstantial evidence as to defect without giving a balancing instruction telling the jury of defendants' theory of circumstantial evidence as to use in a manner that was not reasonably forseeable.

Jury instructions are to be read as a whole, each being construed in light of, and in harmony with the others. Hackman v. Beckwith, 245 Iowa 791, 799, 64

N.W.2d 275, 280 (1954). Nevertheless, if instructions read as a whole give undue emphasis to any phase of the case favorable to either side, it may constitute reversible error. Rosenau v. City of Estherville, 199 N.W.2d 125, 133 (Iowa 1972). Specific reference to certain evidence favorable to a party is also inappropriate. Mills County State Bank v. Fisher, 282 N.W.2d 712, 716 (Iowa 1979).

We believe that under these rules the court committed no error by giving instruction number 19. Defendants' contention that his theory wasn't presented is without merit. Instruction 19 itself said "evidence of proper use and maintenance by the plaintiffs . . . are proper circumstances for you to consider in determining whether or not there is a defect." Moreover, other instructions were given which sufficiently explain defendants' theory of improper use. Instruction number 3 recites that plaintiffs' manner of use must be reasonably foreseeable. Number 8 defines an unreasonably dangerous condition as existing only when the product is being used in a "normal and innocent" manner. Number 9 relieves the seller of liability if he "delivers the product in a safe condition and subsequent mishandling; alteration or other causes beyond his control and not reasonably foreseeable by him render the product defective."

Instruction number 19 contained no reference to any specific evidence presented by plaintiff. In light of this fact and the fact that defendants' theory was adequately explained, we conclude that the trial court did not err by overruling defendants' objection.

III.

The defendants also object to the trial court's refusal to give their requested jury instruction number 2:

> The manufacturer of a product is not a guarantor that no one will get hurt using the article. All that the manufacturer is required to do is to make a product which is free from defective and unreasonably dangerous conditions.

A trial court is not required to submit a requested instruction where it subject matter and legal principles have already been covered by other instructions. Miller v. International Harvester Company, 246 N.W.2d 298, 306 (Iowa 1976). We believe the spirit of requested instruction number 2 is contained in the other instructions given the jury. Instruction number 6 made clear that defendants would be liable "only for defective and dangerous conditions which were present at the time the product was sold . . . ." Instruction number 8 defines an unreasonably dangerous defect and states that plaintiff has the burden to establish such defective condition. Accordingly, the trial court committed no error by refusing to submit instruction number 2.

IV.

Defendants also contend that the court erred by submitting to the jury instruction number 14 allowing Teresa to recover for future embarrassment and humiliation, and number 14A allowing Charlotte to recover for pain and suffering. Defendant claims there was insufficient evidence in the record to support the submission of these elements of plaintiffs' damages.

To facilitate the principle that disputed questions of fact are for the jury, see Hackman, 245 Iowa at 795, 64 N.W.2d at 278, the trial court has a duty to submit all issues presented by the pleadings and supported by evidence in the record. Miller, 246 N.W.2d at 300. In determining whether there is sufficient evidence to warrant submission of the pleaded or properly litigated issues to the jury, we view the evidence in the light most favorable to the party urging submission. Gunnison v. Torney, 216 N.W.2d 361, 364 (Iowa 1974). There must be substantial support for it in the record, and a mere scintilla of evidence is not sufficient. Franken v. City of Sioux Center, 272 N.W.2d 422, 428 (Iowa 1978).

The record in the instant case contains evidence that Teresa refused to wear items of clothing which exposed her legs because she did not want others to see her burn scars. A treating physician testified that there was some scarring even though the burns had healed fairly well. A plastic surgeon reported that skin grafts and cosmetic repairs were not necessary and that the scars were barely discernible. Weighing this evidence in the light most favorable to Teresa, we find there is sufficient evidence of future embarrassment and humiliation to allow the jury to address this element of her damages.

Damages for pain and suffering are not confined to physical injuries, but include mental anguish, sense of loss, inconvenience, and embarrassment. Holmquist v. Volkswagen of America, Inc., 261 N.W.2d 516, 526 (Iowa 1977). In addition it must be remembered that where a tort-feasor's act is superimposed on a pre-existing, latent condition the tort-feasor is liable for the full extent of the damages to plaintiff resulting from its aggravation. Beck v. D & E Distributing Co., 247 N.W.2d 727, 731 (Iowa 1976). With these principles in mind, we find that there was sufficient evidence of Charlotte's pain and suffering to allow this element of her damages to be submitted to the jury. Charlotte had been a burn victim as a child which served to augment the mental anguish and distress suffered by her as a result of the mattress pad fire. She experienced nightmares and trouble sleeping in addition to the physical pain suffered when she burned her hands. Accordingly, the court committed no error by submitting this issue to the jury.

V.

Dr. Johnson, an electrical engineer, was called as plaintiffs' expert witness. While defendants do not challenge his qualifications in this capacity, they claim the hypothetical question failed to set forth the facts upon which his opinion was based. They contend the trial court erred by overruling their objection to the question.

Before an expert can express an opinion, the facts upon which the opinion is based must be stated by the expert or in the hypothetical question. Bernal v. Bernhardt, 180 N.W.2d 437, 441 (Iowa 1970). Our policy concerning the admissibility of opinion evidence is a liberal one; such evidence will be admitted when it will aid the jury and is based upon special training, expertise, or knowledge regarding the issue in controversy. State ex rel. Leas in Interest of O'Neil, 303 N.W.2d 414, 420 (Iowa 1981). There are no distinct rules with respect to its admissibility, rather "it rests with the sound discretion of the trial court, and the trial court's determination will not be disturbed on appeal unless manifest abuse of that discretion causing the prejudice to the complaining party is shown." Id.

In the instant case, Dr. Johnson testified that he examined a similar, sample pad and also the sheets, blankets, and the pad which caught fire on Teresa's bed. He also examined the wiring in the home and testified as to whether the wiring could have caused the pad to overheat. He testified as to the tests he conducted on the remains of the mattress pad and detailed his findings to the jury. The question then posed to Dr. Johnson called for his professional opinion as to the cause of the fire. The question was phrased and rephrased to meet defendants' sustained objections as to the foundation of the questions. After a brief discussion with the court, the question was asked again with specific reference to Dr. Johnson's examination and testing of the exhibits, of plaintiffs' home, and of his knowledge of the manner in which the pad was used, laundered, stored for two and a half months after its purchase, and placed on the bed underneath a thermal blanket. He was then asked to give his opinion as to the cause of the fire based on the above factors and on his training and experience in electrical engineering. After giving his opinion that the mattress pad caused the fire, Dr. Johnson was questioned more specifically as to the technical reasons why the pad caught fire.

Based on this examination of the record, we affirm the trial court's ruling that a proper foundation had been laid from which the jury could discern the facts upon which Dr. Johnson's opinion was based. There was no abuse of discretion in admitting this expert opinion testimony.

VI.

After deliberating for some time, the jury submitted four questions to the court. After the first three questions were submitted, the court referred the jury back to the instructions given. The fourth question asked whether the jury would be allowed to set up a trust fund for Teresa's award. The court conferred with the attorneys and then answered that question in the negative. Defendants claim that these questions show the jury was subjected to matters outside the scope of the evidence even though they were instructed to decide the case solely on the evidence presented and on the instructions given. The defendants moved for a new trial on the grounds that this constituted jury misconduct.

The trial court has wide discretion in reviewing a question of alleged jury misconduct and we give substantial weight to the decision. Turner v. Hansen, 247 Iowa 669, 674, 75 N.W. 341, 343 (1956). Jurors are afforded considerable latitude in their deliberations; the statements complained of must exceed all tolerable bounds of jury deliberation to constitute misconduct. Harris v. Deere & Company, 263 N.W.2d 727, 730 (Iowa 1978). In addition, if misconduct is demonstrated, it must appear "the misconduct was calculated to, and it is reasonably probable it did, influence the verdict" in order to justify a new trial. Id.

Applying these principles, we find no abuse of discretion in the trial court's refusal to grant a new trial. The parties agreed upon the "no" answer to be given to the jury's question about establishing a trust fund. As to the other questions, the jury was told to follow only the instructions given. We are not persuaded that posing these questions was so outside the permissible bounds of jury deliberations as to warrant a new trial. Accordingly, we affirm the trial court's refusal to do so.

AFFIRMED.