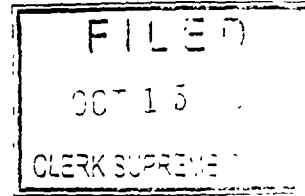


IN THE COURT OF APPEALS OF IOWA

No. 1999-186 (9-410) / 98-1457

Filed October 15, 1999



PERRY BONAR,
Plaintiff-Appellee,

vs.

**WILLIAM SIMPSON and LYNETTE SIMPSON d/b/a SIMPSON
INVESTIGATIONS & SECURITY SERVICES and MARLY INGLES,**
Defendants-Appellants,

and

LARKEN & ASSOCIATES d/b/a THE HOLIDAY INN HOTEL,
Defendant.

Appeal from the Iowa District Court for Johnson County, William R. Eads,
Judge.

Defendants William and Lynette Simpson and Marly Ingles appeal from the
district court's ruling sustaining plaintiff's motion for a new trial. They contend the
trial court abused its discretion in granting a new trial. **REVERSED AND
REMANDED.**

John T. Breitbach of Moyer & Bergman, P.L.C., Cedar Rapids, for appellants.

Dennis A. Bjorklund, Coralville, for appellee.

Thomas P. Pepper of Shuttleworth & Ingersoll, P.C., Cedar Rapids, for
defendant.

Considered by Huitink, P.J., and Mahan and Hecht, JJ.

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HECHT, J.

Defendants William and Lynette Simpson and Marly Ingles (collectively "defendants") appeal from the district court's ruling which granted plaintiff, Perry Bonar, a new trial. The jury found defendants negligent, but found their negligence was not a proximate cause of Bonar's injury and damage. We reverse and remand.

I. Factual Background and Proceedings. On New Year's Eve, 1994, Bonar drank six or seven scotch and water beverages, some beer, and champagne at the Fieldhouse bar in Iowa City. He admits, when he left the bar, he was not in a condition that made him a suitable driver. He then went to visit friends who were apparently staying at the Holiday Inn hotel. Bonar testified he entered the hotel and approached a security guard to inquire about the location of the house phone. He claims the security guard, defendant Ingles, became belligerent, used profanity, and violently pushed him to the floor. According to another witness, Bonar's body flew a distance of approximately five feet, landed on the floor, and slid against a desk.

Bonar claims he sustained an abrasion, several bruises, and a low back injury as a result of the incident. He was examined at an Iowa City hospital on January 2, 1995. The emergency room record documents an abrasion was seen in the lumbar area of his spine, and bruises were found on his buttocks. Bonar's chiropractor testified the black and blue marks memorialized by photographs in evidence were still evident on Bonar's body by January 12, 1995. There was medical evidence

supporting a finding Bonar sustained a significant physical injury as a result of the trauma.

During the jury trial, defendants presented evidence that Bonar had been in the Holiday Inn hotel on the evening of December 31, 1994, about three hours before the altercation. Ingles, the defendant security guard, testified she saw him there the first time around 11:00 p.m. She claimed Bonar appeared to be intoxicated, and she asked him to leave the hotel lobby. He did so. She later saw him down on one knee near a column on the concourse outside the hotel. On another occasion before the altercation, while positioned just inside the hotel lobby door, Ingles claims to have seen Bonar fall backwards onto the steps of Chauncey's, an establishment located near the Holiday Inn.

Defendants presented evidence that Bonar was intoxicated at the time of the altercation which is the subject of this case. Several witnesses testified Bonar was having difficulty walking and standing that evening at the hotel nearly three hours before the altercation. Defendants contended if plaintiff fell in the hotel, it was the result of inebriation rather than a battery by Ingles.

Bonar's clothing was the subject of significant interest during the trial. He testified he was wearing a shirt, khaki trousers, a sport coat, and a mid-calf length wool overcoat at the time of the incident. He claimed the overcoat was tied around his waist when Ingles pushed him to the floor. Bonar offered photographs of the shirt and trousers which he says he was wearing at the time of the fall. They bore dirt

stains which, he contends, were imprinted on the clothing when he slid across the floor after Ingles knocked him down. Defendants asserted, on the contrary, that the stains could not have resulted from the incident alleged in the petition because, according to Bonar's own testimony, the shirt and trousers were covered by a sport coat and long wool overcoat which was tied at the waist when Bonar fell. Moreover, defendants presented evidence from which the jury could have concluded the floor in the location where Bonar fell was not dirty at the time of the incident. Defendants argued, moreover, that the stains must have occurred during one or more of Bonar's other falls earlier in the evening.

The jury found Ingles negligent, but determined her negligence was not a proximate cause of any injury to Bonar. In its conclusions and ruling granting a new trial, the district court observed:

Under the facts and circumstances of this case, the jury's decision to find negligence that [sic] no proximate cause is not justifiable. Since the jury found Defendant Ingles negligent, while the jury was certainly free to disregard some of Mr. Bonar's claims for damages, it was not free to ignore all evidence of injury that the fall of January 1, 1995, produced [sic] injury. The fall might have aggravated a prior injury. The Plaintiff was entitled to a finding by a jury that the negligence of Marly Ingles produced at least some minor damage. Even a token monetary recovery might have upheld the verdict. . . . That the decision by the jury was inconsistent with at least some of the evidence and could reflect passion or prejudice against the Plaintiff.

Defendants contend the district court abused its discretion when it granted Bonar the new trial.

II. Standard of Review. Our review of a district court's action on a motion for new trial is for abuse of discretion. *Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 892 (Iowa 1996). In reviewing rulings upon motions for new trial, we give the district court broad but not unlimited discretion in determining whether the verdict effectuated substantial justice between the parties. See Iowa R. App. P. 14(f)(3). We will not find abuse of discretion unless it is shown that the trial court's discretion was exercised on grounds clearly untenable or to an extent clearly unreasonable. *Kiner v. Reliance Ins. Co.*, 453 N.W.2d 9, 13 (Iowa 1990); *Hagen v. DeNooy*, 563 N.W.2d 4, 7 (Iowa App. 1997).

III. Grant of New Trial. Under the Iowa Rules of Civil Procedure, a party may be granted a new trial where the jury awarded excessive or inadequate damages appearing to have been influenced by passion or prejudice, where the verdict is not sustained by sufficient evidence, or where the verdict is contrary to law. Iowa R. Civ. P. 244(d), (f). The trial court is not limited to the grounds for granting a new trial specified in Iowa Rule of Civil Procedure 244. *Coleman v. Brower Constr. Co.*, 254 Iowa 724, 730, 119 N.W.2d 256, 259 (1963). Nevertheless, there must be a reason apparent from the record to justify the court's exercise of its power. *Lappe v. Blocker*, 220 N.W.2d 570, 572 (Iowa 1974); *Lehigh Clay Prods. v. Iowa Dep't of Transp.*, 512 N.W.2d 541, 544 (Iowa 1994). We are slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 14(f)(4). However, when the evidence amply supports the verdict, a trial court abuses its discretion by granting a new trial

on the ground that it would have reached a different result. *Lappe*, 220 N.W.2d at 573; *Northrup v. Miles Homes, Inc.*, 204 N.W.2d 850, 861 (Iowa 1973).

A. *Prior falls*. There was substantial evidence in the record from which the jury could conclude the bruises and abrasion shown in the photographs, and the stains on the clothing, resulted from one or more falls which occurred on the evening in question before the altercation with Ingles. On the strength of this evidence alone, the jury's verdict on proximate cause should have been sustained.

B. *Bonar's intoxication*. There was a factual dispute with regard to the amount of force applied by Ingles to Bonar's body. Substantial evidence supported a finding Bonar fell not as a result of being pushed by Ingles, but because of unsteadiness on his feet associated with inebriation. In addition to his own testimony that he was not in a condition of sobriety suitable for driving, other witnesses testified Bonar was having great difficulty ambulating and standing just a short time before the incident which is the subject of this case. We believe this evidence, too, was sufficient to support the jury's finding on the issue of proximate cause.

C. *Abuse of Discretion*. Though we are mindful that, as an appellate court, we are less inclined to interfere with the granting of a new trial than with its denial, we find no reason apparent from the record to justify the district court's grant of a new trial. Though we certainly agree some of the evidence would support a finding Ingle's negligence was a proximate cause of some injury to Bonar, there is evidence from which a reasonable juror could conclude that any injury he suffered on the evening

in question was proximately caused by one or more falls which occurred earlier in the evening as a result of his intoxication. In substituting its judgment for that of the jury under the circumstances of this case, the district court's exercise of discretion was clearly unreasonable. The district court's ruling granting a new trial is reversed, and this case is remanded for entry of judgment consistent with the jury's verdict.

REVERSED AND REMANDED.