IN THE COURT OF APPEALS OF IOWA

No. 9-191 / 98-0990
Filed August 27, 1999

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AUG 2 [illegible]
CLERK SUPREME COURT

STEVEN KEOSOFF,

Appellant,

vs.

KATHRYN DICK and SANDSTONE MANAGEMENT, LTD.,

Appellees.

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

The plaintiff appeals the district court's order denying his motion for new trial following a jury verdict in the defendants' favor in plaintiff's action for damages for personal injuries sustained in an automobile accident. **AFFIRMED.**

Erik A. Luthens of Luthens Law Office, P.C., West Des Moines, for appellant.

James M. Ballard of Hansen, McClintock & Riley, Des Moines, for appellees.

Considered by Huitink, P.J., and Streit and Mahan, JJ. Vogel, J., takes no part.

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STREIT, J.

Steven Keosoff appeals from a jury verdict awarding no damages in his personal injury lawsuit brought against Kathryn Dick and Sandstone Management Ltd. for alleged personal injuries resulting from an automobile collision. Because we find the jury verdict supported by sufficient evidence in the record and the verdict achieves substantial justice among the parties, we affirm.

I. Background Proceedings & Facts.

This is a personal injury suit arising from an automobile collision which occurred during slippery conditions in the winter of 1997. Keosoff was traveling uphill and around a curve on a street located in a mobile home park in Des Moines. Dick's vehicle was proceeding down the hill, around the curve, and in the opposite direction. Dick's and Keosoff's vehicles collided when both were proceeding around the curve. Keosoff sustained personal injuries allegedly caused by the collision.

After a jury trial, the jury entered a verdict finding Dick was not at fault. The district court denied Keosoff's motion for new trial. Keosoff appeals.

II. The Merits.

Keosoff contends the trial court erred in refusing to grant a new trial arguing the jury's verdict is not supported by sufficient evidence in the record and the verdict does not achieve substantial justice between the parties. The crux of his argument is the jury erred in not assigning any fault to Dick in light of Dick's testimony and testimony of the investigating officer.

We review the granting or denial of a motion for new trial for abuse of discretion. *Lane v. College*, 581 N.W.2d 214 (Iowa App. 1998). If a jury verdict is not supported by sufficient evidence and the verdict fails to effectuate substantial justice, a new trial may be ordered. *Johnson v. Knoxville Community Sch. Dist.*, 570 N.W.2d 633, 641 (Iowa 1997); *Magnusson Agency v. Public Entity Nat'l Company-Midwest*, 560 N.W.2d 20, 30 (Iowa 1997).

At trial, Dick testified on cross-examination she told the investigating officer she was unable to stop her vehicle due to icy road conditions. Keosoff argues, in light of this testimony, the jury's finding Dick was not at fault is not supported by evidence in the record. Specifically, Keosoff argues Dick's testimony was an admission of negligence, and that under our supreme court's holding in *Johnson v. Knoxville Community Sch. Dist.*, a new trial should have been granted, 570 N.W.2d at 642 (holding the jury's failure to award any damages, in light of the defendant's stipulation of damages and the record as a whole, necessitated a new trial).

We do not find, when put in context of all the evidence on the record, Dick's testimony she could not stop because of icy road conditions an admission of negligence. Keosoff argues the statement admits a violation of the duty to have one's vehicle under control. Other evidence in the record indicates Dick had her vehicle under control. Dick testified she was driving cautiously down the hill and was aware of the icy road conditions and the sharp curve at the bottom of the hill. She testified she was driving five miles per hour and was in control of her vehicle. Dick testified

she remained in her lane of traffic and that Keosoff's vehicle entered her lane of traffic. After the vehicles struck, she continued to apply the brakes but was unable to stop and slid down the hill where her vehicle came to rest. A jury is allowed to settle disputed fact questions, and in this case, chose to accept Dick's version of the facts. *See Neumann v. Service Parts Headquaters*, 572 N.W.2d 175, 176 (Iowa App. 1997).

Keosoff argues the testimony of the investigating officer proves Dick was negligent. The officer testified one of the contributing factors in the accident was that Dick was traveling too fast for the conditions. He also testified skid marks indicated Dick's vehicle slid into the plaintiff's vehicle. The weight and credibility of this testimony was for the jury to decide. *State v. McPhillips*, 580 N.W.2d 748, 754 (Iowa 1998) A jury, as a trier of fact, can accept or reject all or part of the testimony of any witness. *Ward v. Loomis Bros., Inc.*, 532 N.W.2d 807, 812 (Iowa App. 1995). The jury here chose not to accept the officer's testimony which was contradicted by Dick's testimony. We will not disturb the jury's credibility finding.

Because the verdict is supported by sufficient evidence on the record and achieves substantial justice between the parties, we affirm the verdict and trial court's denial of Keosoff's motion for new trial.

AFFIRMED.