IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 9-563 / 89-653

JONATHAN L. BREWER,

Appellant,

vs.

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CAROL JEAN HAYES,

Appellee,

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Plaintiff appeals judgment in his favor, contending he is entitled to a new trial because the amount of damages was inadequate. **AFFIRMED.**

Oscar E. Jones, Des Moines, for appellant.

Valerie A. Fandel of Hopkins & Huebner, Des Moines, for appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

Plaintiff-appellant Jonathan L. Brewer appeals a $3,100.00 judgment in his favor against defendant-appellee Carol Jean Hayes. Brewer contends the amount of the jury verdict was inadequate. He also contends the award was influenced by passion or prejudice. Finally, he contends the jury verdict is inconsistent and contrary to law and the instructions given to the jury. Our review of this action is for errors at law. Iowa R. App. P. 4. We affirm.

On October 22, 1986, Jonathan Brewer was injured in a traffic accident with an automobile driven by Carol Jean Hayes. Brewer suffered injuries to his neck, lower back, left arm, thumb and has experienced recurring headaches.

Brewer filed this negligence action against Hayes. A jury determined that Hayes was entirely at fault and awarded Brewer damages of $3,100.00. The district court then denied Brewer's motion for new trial, which alleged inadequate damages. Brewer has appealed from the judgment.

I.

First, Brewer contends he was entitled to a new trial because the amount of the verdict was inadequate. He argues that the $3,100.00 award is less than his total expenses of $3,134.28. Brewer's total expenses include $2,842.28 for his accrued medical expenses, $110.00 for

Dr. Daniel Hannan's appearance at trial, $112.00 for Dr. Alfredo D. Socarras's deposition expenses and $70.00 for filing fees. He maintains the amount of damages awarded was unsupported by the evidence.

An inadequate damage award merits a new trial as does an excessive one. Witte v. Vogt, 443 N.W.2d 715, 716 (Iowa 1989). The trial court has considerable discretion in ruling on a motion for a new trial on the ground of the inadequacy of a verdict. Miller v. Eichorn, 426 N.W.2d 641, 643 (Iowa App. 1988). The question of whether damages in a particular case are inadequate turns on the particular facts of the case. Witte, 443 N.W.2d at 716.

As noted, Brewer's main contention is that the $3,100.00 judgment awarded by the jury for his physical and mental pain and suffering inadequately compensates him for his losses. Brewer first suggests that the inadequacy of the jury award is evidenced by an examination of the verdict form. Brewer argues that the handwritten numbers returned on the jury verdict form indicates he was awarded $2,500.00 for lost wages, and $600.00 for his physical and mental pain and suffering.

Hayes argues that the handwritten numbers on the jury verdict form may not be considered by this court on appeal. She maintains that these markings represent jury deliberations concerning the amount of damages awarded to

Brewer. Therefore, pursuant to Iowa Rule of Evidence 606(b) these handwritten numbers may not be considered in reviewing the jury's verdict. We agree.

Iowa Rule of Evidence 606(b) provides:

> Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

Iowa R. Evid. 606(b).

In Ryan v. Arneson, 422 N.W.2d 491 (Iowa 1988), the Iowa Supreme Court noted the similarity between the language of Iowa Rule 606(b) and Federal Rule of Evidence 606(b). The court stated:

> [W]e now adopt the federal rule which protects each of the components of deliberation including juror arguments, statements, discussions, mental and emotional reactions, votes, and any other feature of the process occurring in the jury room.

Id. at 495. The Ryan court held rule 606(b) required that a trial court disregard juror affidavits asserting that they had arrived at an illegal quotient verdict. Id.

In Prendergast v. Smith Laboratories, Inc., 440 N.W.2d 880, 884 (Iowa 1989), the Iowa Supreme Court noted that rule 606(b) renders juror testimony inadmissible in an action to overturn a jury verdict because it was induced by the jury's misunderstanding of the court's instruction. The court further explained the testimonial exclusion of rule 606(b) as follows:

> The situation to which that rule of testimonial exclusion applies, however, presupposes that the jury has in fact responded to the fact-finding process entrusted to it and returned a finding on the issue which was submitted. Once that finding has been solemnized in a formal verdict accepted by the court it may not be impeached on the ground that it was induced by juror misapprehension as to the controlling principles of law.

Id. at 884.

We hold that pursuant to the supreme court's rulings in Ryan and Prendergast Brewer may not impeach the jury verdict in this case by an examination of the handwritten markings made on the jury verdict form. Although we do not know which juror made the markings on the verdict form, we believe these markings are protected by rule 606(b) as components of jury deliberations and we will not consider them as we address the damage issue. The jury's verdict was formally accepted by the trial court and it may not be impeached on appeal in an effort to itemize the jury's damage award.

Brewer also supports his claim of inadequate damages by noting that the juror's verdict is far less than a $20,000.00 offer to confess judgment. Hayes asserts that the offer to confess judgment is not an indication of the value of this case or a proper measure to determine the adequacy of the jury's verdict. We agree.

Iowa Code chapter 677 contains the statutory provisions by which a defendant may offer to confess judgment. These statutory provisions are intended to encourage settlements and to reduce costs. Brockhouse v. State, 449 N.W.2d 380, 382 (Iowa 1989). Iowa Code section 677.9 provides:

> If the notice of acceptance is not given in the period limited, the offer shall be treated as withdrawn, and shall not be given in evidence or mentioned on the trial.

Brewer declined Hayes offer to confess judgment and elected to pursue a negligence action in the district court. Hayes's offer to confess judgment was not admissible as evidence at trial and will not be considered on appeal. We find Hayes's offer to confess judgment has no effect upon the amount of damages awarded to Brewer, and will not be considered in our examination of the damage issue in this case.

We now address the issue whether the damages awarded in this particular case are inadequate. As we outlined earlier, we review this question to correct an abuse of discretion. We further note that in jury trials, controverted fact issues are for the jury to decide.

Northrup v. Miles Homes Inc. of Iowa, 204 N.W.2d 850, 861 (Iowa 1973). Assessing damages is peculiarly a function of the jury, and a jury ordinarily should be allowed to settle fact disputes on damage issues. Collier v. General Ins. Corp., 431 N.W.2d 189, 191 (Iowa App. 1988). "If uncontroverted facts show that the amount of the verdict bears no reasonable relationship to the loss suffered, the verdict is inadequate." Witte, 443 N.W.2d at 716.

When we apply these principles to the facts of this case we find the trial court did not abuse its discretion in refusing to grant a new trial on the damage issue. The record in this case reveals that Brewer had numerous medical problems prior to and subsequent to the accident on October 22, 1986.

We find Brewer's medical history prior to the accident at issue to be relevant because he suffered injuries in those accidents similar to the injuries he claims occurred by virtue of his accident with Hayes. In June 1972, and in February and April, 1973, Brewer was hospitalized at the Veterans Hospital for headaches. In November 1972, he was in a car accident where he received injuries to his left shoulder. He was treated for back pain associated with kidney problems in 1978. In July and September 1982, Brewer was treated for neck pain at the Veteran's Hospital. In September 1984, he fell down some stairs and was treated at Broadlawns Hospital.

In May 1986, Brewer was injured while working at Firestone Tire and Rubber Company. He was injured while operating a forklift. Approximately three weeks after this accident, Brewer received medical treatment from Dr. Douglas Brenton. His complaints at that time consisted of pain in the left shoulder and neck as well as headaches. Thereafter, Dr. Brenton recommended Brewer receive physical therapy. At the time of the accident with Carol Hayes, Brewer was returning from physical therapy with Dr. Mark R. Wilson at Iowa Methodist Medical Center.

Subsequent to the October 22, 1986, accident, Brewer reinjured his neck while attempting to break up a fight in May 1988. In September 1988, he also received a concussion in a fall while climbing out of a bathtub.

At trial the jury heard the testimony of Dr. Daniel Hannan, a chiropractor, and received the deposition testimony of Dr. Alfredo D. Socarras, a neurologist. Dr. Hannan testified on direct examination that all of Brewer's injuries were not entirely caused by the car accident with Hayes. Dr. Hannan stated that he was aware of Brewer's medial history consisting of previous injuries to his neck and back. He further testified:

> Q. Which of his injuries, if any, in your opinion, was the sole result of the automobile accident?
> A. In my opinion the sole responsibility and, again, I think we are getting down to knit picking, but I think the low back injury was primarily a result of the automobile accident, but I also believe that the cervical injury was

made worse by the auto accident. So to divide up who did this or who did that was like dividing a glass of milk.
Q. I guess what I'm really saying is, was the injury to the neck originally caused by the accident or was it an aggravation to an injury he already had.
A. It was an aggravation. There is no question about that.

On February 6, 1989, Dr. Socarras examined Brewer after reviewing Brewer's previous medical records and x-rays. Dr. Socarras testified that he did not find any muscle spasm or limitation of range of motion in Brewer's back, neck or shoulders. Dr. Socarras further testified that he did note that Brewer's x-rays showed some spondylitic changes to the spine. He explained that these changes relate to the spine's degenerative change that occurs following an injury or with the aging process. Dr. Socarras stated that these changes were not a result of the automobile accident because such changes take several months and years to develop.

The jury weighed the reliability and credibility of all the witnesses including the testimony of Dr. Hannan and the deposition testimony of Dr. Socarras. The jury also weighed the evidence of Brewer's medical history. A jury is not bound to believe all evidence presented at trial. See Nadler v. City of Mason City, 387 N.W.2d 587, 591 (Iowa 1986). We agree with the trial court that the jury could have properly determined that the damages awarded were those solely the result of the automobile accident in the

instant case. When facts are susceptible to more than one inference or are such that reasonable minds may reach different conclusions therefrom, the question is one of fact which only the jury can decide. Otto v. Stork, 159 N.W.2d 528, 531 (Iowa 1968).

"Our task is to determine whether the trial court abused its discretion in not granting a new trial in light of the award made, not whether a higher verdict would have been justified." Young v. Gibson, 423 N.W.2d 208, 210 (Iowa App. 1988). We believe the amount of the verdict bears a reasonable relationship to the loss suffered in this case. See Witte, 443 N.W.2d at 716. We cannot find the trial court abused its discretion in denying Brewer's motion for a new trial.

II.

Brewer also argues the damage award was the result of passion and prejudice against himself on the part of the jury. He maintains that he is a victim of prejudice because he is an unemployed African-American with a history of alcohol problems, emotional problems, and employment problems.

Upon our review of the record, we find no evidence of passion or prejudice by the jury. There were few objections made during the trial. We find "[n]othing occurred which could ignite any passion or prejudice of the jury." Kaiser v. Stathas, 262 N.W.2d 522, 526 (Iowa

1978). The jury was properly instructed on the damage issue. We note that absence evidence to the contrary, a jury is presumed to have followed its instructions. Thacker v. Eldred, 388 N.W.2d 665, 673 (Iowa App. 1986). The verdict does not appear to have been influenced by passion or prejudice. Iowa R. Civ. P. 244(d). "The trial court has the opportunity to view the witnesses and observe the conduct of the parties. Its position enables it to evaluate the evidence firsthand." Young, 423 N.W.2d at 210. We find no evidence that the verdict is the result of passion, prejudice, or other ulterior motive. We agree with the trial court that Brewer has not shown that the verdict was a result of any jury misconduct.

III.

Finally, Brewer maintains the verdict is inconsistent and contrary to law and the instructions given to the jury.

The record reveals that the instructions submitted to the jury were proper. Brewer did not object to any of the instructions submitted to the jury. The jury was given an instruction to determine credibility of the witnesses. The jury was also given an instruction concerning the damage issue, an instruction regarding aggravation of preexisting conditions and an instruction regarding subsequent injury. "The jury is presumed to have followed its instructions absent evidence to the contrary." Thacker, 388 N.W.2d at 673. Based on the instructions given to the jury, we

believe the jury could properly have determined that Brewer's complaints and the damages claimed were not caused by Hayes's negligence. We believe the verdict is sustained by sufficient evidence and is consistent with the evidence presented at trial. Iowa R. Civ. P. 244(f). We find no abuse of discretion by the district court in denying Brewer's motion for new trial. The decision of the district court is affirmed in all respects.

AFFIRMED.