

IN THE COURT OF APPEALS OF IOWA

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No. 6-661 / 96-0340

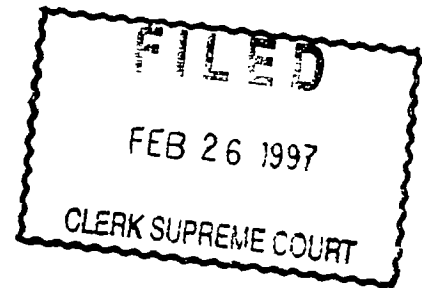
CHARLES JOHN SWANTON,

Plaintiff-Appellant/Cross-Appellee,

vs.

BRIAN P. CARROLL,

Defendant-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan,
Judge.

Plaintiff appeals from the denial of his motion for new trial in this personal
injury action. **AFFIRMED ON APPEAL; CROSS-APPEAL DISMISSED AS
MOOT.**

Les V. Reddick of Kane, Norby & Reddick, P.C., Dubuque, for appellant.

Douglas M. Henry of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C.,
Dubuque, for appellee.

Considered by Sackett, P.J., Cady and Streit, JJ.

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PER CURIAM

Charles Swanton appeals from the denial of his motion for new trial in this personal injury action. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9. Brian Carroll's cross-appeal is dismissed as moot.

Charles Swanton and Brian Carroll were involved in an automobile accident at about 3:00 a.m. on June 25, 1993. Swanton was a police officer on patrol at the time of the accident. Swanton did not immediately seek medical attention, but did submit an incident report with his employer noting that his right hand and wrist were injured in the accident. He continued to perform his regular duties as a police officer.

In September 1993 Swanton sought medical attention because he had recently been experiencing numbness and tingling in his right wrist. Swanton related to his doctors that his wrist injury was a result of an automobile accident in June 1993. Subsequent testing indicated that Swanton had a cartilage tear in his right wrist that would not heal itself. In October 1993 Swanton was placed on light duty. In May 1994 Swanton was separated from his employment after being found to be disabled by the Pension Board.

Swanton filed this personal injury action against Carroll. He presented expert testimony that his wrist injury was consistent with his given history of the automobile accident. The jury returned special verdicts finding that Carroll, although negligent, was not a proximate cause of Swanton's injuries and resulting damages. Swanton

moved for a new trial, contending there was not substantial evidence to support the jury's proximate cause finding.

The trial court denied the motion for new trial, noting that a substantial enough period of time passed between the time of the accident and Swanton seeking medical attention that the jury could have found he did not meet his burden of proof as to proximate cause. Swanton now appeals. He contends the trial court abused its discretion in denying his motion for new trial. He argues there is no evidence from which the jury could have reached its finding that Carroll was not a proximate cause of Swanton's injuries.

In ruling upon motions for new trial the trial court has broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties. Iowa R. App. P. 14(f)(3). Ordinarily the jury should be allowed to settle factual disputes and the verdict should not be set aside simply because the reviewing court would have reached a different conclusion. *Waddell v. Peet's Feeds, Inc.*, 266 N.W.2d 29, 32 (Iowa 1978). The fact finder is not obliged to accept expert testimony, even if uncontradicted. *Id.*

Here, we believe the jury reasonably could have determined Swanton failed to establish that his injuries were caused by the automobile accident with Carroll. Swanton did not seek medical assistance for several months following the accident. He was not placed on light duty until October 1993. The jury was not required to

accept the testimony of Swanton's physicians that the cartilage in Swanton's wrist was torn as a result of the accident. We conclude the trial court did not act on grounds or for reasons clearly untenable or to an extent clearly unreasonable. Finding no abuse of discretion, we affirm.

Carroll's cross-appeal concerns evidentiary matters relevant only if a new trial is ordered. The cross-appeal is dismissed as moot.

AFFIRMED ON APPEAL; CROSS-APPEAL DISMISSED AS MOOT.