FILED
MAR 30 1995
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-010 / 93-1734

JASON WILLEY and **LINNEA MARTIN,**

Appellants,

vs.

ROBERT CHAMBERS,

Appellee.

Appeal from the Iowa District Court for Scott County, James R. Havercamp, Judge.

Plaintiffs appeal trial court's: 1) refusal to instruct on future pain and suffering; 2) exclusion of statistical evidence of alcohol related accidents and injuries; and 3) admission of evidence of defendant's criminal sanctions. **AFFIRMED.**

William J. Bribriesco of William J. Bribriesco & Associates, Bettendorf, for appellants.

Eric M. Knoernschild of Hintermeister & Knoernschild, Muscatine, for appellee.

Heard by Donielson, C.J., and Hayden and Habhab, JJ.

DONIELSON, C.J.

The plaintiffs appeal from their personal injury action resulting from a car accident. They contend the trial court: 1) should have instructed the jury on damages for future pain and suffering; 2) should have admitted their statistical evidence of alcohol-related injuries; and 3) should not have allowed evidence of the defendant's criminal sanctions. We have reviewed the parties' arguments and the applicable law, and we affirm the trial court's rulings in their entirety.

I. FUTURE PAIN AND SUFFERING.

The plaintiffs requested the jury be instructed on damages for future pain and suffering. The trial court refused to do so. It concluded the medical testimony regarding the probability of future pain and suffering had not been based on evidence specific in the record to the plaintiffs. Instead, the trial court found the medical testimony was merely a general assertion of the probability that injuries of the kind sustained by the plaintiff could result in future pain and suffering.

The plaintiffs cite Carradus v.Lange, 203 N.W.2d 565 (Iowa 1973), and argue a plaintiff is entitled to an instruction on future pain and suffering if he or she simply introduces evidence that the plaintiff is experiencing pain at the time of trial. We do not find Carradus stands for that proposition.

In Carradus, an orthopedic specialist had testified as to the plaintiff's activity restricting pain and the reasonable medical certainty she would continue to have pain for a period of several months. Id. at 568. The plaintiff's testimony described the pain she had experienced prior to and at the time of trial, Id. at 567. Under those circumstances, a jury instruction as to future pain and suffering was appropriate. See id. at 569.

In this case neither plaintiff had a permanent injury. Both testified as to continuing problems with pain and/or stiffness, but their testimony was not conlcusive as to attributing these problems to injuries sustained in the accident.

The plaintiffs' treating chiropractor testified neither had a permanent impairment and he had discharged both from his care. He opined that "within a reasonable degree of chiropractic probability" he believed both would have pain in the future. As support for his opinion the chiropractor noted that "any time there is a trauma to the supportive ligaments and structure of the spine there is a probability in the future that the patient could incur additional pain and suffering." When asked on cross-examination if it was just as possible there would be no pain in the future, the chiropractor responded that was possible.

We agree with the trial court that the issue of future pain and suffering should not have been submitted to the

jury. The trial court denied the instruction because of the absence of evidence in the record specific to the plaintiffs to support a medical causal connection between the accident and any future pain and suffering. The plaintiffs bore the burden to establish the probability they would suffer future pain and suffering and that it would be caused by the injuries they sustained in the accident. There was no error in the trial court's refusal to instruct on this issue.

II. STATISTICAL EVIDENCE OF ALCOHOL-RELATED INJURIES.

Before plaintiffs rested they made an offer of proof attempting to introduce Iowa Department of Transportation traffic statistics. This offer of proof encompassed five-years of Iowa alcohol-related accident, injury and fatality statistics. Plaintiffs argued the statistics were "relevant to the issue of deterring others specifically with reference to the issue of punitive damages." The district court excluded the statistics as irrelevant.

The defendant had admitted liability for compensatory damages. He had also admitted his intoxication at the time of the collision and that he had left the scene of the accident. The only significant issue at trial was the defendant's liability for punitive damages. "Punitive damages exist to punish the particular defendant and to deter the offending party and like-minded individuals from committing similar acts." Nassen v. National States Ins.

Co., 494 N.W.2d 231, 238 (Iowa 1992), cert. denied, U.S. ___, 113 S. Ct. 1846 (1993).

A trial court has broad discretion with respect to evidentiary rulings, and we disturb rulings on such matters only upon a finding of abuse of discretion. Hutchison v. American Family Mut. Ins. Co., 514 N.W.2d 882, 889 (Iowa 1994). The plaintiffs argue the societal interest in deterring alcohol-related accidents warranted admission of the statistical evidence, and it was a clear abuse of discretion to exclude it. We cannot agree. While the evidence may have had some relevance as to the scope of our state's drunk-driving problem, it was not essential to enabling the jury to assess the severity of the defendant's conduct. In fact, the jury specifically found the defendant's conduct had constituted a willful and wanton disregard for the rights or safety of another even without the admission of that evidence. We find no abuse of discretion in excluding the statistical evidence.

III. EVIDENCE OF THE DEFENDANT'S CRIMINAL SANCTIONS.

The plaintiffs contend the trial court abused its discretion in allowing evidence of the various criminal sanctions the defendant incurred as a result of the accident. We find the plaintiffs have not preserved, and, in fact, waived error on this issue. The plaintiffs challenged the admissibility of this evidence by filing a motion in limine. The general rule is the granting or

rejecting of a motion in limine is not reversible error. Kalell v. Petersen, 498 N.W.2d 413, 415 (Iowa App. 1993). The error occurs, if at all, when the matter is presented at trial. Id. An objection should be made at trial in order to preserve error. Id.

The plaintiffs did not object at trial to the defendant's introduction of evidence regarding his criminal sanctions. In fact, plaintiff's counsel elicited this purportedly objectionable information from the defendant during his direct examination. Such conduct constitutes a waiver of the issue and we decline to address its merits.

AFFIRMED.