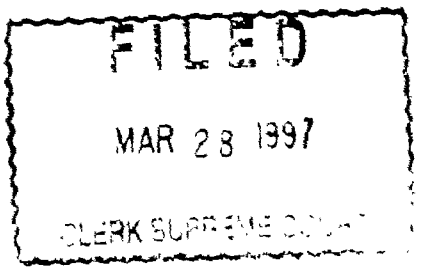
IN THE COURT OF APPEALS OF IOWA

No. 7-094 / 96-702



PAMELA THOMSEN,
Appellant,

vs.

RONALD HARTMAN,
Appellee.

Appeal from the Iowa District Court for Linn County, David M. Remley, Judge.

The plaintiff appeals a district court judgment, following a jury trial, dismissing her personal injury claim against the defendant for damages sustained in an automobile accident. **AFFIRMED.**

Robert F. Wilson of Wilson, Matias & Stitely, Cedar Rapids, for appellant.

Jeffrey M. Margolin and Hugh J. Cain of Hopkins & Huebner, P.C., Des Moines, for appellee.

Heard by Sackett, P.J., and Cady and Vogel, JJ.

VOGEL, J.

Background facts. Pamela Thomsen was stopped at a stop light, waiting for the light to change when she was struck from behind by a car driven by Ronald Hartman. She claimed her car jolted forward, causing her to suffer disabling injuries to her back. At trial, Thomsen sought to introduce testimony from her husband regarding the telescopic nature of the rear bumper to demonstrate there was an impact that produced Thomsen's injuries. The court limited Mr. Thomsen's testimony. The jury returned a verdict in favor of Hartman and the district court entered judgment dismissing Thomsen's action. Thomsen has appealed claiming the court should have allowed her husband's testimony as lay opinion testimony. She also appeals the jury's verdict as not supported by substantial evidence.

Scope of review. Actions tried at law are reviewed for errors at law. Iowa R. App. P. 4. We review the trial court's admission of evidence concerning lay opinion for an abuse of discretion. *Sonnek v. Warren*, 522 N.W.2d 45, 50 (Iowa 1994). To show an abuse of discretion, the plaintiff must show the trial court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Wheeler v. Dental East, P.C.*, 494 N.W.2d 248, 250 (Iowa App. 1992).

I. Admissibility of lay opinion. After the collision, Thomsen got out of her car to examine the rear bumper but saw no apparent damage. Later, Mr. Thomsen took the car to an estimator to inspect for any possible damage. The estimator pointed out to Mr. Thomsen the telescopic or hydraulically operated bumpers. Hartman

objected to any testimony from Mr. Thomsen regarding the type of or operation of the bumpers. Hartman claimed this was outside the realm of lay testimony and, as expert testimony, it was not disclosed during discovery. The court ruled that although Mr. Thomsen had some limited auto mechanic training, he could testify only to what he saw, but could not use the words "telescopic" and "hydraulic" or explain the operations of the bumper. Rule 701 of the Iowa Rules of Evidence concerning opinion testimony by lay witnesses provides:

> If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.

Id.; see also Sonnek, 522 N.W.2d at 50. Mr. Thomsen's testimony was based on the information he received from the estimator who told him of the nature and operations of the telescopic/hydraulic bumper. It was in large part hearsay testimony. Mr. Thomsen could have then misstated what the estimator had explained to him regarding the function and capacity of such bumpers in this type of collision. As a lay witness, his testimony was properly excluded by the trial court as it was not based on his own knowledge and personal perception. *See* Iowa R. Evid. 701.

The second requirement of Iowa Rule of Evidence 701 states that a lay person's testimony must be helpful or serve to clarify the determination of the fact in issue for a jury. Again, we review the exclusion of evidence based on Rule 403 for an abuse of discretion. *See Kelly v. Iowa State Educ. Ass'n*, 372 N.W.2d 288, 299

(Iowa App. 1985). We do not find the trial court abused its discretion on this issue. Mr. Thomsen's testimony would introduce confusion and prejudice as the jury would be left to speculate as to the speed or force necessary to activate the hydraulic bumper. That is, Mr. Thomsen did not have the expertise to provide the jury with a clear and helpful understanding of the nature of the bumper as required under Iowa Rule of Evidence 403. Contrary to Thomsen's assertion, the mechanical operations, force, speed, and impact on a "telescopic bumper" or "hydraulic bumper" is not information we can assume is within the jury's general knowledge.

As Mr. Thomsen's proposed testimony was based on hearsay and lacked expertise of bumper technology to be helpful to the jury, we affirm the trial court's exclusion of this testimony.

II. Jury verdict and substantial evidence. Thomsen further argues the jury verdict was not supported by substantial evidence. She maintains the nature of the accident clearly points to Hartman's negligence and she had medical evidence that supported her injuries. We will not overturn a jury's verdict based on findings of fact if it is supported by substantial evidence; evidence is substantial if reasonable minds would find it adequate to reach the same conclusion. *Shams v. Carney*, 518 N.W.2d 366, 368-69 (Iowa 1994).

Thomsen did not object to Jury Instruction No. 9 which provided: "The mere fact an accident occurred or a party was injured does not mean a party was negligent." Striking the rear of another's car is generally evidence of negligence. *Harris v.*

Clark, 251 Iowa 807, 103 N.W.2d 215, 217 (Iowa 1960). However, this does not preclude Hartman from presenting circumstances surrounding the accident as a defense. *Id.* at 217. There was testimony that the pavement was wet and the visibility was "cloudy." Thus, following the language of Jury Instruction No. 9, the jury could have found Thomsen was hit, not through the fault of Hartman, but due to the condition of the wet pavement or restricted visibility.

The same afternoon of the accident, Thomsen kept an appointment with her chiropractor for treatments to her back for unrelated injuries. Her chiropractor testified her injuries were likely sustained as a result of the accident and that her activities would be limited in the future.

The jury may also have concluded, as it did, the Thomsen did not suffer any injury or damages from the accident. Thomsen testified she was able to walk away from the accident unaided. At the time of the accident she was on her way to her chiropractor's office for "life long" care she has been receiving since 1990 from prior accidents. The chiropractor testified that as a result of Thomsen's prior accidents, he recommended she see him once or twice a week for life to check up on her condition and prevent further degenerative harm to her spine. We find the jury's verdict was supported by substantial evidence and affirm the trial court on this issue.

Having considered all the arguments on appeal, we affirm the decision of the trial court.

AFFIRMED.