

IN THE COURT OF APPEALS OF IOWA

No. 9-534 / 89-114

CAROL S. FREDENBURG and JOHN R. FREDENBURG,

Appellants,

vs.

MARCIA HOLLINGSWORTH and DENTISTS DENTAL SERVICES, INC.,

Appellees.

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

Appellants appeal a jury verdict in their favor on the grounds the verdict was inadequate and was not supported by the evidence. They also challenge the rejection of their proposed verdict form. **AFFIRMED.**

William J. Bribriesco, Bettendorf, for appellants.

John D. Telleen of Lane & Waterman, Davenport, for appellees.

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

FILED

JAN 25 1990

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OXBERGER, C.J.

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Appellants Carol S. Fredenburg and her husband John R. Fredenburg (Fredenburgs) appeal a \$1,000.00 judgment in her favor against appellees Marcia Hollingsworth and Dentists Dental Services, Inc. The Fredenburgs contend the amount of the jury verdict was inadequate and was not supported by the evidence. They also challenge the rejection of their proposed verdict form. Our review of this action is for errors at law. Iowa R. App. P. 4. We affirm.

On February 3, 1987, Carol Fredenburg was injured in a traffic accident with an automobile driven by Marcia Hollingsworth and owned by Dentists Dental Services, Inc. She suffered bruised ribs and tenderness in the shoulder, neck, and hand.

Fredenburg and her husband filed this negligence action against the owner and driver of the other car. The defendants admitted negligence, and the only issue at trial was damages. The jury returned a verdict awarding the Fredenburgs \$104 for lost wages, \$550 for past medical expenses, and \$346 for bodily injury, physical pain, and mental anguish. The district court then denied the Fredenburgs' motion for new trial, which alleged inadequate damages.

The Fredenburgs have appealed from judgment upon the verdict described above. They contend the amount of the verdict was insufficient as a matter of law. They argue

the evidence did not permit the jury to award such a small amount of damages.

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.

The Fredenburgs' main contention is that the \$346 awarded by the jury for Carol's bodily injury, physical pain, and mental anguish bears no reasonable relationship to the damage she actually experienced. 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).

A review of the record in this case reveals Carol was able to resume her activities and employment soon after the accident. Carol testified that most of her complaints as a result of the accident resolved themselves within a month or two after the accident. On April 29, 1987, during an office visit with Dr. Herbert R. Wood, Carol reported that

she had no major complaints. Carol testified that during this office visit she performed full range of motion exercises with her neck without pain.

Dr. Wood testified that by March 4, 1987, a month after the accident, her symptoms were "gradually dissipating and the tests . . . for the most part were returning to a near normal state." Dr. Wood further testified that on March 30, 1987, with the exception of the dynamometer test (grip test) and lateral bending of the spine, all other tests were normal or negative. Dr. Wood discharged Carol from personal injury status on July 23, 1987.

Dr. Wood testified within a reasonable degree of chiropractic certainty that Carol sustained a permanent partial impairment as a direct result of the accident. Dr. Larry L. Swank testified that Carol had sustained a five percent (5%) permanent partial impairment as a result of the accident. Dr. Richard Lee Kreiter, however, concluded there was no evidence of permanent impairment. Dr. Kreiter testified as follows:

Q. And did you when you examined her, see any reason or have any cause to believe that permanent impairment may result in the future?

A. Well, I had seen her at nine months following the accident and at that particular point there was no evidence, you know, that she was developing any, you know, permanent impairment.

He further testified that the neck pain Carol was experiencing could have resulted from activities where a party keeps her head in one position for a long period of time wholly unrelated to any trauma.

Additionally, in a letter dated August 6, 1988, Dr. Wood informed the Fredenburgs' counsel that: "The patient further stated that since the date of this accident, she has suffered from neck pain, tingling sensation in both arms and hands, low back pain and rib cage pain." Dr. Wood testified that the statement referred to his findings on the date of his initial examination of Carol on February 5, 1987, and not to Carol's condition at the time of trial.

The jury heard the testimony of all three of the above health professionals. The jury weighed the reliability and credibility of the witnesses and all of the evidence. 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). 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).

While the evidence in this case could have sustained a larger verdict, "[o]ur 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 a jury could find was suffered in this case. See Witte, 443

N.W.2d at 716. The verdict does not appear to have been influenced by passion or prejudice, and it is sustained by sufficient evidence. Iowa R. Civ. P. 244(d),(f). "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 cannot find the trial court abused its discretion in denying the Fredenburgs' motion for a new trial.

The Fredenburgs also contend the district court should have used their requested verdict form which would have distinguished between damages for loss of body function and damages for pain and suffering.

The trial court instructed the jury that they were entitled to consider Carol S. Fredenburg's recovery:

3. For the injuries to her person and pain and mental anguish, from the date of the accident to the present time, at \$_____.
4. For injuries to her person, physical pain and suffering and mental anguish from this date and in the future, at, \$_____.

The Fredenburgs stated that they had no objections to the courts proposed jury instructions, but requested the court consider their submitted verdict form. The Fredenburgs further stated that "the only difference between our proposed form and the one the Court has is that full body past and future is separated from past pain and suffering and future pain and suffering."

The trial court is "free to phrase instructions in its own words so long as the instructions fully and fairly inform the jury of the issues and the applicable law." Gail v. Clark, 410 N.W.2d 662, 670 (Iowa 1987); Clinton Land Co. v. M/S Assoc. Inc., 340 N.W.2d 232, 234 (Iowa 1983). "A trial court is not bound to any model or form in wording instructions, and a requested instruction may be properly denied if the points raised are otherwise substantially covered." State v. Lindsey, 302 N.W.2d 98, 104 (Iowa 1981). We believe the requested instruction dealt with matters adequately covered in the instruction given by the court. There was no error in the instruction issued to the jury. See Greninger v. City of Des Moines, 264 N.W.2d 615, 617 (Iowa 1978); Miller v. International Harvester, 246 N.W.2d 298, 307 (Iowa 1976). The decision of the trial court is affirmed in all respects.

AFFIRMED.