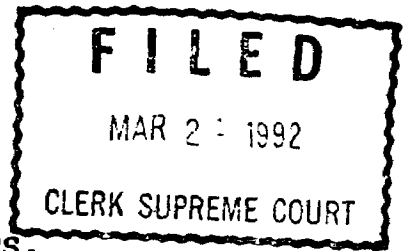


IN THE COURT OF APPEALS OF IOWA

No. 1-626 / 91-586



DONNA HILSENBECK, MARTHA GILES and DONALD R. GILES,

Appellees/Cross-Appellants,

vs.

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IOWA POWER AND LIGHT COMPANY,

Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Polk County,
Ray Fenton, Judge.

Defendant Iowa Power appeals and the plaintiffs cross-appeal a judgment of the district court, following a jury trial, awarding damages to the plaintiffs resulting from a two-car accident. **AFFIRMED.**

Glenn Goodwin of Duncan, Jones, Riley & Finley, P.C.,
Des Moines, for appellant.

John P. Dollar of Bowers, Wilson, Dollar & Kruse Law
Offices, Des Moines, for appellee.

Heard by Donielson, P.J., and Schlegel and Sackett,
JJ. Oxberger, C.J., takes no part.

SCHLEGEL, J.

An accident occurred between a truck owned by Iowa Power and Light Company and a car driven by Michael Giles. There was no damage to the Iowa Power truck, its driver, or to Michael Giles. A back seat passenger of Giles', Donna Hilsenbeck, allegedly suffered a knee injury. Giles' front seat passenger, Martha Giles, allegedly suffered headache and neck pain. Donald Giles, the father of Michael, Donna, and Martha, co-owned the motor vehicle with Michael Giles at the time of the accident. Subsequent to the accident, Michael signed all of his ownership rights in the vehicle to Donald.

Donna Hilsenbeck, Martha Giles, and Donald Giles all sued Iowa Power for their injuries and damages. A jury returned a verdict in favor of Donna Hilsenbeck in the amount of \$11,306 and a verdict in favor of Martha Giles for \$510 on December 13, 1990. The jury also awarded Donald Giles \$1500 for his property damage claim. In addition, the jury imputed the fault of the driver, Michael, to Donald Giles. The jury determined the fault of Michael to be forty percent and Iowa Power's fault to be sixty percent.

The trial court sustained the plaintiffs' motion for a new trial on damages for Martha Giles. The court also sustained Iowa Power's motion for contribution from Donald for forty percent of the personal injury damages suffered by Martha and Donna. The court's judgment entry reduced

Donald's claim by forty percent, entered judgment in favor of Donna, set aside the verdict in favor of Martha, and granted Iowa Power a contribution claim of forty percent of Donna's damages, as well as forty percent of any future verdict obtained by Martha.

Iowa Power appeals and Donald Giles cross-appeals. Iowa Power contends it was entitled to a directed verdict on Martha's claims and that Martha should not have been granted a new trial on damages. Donald Giles argues the court erred both in reducing his property damage claim due to the comparative negligence of the driver and in entering judgment for contribution against him on the judgments in favor of Donna and Martha. We review this case for correction of errors at law. Iowa R. App. P. 4.

I. We first address Iowa Power's contention the court erred in rejecting its directed verdict motion on Martha's personal injury claims. A directed verdict is appropriate in cases where each element of the claim is not supported by substantial evidence. Oberreuter v. Orion Industries, Inc., 398 N.W.2d 206, 209 (Iowa App. 1986). A court ruling on a motion for directed verdict must view the evidence in the light most favorable to the nonmoving party. Beitz v. Horak, 271 N.W.2d 755, 757 (Iowa 1978); Iowa R. App. P. 14(f)(2). To overrule the motion the court must find substantial evidence in support of each element of nonmovant's claim. Beitz, 271 N.W.2d at 757. If reasonable minds could differ, an issue is for the jury.

Harvey v. Palmer College of Chiropractic, 363 N.W.2d 443, 444 (Iowa App. 1984). The trial court is vested with considerable discretion in determining whether evidence is sufficient. Hoover's Hatchery, Inc. v. Utgaard, 447 N.W.2d 684, 687 (Iowa App. 1989). We determine the district court properly overruled Iowa Power's motion for a directed verdict.

The only medical expert testimony at trial to support Martha's claim was given by her physician, Dr. Steven Bunge. Dr. Bunge saw Martha prior to the accident for a basketball incident that produced head and neck injuries. Dr. Bunge testified he could not state to a reasonable degree of medical certainty that the symptoms of which Martha complained were caused by the motor vehicle accident. The doctor's records indicate Martha's symptoms, when Dr. Bunge saw her after the accident, relate to the basketball injury rather than the car accident. Dr. Bunge did testify that if he was in error that Martha's symptoms were continuous to the time of the accident, it was reasonable to believe her present symptoms were a result of the car accident. He further stated it would be unusual for this basketball injury to still be causing trouble.

Iowa Power stresses Martha must establish a causal connection between the accident and her symptoms. It believes if her doctor was unable to causally connect her symptoms to the car accident, there was no basis for a lay jury to make such a connection. We believe there was

sufficient evidence to generate a jury question. Dr. Bunge stated he based his opinion, and thus his records, solely on his interpretation of remarks made to him by Martha. Martha contested that she ever told the doctor her basketball injury symptoms continued until the car accident. When faced with the hypothetical question of assuming Martha's version of the facts to be correct, Dr. Bunge agreed the accident was the likely source of her present problems. He further testified Martha's long-term symptoms were now consistent with a car accident rather than a basketball injury.

The jury could have found the prior basketball injury was resolved before the accident. We find the trial court properly rejected the motion for a directed verdict.

II. Iowa Power next argues the district court erred in granting a new trial on damages for Martha. In a posttrial motion, Martha argued the \$510 verdict was inadequate because it was less than her medical bills. The trial court has broad discretion in ruling on motions for new trial, and we are more hesitant to interfere with the grant of a new trial than with a denial. Iowa R. App. P. 14(f)(3), (4). We find the court correctly granted a new trial.

Iowa Power contends there was support in the evidence for this verdict. It argues the jury had to determine whether any portion of Martha's injuries was due to the prior basketball injury and what, if any, portion of the

damages were due to the car accident. It states the jury reasonably determined the evidence established damages of \$510 resulting from the car accident. Because of its verdict in her favor, the jury obviously decided there was a causal connection between the accident and Martha's injuries. It was improper for the jury to discount Martha's verdict. The trial court did not abuse its discretion by granting a new trial for Martha on damages.

III. On his cross appeal Donald Giles argues his property damage claim should not be reduced by forty percent due to the driver's comparative negligence. Donald cites the case of Stuart v. Pilgrim, 74 N.W.2d 212, 216-17 (Iowa 1956), holding the negligence of the driver of an automobile is not imputed to the owner as to his or her property damage claim. He notes the driver was not a party to the lawsuit. We find the trial court made no error of law in reducing Donald's award by forty percent.

At the time of the accident, Michael Giles' name was listed as one of the owners of the vehicle. See Iowa Code § 321.1(36) (1991) (title denotes ownership). Iowa Power questions whether Stuart, a 1956 case, survived the adoption of comparative fault. We do not address that concern, because here the driver was a co-owner. We find the Iowa Code treats a co-owning driver and a co-owner plaintiff as one party. See Iowa Code § 321.493 (1991). Michael's negligence was, therefore, imputed to Donald. Id. Because of this negligence, Donald's damages "shall be

diminished in proportion to the amount of fault attributable" to him. Iowa Code § 668.3 (1991). The trial court properly reduced Donald Giles' damages in proportion to his forty percent fault.

IV. Donald further claims it was error to enter judgment for contribution against him for forty percent of the judgments entered in favor of Martha and Donna. He argues no claim for contribution against him was ever pleaded by Iowa Power. We find the method of enforcement of contribution was proper, and the trial court correctly entered judgment for contribution against Donald.

A right of contribution exists

between or among two or more persons who are liable upon the same indivisible claim for the same injury, death, or harm, whether or not judgment has been recovered against all or any of them. It may be enforced either in the original action or by a separate action brought for that purpose.

Iowa Code § 668.5(1) (1991). Iowa Power has a right of contribution. In addition, enforcement need not be done through a pleading filed before trial. Iowa Code section 668.6 provides:

1. If the percentages of fault of each of the parties to a claim for contribution have been established previously by the court as provided in section 668.3, a party paying more than the party's percentage share of damages may recover judgment for contribution upon motion to the court or in a separate action. . . .

3. If a judgment has been rendered, an action for contribution must be commenced within one year after the judgment becomes final.

(Emphasis added.)

Contribution need not be pleaded before trial; it can be enforced any time within one year after the judgment is final, either by motion or in a separate action. Iowa Power filed a motion for contribution on December 27, 1990. We do not believe this motion was improper or prejudicial because filed after trial.

We affirm the trial court in toto.

AFFIRMED.