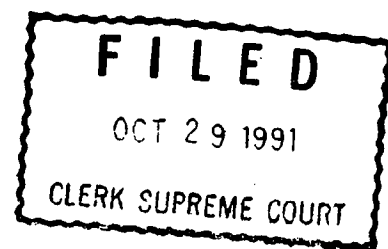


IN THE COURT OF APPEALS OF IOWA

No. 1-363 / 91-286



ROSEMARIE BOURDON,

Plaintiff-Appellee/Cross-Appellant,

vs.

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MARIAN STONEBURNER and SHARON LEE SONDALL,

Defendants-Appellants/Cross-Appellees.

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

In this personal injury suit, the jury awarded the plaintiff \$6,500 for past damages but declined to compensate her on her claim for future damages. The district court then granted the plaintiff a new trial on the ground the verdict on the issue of future damages was contrary to the evidence. The defendants have appealed from the district court order granting the plaintiff a new trial. The plaintiff has cross-appealed, contending the new trial order should be limited to the issue of future damages. **AFFIRMED.**

Douglas A. Haag and Harry Perkins III of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellants/cross-appellees.

Marc S. Harding, Des Moines, for appellee/cross-appellant.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

DONIELSON, P.J.

Rosemarie Bourdon, a pedestrian, was hit by a car owned by Marian Stoneburner and driven by Sharon Sondall. Bourdon sued Stoneburner and Sondall to recover for her physical injuries. The defendants conceded liability for the accident, and the case proceeded to trial on the sole issue of damages.

A jury awarded Bourdon \$6,500 on her claim for past damages but awarded her nothing on her claim for future damages. Believing that Bourdon had presented evidence sufficient to show she will sustain future pain and suffering, the trial court held the amount awarded by the jury for future damages bore no reasonable relationship to the loss suffered. As the jury's verdict was inadequate, the court set it aside and ordered a new trial on both the past and future damages claims.

The defendants have appealed from the district court order granting Bourdon a new trial. The defendants contend the district court erred by concluding the evidence of future damages is sufficient to entitle Bourdon to future damages as a matter of law.

Bourdon has cross-appealed, arguing the new trial order should be limited to the issue of future damages. She asserts the district court erred by ordering an unlimited new trial on all issues.

In determining whether the trial court properly granted a new trial, we review for an abuse of discretion. Witte

v. Vogt, 443 N.W.2d 715, 716 (Iowa 1989). Trial courts have wide judicial discretion in the granting of a new trial. Iowa R. App. P. 14(f)(3). Certainly, such discretion is not unlimited. Id. "Verdicts should not be set aside lightly and the court, in granting a new trial, must be sure there exists sufficient cause to support the exercise of such discretion." Jones v. Iowa State Highway Commission, 185 N.W.2d 746, 749 (Iowa 1971). Nevertheless, to show an abuse of such discretion, one must generally demonstrate that the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976)(quoting State v. Burnor, 132 Vt. 603, 326 A.2d 138, 140 (1974)). Trial courts should grant new trials "whenever their superior and more comprehensive judgment teaches them that the verdict of a jury fails to administer substantial justice" Witte, 443 N.W.2d at 717 (citing Feldhahn v. Van DeVenter, 253 Iowa 1194, 1197, 115 N.W.2d 862, 864 (1962)). We are more reluctant to interfere when a new trial is granted than we are when a new trial is denied. Id. (citing Feldhahn, 253 Iowa at 1197, 115 N.W.2d at 864).

The defendants seem to mistake the court's ruling on the plaintiff's motion for a new trial as a ruling on a motion for judgment notwithstanding the verdict under Rule 243, Iowa Rules of Civil Procedure. Pursuant to Rule 243, the court may either grant a new trial or enter judgment as

though it had directed the verdict if the movant was entitled, as a matter of law, to judgment in his or her favor. See Iowa R. Civ. P. 243. 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). Movant is considered to have admitted the truth of all evidence offered by nonmovant and every favorable inference that may be deduced from it. B & B Asphalt Co. v. T. S. McShane Co., 242 N.W.2d 279, 284 (Iowa 1976). 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 court's analysis is clearly not the same under both motions. The court need not, in ruling on a motion for new trial, determine whether the movant is entitled to judgment as a matter of law. See Iowa R. Civ. P. 244. Indeed, the court's inquiry stops short of that mark. In the instant case, the trial court's finding must be taken in the context of a motion for new trial, not a motion for judgment notwithstanding the verdict.

The defendants' argument centers on the issue of witness credibility. The defendants argue that the trial court must not substitute its judgment for that of the jury on issues of witness credibility. Yet, Rule 244 clearly contemplates the trial court's role as determining, among other things, whether the jury acted out of passion or

prejudice or whether the jury's verdict was sustained by sufficient evidence. See Iowa R. Civ. P. 244(d), (f). Certainly, this role must include an examination, to some degree, of whether the jury properly evaluated the credibility of witnesses.

While the amount of damages to be awarded is peculiarly a jury function, a verdict should fairly and adequately compensate a plaintiff for damages suffered. Waddell v. Peets Feeds, Inc., 266 N.W.2d 29, 32 (Iowa 1978). An inadequate damage award will merit a new trial as does an excessive award. Iowa R. Civ. P. 244(d); Witte, 443 N.W.2d at 716. Motions for new trial may be granted when a jury verdict is not sustained by sufficient evidence or the verdict fails to effectuate substantial justice. Young v. Gibson, 423 N.W.2d 208, 210 (Iowa App. 1988). The court has the inherent power to set aside a verdict which fails to do substantial justice between the parties. Moore v Bailey, 163 N.W.2d 435, 436 (Iowa 1968).

The question of whether a damage award is inadequate is dependent on the facts of each case. Householder v. Town of Clayton, 221 N.W.2d 488, 493 (Iowa 1974). "If uncontroverted facts show that the amount of the verdict bears no reasonable relationship to the loss suffered, the verdict is inadequate." Witte, 443 N.W.2d at 716 (citing Householder, 221 N.W.2d at 493; Olsen v. Drahos, 229 N.W.2d 741, 742 (Iowa 1975)).

The trial court found the evidence showed that Bourdon would undergo future pain and suffering. The court based its finding on the testimony of several witnesses. Bourdon introduced evidence that she had a large, painful, and embarrassing lump of scar tissue on the back of her leg and that the lump resulted from the accident.

Bourdon, her husband, and her doctor all testified to the existence of this lump. Bourdon showed the lump to the jury. Bourdon further testified that the lump caused her daily pain and discomfort. Dr. Lynch explained the source of the pain in such injuries. Bourdon testified that the lump caused her to alter her lifestyle in certain respects. She testified that the pain caused her to sit in odd positions and made standing uncomfortable as well. She also testified that she was embarrassed by the lump and had changed her style of dress in an effort to hide it. Bourdon's husband testified to her new reluctance to wear shorts. None of this testimony was controverted by other testimonial or documentary evidence.

Therefore, the court found the verdict awarding Bourdon nothing for her future damages bore no reasonable relationship to the loss she will suffer and ruled that the verdict was inadequate. We find no abuse of discretion and affirm the trial court.

In her cross-appeal, Bourdon asserts that the trial court erred in granting a new trial on all damages rather than on the issue of future damages alone. The trial court

may well have found the two issues sufficiently interdependent to justify granting a new trial on both issues. Again, we find no abuse of discretion and affirm the trial court.

The costs of this appeal are taxed one-half to the plaintiff and one-half to the defendants.

For all the reasons stated, the judgment of the district court is affirmed.

AFFIRMED.