IN THE COURT OF APPEALS OF IOWA

No. 1-272 / 90-1549

FILED
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CLERK SUPREME COURT

**SHARON BRENTANO,**

Appellant,

vs.

**JOANNE GIBBS,**

Appellee.

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Appeal from the Iowa District Court for Warren County, William Joy, Judge.

The plaintiff sued a dog owner to recover for a dog bite injury. **AFFIRMED.**

Marc S. Harding, Des Moines, for appellant.

Donald Hohnbaum of Christianson, Hohnbaum & George, Des Moines, for appellee.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

**PER CURIAM**

On May 15, 1989, Sharon Brentano decided to visit her neighbor, Joann Gibbs, in Norwalk, Iowa. As Brentano was walking through Gibbs's backyard, she was bitten on both of her legs by Lassie, Gibbs's collie. Brentano did not complain of any pain at the time and had a glass of iced tea at Gibbs's house. Brentano went to a doctor that evening and was treated for dog bites.

An infection developed in the wounds caused by the dog bites. Brentano returned for treatment on May 23, 1989, and June 1, 1989. Brentano subsequently has a small area of scar tissue on her left leg. The area around the scars is very sensitive and bruises easily. There was evidence Brentano could seek cosmetic surgery to remove the scar tissue. Brentano testified she had no current plans for such surgery.

Brentano filed this suit seeking damages for medical expenses and pain and suffering. She also claimed she had developed a fear of contracting rabies because Lassie had not been vaccinated against rabies.

A jury awarded Brentano $450. She filed a motion for a new trial, claiming the jury award was inadequate. The district court denied her motion. Brentano appealed.

Brentano contends the jury award was clearly inadequate. She believes she was not awarded anything for her fear of contracting rabies or her permanent scars.

This case was heard at law, and our scope of review is for correction of errors of law. Iowa R. App. P. 4.

Under our rules of civil procedure an aggrieved party may be granted a new trial where the jury awarded excessive or inadequate damages appearing to have been influenced by passion or prejudice, or where the verdict is not sustained by sufficient evidence, or is contrary to law. Cowan v. Flannery, 461 N.W.2d 155, 157 (Iowa 1990). In ruling upon motions for new trial, the court has broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties. Id.

The question of whether damages in a particular case are inadequate turns on the particular facts of that case. Witte v. Vogt, 443 N.W.2d 715, 717 (Iowa 1989). Our 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). The amount of damages to be awarded is peculiarly a jury, not a court, function. Waddell v. Peet's Feeds, Inc., 266 N.W.2d 29, 32 (Iowa 1978).

We hold the district court did not abuse its discretion in denying the motion for a new trial. The jury's award of damages was not clearly inadequate. Although there was evidence Brentano would have a permanent scar on her left leg, the scar is fairly small. Brentano herself testified she did not have any plans to have cosmetic surgery on her leg. We affirm the decision of the district court.

**AFFIRMED.**