IN THE COURT OF APPEALS OF IOWA

No. 2-021 / 91-572

FILED
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CLERK SUPREME COURT

CHRISTINA R. CHALUPA,

Appellant,

vs.

WILLIAM BERG MUELLER and **PAMELA M. MUELLER,**

Appellees.

Appeal from the Iowa District Court for Johnson County, L. Vern Robinson, Judge.

Appellant appeals from a district court judgment, following a jury verdict, dismissing her claim for damages arising out of an automobile accident. **AFFIRMED.**

Douglas L. Tindal of Shearer & Tindal, Washington, for appellant.

Mark D. Cleve and John D. Stonebraker of McDonald, Stonebraker & Cepican, P.C., Davenport, for appellees.

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

OXBERGER, C.J.

On October 16, 1987, Chris Chalupa was involved in a vehicular collision. Chris was a passenger in a truck which was struck by a vehicle owned by William, ("Bill"), and Pamela Mueller and driven by Bill. Bill pled guilty to failure to yield on a left turn. Chris did not strike her head during the collision nor did she suffer any apparent cuts or bruises.

Several days after the accident, Chris sought treatment for claimed neck, back, and leg pain. In January 1988, Chris was diagnosed with whiplash and related migraine headache injuries.

In July 1988, Chris, while driving intoxicated, was involved in a severe one-vehicle accident. She was treated for back and neck injuries.

In September 1989, Chris filed a petition seeking damages from the Muellers arising out of the 1987 accident. Chris alleges she suffered a traumatic brain injury, trauma-induced migraine headaches, and a soft tissue neck injury as a result of the collision. At trial, Chris alleged she heard the Muellers' attorney make a joke concerning brain damage. The Muellers' attorney denied making the statement. Chris's attorney attempted to enter evidence concerning the attorney's alleged joking, but that evidence was not admitted. Following trial, the jury returned a verdict for the Muellers. Chris' motion for new trial was denied by the court.

Chris contends the district court erred in denying her motion for new trial. She claims the jury's verdict was based on passion and prejudice and unsupported by the record. She also claims evidence regarding alleged statements made by opposing counsel were improperly excluded. In addition, we must consider whether excerpts from medical authorities not presented at trial may be considered on appeal.

Scope of Review: Our scope of review in this appeal is limited to correction of errors at law. Collier v. General Inns Corp., 431 N.W.2d 189, 190 (Iowa App. 1988). Generally, a trial court has broad discretion in passing on motions for new trials and only when there is a clear abuse of that discretion will we interfere with a ruling upon that motion. Houvenagle v. Wright, 340 N.W.2d 783, 785 (Iowa App. 1983).

I. Motion for New Trial

Chris claims the jury's verdict was based on passion and prejudice due to admission of evidence that she was driving while intoxicated during her second collision and was fired by her employer for stealing company property. However, after the trial court denied Chris's Motion in Limine regarding this evidence, Chris's attorney explored this evidence during direct examination. Chris also claims the jury's verdict was based on passion and prejudice due to defense counsel's attack on her credibility. Finally,

she contends the jury's verdict was unsupported by the record.

Under our rules of civil procedure, an aggrieved party may be granted a new trial when the jury awarded excessive or inadequate damages appearing to have been influenced by passion and prejudice, or when the verdict is not sustained by sufficient evidence or is contrary to law. Cowan v. Flannery, 461 N.W.2d 155, 157 (Iowa 1990). We do not find the jury's verdict was based on passion or prejudice. The attack on Chris's credibility was effective and was largely based upon inconsistencies in her sworn statements. In addition, while she claimed the loss of her employment as part of her damages, ample evidence was presented at trial to indicate that she was terminated for stealing company property.

We find sufficient evidence in the record to support the jury's verdict. Evidence is [sufficient] when a reasonable mind would accept it as adequate to reach the same findings, and evidence is not [insufficient] merely because it would have supported contrary inferences. Grinnell Mutual Reinsurance Co. v. Voeltz, 431 N.W.2d 783, 785 (Iowa 1988). Ample evidence was presented at trial from which the jury could find Chris's alleged injuries were not the result of her collision with the Muellers. Other possible causes of her injuries were introduced, including Chris's subsequent work related injury and second

collision. Moreover, the jury was entitled to accept or reject any or all of the experts' testimony regarding both the cause and the severity of Chris's injuries.

Chris also claims the trial court erred in denying her Motion for New Trial by refusing to admit testimony supporting an alleged statement made by defense counsel outside the jury's presence. The court, in camera, heard testimony by Chris's attorney's legal secretary that defense counsel remarked to her that he must have had a seizure since he had spilled coffee on himself twice. There is no indication that this remark was directed at Chris, nor that it was relevant or probative on the issues before the court. We do not find the trial court abused its discretion in failing to grant a new trial on these grounds. Because we do not find the remark was directed towards Chris, we find no merit in the argument that defense counsel falsely denied making the alleged statement.

II. Medical Authority Presented on Appeal

Plaintiff's Reply Brief cites excerpts from medical authority, not presented at trial, in an effort to persuade this Court that the jury was mistaken in its refusal to adopt the opinions of medical experts. We do not substitute our judgment for that of the jury. Sammons v. Smith, 353 N.W.2d 380, 389 (Iowa 1984).

We affirm the trial court.

AFFIRMED.