FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

23

DONNA JEAN BLUMER, LELAND L. BLUMER, NORMA STROUD and JACK STROUD,

Plaintiffs-Appellants,

vs

ROSEMARY MILLER,

Defendant-Appellee.

Filed February 26, 1986

5-588
85-140

Appeal from the Iowa District Court for Appanoose County (No. CL 1098-0283), James D Jenkins, Judge.

Plaintiffs contend the trial court erred in holding the plaintiffs failed to sustain the burden of proving defendant's negligence was a proximate cause of their injuries **AFFIRMED.**

William Shelton and Richard Ambelang of Shelton, P.C., Chariton, for plaintiffs-appellants

Charles K Pettit, Bloomfield, for defendant-appellee.

Heard by Oxberger, C.J., Snell, and Hayden, JJ.

OXBERGER, C.J.

We affirm the trial court's finding that the proof was inadequate regarding proximate cause in plaintiff's negligence action.

This case began as a minor fender-bender in a parking area. Plaintiff driver had backed out of her parking space and was traveling around the Centerville square at less that five miles per hour when she was backed into by defendant who was backing up at approximately three miles per hour. The damage to plaintiff's car was repaired for $286. There was no damage to defendant's vehicle. The parties reported the accident to the police officer on the square, who sent them to the law center because, as he stated, the damage was so minor.

The plaintiffs in the collision, sisters Donna Blumer and Norma Stroud, say they suffered immediately from pain, headache, and nausea. Since then they have received chiropractic care totaling over $13,000 and anticipate future medical expenses. Blumer has had loss of earnings of approximately $29,000. They indicate damages of at least $150,000. Each of their husbands joined in the action for money damages of $25,000 each for loss of consortium claiming their wives were irritable and unable to perform normal household functions since the collision.

This case was tried to the bench and not to a jury. The trial court held:

> The court accordingly finds that defendant was negligent when she backed from her parking space into a motor vehicle operated by plaintiff Norma Stroud on February 10, 1981. . . . The plaintiff ladies, if their testimony is to be believed, have suffered severe and grievous injuries. . . . And yet the accident from which these extensive injuries are supposed to have arisen caused virtually no physical damage to plaintiff's motor vehicle, and absolutely no damage to defendant's pickup truck. . . . The Court finds it impossible to believe that such an insignificant impact could have created the severe and lasting injuries of which plaintiff's Norma Stroud and Donna Jean Blumer

> impact could have created the severe and lasting injuries of which plaintiff's Norma Stroud and Donna Jean Blumer now complain. The burden of proof is on the plaintiffs to show by a preponderance of the evidence that there is a causal connection (or proximate cause) between the negligence of the defendant and the plaintiffs' condition. The Court finds that plaintiffs have failed to sustain that burden, and that the painful, calamitous, and distressing health conditions described by plaintiffs Norma Stroud and Donna Jean Blumer were not caused by the minor accident with defendant on February 10, 1981. The ladies' physical complaints have therefore been obviously caused by something other than the insignificant accident described here. The Court therefore finds that plaintiffs Norma Stroud and Donna Jean Blumer are not entitled to any recovery against the defendant.

The plaintiffs appeal, contending the court's ruling is contrary to its own fact findings. Where the evidence on an issue is uncontradicted, they argue, the court is compelled to find that fact established. They say the evidence is uncontradicted through the doctor's testimony and their own that their injuries directly resulted from the accident.

We disagree. While the court did not elaborate upon all the evidence presented, there was contradiction to the claim that the injuries resulted from the accident.

Dr. James Kinnard, a chiropractor, testified for the plaintiffs indicating Donna Blumer had been having headaches, sleep loss, nervousness, numbness in the arms and hands, and weakness in the legs. He said her range of motion was restricted and she had misaligned vertebrae, pinched nerves, swelling of tissues, tearing of tissues, ligaments, tendons and muscles as a direct result of the accident. Norma Stroud suffered from pain and tenderness, tightness of muscle, muscle spasms in the neck, low back pain, and a weak patellar reflex He also confirmed the accident resulted in injuries to Norma, including limited range of motion. He states she will need treatment over the next two years.

Cross-examination of the doctor revealed that all of the tests he performed were subjective in nature and relied upon the veracity of the patient, except for the X rays. He had treated both plaintiffs for four years and in that time had seen Blumer 106 times and Stroud 105 times.

A witness for the defendant, Thomas Summers, a medical doctor, examined both plaintiffs. He did not find any loss of cervical curve in the X rays of the women. According to this witness, the X rays of Norma Stroud were normal except for a condition which is a long term problem and not connected to her present claims. The X rays of Donna Blumer were also normal except for a congenital defect.

Another chiropractor, Dr. Melvin Rose, also testified for defendant. He said in his opinion the long term and extensive treatment recommended by Dr Kinnard was not indicated by the findings.

A witness for defendant, Jo Walker, testified that she spoke with both plaintiffs in the Spurgeons Store following the accident. The plaintiffs told her they had just been in an accident and the witness said they "seemed happy" and behaved in a "jolly" manner. She further testified they did not complain of pain or injuries at that time nor on the subsequent occasions when she has seen them.

Since the court was the factfinder here, the findings of fact of the trial court are binding upon this court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We view the findings in the light most favorable to the trial court judgment and construe them broadly to uphold rather than defeat the judgment below. Beeck v. Aquaslide 'N' Dive Corporation, 350 N.W.2d 149, 154 (Iowa 1984). We find substantial evidence to support the factual finding of the court that the injuries involved could not have been the result of the

accident. This supports the legal finding that proximate cause is not proven. Accordingly, we affirm the trial court's ruling.

AFFIRMED.