

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 22 1984

CLERK SUPREME COURT

**FLOYD ZIESMAN and MARILYN
ZIESMAN,**

Plaintiffs-Appellants,

and

**KEVIN FLOYD ZIESMAN, SHERRI JEAN
ZIESMAN, DAVID ALAN ZIESMAN and
REBECCA LYNN ZIESMAN,**

Additional Plaintiffs-
Appellants,

vs.

**AGNES BREHMER and EDWIN
BREHMER,**

Defendants-Appellees.

Filed May 22, 1984

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4-113
83-1040

Appeal from the Iowa District Court for Hardin County - Paul E. Hellwege, .
Judge.

Plaintiffs appeal from judgment entered in this personal injury action on a jury verdict which denied plaintiff wife and children's claims for loss of plaintiff husband's consortium. AFFIRMED.

James C. Ellefson of Lundy, Butler & Lundy, Eldora, and Raymond P. Drew of Hobson, Cady & Drew, Hampton, for plaintiffs-appellants.

Paul C. Peglow of Johnson, Sudenga, Carter & Latham, Marshalltown, and Max H. Buck of Grimes, Peterson, Buck & Schoell, Marshalltown, for defendants-appellees.

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

Plaintiffs appeal from judgment entered in this personal injury action on a jury verdict which denied plaintiff wife and children's claims for loss of plaintiff husband's consortium. Plaintiffs contend the trial court erred in disallowing evidence of the wife's depression, which began about one year after the accident, as circumstantial evidence of the nature and extent of her damages for loss of consortium. Plaintiffs also contend this evidence was admissible to explain the wife's prior inconsistent statement with which she had been impeached. We affirm.

Plaintiffs Floyd and Marilyn Ziesman were involved in an automobile accident with defendants in which Floyd sustained physical injuries. He brought this action to recover for those injuries, while Marilyn sought to recover for loss of consortium. Plaintiffs' children were later added as parties seeking to recover for loss of their father's consortium. Marilyn's claim for emotional distress and Floyd's claim for loss of her consortium were dismissed by court order on defendants' motion for summary judgment. The jury found that Floyd was entitled to recover \$5,160 for his injuries, but denied Marilyn and the children any recovery based on their claims for loss of consortium. After their motion for new trial was overruled, plaintiffs brought this appeal.

I.

Marilyn's primary complaint is that the trial court erred in excluding evidence of her mental illness or depression that manifested itself approximately one year after the accident. She claims that this depression was caused by Floyd's failure to make any significant recovery from his injuries and thus constituted at least circumstantial evidence of the amount of her damages for loss of her husband's consortium.

We find no reversible error in the court's exclusion of this evidence. There is an initial question as to the relevance of Marilyn's depression regarding her loss

of consortium claim. The jury was asked by special interrogatory if defendants' negligence, which was previously determined, was "a proximate cause of the injury to the Plaintiff, Marilyn Ziesman?" The jury answered this in the negative. This amounts to a finding that defendants were not liable for any loss of consortium suffered by Marilyn; under these circumstances, any error in the exclusion of this evidence, which Marilyn admits goes only to the question of damages, was harmless. See Humphrey v. Happy, 169 N.W.2d 565, 570 (Iowa 1969).

Even if the damages issue regarding Marilyn was not moot, we believe the trial court was still correct in excluding the evidence. The supreme court has defined consortium as "a separate property right of each spouse to the marital relationship. [citations] It is 'the right of each to the company, co-operation, affection and aid of the other in each conjugal relation.' [citation]." Fuller v. Buhrow, 292 N.W.2d 672, 675 (Iowa 1980). Consortium damages are limited to compensation for the loss of these intangible items. Id. We do not believe the evidence concerning Marilyn's depression is relevant to any alleged loss of Floyd's "company, co-operation, affection and aid" on her part, nor was it offered to prove any such loss. Rather, Marilyn offered this evidence for an entirely different and separate reason; i.e. to show the effect on her of Floyd's failure to make a complete and speedy recovery. We cannot accept Marilyn's assertion that the fact of her depression necessarily or even inferentially means that she did in fact suffer loss of the conjugal relationship. The trial court did not err in excluding this evidence.

II.

Marilyn also claims that this evidence regarding her depression should have been admitted to explain a prior inconsistent statement made by her in a deposition taken while she was allegedly suffering from her depression. Marilyn believes that the jury might have inferred that her depression at the time of her deposition affected her ability to give truthful testimony and would thus

constitute an explanation for her inconsistent answers to questions regarding Floyd's ability to work after the accident. We accept the trial court's response to this contention: "...no attempt was made at the time or subsequent to the impeachment of the testimony of Marilyn Ziesman to show her mental or physical condition at the time of the taking of the deposition." Marilyn's offer of proof indicated only that she suffered from depression; it did not indicate what effect, if any, her depression had on her ability to give truthful testimony at her deposition. "The offer [of proof] must contain specific evidence, competent upon the subject, which tends to prove the desired fact. Nothing that is offered should be left to inference." Schreiber Mills, Inc. v. Lee County, 249 Iowa 746, 754, 88 N.W.2d 811, 816 (1958) (emphasis added) (citations omitted). The trial court did not err in rejecting this basis for admission of this evidence.

The judgment of the trial court is affirmed.

AFFIRMED.