IN THE COURT OF APPEALS OF IOWA

No. 1999-383 (9-636) / 98-2118
Filed March 15, 2000

MICHAEL CARRIER and BRENDA CARRIER,
Individually and as Parents and Guardians of Deanna Carrier,
A Minor,
Plaintiff-Appellants,

vs.

ROLLAND McSPAREN and DEBBIE McSPAREN,
Defendants-Appellees.

FILED
MAR 15 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Davis County, Annette J. Scieszinski, Judge.

Plaintiffs claim the district court erred by denying their motion for a new trial, and instead exercising additur. **AFFIRMED.**

Dennis W. Emanuel of Webber, Gaumer & Emanuel, P.C., Ottumwa, for appellants.

David J. Hester and Robert E. Breckenridge of Johnson, Hester, Walter & Breckenridge, L.L.P., Ottumwa, for appellees.

Considered by Huitink, P.J., and Streit and Miller, JJ.

PER CURIAM

Deanna Carrier, age two, was bitten by Ronald and Deborah McSparen's dog at the defendants' premises. The dog bite penetrated Carrier's skin on the left cheek and upper throat, requiring treatment at the Davis County Hospital. Carriers sued McSparens for damages. A jury found McSparens liable for past disfigurement, physical pain, mental suffering, and for future medical expenses. The trial court denied Carriers' motion for a new trial and exercised additur in awarding additional damages for future pain and suffering and for future disfigurement.[1]

The Carriers claim the court erred in not granting a new trial based on the jury's award being inadequate, inconsistent, and not supported by substantial evidence; and defense counsel's improper and prejudicial argument referring to insurance and the defendants' livelihood. They argue the court should order a new trial based solely upon the issue of damages, as liability has been fully established. The McSparens respond that the jury award was reasonable in light of the injuries; the court's exercise of additur effected justice; and defense counsel's disputed statements did not implicate their ability to pay, suggest insurance coverage, or affect the jury's verdict.

The district court may grant a new trial when the jury awards excessive or inadequate damages, or when the verdict is not sustained by sufficient evidence, or is contrary to law. Iowa R. Civ. P. 244(d), (f). The district court has

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[1] We assume the use of the term "disfigurement" in the verdict form is intended to refer to a claim for "loss of function" of the body or for pain and suffering. We are not aware of "disfigurement" being a basis for damages under existing law, but do not address this distinction in terminology since it was not raised by the parties.

considerable discretion in ruling on a motion for new trial based on an inadequate verdict. *Householder v. Town of Clayton*, 221 N.W.2d 488, 493 (Iowa 1974). Whether damages are so inadequate to warrant a new trial is for the district court to decide. *Fisher v. Davis*, 601 N.W.2d 54, 57 (Iowa 1999). We review district court rulings on motions for new trials for abuse of discretion. Iowa R. App. P. 14(f)(3); *Kalvik ex rel. Kalvik v. Seidl*, 595 N.W.2d 136, 138 (Iowa App. 1999).

Iowa Rule of Civil Procedure 250 governs conditional new trials and allows a court to increase or modify a jury's verdict as a condition for a defendant to avoid a new trial. *See Fisher v. Davis*, 601 N.W.2d at 59-60. The refusal to grant additur can be an abuse of discretion when the verdict is inadequate. *McHose v. Physician & Clinic Servs, Inc.*, 548 N.W.2d 158, 162 (Iowa App. 1996).

Based on our review of the evidence presented at trial, we find no abuse of discretion in the trial court's use of additur instead of granting a new trial. We conclude the use of additur effected substantial justice between the parties.

The Carriers also claim the court erred in its handling of allegedly improper remarks by defense counsel during closing argument. After reviewing the remarks in context and the court's ruling, we cannot say the remarks improperly referred to the financial status of the McSparens or that the court abused its discretion in its resolution of the issue. *See Eldridge v. Casey's Gen. Stores, Inc.*, 533 N.W.2d 569, 571 (Iowa App. 1995).

We find the district court did not abuse its discretion in denying the Carriers' motion for new trial on all of the grounds urged. We determine the use of additur was appropriate under the circumstances and effected justice.

AFFIRMED.