

IN THE COURT OF APPEALS OF IOWA

No. 9-655 / 89-291

FILED

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CLERK SUPREME COURT

JOY L. BEST and JACK N. BEST,

Appellants,

17

vs.

MEREDITH L. DAVIS,

Appellee.

Appeal from the Iowa District Court for Poweshiek
County, James P. Rielly, Judge.

Plaintiffs appeal the jury award of property damages
arising from a traffic accident. **REVERSED.**

Theodore R. Hoglan of Fairall, Fairall, Kaplan, Condon
& Hoglan, Marshalltown, for appellants.

John W. Hayek of Hayek, Hayek, Hayek & Holland,
Iowa City, for appellee.

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

SCHLEGEL, J.

In this lawsuit arising from a traffic accident, the jury found the defendant 100% at fault but awarded plaintiffs only property damages. The jury concluded the accident had not proximately caused the back pain complained of by one of the plaintiffs. Plaintiffs appeal the judgment entered and contend the verdict was contrary to the evidence. We reverse and remand for a new trial.

A car driven by Meredith Davis collided with a car occupied by Jack and Joy Best.

The Bests later filed this lawsuit against Meredith Davis. Joy Best sought damages for an alleged back injury. Jack Best sought to recover for property damage to his car and also for loss of consortium resulting from Joy's back injury.

At trial one of the main evidentiary issues concerned whether Joy Best's back trouble resulted from this accident or from a preexisting condition.

The jury returned a verdict finding that Meredith Davis was 100% at fault in the accident. Accordingly, the jury granted Jack Best an award for the damages to his car. However, the jury also found that the accident was not a proximate cause of any of Joy Best's subsequent back pain. Therefore, the jury awarded no damages to Joy Best for personal injury nor to Jack Best for loss of consortium.

The Bests have appealed the judgment entered upon the verdict described above.

The Bests contend the verdict, insofar as it awarded no damages for Joy's back injury or Jack's loss of consortium, was contrary to the evidence. They argue they are therefore entitled to a new trial.

Our scope of review in this matter is for the correction of errors at law. Iowa R. App. P. 4.

The plaintiff argues that a new trial should have been granted primarily because the verdict was contrary to the weight of the evidence. The trial court has wide discretion in ruling on a motion for new trial and this court will not disturb that ruling unless it is reasonably clear there was an abuse of discretion. Northrup v. Miles Homes, Inc. of Iowa, 204 N.W.2d 850, 861 (Iowa 1973). Where there is substantial evidence to support the jury's determination, the judge should not grant a new trial merely because reasonable men might disagree with the jury's conclusion. Id.

It is apparent from the facts of this case that the jury was rather confused. When the jury first returned its verdict it stated the defendant was at fault and should pay for the property damage, but was not at fault for the personal injuries. The court instructed the jury that its verdicts were inconsistent and the jury later returned a verdict, again placing the defendant 100% at fault but stating that the accident was not the proximate cause of the plaintiff's back injury. It is also clear that the

jury may have been considering whether the parties had insurance and could get double recovery. During their first set of deliberations the jury sent a question to the judge asking about double recovery and insurance. In any event, we cannot tell what the jury was thinking, nor can we render an opinion based on it. We can only overturn the jury's verdict if based on several well-established principles.

These principles are set out in the case of Harsha v. State Savings Bank, 340 N.W.2d 791, 799 (Iowa 1984). "Finally on the damage issue, we do not disturb jury verdicts pertaining to damages unless they are flagrantly excessive or inadequate, so out of reason so as to shock the conscience, the result of passion or prejudice, or lacking in evidentiary support."

There were five experts who testified as to the injuries suffered by Joy Best. All five of these experts gave varying diagnosis as to whether her injuries were directly caused by the accident. Most of the evidence was that they could not tell whether the entire injury was due to the accident or to a previously existing condition. What they all did agree on was that her injury was at least aggravated by the accident. There is no question that a jury does not have to follow the opinion of an expert to the exclusion of all other evidence. See Eickelberg v. Deere & Co., 276 N.W.2d 442, 447 (Iowa 1979). However,

"where common knowledge or everyday experience will not permit a lay jury to form an opinion as to causal connection between alleged acts of negligence and injury to the plaintiff, causal connection is essentially a matter which must be foundationed upon expert evidence." Van Iperen v. Van Bramer, 392 N.W.2d 480, 484 (Iowa 1986). It is apparent that lay opinion was not sufficient under these circumstances. Even the five experts could not tell for certain what caused the injury. Knowledge and everyday experience would not help the jury to decide this issue. They needed, and received, the help of five qualified individuals, and it appears that they ignored that help in order to reach an end consistent with their view of the law. The jury determined the defendant was completely at fault for the accident. All of the expert testimony agreed that some aggravation or injury had occurred. The jury could have determined that the damage caused by the aggravation was only \$1, for on that point reasonable men could differ. Reasonable men cannot differ as to whether at least some injury, and therefore some damages occurred.

The confusion of the jury and its inquiry concerning insurance also cast suspicion on an already suspicious verdict. The jury's verdict in this case was flagrantly inadequate because it awarded absolutely nothing for an injury caused by the defendant. It also may be the result of passion or prejudice based on the jury's apparent

chagrin at the possibility of double recovery. It is certainly lacking in evidentiary support and the trial court abused its discretion in failing to grant a new trial.

REVERSED.