IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 1-572 / 00-2011
Filed November 16, 2001

PAMELA RICHEY-BUTTS,
Plaintiff-Appellant,

vs.

ELIZABETH LAY,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge.

Plaintiff appeals following a trial on her personal injury action in which the jury found the actions of the defendant were not the proximate cause of injuries allegedly suffered by the plaintiff. **AFFIRMED.**

Catherine C. Dietz-Kilen and Harvey Harrison of Harrison & Dietz-Kilen, Des Moines, for appellant.

Kris Holub Tilley of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, for appellee.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

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VAITHESWARAN, J.

In this personal injury action arising from a car accident, plaintiff Pamela Richey-Butts contends the district court should have overturned the jury's defense verdict and granted her a new trial. Finding no abuse of discretion in the court's denial of her new trial motion, we affirm.

I. Background Facts and Proceedings

Richey-Butts was driving along a snow-packed Des Moines boulevard when a sport utility vehicle driven by Elizabeth Lay crossed her path and hit her left front fender. Richey-Butts' car skidded into a snowbank. Richey-Butts called the police, got out of the passenger side of the car, exchanged information with Lay, took several pictures of her own car, waited for the police, and, after they arrived, drove home.

Richey-Butts filed a negligence action against Lay. At trial, Lay admitted she was negligent but did not agree that her negligence proximately caused Richey-Butts' damages. The jury sided with Lay. Richey-Butts moved for a new trial but the district court denied the motion. This appeal followed.

II. Scope of Review

The scope of our review of a district court's denial of a motion for new trial depends on the grounds alleged in the motion and ruled upon by the district court. *Hoskinson v. City of Iowa City*, 621 N.W.2d 425, 426 (Iowa 2001). We review the court's ruling as it pertains to the sufficiency of the evidence supporting the jury verdict for abuse of discretion. *See Ladeburg v. Ray*, 508 N.W.2d 694, 696 (Iowa 1993) (citing *Shepherd Components, Inc. v. Brice Petrides-Donohue & Assocs., Inc.*, 473 N.W.2d 612, 618 (Iowa 1991)). We

review claims that the court's ruling is contrary to law for errors of law. *Greenwood v. Mitchell*, 621 N.W.2d 200, 204 (Iowa 2001).

Richey-Butts' primary argument is that the verdict was not supported by sufficient evidence. Although Richey-Butts also suggests the verdict is contrary to law and does not effect substantial justice, these arguments are actually repackaged challenges to the sufficiency of the evidence supporting the verdict. Therefore, our review is for abuse of discretion.

III. Denial of New Trial Motion

A. Causation Standard

The concept of causation has two components. There must be a determination of whether: (1) the harm would have occurred but for the defendant's negligence and (2) the defendant's negligence was a substantial factor in bringing about the harm. *Rieger v. Jacque*, 584 N.W.2d 247, 251 (Iowa 1998).[1] The second component implicates the concept of proximate cause. *Id.* Given this two-fold analysis, it is entirely possible to find a defendant negligent without finding the negligence to be a proximate cause of damages.[2]

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[1] *Compare City of Cedar Falls v. Cedar Falls Comm. Sch. Dist.*, 617 N.W.2d 11, 17 (Iowa 2000) (noting proximate cause requires proof that (1) the defendant in fact caused damages and (2) the policy of the law required the defendant to be legally responsible for them).

[2] *See Scoggins v. Wal-Mart Stores, Inc.*, 560 N.W.2d 564, 567-568 (Iowa 1997) (negligent sale of ammunition to minor not a proximate cause of plaintiff's death); *Millis v. Hute*, 587 N.W.2d 625, 629 (Iowa Ct. App. 1998) (stipulation to negligence was not stipulation as to proximate cause and conflicting evidence was sufficient to uphold jury verdict for defendant); *Ten Hagen v. DeNooy*, 563 N.W.2d 4, 8 (Iowa Ct. App. 1997) (abuse of discretion to order new trial when jury could reasonably conclude defendant's fault was not substantial cause of damages).

B. Sufficiency of Evidence

The sole question we must decide is whether there was sufficient evidence to support the jury's finding that Lay's negligence was not the proximate cause of Richey-Butts' damages. *See Ten Hagen v. DeNooy*, 563 N.W.2d 4, 9 (Iowa Ct. App. 1997). Richey-Butts sought damages for the following injuries she claimed she sustained in the accident with Lay: (1) neck pain; (2) right shoulder pain; (3) back problems; and (4) mental health problems. We will examine the evidence relating to each of these claimed injuries.

1. Neck Pain. Richey-Butts testified she experienced neck pain following the accident with Lay. Her treating physician as well as a physician practicing in the field of physical medicine and rehabilitation opined that the accident caused her pain.

However, the record also contained evidence that Richey-Butts was in another accident just two months before the accident with Lay, in which she sustained a neck injury. Although her treating physician stated the pain from that accident had resolved by the time of the collision with Lay, a defense expert noted she was being treated for the earlier pain just weeks before the collision with Lay. He also opined that the soft tissue injury to her neck following the accident with Lay would have healed within four to six weeks. Finally, the defense expert pointed out that Richey-Butts had been experiencing degenerative changes in her upper spine from as early as 1995 and opined all her neck pain could be attributed to these changes and to "deconditioning." A jury reasonably could have found the defense expert's opinion more persuasive on the question of proximate cause. *See DeNooy*, 563 N.W.2d at 9 (noting the

function of the jury to sort out controverted issues of fact); *Young v. Gibson*, 423 N.W.2d 208, 210 (Iowa Ct. App. 1988) (jury free to reject testimony of plaintiff's doctor that plaintiff's injuries were caused by accident).

2. Shoulder Pain. Richey-Butts claimed she sustained a right shoulder injury in her accident with Lay and, again, her treating physician, the physical medicine physician, and an orthopedic surgeon opined that the injury was caused by this collision. However, there was also evidence Richey-Butts experienced shoulder pain in the earlier accident. The orthopedic surgeon admitted he was not aware of this earlier accident when he performed arthroscopic surgery on Richey-Butts' shoulder. He stated the earlier accident "muddie[d] the water" with respect to his opinion on causation. In light of this concession, a jury reasonably could have found that the earlier accident was the proximate cause of Richey-Butts' shoulder injury. *See Gibson*, 423 N.W.2d at 210.

3. Back Pain. Richey-Butts claimed she injured her lower back in the accident with Lay and her treating physician as well as the physical medicine physician testified to a causal connection between the accident and the injury. However, the record also contains evidence that Richey-Butts injured her back at work three years before the accident with Lay, received treatment for several years, and was accorded a six percent permanent impairment rating for workers compensation purposes. Additionally, the defense expert opined that Richey-Butts did not sustain any type of lower back injury in the accident. In light of this opinion and the evidence of a pre-existing back injury, a jury reasonably could have found the accident with Lay was not the proximate cause of Richey-Butts'

back problems. *See Kautman v. Mar-Mac Comm. Sch. Dist.*, 255 N.W.2d 146, 148 (Iowa 1977) (noting jury was free to accept or reject any expert opinion evidence in whole or in part).

4. Mental Health Problems. Richey-Butts claimed she experienced anxiety and depression after the accident with Lay, and her physicians opined this was causally related to the accident with Lay. However, Richey-Butts admitted she first received treatment for depression eight to ten years before the accident with Lay, and continued to receive treatment after that period. A psychotherapist who opined that the accident with Lay caused her depression had only a sketchy picture of this past mental health history. Although he stated that additional knowledge would not necessarily have changed his causation opinion, a jury could have concluded otherwise. *Waddell v. Peet's Feeds, Inc.*, 266 N.W.2d 29, 31 (Iowa 1978) (noting factfinder not obliged to accept expert testimony even if uncontradicted).

In sum, we are left with multiple causes for Richey-Butts' injuries and damages. It was the jury's function to sift through this causation evidence and determine whether the accident with Lay was a substantial factor in bringing about Richey-Butts' damages. *Contrast Johnson v. Knoxville Comm. Sch. Dist.*, 570 N.W.2d 633, 642 (Iowa 1997) (concluding new trial warranted where jury awarded no damages despite stipulation as to defendant's negligence and proximate cause on some damages). The jury did so and the district court appropriately did not interfere. Accordingly, we find no abuse of discretion in the court's denial of Richey-Butts' motion for new trial.

AFFIRMED.

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