FILED
MAR 3 1 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

136

FRANCIS W GREINER and JUDITH C GREINER,	)	
Plaintiffs-Appellants,	)	Filed March 31, 1987
vs	)	
STEPHEN C. GERARD,	)	6-527 86-124
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Keokuk County (21492) - James Jenkins, Judge

Plaintiffs appeal a judgment entered on a jury verdict in their favor in a legal malpractice and contract action. **AFFIRMED.**

Bruce E Bergman and John K. Vernon of Isaacson, Clarke, Vernon & Hodge, Des Moines, Iowa, for plaintiffs-appellants.

W Don Brittin, Jr., and Burns Mossman of Nyemaster, Goode, McLaughlin, Emery & O'Brien, Des Moines, Iowa, for defendant-appellee.

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

SCHLEGEL, J.

Plaintiffs appeal a judgment entered on a jury verdict in their favor in a legal malpractice and contract action. We affirm.

Plaintiffs were farmers in the Sigourney, Iowa, area for 25 years. In 1982, having suffered substantial farming losses in the years preceding, plaintiffs' financial crisis developed. Keokuk County State Bank sent a letter regarding their delinquency in payments, and requested action on reducing plaintiffs' debts.

Plaintiffs had substantial assets but little cash with which to make payments to the bank and other creditors. They viewed their principal alternatives in raising needed funds as selling their seller's interest in two farm real estate contracts or selling out their farm operation and moving to town. Defendant, a lawyer whose firm had prepared plaintiffs' tax returns for several years, was hired to assist plaintiffs. He recommended against selling the farm. Plaintiffs received an offer to sell their real estate contracts for $300,000 by the bank. Plaintiffs asked defendant in the spring of 1982 to calculate the tax consequences of accepting the offer. He advised them it was in the area of $20,000. Based upon this information, plaintiffs sold their contracts. The bank agreed to loan plaintiffs $18,000 to pay income taxes in 1983.

In February of 1983, defendant calculated plaintiffs actual income tax liability for 1982, and found it to be approximately $56,000. He admitted to plaintiffs that he had made an error in the spring of 1982 in estimating tax liability by failing to consider the alternative minimum tax. The bank refused to loan plaintiffs funds for taxes because of the increased liability. Plaintiffs maintain they were in desperate straits, with additional income tax liabilities of nearly $40,000 more than they had anticipated. They had to borrow the money from a relative. Plaintiffs sued defendant seeking damages for legal malpractice and breach of contract.

The jury returned a special verdict finding that defendant was negligent, but that he had not breached a contract with plaintiffs. It awarded $9,000 damages. Plaintiffs seek a new trial on the issue of damages.

Our scope of review is for corrections of errors at law. Iowa R. App. P. 4. The findings of fact by the jury are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

I.

At trial, plaintiffs attempted to introduce evidence of the emotional distress and mental anguish suffered as a result of the defendant's tax error, but defendant's relevancy objections were sustained by the trial court. It ruled that such evidence was not admissible because: (1) there could be no recovery of damages for emotional distress resulting from damage which is done to property; and (2) the "impact" rule requires physical injury to permit recovery for emotional distress.

Briefly summarized, the testimony proffered by plaintiffs regarding emotional distress was intended to show that Francis Greiner suffered from severe depression, resulting in numerous threats of suicide, as well as hospitalization on two occasions and Judith Greiner suffered from anxiety and related health problems. The plaintiffs urge that the trial court be reversed and the case be remanded for a new trial on the issue of damages because the trial court erred in excluding evidence of emotional distress suffered by plaintiffs.

We do not agree with plaintiffs that we should recognize the tort of negligent infliction of emotional distress in these circumstances. Our courts generally do not allow recovery for the negligent infliction of emotional distress or mental anguish. Wambsgans v. Price, 274 N.W.2d 362, 365 (Iowa 1979). It is true, as plaintiffs point out, that a bystander may have a claim for emotional distress caused by witnessing harm to a victim proximately caused by the negligence

of another. Barnhill v. Davis, 300 N.W.2d 104, 108 (Iowa 1981). However, the supreme court has not allowed further expansion of this tort outside the bystander context. See e.g., Oberreuter v. Orion Industries, Inc., 342 N.W.2d 492, 494 (Iowa 1984). We will not here say that damages for emotional distress may be recovered as a result of the erroneous preparation of a tax return. Consequently, we affirm the trial court's ruling that since damages are not recoverable in these circumstances, evidence intended to establish such a claim is inadmissible.

II.

Plaintiffs also contend that the court's failure to instruct the jury regarding a method of finding present value in calculating damages constituted reversible error.

Both parties offered expert testimony concerning the issue of damages. In instruction 16, the jury was told of the measure of damages in this manner:

> Under Count I (negligence) and Count II (breach of contract) the measure of damages is identical. The measure of damages is the difference between the income tax actually paid by plaintiffs for their sale of the Greiner and Herman contracts in 1982, and the amount that they would have paid had they continued reporting their income on installment basis, discounted to its 1983 value.

The trial court declined to give Iowa Uniform Jury Instruction 3.3, which states:

> Present cash value is the present sum of money which, together with interest earned thereon when invested so as to yield the highest interest rate of return of a good, sound investment, consistent with reasonable security, will pay the equivalent of future damages at the times, in the amounts, and for the period that you find such future damages will be incurred with reasonable certainty.

Both parties' experts had testified as to the methodology to be used in calculating present cash value. The experts disagreed as to the interest rates to be applied in making the calculations, and what the damages were.

VonTersch v. Ahrendsen, 251 Iowa 115, 122, 99 N.W.2d 287, 291 (1959), sets forth the standard to be used by the jury in determining present value:

> The rate to be used is the one found by the jury from the evidence to be fairly expected from reasonably safe investments which a person of ordinary prudence, but without particular financial experience or skill, could make in the locality.

The jury heard a great deal of testimony as to how much money would have been required to be invested by plaintiffs in April 1983 to produce the funds required to pay their income taxes on the contracts on an installment basis. The jury heard both plaintiffs' and defendant's testimony as to the rate that a person of ordinary prudence could expect to make on an investment. The trial court, in these circumstances, was understandably wary of influencing the jury's determination of factual issues. The court's reliance on the evidence presented at trial to assist the jury in determining an appropriate method of calculating present value was not error.

III.

Plaintiffs next maintain that the trial court erred in refusing to admit evidence regarding financial alternatives not pursued due to defendant's negligence.

The general measure of damages in a legal malpractice case is the actual loss sustained by the plaintiff client. Pickens, Barnes & Abernathy v. Heasley, 328 N.W.2d 524, 525 (Iowa 1983). The court did not find that evidence supporting financial alternatives which might have been pursued absent the attorney's negligence was relevant. We will not interfere with the trial court's decision in excluding evidence unless it has clearly abused its discretion to prejudice the complaining party. Henkel v. R and S Bottling Co., 323 N.W.2d 185, 193 (Iowa 1982); Carter v. Wiese Corp., 360 N.W.2d 122, 131 (Iowa Ct. App. 1984).

On appeal, we will not say that the trial court abused its discretion in excluding the evidence as speculative and irrelevant.

IV.

Plaintiffs contend the trial court erred in failing to instruct the jury that it could award damages for accounting fees incurred by plaintiffs. The court refused to give such an instruction because the fees had to be spent for preparation of the taxes in any event; there was no evidence in the record as to the reasonability of the fees; and, the court did not believe the fees were incurred in mitigation of damages. It is the trial court's duty to submit an issue to the jury only when there is evidence in the record to support those issues. Bradt v Grell Construction, Inc., 161 N.W.2d 336, 340 (Iowa 1968). We find no error in the trial court's decision not to submit an instruction regarding the accounting fees.

V.

Plaintiffs further argue that the trial court erred in failing to give plaintiffs' requested instructions regarding damages for negligence and breach of contract.

In determining whether there is an error in the trial court's failure to submit a requested instruction, we look to all relevant instructions. Palleson v Jewell Cooperative Elevator, 219 N.W.2d 8, 17 (Iowa 1974). If the substance of the requested instruction is covered in the instructions given, it is not error to refuse the request made. Id. A party is entitled to an instruction stating a correct rule of law having application to the facts of the case when the concept is not otherwise embodied in the court's instructions. Adam v. T.I.P. Rural Electric Cooperative, 271 N.W.2d 786, 901 (Iowa 1968). We do not believe that the jury instructions given by the court omitted or misstated the law or were confusing. None of the instructions given require reversal as they were neither prejudicial nor erroneous.

AFFIRMED.