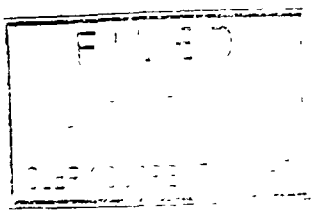
IN THE COURT OF APPEALS OF IOWA

No. 1999-46 (9-201) / 98-1185
Filed October 15, 1999



STASHU ANDERSON, a Minor by her Mother, PATRICIA ANDERSON,
Plaintiff-Appellant,

vs.

KENNETH BERNAUER,
Defendant-Appellee.

Appeal from the Iowa District Court for Scott County, Edward B. DeSilva, Judge.

Plaintiff appeals following a jury verdict for the defendant in her personal injury case. She contends the court abused its discretion in denying her motion for a new trial because the jury erroneously found the defendant did not proximately cause her injuries. **AFFIRMED.**

John F. Doak and Andrew M. Rink of Katz, McHard, Balch, Lefstein & Fieweger, P.C., Rock Island, Illinois, for appellant.

Patrick L. Woodward and Patricia Rhodes Cepican of McDonald, Stonebraker & Cepican, Davenport, for appellee.

Considered by Huitink, P.J., and Mahan and Hecht, JJ.

HECHT, J.

Plaintiff Stashu Anderson appeals following a jury verdict for defendant Kenneth Bernauer in her personal injury case. She contends the court abused its discretion in denying her motion for a new trial because the jury erroneously found the defendant did not proximately cause her injuries. We affirm.

I. Factual Background and Proceedings. On May 22, 1993, Anderson, then 10 years old, was a passenger in a car driven by Kim Guthrie. Guthrie was unable to stop her car after changing lanes on a rainy day and rear-ended a truck (hereinafter "the first impact"). Immediately thereafter, Guthrie's car was rear-ended by Bernauer's car (hereinafter "the second impact").

The nature and extent of the two impacts was a subject of dispute during the trial. Anderson testified that when Guthrie's car "slightly tapped" the vehicle ahead of her in the first impact, her body "jerked just a little bit forward." Guthrie testified that Anderson's body did not strike the windshield as a result of the first impact, but that the second impact did throw Anderson into the windshield. Mr. and Mrs. Bernauer testified, on the other hand, that the second impact was a mere "bump." Mr. Bernauer claimed that he was going less than 5 miles per hour when his vehicle struck the rear of the Guthrie automobile, and that he "didn't even get a jolt" as a result of the impact. Mrs. Bernauer testified that her body didn't move forward at all at the time of the "gentle" second impact.

After the two impacts occurred, Anderson complained of headaches. She was later diagnosed with "post-traumatic headaches." Dr. Cullen, Anderson's expert, testified that the headaches were causally related to the accident. His opinion was, however, dependent upon a history (inaccurate, in fact) that Anderson had been thrown through the windshield as a result of the second impact.

Following the presentation of evidence, the jury returned a verdict finding Bernauer negligent. The jury found no causal connection, however, between his negligent conduct and Anderson's injuries. Anderson filed a motion for new trial which was denied by the district court. Anderson appeals.

II. Scope of Review. On an appeal from a motion for new trial, the standard of review is abuse of discretion. *See Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 891 (Iowa 1996). Upon a motion for new trial, the trial court has broad, but not unlimited, discretion in determining whether the verdict effectuates substantial justice between the parties. Iowa R. App. P. 14(f)(3). An abuse of discretion will not be found unless the trial court exercised its discretion on clearly untenable grounds or to an extent clearly erroneous. *See Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 13 (Iowa 1990).

III. Motion for New Trial. Under the Iowa Rules of Civil Procedure, a party may be granted a new trial where the jury awarded excessive or inadequate damages appearing to have been influenced by passion or prejudice, where the verdict is not sustained by sufficient evidence, or where the verdict is contrary to law. Iowa R. Civ.

P. 244(d), (f). Anderson alleges that the jury's verdict finding Bernauer negligent but not the proximate cause of her injuries was not supported by the evidence.

Questions of negligence and proximate cause are questions of fact and, as such, are reserved for the jury; it is only in rare cases that they may be decided as matters of law. Iowa R. App. P. 14(f)(10). Even though negligence may have been established, it does not necessarily follow that proximate cause exists; this question must be separately determined. *Northwestern Nat'l Ins. v. Raid Quarries Corp.*, 249 N.W.2d 640, 643 (Iowa 1977). Proof of the necessary causal connection may be by either direct or circumstantial evidence but in the event the latter is used, it must be sufficient to make plaintiffs' theory asserted reasonably probable, not merely possible, and more probable than any other theory based on such evidence; however it is generally for the trier of fact to say whether circumstantial evidence meets this test. *Oak Leaf Country Club, Inc. v. Wilson*, 257 N.W.2d 739, 746 (Iowa 1977).

Two motor vehicle collisions occurred in rapid succession in this case. The nature and extent of the two impacts were disputed. Though Anderson and her physician testified that she was injured as a result of the second impact, the jury was free to reject such testimony and believe the Bernauers' testimony that the collision was a minor bump which didn't even produce a real jolt. Though Anderson's physician stated with a reasonable degree of medical certainty that her headaches were casually related to the accident, the jury is not required to accept such testimony.

The verdict indicates the jury apparently found the Bernauers' testimony more persuasive than evidence produced by Anderson. Viewing the entire record as a whole, the jury was well within their role as fact-finder to determine that Bernauer's negligence was not a proximate cause of Anderson's injuries. Therefore, we conclude the district court did not abuse its discretion in denying the plaintiff's motion for new trial.

AFFIRMED.