FILED
MAY 22 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

TOBY BUCHANAN, a minor by his next friends John and Susan Buchanan,

Plaintiff-Appellant,

and JOHN BUCHANAN and SUSAN BUCHANAN,

Plaintiffs,

vs.

STEVE SCHULTZ,

Defendant-Appellee.

Filed May 22, 1984

4-105
83-960

Appeal from the Iowa District Court for Linn County—Thomas M. Horan, Judge.

Plaintiff Toby Buchanan appeals from the entry of judgment upon a verdict which awarded him no damages in this assault and battery suit. REVERSED AND REMANDED.

Hugh G. Albrecht of the Tom Riley Law Firm, Cedar Rapids, for plaintiffs-appellants.

Susan E. Harman of Lynch, Dallas, Smith & Harman, Cedar Rapids, for defendant-appellee.

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

Plaintiff Toby Buchanan appeals from the entry of judgment upon a verdict which awarded him no damages in this assault and battery suit. On appeal, Toby asserts that the uncontroverted evidence showed that (1) he had pain and suffering as a result of the assault on him by defendant, so the jury's award of no damages was inadequate as a matter of law; and (2) the court should have cautioned the jury that testimony about defendant's lack of assets was admissible only on the punitive damage count, and also should have given a limiting jury instruction to that effect. Plaintiff moved for a new trial which was overruled. We reverse and remand.

Motions for new trials can be granted pursuant to Iowa Rule of Civil Procedure 244(f) if a jury verdict is not sustained by sufficient evidence. Likewise, a trial court can grant a new trial when the verdict fails to effectuate substantial justice. Thompson v. Rozeboom, 272 N.W.2d 244, 246 (Iowa 1978). Generally, a trial court has broad discretion in passing on motions for new trials and only when there has been a clear abuse of that discretion will we interfere with a ruling upon the motion. Houvenagle v. Wright, 340 N.W.2d 783 (Iowa Ct. App. 1983).

In this case the evidence disclosed that Toby incurred $3916.95 in medical expenses as a result of this injury. The jury awarded Toby's parents $1916.95. The jury was instructed that all payments made by Steven or his parents would reduce defendant's liability to plaintiff by that amount. Two thousand dollars ($2000.00) was previously paid to the Buchanans by Steve and his parents. We find it unquestionable but that the jury verdict of $1916.95 was for the balance of Toby's medical expenses incurred as a result of this injury. This was the only award rendered by the jury. As such, Toby was not given any compensatory damages for the pain and suffering that necessitated those medical expenses; nor was he awarded any punitive damages.

Defendant stipulated to his liability. Defendant testified that he knew he had badly injured Toby and that he "wouldn't want to go through what [Toby] had to go through." The attending physician testified that the medical procedures used on Toby on account of the nose injury were quite painful. Toby corroborated that testimony.

Toby was hospitalized twice; his nose was sufficiently deformed, necessitating cosmetic surgery to correct the problem. The surgery took a bone from the hip and placed it in the nose, which subsequently caused a fair amount of pain in the nose and the hip area.

The record describes at length the medical procedures used on Toby. We need not reiterate the graphic details now. Let it suffice to say, we find no logical ground on which the jury could award Toby's parents the cost of medical services made necessary by Toby's pain and suffering and yet allow him nothing for his pain and suffering. See Shewry v. Heuer, 255 Iowa 147, 152, 121 N.W.2d 529, 532 (1963).

The fact that Toby's parents' claim for medical expenses was a separate and distinct cause of action from Toby's claim for compensatory damages does not make the Shewry case inapplicable as suggested by defendant. We still find the jury verdicts to be inconsistent and not sustained by sufficient evidence.

We also note that in the original proceeding the trial court admitted evidence concerning the financial condition of the defendant.

The general rule is that evidence of a defendant's poverty or wealth is admissible in connection with exemplary or punitive damages. See Hall v. Montgomery Ward & Co., 252 N.W.2d 421, 424 (Iowa 1977). However, in adopting such a rule, the trial court is cautioned to confine the parties carefully to the

proper use of such evidence, i.e., to the issue of the amount of exemplary damages which is necessary to punish the defendant. Id. at 424.

For reasons previously stated, we find the trial court should have sustained the motion for a new trial. Therefore, we reverse the trial court and remand this case for a new trial on all the issues.

REVERSED AND REMANDED.