

IN THE COURT OF APPEALS OF IOWA

No. 3-1057 / 13-0284
Filed December 5, 2013

**CHARLES S. HARLESS, PAUL E. HARLESS,
and REBECCA HARLESS,**
Plaintiffs-Appellants,

vs.

ERIC JON DUNN and CONNIE L. DUNN,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

The plaintiffs appeal from a district court ruling denying their motion for new trial following a jury verdict and judgment entry in their personal injury action.

AFFIRMED.

William B. Serangeli of Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines, for appellants.

Scott J. Beattie and Joseph M. Barron of Peddicord, Wharton, Spencer, Hook, Barron & Wegman, LLP, West Des Moines, for appellees.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

DOYLE, P.J.

Charles Harless, Paul Harless, and Rebecca Harless appeal from a district court ruling denying their motion for new trial following a jury verdict and judgment entry in their personal injury action against Eric Dunn and Connie Dunn, stemming from a motor vehicle accident that occurred in October 2008 in West Des Moines.¹ We affirm.

The Harlesses' claims were submitted to a Polk County jury in September 2012. The jury returned a verdict in favor of Charles in the amount of \$22,900,² and in favor of Paul in the amount of \$9000.³ The jury did not return a verdict in favor of Rebecca on her claim for loss of consortium. The Harlesses filed a motion for new trial. Following a hearing, the district court denied the motion. The Harlesses' appeal, contending the district court erred in denying the motion for new trial because the jury verdict was "flagrantly inadequate" and "influenced by passion or prejudice against" them. See Iowa R. Civ. P. 1.1004(4) (providing that a new trial may be granted if the verdict awarded "[e]xcessive or inadequate damages appearing to have been influenced by passion or prejudice").

Our review of a district court's ruling on a motion for new trial depends on the grounds raised in the motion. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). When the motion and ruling are based on discretionary grounds, our review is for abuse of

¹ Rebecca was not part of the motor vehicle accident; her claim was for loss of consortium relating to her husband Paul's injuries.

² This award includes: \$16,400 for past medical expenses, \$2500 for past pain and suffering, \$3500 for past loss of full body, and \$500 for future loss of full body.

³ This award includes: \$8000 for past medical expenses, \$500 for past pain and suffering, and \$500 for past loss of full body.

discretion. See *id.* Here, the parties agree we are to review for abuse of discretion.⁴

The district court has considerable discretion in ruling on a motion for new trial based upon the ground that the verdict was inadequate. See *Fisher v. Davis*, 601 N.W.2d 54, 57 (Iowa 1999). Whether damages are so inadequate as to warrant a new trial is for the district court to decide, and we will ordinarily not disturb its discretion to grant or deny the motion unless an abuse of discretion is shown. *Id.* “An abuse of discretion occurs when the court’s decision is based on a ground or reason that is clearly untenable or when the court’s discretion is exercised to a clearly unreasonable degree.” *WSH Properties, L.L.C. v. Daniels*, 761 N.W.2d 45, 49 (Iowa 2008).

“Whether damages in a given case are adequate depends on the particular facts of the case.” *Fisher*, 601 N.W.2d at 57. “The test is whether the verdict fairly and reasonably compensates the party for the injury sustained.” *Id.* We view the evidence in the light most favorable to the jury’s verdict when reviewing a motion for new trial. *Estate of Pearson ex rel. Latta v. Interstate Power & Light Co.*, 700 N.W.2d 333, 345 (Iowa 2005). “Where the verdict is within a reasonable range as indicated by the evidence we will not interfere with what is primarily a jury question.” *Olsen v. Drahos*, 229 N.W.2d 741, 742 (Iowa 1975).

⁴ The parties make no claim that we should review for correction of errors at law the district court’s ruling on the insufficient evidence issue. See *Estate of Hagedorn ex rel. Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004) (“Iowa Rule of Civil Procedure 1.1004(6) authorizes the trial court to grant a new trial when the verdict ‘is not sustained by sufficient evidence’ and the movant’s substantial rights have been materially affected. Because the sufficiency of the evidence presents a legal question, we review the trial court’s ruling on this ground for the correction of errors of law.”).

Here, as the Dunns point out, “the evidence presented on the issues of causation and damages was not ‘uncontroverted.’” As the district court observed, “The Jury had complete discretion to weigh the evidence and believe all, part, or none of the evidence.” In particular, the Harlesses’ own evidence discredited at least some of their claim as to the extent and amount of damages incurred as a result of the October 2008 accident.

Moreover, we observe, as did the district court, that the Harlesses proffered no facts or evidence—aside from their bald assertion—to support a claim that the jury’s verdict was arrived at as a result of an improper influence.

The district court noted:

With respect to the Plaintiffs’ grounds for a new trial relating to the damages awarded by the Jury being inadequate or influenced by passion or prejudice or that the Jury has committed error by granting some recoveries, the Court notes that included in the Plaintiffs’ arguments is the assumption that because the award is small, it can only have been arrived at as a result of some improper reason, namely passion or prejudice against the Plaintiffs. However, the Plaintiffs have not presented any facts to corroborate that assumption. Plaintiffs rely on speculation as to why or how the Jury arrived at its decision. To grant a new trial on these unsupported grounds as alleged by the Plaintiffs would only dictate to the Jury what they must find and award. If that were the case, then instructing the Jury would be senseless. The Court does not find that removing the Jury’s discretion in this case is supportable by the facts or the law.

In view of the evidence and the instructions given in this case, we do not think the jury’s finding was “so far outside the bounds of the record that its verdict raises a presumption of passion” or prejudice. See *WSH Properties*, 761 N.W.2d at 51. And the Harlesses have failed to present some other “indication in the proceedings that would support a finding the jury was angry with [them] and motivated to punish them.” See *id.* Viewing the evidence in the light most

favorable to the jury's verdict, we conclude the court exercised its discretion in finding the awards were adequate. We therefore affirm the district court's ruling denying the Harlesses' motion for new trial.

AFFIRMED.