IN THE COURT OF APPEALS OF IOWA

No. 6-441 / 05-1998
Filed August 9, 2006

**JESSE WILDNER, a minor child,
by his Mother and next Friend,
DENISE WILDNER, and DENISE
WILDNER, Individually,**
Plaintiff-Appellee/Cross-Appellant,

vs.

RAMONA WENDORFF,
Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Gordon C. Abel, Judge.

A defendant appeals from a district court order granting the plaintiff a new trial, and the plaintiff cross-appeals from the court's ruling that allowed evidence of payments, write-offs, and adjustments of billed medical expenses. **REVERSED ON APPEAL; AFFIRMED ON CROSS-APPEAL.**

Lyle W. Ditmars and Jennifer K. Sewell of the Peters Law Firm, Council Bluffs, for appellant/cross-appellee.

Robert M. Livingston of Stuart Tinley Law Firm L.L.P., Council Bluffs, for appellee/cross-appellant.

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

ZIMMER, J.

Defendant Ramona Wendorff appeals from a district court order that granted a new trial to plaintiff Denise Wildner, who brought claims individually and on behalf of her son Jesse Wildner. Wildner cross-appeals from the district court ruling that allowed evidence of payments, write-offs, and adjustments of medical expenses incurred by both herself and her son. Because we conclude the district court abused its discretion in granting a new trial, but did not abuse its discretion in admitting the medical expense evidence, we reverse the court's new trial ruling and reinstate the defense verdict rendered by the jury in this matter.

I. Background Facts and Proceedings.

Wildner and Wendorff were involved in a motor vehicle collision in Council Bluffs, Iowa. Wildner's son Jesse was a passenger in her vehicle at the time of the accident. The collision occurred in or near the westbound lane of Avenue G where the lane adjoins a wide entrance and exit driveway of a Kwick Trip convenience store and gas station. Wendorff was exiting the driveway, making a right turn into the westbound lane of Avenue G, and Wildner was entering the driveway after making a left turn from the eastbound lane of Avenue G. The front driver side of Wendorff's vehicle struck the front center or front passenger side of Wildner's vehicle. After the initial impact, Wendorff hit the gas pedal instead of the break pedal and pushed Wildner's vehicle further back into the street. Wendorff was issued a citation for unsafe emergence from a driveway and paid the resulting fine. Wildner was not cited by police.

Wildner filed suit against Wendorff, both individually and on behalf of her son. She asserted Wendorff was negligent in a number of particulars, including

failing to stop her vehicle immediately prior to entering Avenue G or yielding the right of way, failing to have her vehicle under control, failing to keep a proper lookout, and failing to act as a reasonable driver under the circumstances there and then existing. Wildner alleged she and her son had been injured in the accident and sought several items of damage, including past medical expenses.

Wildner moved in limine to exclude evidence that Medicaid had made payment of medical bills incurred in the treatment of herself and her son "either in full or after making an adjustment, reduction, or write-off," which had been accepted by the medical providers pursuant to agreements with Medicaid. The district court granted the motion in part and denied the motion in part. It allowed Wendorff to present "evidence of the acceptance and satisfaction of the medical bills on the issue of reasonableness of the medical charges," but precluded any reference to Medicaid.

During trial, the parties presented differing versions of events. The matter was submitted to the jury, which found Wendorff was not at fault for the accident. Wildner filed a motion for a new trial, asserting the jury's finding of no fault on the part of Wendorff was not sufficiently supported by the record. The district court agreed and granted Wildner a new trial. The court focused on Wendorff's "admissions," specifically admissions that "she was at fault because she panicked and stepped on the gas rather than the brake and, as a result, pushed [Wildner's] vehicle backward" and that she had been "issued . . . a citation for unsafe emergence from a driveway, which she did not contest and for which she paid a fine."

II. New Trial Motion.

On appeal, Wendorff contends the district court erred in vacating the defense verdict and granting Wildner a new trial because the defense verdict found sufficient support in the record. The district court may, in its discretion, vacate a jury verdict and grant a new trial if a party's substantial rights have been materially affected because the verdict is not sustained by sufficient evidence. Iowa R. Civ. P. 1.1004(6). Because such a ruling is based on a discretionary ground, we review it for an abuse of discretion by the district court. *Vaughan v. Must, Inc*., 542 N.W.2d 533, 542 (Iowa 1996). In determining whether the verdict effectuates substantial justice between the parties, the district court enjoys broad, but not unlimited, discretion. *Id*.

The exercise of that discretion must be based on sound judicial reasons. *Wilson v. IBP, Inc*., 558 N.W.2d 132, 144 (Iowa 1996). The district court has no right to set aside a jury verdict because it might have reached a different conclusion. *In re Estate of Hughbanks*, 506 N.W.2d 451, 456 (Iowa Ct. App. 1993). Rather, "[t]he key question is whether after examining the record, 'giving the jury its right to accept or reject whatever portions of the conflicting evidence it chose, the verdict effects substantial justice between the parties.'" *Johnson v. Knoxville Cmty. Sch. Dist*., 570 N.W.2d 633, 641-42 (Iowa 1997). Generally, a jury's verdict finds sufficient support in the record if a reasonable mind would accept the evidence as adequate to reach the same conclusion as the jury. *See Dettmann v. Kruckenberg*, 613 N.W.2d 238, 251 (Iowa 2000).

While we are slower to interfere with the grant of a new trial than with its denial, *Riniker v. Wilson*, 623 N.W.2d 220, 230 (Iowa Ct. App. 2000), we

conclude that, under the record before the jury in this case, the district court abused its discretion when it granted Wildner a new trial. The district court's ruling appears to be based upon a determination that Wendorff's fault had been indisputably established by the fact she did not contest the citation and her admission that she stepped on the gas pedal after the initial impact. However, the totality of the evidence before the jury leads us to conclude that its no fault determination was supported by sufficient evidence.

It is the jury's role to weigh the evidence and assess the credibility of witnesses. *EnviroGas, L.P. v. Cedar Rapids/Linn County Solid Waste Agency*, 641 N.W.2d 776, 785-86 (Iowa 2002). Accordingly, the jury could have accepted Wendorff's assertions that she drove into the right or west side of the driveway, came to a stop, checked the westbound lane for traffic in both directions and, seeing none, began to execute a right turn into the westbound lane when she was stuck by Wildner's vehicle. The foregoing, if accepted by the jury as true, provides sufficient support for a determination that Wendorff was not at fault for the initial collision. The jury was not required to reach a contrary conclusion merely because Wendorff was issued a citation and paid the accompanying fine.

First, we note Wendorff emphasized a number of factors that could detract from the weight the jury might place on the issuance of the citation for unsafe emergence from a driveway. For instance, by the time police arrived at the scene she had moved her vehicle. In addition, the issuing officer had no independent recollection of the accident, did not document what side of the driveway her vehicle had been on, did not record any skid marks, yaw marks, or debris which could aid his investigation, and was not certain whether he had

interviewed the two independent witnesses listed on his report. Moreover, even though Wendorff's payment of the fine is tantamount to an admission of guilt, and can be considered by the jury as evidence of her fault, it is not conclusive proof that she bore some degree of fault for the accident.[1]

During trial Wendorff denied she bore any fault for the initial collision, a denial which found support in her version of events. She also testified, without objection, that she lived in South Dakota and the seven-and-a-half to eight-hour trip to Council Bluffs "would be quite a distance to drive to argue about a ticket . . . ." Although Wildner questions the consistency and veracity of some of Wendorff's testimony, questions of credibility and weight are, as we have previously noted, matters for the jury. *EnviroGas, L.P.*, 641 N.W.2d at 785-86. The inconsistencies relied on by Wildner are not so substantial as to require the court to disregard the portions of Wendorff's evidence that support the defense verdict. *See State v. Mitchell*, 568 N.W.2d 493, 503 (Iowa 1997) (noting that it is only when a witness's testimony is "so impossible, absurd, and self-contradictory that the court should deem it a nullity").[2]

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[1] Compare *Dettmann v. Kruckenberg*, 613 N.W.2d 238, 244 (Iowa 2000), and *Ideal Mutual Insurance Co. v. Winker*, 319 N.W.2d 289, 296 (Iowa 1982), which provide that preclusive effect may be given to a criminal conviction or a validly entered and accepted guilty plea in certain situations, with *Book v. Datema*, 256 Iowa 1330, 1332-33, 131 N.W.2d 470, 471 (1964) (partially overruled on other grounds by *Ideal Mut. Ins. Co.*, 319 N.W.2d at 296), which continues to provide when a guilty plea is not entered pursuant to the rules of criminal procedure, and when a court has not determined that the plea is voluntary and has a factual basis, it "is admissible in a subsequent civil action against the accused arising out of the same offense, as his [or her] deliberate declaration or admission against interest . . . but [is] not conclusive proof in the civil action."

[2] Wildner contends Wendorff's assertion that she "went all the way to the right of that exit and stopped her vehicle before entering Avenue 'G' . . . was suspect" because (1) it was contrary to Wildner's own version of events, (2) the investigating officer testified that his drawing indicated Wendorff had driven "from the east part of the parking lot . . .

Under the circumstances, a reasonable juror could have concluded that the citation was issued after an inadequate investigation, that Wendorff's decision to pay the citation was matter of convenience rather than an intended admission of guilt, and that Wendorff's version of events was the more credible. The record accordingly contains sufficient evidence to support the jury's determination that Wendorff bore no fault for the initial collision.

The district also determined Wendorff bore some level of fault for the accident based on her admission that she was not at fault "in the cause [of the accident], but in stepping on the gas after the collision" while in a state of panic and shock. Wildner contends this admission indisputably established that Wendorff had failed to keep her vehicle under control, one of the specifications of fault that was submitted to the jury. We cannot agree, particularly as the jury was instructed that a vehicle "is under control when the driver can guide and direct its movement, control its speed and stop it reasonably fast." A reasonable juror could determine that accidentally stepping on the gas pedal in a panic, after a sudden and unexpected collision, did not equate to an inability to guide and direct the movement of the vehicle, control its speed, or stop it reasonably fast.

We conclude the district court abused it discretion when it determined that "the jury's verdict is clearly lacking in evidentiary support regarding their finding of no fault on the part of Wendorff especially in light of the admission of fault by

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coming to the direction towards the driveway and exiting out onto Avenue G," and Wendorff's car was somewhere "in the driveway area" when the accident occurred, (3) Wendorff admitted she was traveling between five and ten miles an hour at the time of the accident, and (4) Wendorff testified that, after coming to a stop in the right/west side of the driveway, "I looked both ways, made sure my lane was clear *ahead* of me and *behind* me." (Emphasis supplied by plaintiff.)

Wendorff." The court accordingly erred in vacating the jury's verdict and granting the plaintiff a new trial. We therefore turn to Wildner's claim on cross-appeal.

III. Medical Expense Evidence.

Wildner asserts the district court erred when it allowed into the record, over her objections, evidence regarding the payment, write-off, and adjustment of the billed medical expenses for treatment provided to Wildner and her son. Wildner asserts admission of this evidence violated the collateral source rule, which provides, in relevant part,

> [T]he court shall permit evidence and argument as to the previous payment or future right of payment of actual economic losses incurred or to be incurred as a result of the personal injury for necessary medical care, rehabilitation services, and custodial care *except to the extent that the previous payment* or future right of payment *is pursuant to a state or federal program* or from assets of the claimant or the members of the claimant's immediate family.

Iowa Code § 668.14 (emphasis added). Wildner asserts that because the payments, write-offs, and adjustments in this case were made by and pursuant to agreements with Medicaid, their admission violated the foregoing rule. We review the court's evidentiary decision for an abuse of discretion. *Poole v. Hawkeye Area Cmty. Action Program, Inc*., 666 N.W.2d 560, 565 (Iowa 2003).

The purpose of the collateral source rule is to prevent a jury from reducing a tortfeasor's obligation to make full restitution for the injuries caused by his or her negligence. *Schonberger v. Roberts*, 456 N.W.2d 201, 202 (Iowa 1990). The rule is implicated if a plaintiff's recovery is reduced by the amounts paid by a collateral source, but not if the plaintiff's recovery is simply limited to those amounts. *Pexa v. Auto Owners Ins. Co*., 686 N.W.2d 150, 156 (Iowa 2004). "A proper calculation of the plaintiff's medical expenses must precede a

determination of their recoverability; only the latter issue implicates the collateral source rule." *Id*.

Here, the evidence of the payments, adjustments, and write-offs was introduced to establish the actual expense of the medical services provided to Wildner and her son. Thus, the collateral source rule was not implicated. Wildner was only entitled to recover the reasonable and necessary costs of the medical care, and the reasonable value of those services may be proved by evidence of the amount paid for such services. *Id*. (further noting that "[t]he amount charged, standing alone, is not evidence of the reasonable and fair value of the services rendered," and "that the jury is not bound by the testimony of an expert with respect to the reasonable value of medical services, but 'may use and be guided by their own judgment in such matters'" (citation omitted)). Thus, the district court did not abuse its discretion by allowing evidence of payments, write-offs, and adjustments into the record.

IV. Conclusion.

The district court abused its discretion in vacating the jury's defense verdict and granting Wildner a new trial. It did not, however, abuse its discretion in admitting evidence of payments, write-offs, and adjustments to the billed medical expenses, which were relevant to establish the reasonable value of those services. We accordingly reverse the district court's new trial ruling and reinstate the verdict rendered by the jury in this matter.

REVERSED ON APPEAL; AFFIRMED ON CROSS-APPEAL.