STATE OF MICHIGAN

COURT OF APPEALS

SALAM SAAD, individually, and ALI SAAD, as Next Friend of HUSSIEN SAAD, a Minor,

Plaintiff-Appellants,

and

BLUE CROSS AND BLUE SHIELD OF MICHIGAN,

Plaintiff-Intervenor,

v

BECHARAS BROTHERS COFFEE COMPANY,

Defendant,

and

CITY TAVERN, INC.,

Defendant-Appellee.

UNPUBLISHED
February 2, 1999

No. 202674
Wayne Circuit Court
LC No. 95-512012 NO

Before: McDonald, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

This is a personal injury action arising from burns suffered by thirteen-month-old Hussien Saad after a pot of hot coffee spilled on him at defendant City Tavern (defendant). A waitress had placed the pot of coffee on a table occupied by Hussien and some other adults, but there was a dispute regarding whether the coffee pot was placed within the child's reach, or whether one of the other adults at the table had moved the pot before it spilled. Hussien's mother, plaintiff Salam Saad, brought a separate claim for negligent infliction of emotional distress arising from witnessing both the injury and the subsequent burn care treatment received by Hussien. A jury found defendant liable for the injuries to Hussien and awarded $20,000 to plaintiff Ali Saad, as next friend of minor Hussien, but returned a

verdict in favor of defendant regarding Salam Saad's claim for negligent infliction of emotional distress. Plaintiffs appeal as of right and we affirm.

Plaintiffs raise several issues on appeal. They claim that the trial court erred in denying their motion for separate trials, that the trial court erred in denying their motion for a new trial on the ground that the verdicts were inconsistent, that the trial court erred in not granting a new trial regarding damages only where the verdict for Ali Saad was clearly and grossly inadequate in light of undisputed damages, and that there were other irregularities in the proceeding and in defense counsel's conduct that denied them a fair trial.

A new trial may be granted for, inter alia, (1) an "[i]rregularity in the proceedings of the court, jury, or prevailing party, or an order of the court or abuse of discretion which denied the moving party a fair trial"; (2) "[e]xcessive or inadequate damages appearing to have been influenced by passion or prejudice"; (3) "[a] verdict grossly inadequate or excessive"; (4) [a] verdict or decision against the great weight of the evidence or contrary to law"; or (5) an "[e]rror of law occurring in the proceedings, or mistake of fact by the court." MCR 2.611(A)(1)(a), (c)-(e), (g). Also, in lieu of granting a new trial, additur may be ordered under MCR 2.611(E)(1). A trial court's decision granting or denying a motion for a new trial, or for additur or remittitur, will not be reversed absent a palpable abuse of discretion. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 172; 568 NW2d 365 (1997); *Setterington v Pontiac General Hosp*, 223 Mich App 594, 608; 568 NW2d 93 (1997).

Contrary to what plaintiffs argue on appeal, plaintiff Salam Saad's claim for negligent infliction of emotional distress is independent from her child's claim; it is based on the foreseeability of injury to her as a close relative bystander. *Auto Club Ins Ass'n v Hardiman*, 228 Mich App 470, 475; 579 NW2d 115 (1998); *Wargelin v Sisters of Mercy Health Corp*, 149 Mich App 75, 80-81, 85; 385 NW2d 732 (1986). The jury could have logically found that defendant was negligent for the injury to the minor child, but that an emotional distress injury was not reasonably foreseeable because the injury to the child was not of a nature to cause severe mental disturbance. *Nugent v Bauermeister*, 195 Mich App 158, 160; 489 NW2d 148 (1992). Thus, the jury's verdicts are not "so logically and legally inconsistent that they cannot be reconciled." *Lagalo v Allied Corp*, 457 Mich 278, 282; 577 NW2d 462 (1998), quoting *Granger v Fruehauf Corp*, 429 Mich 1, 9; 412 NW2d 199 (1987).

Plaintiffs next argue that the trial court erred in denying the motion for a new trial on the issue of damages only because the jury's verdict is clearly and grossly inadequate and ignores uncontroverted damages. Although the undisputed medical bills totaled $26,416.76 and the jury awarded $20,000 for pain and suffering only, there is no error because plaintiffs did not ask for medical expenses in the child's case. Instead, the jury received billing statements as evidence showing that the medical expenses were incurred by Salam Saad. The billing statements indicated that there was a balance of zero dollars. Further, the jury specifically found in defendant's favor with regard to Salam Saad's claim, a wholly independent claim.

Moreover, plaintiffs' complaint indicates that a claim for past and future medical expenses was not requested on behalf of the minor child by his next friend, Ali Saad. Rather, Salam Saad and Ali Saad requested medical expenses for their individual claims incurred on behalf of Hussien. Before trial,

Ali Saad's independent claims were dismissed, and, as previously noted, the jury did not find in Salam Saad's favor. Because these were the only two parties who requested medical expenses as damages, there is no error requiring reversal where the jury did not award medical expenses on behalf of Hussien. The failure of plaintiffs to request medical expenses as damages on behalf of Hussien in the trial court precludes relief by this Court.

Further, we note that the jury awarded $20,000 in damages to Ali Saad, as next friend of Hussien Saad which was for past pain and suffering, disability, and disfigurement. There being factual disputes regarding future damages for scarring, disfigurement and counseling, the jury's ultimate award will not be disturbed. Accordingly, the trial court did not abuse its discretion in denying plaintiffs' motion for new trial on the issue of damages only and plaintiffs are not entitled to additur.

Next, we agree with plaintiffs that "the comparative negligence of a parent may not be imputed to [reduce] the recovery attributable to the child's damages." *Byrne v Schneider's Iron & Metal, Inc*, 190 Mich App 176, 189; 475 NW2d 854 (1991). In this case, however, evidence that other adults at the table may have been negligent in either handling or placing the coffee pot was relevant and admissible on the issue of defendant's liability. Moreover, the trial court instructed the jury not to impute the adults' negligence to the child and plaintiffs have failed to overcome the presumption that the jury followed the trial court's instructions. *People v McAlister*, 203 Mich App 495, 504; 513 NW2d 431 (1994). Accordingly, a new trial is not warranted on this basis. Further, in this regard, the trial court adequately protected the minor child by instructing the jury not to consider the mother's negligence; therefore, separate trials were not necessary.

Next, because there was a factual dispute as to how the accident happened, the trial court did not err in refusing to direct a verdict on the issue of liability. *Mason v Royal Dequindre, Inc*, 455 Mich 391, 397; 566 NW2d 199 (1997).

The trial court also did not abuse its discretion in precluding plaintiffs from questioning a witness regarding her immigration status, a collateral matter. See MRE 608(b). Also, because plaintiffs could not identify the person who made the alleged statement to the paramedic outside the restaurant, the trial court did not abuse its discretion in excluding the statement. MRE 801(c), (d)(2)(C), and (d)(2)(D); see also MRE 402, 803(3); *People v Jones*, 115 Mich App 543, 549-550; 321 NW2d 723 (1982), aff'd 419 Mich 577; 358 NW2d 837 (1984). In any event, this issue goes to liability and the jury returned a verdict in favor of the child on the issue of liability. Therefore, any error in excluding the evidence would have been harmless. Lastly, plaintiffs did not object to the evidence and argument which they claim injected false issues of parental neglect. Therefore, the issue is not preserved. *Szymanski v Brown*, 221 Mich App 423, 427; 562 NW2d 212 (1997).

Affirmed.

/s/ Gary R. McDonald
/s/ Kathleen Jansen
/s/ Michael J. Talbot