

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LAURA HILLER, as Next Friend to AMBER  
HILLER, a Minor,

UNPUBLISHED  
June 16, 2000

Plaintiff-Appellant,

v

No. 211187  
Wayne Circuit Court  
LC No. 96-621571-NO

ALPHONSE LEOPARDI,

Defendant-Appellee.

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Before: Markey, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order denying her motion for a new trial on the issue of damages. We affirm.

Seven-year-old Amber Hiller was attacked by defendant's Rottweiler dog, incurring injuries to her face, in the areas of her mouth, left eye, nose, and forehead. The injuries required immediate suturing and left Amber with permanent, noticeable scars. A plastic surgeon testified that Amber would require a series of two corrective surgeries once her face had fully matured. These surgeries could improve the appearance of the scars, but could not eradicate them altogether. A psychologist testified that the attack and resulting facial scarring had caused all manner of psychological damage to Amber and had given rise to various behavioral problems.

Defendant argued that Amber's behavioral problems stemmed from sources other than the scarring. Evidence at trial established that Amber's father was an alcoholic who treated Amber and the rest of his family harshly. Indeed, evidence showed that the father had physically abused the mother in Amber's presence when he had been drinking.

The jury awarded plaintiff \$15,000 in damages. Pursuant to MCR 2.611(A), plaintiff moved for a new trial on the issue of damages, arguing that the jury's verdict was grossly inadequate, that it was the product of improper prejudice, and that the verdict was against the great weight of the evidence. The trial court denied the motion. On appeal, plaintiff reiterates her arguments in relation to her new trial motion.

MCR 2.611(A) provides, as pertinent:

(1) A new trial may be granted to all or some of the parties, on all or some of the issues, whenever their substantial rights are materially affected, for any of the following reasons:

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(c) Excessive or inadequate damages appearing to have been influenced by passion or prejudice.

(d) A verdict clearly or grossly inadequate or excessive.

(e) A verdict or decision against the great weight of the evidence or contrary to law.

Whether to grant a new trial is in the trial court's discretion; this Court will not reverse that decision absent a clear abuse of discretion. *Setterington v Pontiac Gen'l Hosp*, 223 Mich App 594, 608; 568 NW2d 93 (1997). An abuse of discretion occurs when "an unprejudiced person, considering the facts on which the trial court acted, would say there is no justification or excuse for the ruling made." *Roulston v Tendercare (Michigan), Inc*, 239 Mich App 270, 282; 608 NW2d 525 (2000).

Plaintiff first contends that the jury's damage award of \$15,000 is grossly inadequate because it does not adequately compensate for Amber's past and future medical expenses, her pain and suffering, and her lingering psychological damage due to the dog attack. Plaintiff argues that the evidence presented to support her claim for damages was uncontroverted, establishing that the cost of Amber's future corrective surgeries would exceed \$10,000 and that Amber suffered grave psychological consequences because of the dog attack.

Generally, a verdict that ignores uncontroverted damages is inadequate. *Burtka v Allied Integrated Diagnostic Services, Inc*, 175 Mich App 777, 780; 438 NW2d 342 (1989). However, "where reasonable minds could differ regarding the level of certainty to which damages have been proved, this Court is careful not to invade the fact finding of the jury and substitute its own judgment." *Severn v Sperry Corp*, 212 Mich App 406, 415; 538 NW2d 50 (1995).

We disagree that the jury's \$15,000 verdict was grossly inadequate to cover Amber's medical expenses. The unrebutted evidence elicited at trial established that the total past and future costs of treating Amber's scars was approximately \$6,109.85, not over \$10,000. Although the plastic surgeon who testified at trial also predicted that there would be "enormous" costs associated with obtaining an operating room for plaintiff's two future corrective surgeries, plaintiff failed to present evidence to establish or estimate those costs. A party asserting a claim has the burden of proving its damages with reasonable certainty; damages based on mere speculation and conjecture are not recoverable. *Berrios v Miles, Inc*, 226 Mich App 470, 478; 574 NW2d 677 (1997). Based on the evidence presented at trial, we cannot say that the jury's verdict was inadequate to provide recovery for Amber's medical

expenses. See *Gregoricka v Lytyniuk*, 123 Mich App 196, 199; 333 NW2d 221 (1983) (“a jury verdict which is less than the uncontroverted out-of-pocket expenses is inadequate and must be overturned”).

Next, plaintiff argues that the jury’s verdict was inadequate to compensate for Amber’s pain and suffering. “Awards for personal injury damages, particularly pain and suffering, rest within the sound discretion of the trier of fact and there is no absolute standard for the measurement of such damages.” *Meek v Dep’t of Transportation*, 240 Mich App 105, 122; \_\_\_ NW2d \_\_\_ (2000). “An appellate court reviewing a personal injury award should decide each case on its own facts, although analogous cases may be one factor considered.” *Id.*

It is not contested that Amber experienced pain, shock, and fright when she was attacked by defendant’s dog. Most significantly, Amber was left with permanent facial scarring that can be improved only with additional surgeries. The necessary corrective surgeries will not eradicate the scars from her face, but will merely make them less obvious. Thus, it is not inaccurate to say that Amber’s scarring was permanent.

Further evidence established that Amber suffered psychological harm and some behavioral problems from the dog attack and the resulting scars. However, we cannot say that the trial court abused its discretion by denying plaintiff’s motion for a new trial based on the alleged inadequacy of the jury’s verdict in relation to Amber’s pain and suffering. Although evidence established that the dog attack and the resulting scars caused psychological distress to Amber, other evidence established that her home life was problematic and contributed a great deal to her personal problems. Specifically, Amber’s father was an alcoholic who was “constantly on [Amber] for any little thing that she did.” Not only did Amber’s father and mother engage in loud arguments concerning Amber’s behavior, Amber’s father had physically abused her mother in Amber’s presence when he had been drinking. He also isolated himself from his family, both physically and emotionally. Defendant also introduced a 1995 psychiatric evaluation of Amber by a school psychiatrist, who also found that Amber’s home life was difficult. The psychiatrist’s evaluation noted that Amber’s father was an alcoholic and that her parents’ marriage was “a difficult one with frequent short-term separations.” The evaluation stated that Amber’s mother and father often disagreed on child management, that Ms. Hiller believed her husband was too harsh toward Amber, and that Amber had expressed a marked desire to leave her home and live with her brother. Even if the jury found that some of Amber’s behavioral problems arose from the dog attack and her facial scarring, it was not required to ignore strong evidence tending to show that her psychological injuries had another source altogether. See *Severn, supra* at 415-416.

Additionally, we find it particularly compelling that the jury had the opportunity to view Amber’s face during trial. In this case, the damages award in relationship to Amber’s pain, suffering, and psychological trauma were linked inextricably to the changes in Amber’s physical appearance caused by the bite to her face. The trial court confirmed that Amber was scarred, but not hideously so. Because the jury had the first-hand opportunity to view Amber and assess the damage to her appearance in light of her claim for pain and suffering premised on the lasting effects of the dog attack, we are particularly wary of interfering with the jury’s factfinding role because it was in the best position to gauge the extent and severity of Amber’s scarring. Thus, we conclude that the trial court did not abuse its discretion by

refusing to grant plaintiff's motion for new trial on the ground that the jury's verdict was grossly inadequate.

Next, plaintiff argues that the jury's verdict on the issue of damages was against the great weight of the evidence. To grant a motion for a new trial based on the great weight of the evidence, a court must find that the evidence preponderates so heavily against the verdict that a miscarriage of justice would result from allowing the verdict to stand. *In re Ayres*, 239 Mich App 8, 23; 608 NW2d 132 (1999).

The trial court did not abuse its discretion by refusing to grant plaintiff's motion for new trial premised on the great weight of the evidence. As we have discussed, some evidence supported Amber's claim to extensive psychological damages and pain and suffering because of the dog attack and her subsequent scarring, while other evidence strongly suggested that Amber's psychological and adjustment problems were due to problems in her home life. With the evidence balanced in such a manner, we are unable to say that the jury's verdict and award of damages was against the great weight of evidence. A miscarriage of justice will not result from our refusal to reverse the trial court's decision to deny plaintiff's motion for new trial.

Finally, plaintiff argues that the trial court should have ordered a new trial because the jury's verdict was the product of bias and prejudice. Plaintiff suggests that defendant improperly influenced the jury by eliciting evidence concerning Amber's underlying family problems. "A trial court may consider whether a verdict was induced by bias or prejudice; however, its inquiry must be limited to objective considerations relating to the actual conduct at trial or the evidence adduced." *Anton v State Farm Mutual Automobile Ins Co*, 238 Mich App 673, 688-689; 607 NW2d 123 (1999). "The trial judge, who experienced the trial, is generally in the best position to determine whether the jury's verdict was motivated by such impermissible considerations as passion, bias, or anger." *Id.*

We do not find merit to plaintiff's claim that the jury was improperly prejudiced against plaintiff because defendant improperly elicited evidence of her unhappy family life. Based on the testimony of her expert witnesses, plaintiff vigorously argued at trial that Amber's behavioral problems were due primarily to the fact that her physical appearance had changed because of the dog attack. Defendant was free to establish his theory of the case by eliciting evidence that Amber had problems because of her home life. The jury reached a verdict in plaintiff's favor, notwithstanding evidence that Amber's emotional difficulties may have had their primary source in her family situation. In light of this result, it is difficult to accept plaintiff's contention that the jury was somehow biased against her simply because it did not return an award of damages in an amount that was satisfactory to plaintiff. In light of these considerations, we affirm the trial court's decision to deny plaintiff's motion for new trial on the issue of damages.

We affirm.

/s/ Jane E. Markey  
/s/ Roman S. Gibbs  
/s/ Richard Allen Griffin