

**IN THE COURT OF APPEALS OF IOWA**

No. 7-369 / 06-1781

Filed June 27, 2007

**SUSAN KULA and ANDREW KULA,**  
Plaintiffs-Appellants,

**vs.**

**BOONE COUNTY HOSPITAL,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Boone County, William J. Pattinson, Judge.

Plaintiffs appeal following the denial of their motion for new trial after the jury returned a defendant's verdict in their medical malpractice action against Boone County Hospital. **AFFIRMED.**

Guy R. Cook and Nicholas Mauro, Des Moines, for appellants.

Joseph Fitzgibbons, Estherville, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

**SACKETT, C.J.**

Plaintiffs Susan and Andrew Kula appeal following the denial of their motion for new trial after the jury returned a defendant's verdict in their medical malpractice action against Boone County Hospital. Plaintiffs contend the district court abused its discretion in admitting certain medical and mental health records of Susan. The defendant contends the district court did not err in overruling plaintiffs' motion as (1) the court did not abuse its discretion in admitting the evidence and (2) plaintiff's substantial rights were not affected because there was insufficient evidence to support a finding that defendant's negligence was a proximate cause of plaintiff's injuries. We affirm.

**Scope of Review.** In ruling on motions for new trial, the trial court has broad, but not unlimited, discretion in determining whether the verdict effectuates substantial justice between the parties. *Gorden v. Carey*, 603 N.W.2d 588, 590 (Iowa 1999); *Jackson v. Roger*, 507 N.W.2d 585, 589 (Iowa Ct. App. 1993). Our review of rulings on motions for a new trial depends on the grounds asserted in the motion and ruled upon by the district court. *Ladeburg v. Ray*, 508 N.W.2d 694, 696 (Iowa 1993). If the motion and the ruling are based on a discretionary ground, we review the ruling for abuse of discretion. *Id.* If the motion and ruling are based on a legal issue, our review is for correction of errors at law. *Id.* at 696-97. Rulings on evidentiary issues are based on a discretionary ground. See Iowa R. Civ. P. 1.1004(1). Our review on this issue is therefore for abuse of discretion. *Hansen v. Cent. Iowa Hosp. Corp.*, 686 N.W.2d 476, 480 (Iowa 2004). We review the question of whether there was evidence to support a finding of proximate cause for error. See *Iowa Mut. Ins. Co. v. McCarthy*, 572

N.W.2d 537, 541 (Iowa 1997). The question there is whether the evidence, when viewed in the light most favorable to the plaintiffs, was sufficient to generate a jury question. *Roling v. Daily*, 596 N.W.2d 72, 74 (Iowa 1999); *Nesler v. Fisher & Co.*, 452 N.W.2d 191, 193 (Iowa 1990).

**Background and Proceedings.** Susan was admitted to the hospital on February 2, 2002, for gallbladder surgery. Susan and her husband, Andrew, subsequently sued contending Susan sustained ulnar nerve injuries in her left wrist and elbow from problems with I.V. therapy during her hospitalization. Susan claimed she sustained damages including past and future physical and mental pain and suffering, and loss of past and future full mind and body. Andrew claimed the loss of spousal consortium. The jury found the defendant negligent but found the negligence was not a proximate cause of the plaintiffs' damages.

Plaintiffs filed a post-trial motion contending they should have a new trial because prejudicial evidence was admitted, including Susan's mental health records and medical records addressing an incident when Susan was struck by lightning. They contended these records were prejudicial as they caused the jury confusion in addressing the issue of proximate cause. They further contended the admission of plaintiff's mental health records were prejudicial and not relevant. Alternatively, they claim that if the records were relevant, the relevance was outweighed by unfair prejudice.

Prior to trial, plaintiffs filed a motion in limine seeking to exclude Susan's psychiatric records as well as records concerning a lightning strike Susan sustained in 1993. The records were offered by the defendant at the close of the

evidence at which time plaintiffs told the court they had no objections other than those previously made. Prior to closing arguments and outside the presence of the jury, plaintiffs again requested the counseling records be redacted from the defendant's exhibits.

The district court denied the motion for new trial relying on two grounds. First, the district court noted that defendant had moved for a directed verdict at the close of the plaintiffs' case contending there was insufficient evidence for the question of proximate cause to be submitted to the jury. The district court denied the motion. He related that the Iowa Supreme Court encourages district court judges to deny motions for directed verdicts in most cases even if the district court judge believes the motion should be sustained. It is considered more prudent for a district court judge to submit a weak case to the jury and avoid a second trial in case there was error in sustaining the motion for directed verdict. It is preferable to give the jury an opportunity to consider the evidence and potentially reach the same conclusion as the district court so that unnecessary re-trials and additional appeals may be avoided. See *State v Kading*, 552 N.W.2d 305, 308 (Iowa 1996); *Reed v. Chrysler Corp.*, 494 N.W.2d 224, 228-29 (Iowa 1992).

The district court found no substantial evidence to support a finding of proximate causation noting there was no expert testimony on this necessary element and the issue of causation was not within the common experience of lay persons. The court noted it would have sustained a motion for judgment notwithstanding the verdict if the jury had found proximate cause. Having found

no evidence of proximate cause, the district court found error, if any, on the issue of admission of records was of little import.

The plaintiffs have not challenged this finding on appeal nor do they argue there was sufficient evidence in the record to support a finding of proximate cause. Consequently, we agree with the defendant's argument that even if the district court abused its discretion in admitting the challenged records, there is not reversible error.

Secondly, the district court addressed the issue of the admission of records. He discussed the fact that Susan sought compensation for past and future pain and suffering, and for past and future lost body and mental functions. The court found Susan's mental and emotional state before and after the claimed injuries were probative of her ability to enjoy life and the extent to which her mental discomfort could be attributed to the injury. The court also found her mental and emotional condition before the alleged injury was relevant to the issue of causation and whether she was in fact injured. He noted the evidence that Susan feared she was becoming a hypochondriac tended to disprove the element of causation. Medical records offered in evidence by the plaintiffs indicated that in early June of 2002, Susan's physician wondered whether her complaints were more psychologically rooted than physiologic. The district court further found that the admitted records were relevant to Andrew's claim for lost spousal consortium; for the records indicated that other things may have damaged Susan's body and mental functions. The court believed the challenged evidence did not mislead the jury nor did it unfairly prejudice the plaintiffs.

A trial court has wide discretion in determining the relevancy of proffered evidence. *Spahr v. Kriegel*, 617 N.W.2d 914, 916 (Iowa 2000). Evidence is relevant if it has any tendency to make the existence of a fact in controversy more or less probable than it would be without the evidence. Iowa R. Evid. 5.401. Evidence is relevant when it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *Id.* The test is whether a reasonable person might believe the probability of the truth of the consequential fact to be different if the person knew of the proffered evidence. *McClure v. Walgreen Co.*, 613 N.W.2d 225, 235 (Iowa 2000); *State v. Plaster*, 424 N.W.2d 226, 229 (Iowa 1988).

Even relevant evidence is not admissible “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Iowa R. Evid. 5.403. Unfair prejudice arises when the evidence prompts the jury to make a decision on an improper basis, often an emotional one. *Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 158 (Iowa 2004).

The plaintiffs’ pleading put both the physical and mental condition of Susan in the case. She complained of pain and emotional distress. Andrew claimed a loss of consortium. One factor the jury considers in determining damages for pain and suffering is loss of enjoyment of life. See *Poyzer v. McGraw*, 360 N.W.2d 748, 753 (Iowa 1985). Evidence concerning other medical conditions that have and will impact Susan’s physical and mental well-being and

her ability to enjoy life are clearly relevant to her damage claims. See *Pexa*, 686 N.W.2d at 158 (affirming trial court's decision to include plaintiff's pre- and post-accident history of cancer and treatment in his underinsured motorist claim against his insurer).

Furthermore, there was medical evidence showing that there was no explanation for plaintiff's injury. The questioned records indicate Susan constantly and consistently sought medical help for a variety of pains in various parts of her body. For the majority of these consultations, there was no underlying physical cause. Rather, there was an indication they were psychologically based. The evidence was probative and did not unfairly prejudice the jury's consideration of plaintiffs' claims. The adverse effect of relevant evidence due to its probative value is not unfair prejudice. *Id.* at 158-59. We affirm the district court's denial of a new trial.

**AFFIRMED.**