IN THE COURT OF APPEALS OF IOWA

No. 7-401 / 06-1051
Filed June 27, 2007

JULIE RANSOM,
Plaintiff-Appellant,

vs.

LEONARD FRANCES ZEIEN,
Defendant-Appellee.

Appeal from the Iowa District Court for Floyd County, John S. Mackey, Judge.

A plaintiff appeals from the jury verdict for the defendant in this negligence action. **AFFIRMED.**

Judith O'Donohoe of Elwood, O'Donohoe, Stochl, Braun & Churbuck, Charles City, for appellant.

Randall Nielsen of Pappajohn, Shriver, Eide & Nielsen, P.C., Mason City, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

Julie Ransom appeals from the jury verdict substantially in favor of Leonard Zeien in this negligence action. Ransom seeks a new trial. We affirm.

I. Background and Facts

On January 3, 2003, an accident occurred involving vehicles driven by Leonard Zeien and Gary Colsen. Julie Ransom was a passenger in the vehicle driven by Colsen, who was her husband at the time. Zeien was traveling in the right eastbound lane of U.S. Highway 18, a four-lane highway. Colsen pulled onto the eastbound lane. Zeien's vehicle collided with the left rear of Colsen's.

After the accident, a state trooper issued Zeien a ticket for failure to have his vehicle under control, to which he pled guilty. Zeien admitted his cruise control had been set at approximately sixty-eight miles per hour and that he had told the trooper he must have dozed off.

Ransom and Colsen filed a lawsuit against Zeien on December 30, 2004. Colsen's claim against Zeien was settled. Ransom did not file a claim against Colsen for her injuries, nor did Zeien seek contribution from Colsen for Ransom's claim. A jury trial on Ransom's claim commenced on May 2, 2006. The trial court refused Ransom's motion to direct the verdict and to instruct the jury that Zeien was negligent as a matter of law. The trial court submitted a verdict form allowing the allocation of fault between Zeien and Colsen. The jury returned a verdict finding Gary Colsen eighty-five percent negligent and Zeien fifteen percent negligent. The jury found Ranson suffered $5000 in past medical expenses, $4000 in lost wages, and $800 in past pain and suffering. A judgement for fifteen percent of that total, $1470, was entered against Zeien.

Ransom filed a motion for judgment notwithstanding the verdict and for a new trial, which were denied by the trial court. Ransom appeals. Other facts relevant to our decision will be considered in our discussion of the legal issues presented.

II. Merits

Ransom contends the record supported a finding, either by directed verdict or by jury instruction, that Zeien was negligent as a matter of law for failing to have his vehicle under control. She further contends the trial court abused its discretion in failing to award a new trial because substantial evidence does not support the allocation of fault. She also contends the court erred in failing to enter judgment or grant a new trial on the issue of damages because the verdict was inadequate.

We review a trial court's ruling on a motion for directed verdict for correction of errors at law, viewing the evidence in the light most favorable to the nonmoving party. *Yates v. Iowa West Racing Ass'n*, 721 N.W.2d 762, 768 (Iowa 2006); *Seastrom v. Farm Bureau Life Ins. Co.*, 601 N.W.2d 339, 345-46 (Iowa 1999). "If there is substantial evidence to support a claim the motion should be denied . . . . Even if the facts are undisputed, the case should be submitted to the jury if reasonable minds could draw different inferences from the evidence." *Seastrom*, 601 N.W.2d at 345 (citation omitted). We also review alleged errors in jury instructions for correction of errors at law. *Boyle v. Alum-Line, Inc.*, 710 N.W.2d 741, 748 (Iowa 2006). We review the denial of a motion for a new trial for abuse of discretion. *Seastrom*, 601 N.W.2d at 345. "If the jury verdict is not supported by sufficient evidence and fails to effectuate substantial justice, a new trial may be ordered." *Id.* at 345-46.

A. Comparative Fault

Ransom argues the record requires a finding that Zeien was negligent as a matter of law because Zeien's conduct should have been found to be negligence per se. While a finding of negligence per se based on Zeien's failure to have his vehicle under control may have been appropriate, Ransom can show no prejudice because the jury found Zeien was negligent. Whether the jury was instructed regarding negligence per se, or the trial court made a finding of negligence per se as a matter of law, is immaterial. There is no basis for awarding a new trial based on this argument. *See Conner v. Menard*, *Inc*., 705 N.W.2d 318, 322 (Iowa 2005) ("[E]rror in giving a challenged instruction will not result in reversal unless the challenging party has been prejudiced.").

Ransom also contends the trial court erred in denying her motion for a new trial because the jury verdict, which allocated less than fifty percent fault to Zeien, was not sustained by sufficient evidence. "If a jury verdict is not supported by sufficient evidence and fails to effectuate substantial justice, a new trial may be ordered." *Olson v. Sumpter*, 728 N.W.2d 844, 850 (Iowa 2007) (citation omitted). The fact that the court may have reached a different result, however, is not grounds for setting aside a jury verdict and awarding a new trial. *Waddell v. Peet's Feeds, Inc.*, 266 N.W.2d 29, 32 (Iowa 1978).

In this case, the jury's verdict allocating eighty-five percent fault to Colsen is supported by sufficient evidence. Colsen testified that he pulled out onto the highway even though he could see Zeien's vehicle approaching. Ransom argues there are two lanes of eastbound travel on the highway, and, "if Zeien wished to travel faster than the Colsen vehicle, he merely had to pull into the left lane." A

reasonable jury, however, could conclude that Colsen pulled out in front of Zeien when it was unsafe to do so. *See Olson*, 728 N.W.2d at 850 (holding a jury verdict allocating sixty percent fault in vehicle accident to the plaintiff was supported by sufficient evidence where the plaintiff noticed the defendant's car before backing her car onto the street); *see also Bredberg v. Pepsico, Inc.*, 551 N.W.2d 321, 329 (Iowa 1996) (affirming the trial court's refusal to grant a new trial where the verdict was "consistent with the intent and purpose of the comparative fault statute, which allows the fact finder to assign fault (without explanation) to one or more parties claimed to have contributed to plaintiff's injuries") (citing Iowa Code § 668.3(2)). Accordingly, we reject Ransom's contention that the trial court abused its discretion when it denied her a new trial based on insufficient evidence to support the jury's verdict.

B. Damages

Ransom contends the trial court erred in failing to enter judgment or grant a new trial on the issue of damages because the verdict failed to adequately compensate her. Whether damages are so inadequate to warrant a new trial is for the trial court to decide. *Householder v. Town of Clayton*, 221 N.W.2d 488, 493 (Iowa 1974). Whether a particular award of damages is adequate turns on the facts of each case. *Matthess v. State Farm Mut. Auto. Ins. Co.*, 521 N.W.2d 699, 702 (Iowa 1994). We afford the court considerable discretion in ruling on a motion for new trial based on an inadequate verdict. *Fisher v. Davis*, 601 N.W.2d 54, 57 (Iowa 1999). If, however, "uncontroverted facts show that the amount of the verdict bears no reasonable relationship to the loss suffered, the verdict is

inadequate" and we will find an abuse of discretion for the trial court's refusal to grant a new trial. *Witte v. Vogt*, 443 N.W.2d 715, 716-17 (Iowa 1989).

> [W]e reviewed extensively our cases involving questions of inadequate awards where the awards were approximately equal to or less than the special damages. We discovered we *have not adopted an inflexible rule that every verdict awarding only special damages is inadequate as a matter of law.*

Foggia v. Des Moines Bowl-O-Mat, Inc., 543 N.W.2d 889, 891 (Iowa 1996). "Another consideration for this court . . . is 'the fact the trial court, with benefit of seeing and hearing witnesses, observing the jury and having before it all incidents of the trial, did not see fit to interfere [with the jury's verdict].'" *Id.* (quoting *Olsen v. Drahos,* 229 N.W.2d 741, 743 (Iowa 1975)).

Ransom contends $5000 is inadequate to cover her medical expenses, which she claimed were $9791.10 since the accident and estimated at $936 per year in the future. She also contends $800 for pain and suffering is inadequate because, although there is evidence she will continue to have lower back and left leg pain, the award does not include damages for future pain and suffering.

In *McDonnell v. Chally*, 529 N.W.2d 611, 614 (Iowa Ct. App. 1994), the plaintiff claimed $5457 in past medical expenses, $110 per year for future medical expenses, and $160 per month for future medication costs, yet the jury awarded her only $1091 for medical expenses and $2000 for past pain and suffering, which the plaintiff claimed was inadequate. This court held that, although the damages were small, "that does not necessarily mean they are unsupported by the evidence." *Id.* Several factors may have influenced the jury. They may not have believed all of the plaintiff's medical problems were caused by the auto accident. *Id.* Further, her testimony may have diminished her

credibility and, because she continued to work full-time and reportedly was having no problems, the jury may just not have believed her injuries were as serious as contended. *Id.* In *McDonnell*, we concluded

> the jury may have attempted to award her only that portion which they believed related to her injuries caused by the accident. In not awarding her future medical expenses and damages for future pain and suffering, the jury may have reasonably concluded any need Julie would have for future medical care was necessitated by factors other than the accident. Preexisting and post-accident ailments were proper areas of consideration for the jury, and we cannot find the trial court abused its discretion in denying the request for a new trial.

Id. at 614-15.

In this case, we similarly conclude the medical expenses and pain and suffering awards were proper questions for the jury, and the trial court did not abuse its discretion in refusing to grant a new trial. There was testimony that, like the plaintiff in *McDonnell*, Ransom had preexisting medical issues which may have influenced the jury into believing not all of her medical problems were caused by the auto accident. There was also evidence presented that Ransom had reported she was feeling better, and she had been working full time as a secretary for a year. Her chiropractor, Dr. Jeanne Staudt, testified that Ranson should not do physical exercises, that chiropractic care is the only thing that will ever do her any good, and that "it would be a waste of her time and a waste of her money" to seek care from a physical therapist or a medical doctor. Additionally, Ransom testified that prior to the collision, she and Colson had been on the highway approximately eighteen seconds, he had accelerated "normally as a person would going onto a four-lane highway," yet had accelerated to only thirty-five miles per hour at the time of the collision. We conclude that, like the

plaintiff in *McDonnell*, Ransom's testimony may have diminished her credibility, and the jury may not have believed her injuries were as serious as she contends.

Ransom also contends the lost wages award of $4000 is not supported by the record. Based on her estimated $20,784.77 annual average income from trucking, she claims she lost $37,997.07 in past wages, and $48,765.50 in future wages, due to her injuries.[1] The record demonstrates her income in 2003 through 2005 was less than one-half of the $36,475 she and Colsen earned together in 2000. We find the jury could have reasonably concluded her loss of income was due to other reasons, e.g. the dissolution of her marriage with Colsen. *See Foggia*, 543 N.W.2d at 891.

Ransom asserts the failure-to-mitigate instruction should not have been given because there was no evidence to support a claim that other employment was available. Zeine argues that Ransom failed to preserve error because no objection was made to this instruction. A review of the record indicates Ransom agreed to this instruction. While this argument may have had merit, because error was not preserved on this issue, we may not consider it on appeal. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("[I]ssues must ordinarily be both raised and decided by the district court before we will decide them.").

III. Conclusion

We find no error in the trial court's failure to instruct on negligence per se as there was no prejudice based on the jury's finding of fault. Therefore Ransom's contention that the record supported a finding that Zeien was negligent as a

[1] Following their 1999 marriage, Ransom drove truck with Colsen, who owned the truck, on an intermittent basis. Colsen and Ransom were divorced in the fall of 2003.

matter of law is an insufficient ground for granting a new trial. We reject her contention that the trial court abused its discretion when it denied her a new trial based on insufficient evidence to support the jury's verdict. Because Ransom failed to preserve error on the mitigation jury instruction, we will not consider it on appeal. We have considered all issues presented and conclude that the judgment of the trial court must be affirmed.

AFFIRMED.