IN THE COURT OF APPEALS OF IOWA

No. 7-935 / 06-1553
Filed March 14, 2008

GLENDA BRUNS AND ARTHUR BRUNS,
Plaintiffs-Appellants,

vs.

ANDREA HANSON,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Denver D. Dillard, Judge.

Plaintiffs appeal the jury's verdict in a tort suit based on an automobile accident. **AFFIRMED.**

Gary J. Shea of Gary J. Shea Law Office, Cedar Rapids, for appellants.

Matthew J. Nagle and Jason M. Craig of Lynch Dallas, P.C., Cedar Rapids, for appellee.

Considered by Mahan, P.J., and Zimmer, J., and Brown, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BROWN, S.J.

I. Background Facts & Proceedings

On August 23, 2002, the vehicle driven by Glenda Bruns was rear-ended by a vehicle driven by Andrea Hanson at an intersection in Cedar Rapids, Iowa. Glenda and her husband, Arthur Bruns, filed suit against Hanson. Glenda claimed she received permanent injuries to her back and upper torso. Arthur sought damages for loss of consortium. Hanson admitted she was negligent, but denied her negligence was the proximate cause of plaintiffs' damages.

Prior to trial, Hanson submitted an offer to confess judgment in the amount of $25,000. The offer stated:

> Pursuant to Chapter 677 of the Iowa Code, if plaintiffs do not accept this offer within five days after it was served, the offer is deemed withdrawn. If the amount recovered by a plaintiff does not exceed the sum mentioned in the offer, the defendants shall recover the defendants' costs incurred in the defense.

Glenda rejected the offer to confess judgment, but Arthur attempted to accept the offer. Hanson stated the offer was only valid if accepted by both plaintiffs. The district court declined to enter judgment based on Arthur's attempted acceptance, stating, "I think it was intended to apply to the overall judgment and intended to require the acceptance of both plaintiffs."

The case proceeded to trial. Glenda testified she went to the emergency room in the evening after the accident because she had back pain in the upper thoracic region. She was given some medication and sent home. Glenda saw her chiropractor, Dr. Joseph Geelan, on August 28, 2002, for back pain after the accident, and had seen him almost every week since that time. Dr. Geelan's

treatment provided Glenda with temporary relief. Dr. Geelan testified Glenda had a permanent partial impairment which was caused by the motor vehicle accident. He expected her to need treatment for the rest of her life.

Glenda injured her lower back in 1979 and had been receiving treatment from Dr. Geelan since that time. Dr. Geelan testified he had seen Glenda ten times in 2002 prior to the accident to treat her for neck and shoulder pain. Evidence was also presented that Glenda's x-rays showed degenerative changes in her spine. She has mild to moderate disc bulge at the C6-7 level. She also has a mild thickening of the tissue in the upper thoracic spine. There was evidence that after the accident Glenda received treatment for a twisted knee and carpal tunnel syndrome.

The jury returned a verdict awarding Glenda damages of $3785 for past medical expenses and $1000 for past pain and suffering, for a total damage award of $4785. Glenda received no other damages and Arthur received nothing on his loss of consortium claim. Arthur filed a motion asking the court to reconsider its earlier denial of his attempted acceptance of the offer to confess judgment. Both plaintiffs filed a motion for judgment notwithstanding the verdict, motion for new trial, and an alternative motion for additur. The district court denied all of these post-trial motions. The court noted, "The verdict is completely logical if the jury did not accept Dr. Geelan's opinions and believed that his treatment of the Plaintiff was unnecessary." Plaintiffs have appealed.

II. Jury Instructions

We review challenges to jury instructions for the correction of errors at law. *Sleeth v. Louvar*, 659 N.W.2d 210, 213 (Iowa 2003). We will not reverse a verdict due to an erroneous instruction unless the error was prejudicial. *Waits v. United Fire & Cas. Co.*, 572 N.W.2d 565, 569 (Iowa 1997). Instructions may be considered erroneous if they contain a material misstatement of the law, are not supported by the evidentiary record, or are conflicting and confusing. *Id.* at 575. We review only those objections to instructions raised before the district court. *Neumann v. Service Parts Headquarters*, 572 N.W.2d 175, 178 (Iowa Ct. App. 1997).

A. The district court submitted the following instructions to the jury:

> 16. If you find Glenda Bruns had a spinal condition before this incident and this condition was aggravated by the incident causing further suffering or disability, then she is entitled to recover damages caused by the aggravation. She is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which she now has which were not caused by the Defendant's actions.
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> 17. If you find Glenda Bruns had spinal conditions making her more susceptible to injury than a person in normal health, then the Defendant is responsible for all injuries and damages which are experienced by Glenda Bruns proximately caused by Defendant's action, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.

Plaintiffs objected to instruction No. 16, which is based on Uniform Civil Jury Instruction No. 200.32, because it did not contain language found in a comment to the uniform instruction, as follows, "An exception may exist to the general rule stated above if the pre-existing condition was asymptomatic before the incident and plaintiff has proven that apportionment is not possible." Plaintiffs

argued that if the district court was going to give an aggravation instruction, the court needed to include the comment in its instruction. The district court determined the comment did not recommend adding any language, but was simply noting an exception may be present in some cases. The court found that in the present case, it was appropriate to give instruction No. 17 in addition to instruction No. 16 ("They're just stating that there may be an exception. And I think the exception would be to give both instructions.").

The comment to uniform instruction 200.32 is based on *Becker v. D & E Distributing Co.*, 247 N.W.2d 727, 731 (Iowa 1976), which states "[i]t is also apparent mere existence of a prior non-disabling, asymptomatic, latent condition is not a defense." The court goes on to state, "[i]n these cases the injury, and not the dormant condition, is deemed to be the proximate cause of the pain and disability." *Becker*, 247 N.W.2d at 731. These statements in *Becker* are sometimes referred to as the "eggshell plaintiff" rule, and are considered to support uniform instruction No. 200.34. *See Benn v. Thomas*, 512 N.W.2d 537, 539 (Iowa 1994).

Jury instruction No. 17 in the present case is based on Uniform Civil Jury Instruction No. 200.34. Hanson contends this instruction embodies the comment requested by plaintiffs, the eggshell plaintiff rule. We agree. *See Waits*, 572 N.W.2d at 577 ("The eggshell plaintiff rule is an *exception* to the general rule.") (emphasis in original). We conclude the district court did not err by submitting instruction No. 17 to the jury instead of incorporating the language of the comment to uniform instruction No. 200.32 in instruction 16. As long as the court

fairly presents an issue in its instructions, no particular form is required. *Bossuyt v. Osage Farmers National Bank*, 360 N.W.2d 769, 774 (Iowa 1985).

On appeal, plaintiffs contend the jury instructions were confusing without the additional language of the comment to uniform instruction No. 200.32. Plaintiffs did not raise this objection before the district court. We conclude this issue has not been preserved for our review. *See* Iowa R. Civ. P. 1.924 (noting objections to jury instructions must be raised before the district court to be considered on appeal); *Neumann*, 572 N.W.2d at 178 ("We limit our review to the objection raised in the trial court.").

B. Plaintiffs had requested the district court to give a statement of the case, as found in Iowa Uniform Jury Instruction 100.1. The court ruled, "I don't think a statement of the case is helpful to the jury after they've heard all of the evidence. And I don't believe that it's required." We have found no authority that a statement of the case is required. Furthermore, plaintiffs would not be entitled to relief unless the failure to give a statement of the case was prejudicial. *See Waits*, 572 N.W.2d at 569. We conclude plaintiffs have failed to show they were prejudiced by the court's refusal to give a statement of the case instruction.

C. Plaintiffs requested the jury be instructed that the defendant had chosen not to have an independent medical examination, as permitted by Iowa Rule of Civil Procedure 1.515.[1] The district court refused to give the proposed

[1] The proposed instruction stated:

> Because the Plaintiff Glenda Bruns's physical condition has been placed in controversy, Defendant had the opportunity to have Glenda examined by a doctor of their choice. In this case, Defendant chose not to have Glenda examined by a doctor of its choice. You may give this

instruction, stating it was not required and was not necessary under the facts of the case.

We conclude the district court did not err by refusing to give plaintiffs' proposed instruction. Plaintiffs have not cited to any authority for giving such an instruction. Additionally, the instruction would have encouraged the jury to engage in speculation and conjecture, s*ee McElroy v. State*, 703 N.W.2d 385, 392 (Iowa 2005) (finding error in an instruction that would have invited the jury to engage in speculation and conjecture), and is likely an unwarranted comment on the evidence in the case. *See State v. Massick*, 511 N.W.2d 384, 386 (Iowa 1994) (noting that instructions which single out particular evidence may invade the province of the jury).

D. Plaintiffs assert the district court erred by submitting instruction No. 18, which is based on Iowa Uniform Jury Instruction 200.33, to the jury. The instruction stated, "If you find Glenda Bruns was injured by another act after the incident, she cannot recover for any later injury not caused by this incident." Plaintiffs claim there is insufficient evidence Glenda suffered any injuries subsequent to the August 2002 automobile accident.

Evidence was presented during the trial that Glenda sought medical treatment for a twisted knee and carpal tunnel syndrome after the accident. As the district court stated, "because there is evidence that there has been medical treatment for something else, unrelated to the accident and it's conceded, I think

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omission as much weight as you think it deserves, considering all the other evidence in this case.

they need to know that that's what the law is." We conclude the district court did not err by giving the jury instruction No. 18.

E. Plaintiffs objected to the verdict form because it included one line for past loss of function and ability to enjoy life and one line for future loss of function and ability to enjoy life. Plaintiffs argued, "loss of function of the body, the actual mechanics of the function of the body is different than loss of ability to enjoy life, and they should not be lumped together on a verdict form." Plaintiffs asked to have loss of function of the body as a separate element from ability to enjoy life. The district court refused to change the verdict form.

On appeal, plaintiffs claim the verdict form is inconsistent with instruction No. 14, which listed the types of damages. Plaintiffs did not raise this argument before the district court. We conclude plaintiffs' claims on appeal were not preserved for our review. *See* Iowa R. Civ. P. 1.924 (noting objections to jury instructions must be raised before the district court to be considered on appeal).

III. Motion for New Trial

Plaintiffs contend the district court should have granted their motion for new trial on the ground that the jury's verdict was wholly inadequate. A new trial may be granted under Iowa Rule of Civil Procedure 1.1004(4) where there is "[e]xcessive or inadequate damages appearing to have been influenced by passion or prejudice." Plaintiffs also claim the jury's verdict "is not sustained by sufficient evidence." *See* Iowa R. Civ. P. 1.1004(6).

Our review of a district court's ruling on a motion for new trial depends upon the grounds raised in the motion. *Channon v. United Parcel Serv., Inc.*,

629 N.W.2d 835, 859 (Iowa 2001). If the motion for new trial was based upon a discretionary ground, we review the court's ruling for an abuse of discretion. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). On the other hand, if the motion was based on a legal question, we review the court's ruling for errors of law. *Id.*

"The district court has considerable discretion in ruling upon a motion for new trial based upon the ground that the verdict was inadequate." *Fisher v. Davis*, 601 N.W.2d 54, 57 (Iowa 1999). A district court has broad, but not unlimited, discretion to determine whether a jury's verdict effectuates substantial justice between the parties. Iowa R. App. P. 6.14(6)(*c*). We are slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 6.14(6)(*d*). Because the motion for new trial was based upon a discretionary ground, we will not reverse the district court's decision unless there has been an abuse of discretion. *See Fisher*, 601 N.W.2d at 57.

Generally, the question of whether damages are so inadequate a new trial is warranted is an issue for the district court to decide. *Id.* Whether damages are inadequate depends upon the facts of the case. *Id.* If uncontroverted evidence shows a jury's verdict bears no reasonable relationship to the loss suffered, the verdict is inadequate. *Pexa v. Auto Owner's Ins. Co.*, 686 N.W.2d 150, 163 (Iowa 2004). Where evidence of the cause or extent of injury is disputed, however, a motion for new trial based on inadequate damages may be denied. *See Cowan v. Flannery*, 461 N.W.2d 155, 159 (Iowa 1990).

We conclude the district court did not abuse its discretion by denying plaintiffs' motion for a new trial based on a claim of inadequate damages. The cause of Glenda's injuries and the extent of her injuries were disputed. The district court was able to observe the evidence as presented during the trial, and the court concluded the verdict was supported by the evidence. The court properly exercised its discretion by denying the motion for new trial.

IV. Offer to Confess Judgment

Arthur claims the district court erred by refusing to enter judgment on his acceptance of the offer to confess judgment. He asserts that the language of the offer to confess judgment meant each plaintiff could independently decide whether to accept or reject the offer; that is, each plaintiff had been extended the identical $25,000 offer. He asserts his acceptance of the offer was valid, even though Glenda rejected the offer to confess judgment. Our review of this issue is for the correction of errors at law. *Rick v. Sprague*, 706 N.W.2d 717, 723 (Iowa 2005).

Offers to confess judgment are governed by Iowa Code chapter 677 (2003). A judgment based on such an offer is "in substance a contract of record made by the parties and approved by the court." *Hughes v. Burlington Northern R. Co.*, 545 N.W.2d 318, 321 (Iowa 1996). We look to contract principles to interpret offers to confess judgment. *See Ellefson v. Centech Corp.*, 606 N.W.2d 324, 330 (Iowa 2000).

A similar issue was raised in *Rick*, 706 N.W.2d at 724, where the offer to confess judgment referred to "plaintiffs' claim." A defendant asserted the use of

the singular "claim" instead of the plural "claims" meant the offer was independently being made to each defendant. *Rick*, 706 N.W.2d at 724. The supreme court determined, "A reasonable interpretation of the phrase 'plaintiffs' claim' is that Marlene's loss of consortium claim and Howard's personal injury claim were in Sprague's mind one claim for purposes of the offer." *Id.* The court concluded the defendant had not invited a separate response from each plaintiff. *Id.*

In the present case, the offer to confess judgment clearly stated, "if plaintiffs do not accept this offer," which would show the offer was being made to both plaintiffs jointly. This does not conflict with the next sentence, which states, "If the amount recovered by a plaintiff does not exceed the sum mentioned in the offer, the defendants shall recover the defendants' costs incurred in the defense." This sentence refers to costs, and not to acceptance of the offer.

We conclude the offer of a single sum was intended to satisfy the entire controversy and was made jointly to both plaintiffs. It could not be accepted by a single plaintiff. Because Arthur attempted to accept the offer to confess judgment in a manner that did not conform to the offer, there was no valid acceptance. *See id.* Therefore the district court did not err by refusing to enter judgment based on Arthur's attempted acceptance of the offer to confess judgment.

We affirm the decision of the district court.

AFFIRMED.