IN THE COURT OF APPEALS OF IOWA

No. 8-668 / 07-1929
Filed October 29, 2008

AFAF SHEHATA, Individually, IBRAHIM SHEHATA, MUHAMMAD SHEHATA, AHMAD SHEHATA and YUSUF SHEHATA by their Mother and Next Friend, AFAF SHEHATA,
Plaintiffs-Appellants,

vs.

BLAKE ANTHONY LANDAU and CHARLES LANDAU,
Defendants-Appellees.

Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris, Judge.

Plaintiffs appeal from a district court ruling denying their motion for new trial following a jury verdict and judgment in their personal injury action. **AFFIRMED.**

David P. Odekirk of Dunakey & Klatt, P.C., Waterloo, for appellants.

Timothy W. Hamann and Rebecca A. Feiereisen of Clark, Butler, Walsh & Hamann, Waterloo, for appellees.

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

MILLER, J.

Afaf Shehata, her husband, Ibrahim Shehata, and their three children, Muhammad, Ahmad, and Yusuf Shehata appeal from a district court ruling denying their motion for new trial following a jury verdict and judgment in their personal injury action against Blake and Charles Landau. We affirm the judgment of the district court.

I. BACKGROUND FACTS AND PROCEEDINGS.

On July 15, 2003, a vehicle driven by Afaf Shehata was struck from behind by a vehicle driven by Blake Landau and owned by his father, Charles. Blake was "pushing play on [his] CD player" when, traveling at approximately twenty miles per hour, he rear-ended Afaf as she was making a right-hand turn into a parking lot of a store from a frontage road. Afaf's three-year-old son, Yusuf, was restrained in a car seat in the back of the vehicle. Afaf's "whole body was shaking" after the collision, but she was able to get herself and Yusuf out of the vehicle. Yusuf was examined by emergency personnel at the scene of the accident while he and Afaf waited for Ibrahim to drive them home. Afaf did not seek any medical attention at that time.

That night, however, Afaf's "body started to feel very painful all over." Ibrahim called her family practitioner the next morning and scheduled an appointment for her for July 17, 2003. At that appointment, Afaf reported to the physician that examined her, Dr. Kathleen Megivern, that she had been experiencing neck pain and some intermittent dizziness since the accident. Dr. Megivern felt she was suffering from cervical strain and myalgias. She

recommended that Afaf treat her condition with "rest, heat, massage, and medication" and ordered an x-ray, which "showed only some mild arthritis."

Afaf's condition did not immediately improve. She began experiencing headaches and was unable to fully rotate her neck to the left. Dr. Megivern accordingly recommended that she begin physical therapy. By September 2003, Afaf noticed considerable improvement in her symptoms. She was able to "do all household activities with minimal discomfort." She was also able to lift Yusuf "with no pain and . . . turn [her] neck to drive with no discomfort." She was accordingly discharged from physical therapy at the end of September 2003 with instructions to continue her exercises at home.

Unfortunately, Afaf's symptoms returned in mid-October 2003. She was examined by neurologist Robert H. Choi, who felt she was suffering from a soft tissue injury. He noted that an MRI showed "minimal abnormality" related to mild degenerative disc disease, while an "EMG study of the right upper extremity . . . was normal." Dr. Choi recommended that Afaf return to physical therapy. After Afaf's physical therapy sessions failed to bring her relief from her neck pain and muscle spasms, Dr. Choi referred her to Dr. Richard Bose for a pain management evaluation.

Afaf's chief complaints when she saw Dr. Bose in November 2003 were pain in her shoulder, neck, and right hand. Dr. Bose decided to treat her condition with "trigger point injections." He also recommended that she continue to participate in physical therapy. Despite following this course of treatment, Afaf's symptoms continued. However, a June 2, 2004 letter from her physical

therapist did indicate that she had "made considerable progress including: . . . [e]limination of mid thoracic pain" and "neck pain and headaches changed from constant to intermittent with frequency of occurrence decreasing overall."

Shortly thereafter, the Shehatas traveled to Egypt to visit family. After they returned from their extended vacation at the end of the summer, Afaf visited her family practitioner, Dr. Susan Swift, complaining of continuing neck and shoulder pain. Dr. Swift referred her to Dr. Farid Manshadi, a physiatrist. Dr. Manshadi recommended that Afaf undergo acupuncture treatment and transcutaneous neurostimulation. Neither technique was successful in alleviating Afaf's symptoms, which perplexed Dr. Manshadi as he related in a February 2005 letter: "Really it is taking its time to heal and it really should have been healed by now and I really don't understand why we are not making progress with her."

In April 2005, Afaf discussed breast reduction surgery with Dr. Swift as a means of relieving her persistent neck and shoulder pain. Dr. Swift referred Afaf to Dr. Mark Barnard, who noted her symptoms of breast hypertrophy, which included "lateral neck pain, shoulder pain, upper, middle, and lower back pain, shoulder grooving, intermittent intertrigo, breast pain, and finger paresthesia" "have been going on for many years." Dr. Barnard also noted "she had a car accident two years ago and suffers neck and back discomfort from this" as well. Afaf underwent a bilateral breast reduction surgery in June 2005. She continued, however, to experience neck and shoulder pain following that surgery.

The Shehatas filed suit against the Landaus in July 2005, alleging the negligence of the defendants caused the collision and Afaf's resulting injuries. Afaf sought damages for past and future medical expenses, past and future pain and suffering, and past and future loss of body function, and Ibrahim sought damages for past and future loss of spousal consortium. Afaf also sought damages for past and future loss of parental consortium on behalf of her three children. The Landaus ultimately admitted negligence, but denied their negligence was the proximate cause of damages claimed by the Shehatas.

Following a trial, the jury awarded Afaf $3041.41 in past medical expenses, $1000 for past loss of body function, and $2000 for past pain and suffering. The jury also awarded Muhammad and Ahmad $500 each for their past loss of parental consortium and $1000 for Yusuf's past loss of parental consortium. Ibrahim was not awarded anything on his loss of spousal consortium claim.

The Shehatas filed a motion for new trial. The district court denied the motion, and the Shehatas appeal. They claim the court erred in denying the motion because the jury's award of damages was inadequate and not supported by sufficient evidence. They additionally claim the jury's award of parental consortium damages was inconsistent with its denial of Ibrahim's loss of spousal consortium claim. Finally, the Shehatas claim the jury's verdict was influenced by passion or prejudice related to "cultural and/or religious differences."

II. SCOPE AND STANDARDS OF REVIEW.

Our review of a district court's ruling on a motion for new trial depends on the grounds raised in the motion. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). When the motion and ruling are based on discretionary grounds, our review is for abuse of discretion. *Id.* However, when the motion and ruling are based on a claim the court erred on issues of law, our review is for correction of errors at law. *Id.*

In this case, the Shehatas' motion for new trial argued the jury's verdict was inadequate, not supported by sufficient evidence, and inconsistent. The district court has considerable discretion in ruling on 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). Whether damages are so inadequate as to warrant a new trial is for the district court to decide, and we will ordinarily not disturb its discretion to grant or deny the motion unless an abuse of discretion is shown. *Id.* On the other hand, we review the court's ruling as to whether the verdict was sustained by sufficient evidence for correction of errors at law. *Estate of Hagedorn ex rel. Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004). We likewise review the court's conclusion as to whether the jury's answers in a verdict are inconsistent for correction of errors at law. *Clinton Physical Therapy Servs.*, 714 N.W.2d at 609.

III. MERITS.

The Shehatas first claim the district court erred in denying their motion for new trial because the jury's award of damages to Afaf, which they assert is

limited to "a time frame of July 15, 2003 to October 17, 2003," is inadequate and not supported by sufficient evidence. They argue that the jury should have also awarded her damages for the medical expenses, loss of body function, and pain and suffering she experienced in the years thereafter. We do not agree.

We will not disturb a jury verdict for damages unless the verdict is "flagrantly excessive or inadequate, so out of reason so as to shock the conscience, the result of passion or prejudice, or lacking in evidentiary support." *Olson v. Prosoco, Inc.*, 522 N.W.2d 284, 292 (Iowa 1994). "Whether damages in a given case are adequate depends on the particular facts of the case." *Fisher*, 601 N.W.2d at 57. "The test is whether the verdict fairly and reasonably compensates the party for the injury sustained." *Id.* "Where the verdict is within a reasonable range as indicated by the evidence we will not interfere with what is primarily a jury question." *Olsen v. Drahos*, 229 N.W.2d 741, 742 (Iowa 1975).

Upon viewing the evidence in the light most favorable to the jury's verdict, *id.*, we do not believe the district court erred in concluding the jury's award of damages fairly and reasonably compensates Afaf for the injury she sustained as a result of the accident on July 15, 2003. The medical records demonstrate that Afaf's injury from this low-speed car accident was relatively minor. Her treating physicians opined that she suffered a soft tissue injury or cervical strain as a result of the accident. Diagnostic tests revealed no injury directly related to the accident. An x-ray taken soon after the accident "showed only some mild arthritis." Subsequent MRIs revealed "mild spondylosis" and bulging discs due to degenerative changes in her spine.

None of Afaf's physicians recommended surgical intervention for her injury. She was instead encouraged to continue to engage in her routine daily activities. Afaf's symptoms significantly improved in September 2003. By the end of that month, she was able to perform her household activities with minimal discomfort. She was also able to lift her three-year-old child and drive with no pain. Afaf was accordingly discharged from physical therapy and instructed to continue to perform her exercises at home, which she did not do. Her neck and shoulder pain returned in mid-October 2003 and persisted for several years thereafter.

The Shehatas argue the jury "randomly and arbitrarily picked" October 17, 2003, as "a date to cut off Afaf's damages" despite the continuation of her symptoms and medical treatment beyond that period of time. However, the Landaus presented testimony from Dr. Keith Riggins, who examined Afaf at their request, that the muscle strain she suffered from the accident "should [have been] resolve[d] within six to eight weeks of the injury." Dr. Riggins thus opined that the medical expenses she incurred up to August 26, 2003, which was approximately six weeks after her accident, were related to the injury she suffered from the accident. However, he noted that the healing time he approximated for her injury could vary by "four weeks, more or less depending on the severity."

Dr. Riggins testified that the symptoms Afaf presented with when he examined her in February 2007 were not related to the July 15, 2003 accident. He instead believed she was suffering from chronic pain syndrome, a condition of

"psychiatric origin" that can be motivated by "secondary gain" or the "benefit you get" both socially and monetarily "from being ill." He further testified that his opinion regarding the extent of Afaf's injury from the accident was also based on her May 2005 medical records from Dr. Barnard that indicated she had experienced breast hypertrophy with ongoing symptoms of "neck pain, shoulder pain, upper, middle and lower back pain . . . for several years."

Although the Shehatas presented evidence from Afaf's treating physicians that the medical care she received for the four-year period of time following the July 15, 2003 accident for her "neck and shoulder, elbow . . . [and] headache pain, was related to" that accident, "the jury was at liberty to accept or reject any such opinion evidence in whole or part." *Kautman v. Mar-Mac Comm. Sch. Dist.*, 255 N.W.2d 146, 148 (Iowa 1977); *see also Cowan v. Flannery*, 461 N.W.2d 155, 157 (Iowa 1990) (stating ordinarily the jury should be allowed to settle disputed fact questions). Based on the evidence detailed in the preceding paragraphs, the jury may have reasonably concluded that Afaf's injury from the car accident was resolved in mid-October 2003. *See Seastrom v. Farm Bureau Life Ins. Co.*, 601 N.W.2d 339, 346 (Iowa 1999) ("When evidence is in conflict, 'we entrust the weighing of testimony and decisions about the credibility of witnesses to the jury.'" (citation omitted)). We therefore conclude the district court did not err in finding sufficient evidence supported the jury's award of damages to Afaf. Nor did the court abuse its discretion in concluding that award was adequate.

The Shehatas next claim the jury's failure to award loss of spousal consortium damages to Ibrahim is not supported by sufficient evidence in the

record and is inconsistent with its award of loss of parental consortium damages. They argue "[i]t is not consistent, legally or factually, to award consortium damages to the children and not to the husband when all damages . . . arise out of the injuries to Afaf" and "are inextricably intertwined." We do not agree.

Our supreme court has recognized that spousal consortium claims differ from parental consortium claims. *See Gail v. Clark*, 410 N.W.2d 662, 667-68 (Iowa 1987). While both claims include the tangible benefits of "general usefulness, industry, and attention within the home and family," spousal consortium refers to "the fellowship of husband and wife and the right of each to the intangible benefits of company, cooperation, affection, and aid of the other in every marital relationship." *Id.* at 667. "Parental consortium, on the other hand, is the relationship between parent and child and the right of the child to the intangible benefits of companionship, comfort, guidance, affection, and aid of the parent in every parental relationship." *Id.* at 668.

In order to recover on his loss of spousal consortium claim, Ibrahim was required to prove he suffered damages as a result of Afaf's injury. *See Brunson v. Winter*, 443 N.W.2d 717, 720 (Iowa 1989) (stating that spouse seeking damages for loss of consortium must prove "he suffered damages in an ascertainable amount"). However, he refused to elaborate as to the effect of Afaf's injury on the intangible benefits of his marital relationship with her, testifying, "I'm not going to reveal anything about . . . our own life as a husband and wife and how this got disturbed." Afaf's testimony was similarly vague. She

acknowledged that her injury from the accident "[s]ometimes" had an affect on her relationship with Ibrahim, but she did not specify how.

The Shehatas did testify as to the effect of Afaf's injury on her relationship with her children. They both testified that after the accident, Afaf was unable to play and interact with her children the way she was able to before she was injured. Afaf further explained that when her sons "want to jump over and hug me, I always tell them to be watchful and careful because my shoulder and my neck are going to be hurt." It also appears from her physical therapy records that she was unable to lift or carry her then three-year-old son, Yusuf, for several weeks after the accident.

The Shehatas additionally testified that before Afaf's injury, she was responsible for taking care of the children and the home while Ibrahim was at work. After Afaf's injury, she testified that she was unable to resume her normal household activities for a lengthy period of time. However, her physical therapy records indicate that by September 10, 2003, she was able to "do all household activities with minimal discomfort." Although Ibrahim testified that he helped Afaf by "vacuuming, carrying things, taking the kids . . . doing the shopping," he acknowledged they also occasionally hired outside help to assist with such chores.

"Damages for loss of consortium are incapable of precise pecuniary measurement by the witnesses. Consequently, they are left to the sound discretion of the jury." *Estate of Pearson ex rel. Latta v. Interstate Power & Light Co.*, 700 N.W.2d 333, 346 (Iowa 2005); *see also Spaur v. Owens-Corning*

Fiberglas Corp., 510 N.W.2d 854, 870 (Iowa 1994) (stating the "value of a spouse's companionship, affection, and aid is difficult to measure"). We believe a reasonable jury could have determined based on the evidence in this case that Ibrahim's "loss [of spousal consortium] was insufficient to support a money award," *Brunson*, 443 N.W.2d at 720, while the children's loss of parental consortium was sufficient to support an award of damages. We therefore reject the Shehatas' claims to the contrary. *See Clinton Physical Therapy Servs.*, 714 N.W.2d at 613 ("[A] verdict is not inconsistent if it can be harmonized in a reasonable manner consistent with the jury instructions and the evidence in the case, including fair inferences drawn from the evidence.").

Finally, based on our above conclusion, we reject the Shehatas' claim that the jury's failure to award Ibrahim damages on his loss of spousal consortium claim was influenced by passion or prejudice "aroused by cultural and/or religious differences." *See Guinn v. Millard Truck Lines, Inc.*, 257 Iowa 671, 685, 134 N.W.2d 549, 558 (1965) ("Passion and prejudice arise only when the award is not sustained by the evidence."). Furthermore, there is no indication in the record, aside from the Shehatas' speculations, that the jury's verdict was influenced by passion or prejudice. *Waddell v. Peet's Feeds, Inc.*, 266 N.W.2d 29, 32 (Iowa 1978).

IV. CONCLUSION.

Because the cause, nature, and extent of Afaf's injury was disputed, we conclude the district court could reasonably decide that the jury's verdict awarding Afaf only a portion of her requested damages was not inadequate and

was supported by sufficient evidence in the record. *See Cowan*, 461 N.W.2d at 159 ("We have affirmed the trial court's denial of a new trial where the evidence of the cause or the extent of injury was disputed."). We additionally conclude a reasonable jury could have determined based on the evidence in this case that Ibrahim's claimed loss of spousal consortium was insufficient to support an award of damages, while the children's claimed loss of parental consortium was sufficient to support such an award. Thus, the district court did not err in denying the Shehatas' motion for new trial. We therefore affirm the judgment of the district court.

AFFIRMED.