This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0318

Acuity, A Mutual Insurance Company,
Respondent,

vs.

Kraus-Anderson Construction Company,
Appellant,

vs.

Borton Construction, Inc.,
Respondent.

Filed September 18, 2023
Affirmed
Hooten, Judge[*]

Winona County District Court
File No. 85-CV-21-678

Hugh E. Mulligan, Nicholas L. Klehr, Klehr & Mulligan, PLLC, Edina, Minnesota (for respondent Acuity, A Mutual Insurance Company)

Mark R. Bradford, Elizabeth J. Roff, Bradford, Andresen, Norrie & Camarotto, Bloomington, Minnesota (for appellant)

Mark A. Smith, Wrobel & Smith, PLLP, St. Paul, Minnesota (for respondent Borton Construction, Inc.)

Considered and decided by Slieter, Presiding Judge; Larkin, Judge; and Hooten, Judge.

---

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

Appellant-contractor appeals from the denial of its motion for judgment as a matter of law after a jury trial on respondent-insurer's negligence claim in a subrogation action to recover amounts paid in workers' compensation benefits. Appellant-contractor argues it did not owe a duty of care to the injured worker and asserts respondent-insurer failed to carry its burden to prove the damages awarded were reasonable and necessary. Because a reasonable jury could conclude that appellant-contractor had constructive knowledge of the dangerous condition and the damages awarded were not manifestly against the entire evidence, we affirm.

FACTS

Winona State University hired appellant-contractor Kraus-Anderson Construction Company (Kraus-Anderson) as a general contractor for a three-building construction and renovation project on its campus. The university also hired respondent Borton Construction Inc. (Borton) to build a grab-and-go food court on the second floor of Wabasha Hall. Kraus-Anderson performed demolition and renovation work on Wabasha Hall in addition to maintaining the construction site for the project as a whole.

On March 15, 2019, James Liss, a construction superintendent for Borton working on the Wabasha Hall food court project, was injured while traversing an area outside of the building. Liss fell, tore his rotator cuff, and required surgery to repair it. Respondent-insurer Acuity, A Mutual Insurance Company (Acuity) provided a workers' compensation

benefits insurance policy for Borton and made payments to Liss for medical expenses and lost wages pursuant to that policy.

In April 2021, Acuity asserted a subrogation claim against Kraus-Anderson to recover the workers' compensation benefits paid to Liss, alleging Kraus-Anderson was negligent in maintaining a safe premises and caused Liss's injuries.[1] Kraus-Anderson denied liability and filed a third-party complaint against Borton for contribution and indemnity. The district court held a three-day jury trial.

Liss testified that he worked on the construction site maintained by Kraus-Anderson starting in January of 2019 and throughout his time working there, he entered and exited Wabasha Hall from the same door. To enter the building from the street, Liss would step over a curb, walk over a grassy boulevard, walk onto a concrete sidewalk, and enter the door. Liss testified that on the boulevard he would walk over a wood pallet lying on top of the grass that was between two dumpsters and that he cumulatively walked over the pallet 50 to 60 times without any issue until March 15. He explained he did not know who placed the pallet on the ground to serve as a walkway but noted that Kraus-Anderson took care of the area in the winter by shoveling the concrete near the door and placing salt on the ground.

Liss testified that on the morning of March 15, he entered Wabasha Hall from the street by traversing the pallet over the grass. It did not move or feel unstable. After

[1] In a subrogation action "the insurer stands in the shoes of the insured and acquires all of the rights the insured may have against a third party." *Medica, Inc. v. Atl. Mut. Ins. Co.*, 566 N.W.2d 74, 77 (Minn. 1997).

spending about 30 minutes inside, Liss received a call from a delivery driver who needed directions to the construction site. Liss decided to leave the building to get the driver. As Liss exited Wabasha Hall, he testified that a Kraus-Anderson employee was walking in front of him over the pallet on the ground. Liss testified that, as the employee reached the end of the pallet, it "popped upwards" when Liss attempted to step on it. He fell to the ground and landed on his shoulder. Liss and the employee discovered that someone had moved the pallet so three feet of its length extended past the curb, which caused it to cantilever. Later, Liss reported the fall to two Kraus-Anderson employees and his own boss. On cross-examination, Liss agreed that although the pallet was in the open and its condition was "obvious," he did not think it was dangerous.

An Acuity workers' compensation claim representative testified to a list of payments made by Acuity to Liss and the providers of his medical care. Under the policy held by Borton, Acuity was required to pay benefits for Liss's injury regardless of fault. Liss's medical records from Winona Health Services and Gunderson Heath System were received into evidence. A Winona Health employee testified that Acuity paid Winona Health $84,585.67 for Liss's medical care. A Gunderson Health employee testified that Gunderson Health System billed Acuity $7,492.50 for Liss's medical care.

Kraus-Anderson's project superintendent testified that Kraus-Anderson made it a point to ensure all workers on the construction site had safe access to their work area. The project superintendent testified he entered and exited Wabasha Hall at least twice each day to monitor the building and never saw a pallet or plywood on the boulevard for workers to walk on. Rather, he saw people walk across the grass to get into the building. The project

superintendent testified he investigated where Liss fell after he was informed of the incident and did not see a pallet. The project superintendent agreed that pallets or plywood in that location would be dangerous because they can be moved over the curb and testified that he would have had the pallet or piece of wood removed if he was notified it was there. The project superintendent testified he reviewed Kraus-Anderson's memorandum that summarized an interview of its employee that witnessed Liss's fall. In the interview, the employee stated Liss tripped on a plywood sheet hanging over the curb while the employee stepped off of it. Kraus-Anderson's lead superintendent testified that he visited the area biweekly but never saw a pallet or plywood being used as Liss described.

Liss's boss testified he remembered the wood being used "quite a bit" by "everybody" as a walkway from the street, over the grass, and into the building. He testified Borton did not place the wood there and recalled that it did not appear to be unsafe because it was "frozen down." He noted that the wood did not raise any safety concerns for him before Liss fell and he never saw it hanging over the curb.

After Acuity rested its case-in-chief, Kraus-Anderson moved the district court for judgment as a matter of law (JMOL), arguing it had no duty of care because Liss testified the pallet was open and obvious and Acuity did not produce evidence that its payments were reasonable and necessary for Liss's injuries. The district court denied the motion, reasoning that there were factual disputes as to the issue of duty and Liss's testimony, in addition to his medical bills, was sufficient evidence for the jury to determine damages.

The jury returned a special verdict, allocating 100% of the fault to Kraus-Anderson and finding it was negligent. The jury awarded Acuity $26,876.13 in past medical expenses

and $10,285.94 in lost earnings. Kraus-Anderson renewed its motion for JMOL. The district court denied the motion and accepted the jury's verdict.

Kraus-Anderson's appeal follows.

DECISION

The district court may grant JMOL during trial if a party has been fully heard on an issue and "there is no legally sufficient evidentiary basis for a reasonable jury to find for that party." Minn. R. Civ. P. 50.01(a). A party may make or renew a JMOL motion following a verdict. Minn. R. Civ. P. 50.02(a). Kraus-Anderson sought JMOL during the trial and after the jury's verdict and both motions were denied by the district court. We review the denial of a motion for JMOL de novo. *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 n.5 (Minn. 2018).

On review, we view the evidence in the light most favorable to Acuity as the nonmoving party. *Id.* We examine "whether the verdict is manifestly against the entire evidence or whether despite the jury's findings of fact the moving party is entitled to [JMOL]." *Navarre v. S. Washington Cnty. Schs.*, 652 N.W.2d 9, 21 (Minn. 2002). The verdict "will not be set aside if it can be sustained on any reasonable theory of the evidence." *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. App. 2007); *see also Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009) ("If reasonable jurors could differ on the conclusions to be drawn from the record, [JMOL] is not appropriate.").

I. The district court did not err in denying Kraus-Anderson's motion for JMOL because a reasonable jury could conclude that Kraus-Anderson had constructive knowledge of the dangerous condition.

To succeed on a negligence claim, Acuity was required to prove four elements: "(1) the existence of a duty of care; (2) a breach of that duty; (3) an injury; and (4) the breach of the duty being the proximate cause of the injury." *Engler v. Ill. Farmers Ins. Co.*, 706 N.W.2d 764, 767 (Minn. 2005). Kraus-Anderson challenges the first element, arguing the district court erred by denying its motion for JMOL because Acuity failed to meet its burden of proof to show Kraus-Anderson owed a duty of care to Liss.

"Generally, a defendant's duty to a plaintiff is a threshold question because in the absence of a legal duty, the negligence claim fails." *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011) (quotation omitted). A general contractor who retains detailed authoritative control and supervision over a construction project may be charged with the duty of care required of a possessor of the land. *Thill v. Modern Erecting Co.*, 136 N.W.2d 677, 684 (Minn. 1965). Possessors of land have the duty to use reasonable care for the safety of all persons who are permitted to enter their land. *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017). But the duty of care is not limitless; landowners are not "insurers of safety." *Rinn v. Minn. State Agric. Soc'y*, 611 N.W.2d 361, 365 (Minn. App. 2000).

Rather, "a property owner has a duty to use reasonable care to prevent persons from being injured by conditions on the property that represent foreseeable risk of injury." *Id.* at 364. As such, liability is appropriate where the landowner had "actual or constructive knowledge of the dangerous condition" or "the dangerous condition actually resulted from

the direct actions of a [landowner] or his or her employees." *Id.* at 365; *see also Messner v. Red Owl Stores*, 57 N.W.2d 659, 661 (Minn. 1953). "[T]he burden is on [Acuity] to establish that . . . [Kraus-Anderson] had actual knowledge of the defect causing the injury or that it had existed for a sufficient period of time to charge [Kraus-Anderson] with constructive notice of its presence." *Wolvert v. Gustafson*, 146 N.W.2d 172, 173 (Minn. 1966).

First, Kraus-Anderson contends Acuity did not establish that Kraus-Anderson had actual knowledge of or created the dangerous condition. Indeed, no witness at trial affirmatively testified as to where the pallet or plywood came from and who placed it there. Instead, there was a factual dispute as to whether pallet or plywood existed at all. Liss testified that he traversed a pallet as a walkway around 50 to 60 times starting in January 2019. Liss's boss also testified that a pallet was used "quite a bit" by "everybody" as a walkway to enter the building. Kraus-Anderson's project superintendent, who testified he examined Wabasha Hall twice per day to monitor the building, and Kraus-Anderson's lead superintendent, who examined the building biweekly, never saw a pallet or plywood being used in the way Liss described. But the project superintendent acknowledged that the Kraus-Anderson worker, who was walking in front of Liss at the time his fall, reported to Kraus-Anderson that Liss tripped on plywood that popped up when the worker stepped on one end that was sticking out over the edge of the curb. Viewing the evidence most favorably to Acuity and the verdict, it is clear that the jury credited Liss's testimony and concluded that the pallet or plywood existed and was used as a walkway.

Next, Kraus-Anderson argues Acuity failed to show Kraus-Anderson had constructive knowledge of the dangerous condition. Specifically, Kraus-Anderson argues the dangerous condition at issue was not the pallet or plywood itself, but the pallet or plywood after it had been moved to extend over the curb during the 30-minute period Liss was inside Wabasha Hall on March 15. Kraus-Anderson asserts that the 30-minute period of time is insufficient to charge Kraus-Anderson with constructive notice of the cantilevered walkway. *See Rinn*, 611 N.W.2d at 365 (determining 30 minutes was not sufficient time to give landowners constructive notice of a late-night puddle); *Otis v. First Nat'l Bank*, 195 N.W.2d 432, 433 (Minn. 1972) (determining 20 minutes was an insufficient amount of time to give a landowner constructive notice of a puddle).

However, Kraus-Anderson's project superintendent testified that "in no way, shape, or form [he] would have ever allowed wood, whether it be a pallet . . . [or] plywood" be used as a walkway and he would have moved it. The project superintendent agreed that the pallet or plywood "could be a hazard" because it could move and cantilever. Taking together the project superintendent's testimony that he entered and exited Wabasha Hall twice daily and the evidence, credited by the jury, that the pallet or plywood was in front of the door to the building for months, a reasonable jury could conclude that the project superintendent should have discovered the dangerous condition. Further, a jury could reasonably conclude from the project superintendent's testimony that he appreciated the pallet or plywood as a "condition[] on the property that represent[ed] [a] foreseeable risk of injury" for which Kraus-Anderson had a duty to use reasonable care to prevent persons from being injured. *Rinn*, 611 N.W.2d at 364.

As such, we conclude that the jury's verdict is not manifestly against the entire evidence and the district court did not err in denying Kraus-Anderson's motion for JMOL on this issue.

II. The district court did not err in denying Kraus Anderson's motion for JMOL on the issue of damages.

Kraus-Anderson also contends the district court erred in denying its motion for JMOL because Acuity failed to meet its burden to prove damages. Particularly, Kraus-Anderson asserts that Acuity failed to show that its payments to Liss for medical expenses and lost wages were reasonable and necessary through expert testimony. Plaintiffs have the burden of proving damages. *Rowe v. Munye*, 702 N.W.2d 729, 735 (Minn. 2005). The measure of damages for medical expenses is the reasonable value of the services received. *Swanson v. Brewster*, 784 N.W.2d 264, 281 (Minn. 2010). The assessment of damages is within "the peculiar province of the jury." *Myers v. Hearth Techs. Inc.*, 621 N.W.2d 787, 794 (Minn. App. 2001) (quotation omitted), *rev. denied* (Minn. Mar. 13, 2001).

Minnesota's workers' compensation system requires employers to furnish medical treatment "as may reasonably be required at the time of injury and any time thereafter to cure and relieve from the effects of the injury." Minn. Stat. § 176.135, subd. 1(a) (2022). The Minnesota Department of Labor & Industry, at the direction of the legislature, developed comprehensive rules and treatment parameters to determine whether a treatment is reasonable. *Johnson v. Darchuks Fabrications, Inc.*, 963 N.W.2d 227, 229 (Minn. 2021). As such, an employer is required to pay for reasonable and necessary treatment. *Leuthard v. Indep. Sch. Dist. 912 – Milaca*, 958 N.W.2d 640, 645 (Minn. 2021); *see also* Minn. R.

5221.0500, subp. 1D (2022) (noting that treatment that is not reasonable and necessary is not compensable).

Notably, there is a difference in the nature and quantity of damages that are recoverable through workers' compensation claims compared to common-law tort claims. For example, for an injury producing temporary total disability, an injured employee may only be compensated at "66-2/3 percent of [their] weekly wage at the time of injury" under the workers' compensation scheme. Minn. Stat. § 176.101, subd. 1(a) (2022); *see also* Minn. Stat. § 176.136, subd. 1b(b) (2022) (limiting the liability of the employer for medical expense treatment to 85% of the provider's charge). Further, damages that are recoverable under the common law, such as "pain and suffering . . . embarrassment, disfigurement, and mental anguish," are not the kinds of damages that are recoverable under workers' compensation. *Tyroll v. Private Label Chems., Inc.*, 505 N.W.2d 54, 59 (Minn. 1993). Put simply, the damages recoverable at common law are more expansive than those heavily regulated by the workers' compensation system. *Id.*

Kraus-Anderson first contends the district court erred in allowing Acuity to meet its evidentiary burden by misapplying a presumption articulated in *Tyroll* that benefits paid by Acuity were presumptively reasonable and proper. *See id.* at 61.[2] In its closing

[2] In *Tyroll*, the Minnesota Supreme Court established a two-step process for determining the subrogation interest of an employer after an injured employee enters into a *Naig* settlement with a third-party tortfeasor for damages not recoverable in workers' compensation cases. 505 N.W.2d at 61; *see also Naig v. Bloomington Sanitation*, 258 N.W.2d 891, 894-95 (Minn. 1977). In the first step, the district court determines the amount of the subrogation damages and holds a hearing to determine the amount of benefits paid and payable, where the benefits paid are "presumed . . . reasonable and proper expenditures under the Workers' Compensation Act." *Tyroll*, 505 N.W.2d at 61. In the

argument and based on trial testimony, Acuity sought an award for $89,587.09 in past medical expenses and $34,286.45 in lost earnings. Kraus-Anderson, in its closing argument, maintained that Acuity did not meet its burden of proving that the amount of damages were reasonable and necessary. The jury awarded Acuity only $26,876.13 in past medical expenses and $10,285.94 in lost earnings for a total of $37,162.07, an amount that was approximately 30% of the total amount of damages claimed by Acuity.

In rejecting Kraus-Anderson's posttrial motion for JMOL, the district court noted Minnesota law did not require Acuity to present experts at trial to show the amounts were reasonable and necessary and noted the payments Acuity already made to Liss were "*per se* reasonable under *Tyroll.*" Ultimately, the district court concluded "there was legally sufficient evidence presented for a reasonable jury to find damages in this case." We agree with the district court's conclusion.

Turning first to Kraus-Anderson's assertion that the district court misapplied *Tyroll*, we agree generally that a district court cannot instruct a jury to apply the *Tyroll* presumption where the entirety of the injured employee's damages are submitted to the jury. In *Tyroll*, an injured employee brought tort claims against a third-party tortfeasor. *Id.* at 56. His employer and its workers' compensation carrier, after paying the employee workers' compensation benefits, also sought to recover its subrogation interest against the third-party tortfeasor. *Id. Tyroll* requires the district court to first calculate the amount of

---

second step, the tort action is tried to the jury. *Id.* After the verdict, "judgment is entered against the defendant for the amount of the benefits paid and payable or such part thereof as the jury's award of damages will cover." *Id.*

the workers' compensation insurer's subrogation claim in a separate proceeding apart from the purview of the jury. *Id.* at 61. This procedural step is taken so that the distribution formula, set forth in Minn. Stat. § 176.061, subd. 6 (2022), can be later applied to the jury's award of damages to determine the workers' compensation insurer's recovery.[3] *Id.* at 60-61; *see Lambertson v. Cincinnati Welding Corp.,* 257 N.W.2d 679, 685 (Minn. 1977) (explaining how to apply the distribution formula and the resulting interests of the employee, employer, and tortfeasor).

[3] The distribution formula provides that "the proceeds of all actions for damages" shall be divided as follows:

> (1) After deducting the reasonable cost of collection, including but not limited to attorney fees and burial expense in excess of the statutory liability, then
> (2) One-third of the remainder shall in any event be paid to the injured employee or the employee's dependents, without being subject to any right of subrogation.
> (b) Out of the balance remaining, the employer or the special compensation fund shall be reimbursed in an amount equal to all benefits paid under this chapter to or on behalf of the employee or the employee's dependents by the employer or special compensation fund, less the product of the costs deducted under paragraph (a), clause (1), divided by the total proceeds received by the employee or dependents from the other party multiplied by all benefits paid by the employer or the special compensation fund to the employee or the employee's dependents.
> (c) Any balance remaining shall be paid to the employee or employee's dependents. . . .
> (d) There shall be no reimbursement or credit to the employer or to the special compensation fund for interest or penalties.

Minn. Stat. § 176.061, subd. 6.

Under the circumstances in *Tyroll*, where the workers' compensation insurer has paid medical and wage loss benefits that are closely controlled by statute and regulations, the presumption exists because there is little need for the parties to contest the reasonableness and necessity of such benefits or for the district court to make an independent determination of the reasonableness and necessity of such payments in this separate proceeding. 505 N.W.2d at 61. But, even under this procedure, the defendant tortfeasor can overcome the presumption of reasonableness and necessity by offering evidence of erroneously paid benefits. *See id*. at n.6.

However, this case is decidedly different from *Tyroll*. Unlike the employee in *Tyroll*, Liss did not advance any claims against Kraus-Anderson or seek damages. The only damages at issue were those asserted by Acuity as the workers' compensation insurer seeking to recover for past medical expenses and past lost earnings paid to Liss.[4] As such, the district court was not required to first calculate Acuity's subrogation interest in a separate hearing or later apply the distribution formula to divide the jury's award between Liss and Acuity. *See* Minn. Stat. § 176.061, subd. 6.

We are not convinced that the district court erred. In a pretrial order, the district court observed

> [t]he jury will have [medical records detailing treatments and bills] in determining the nature, extent, duration and

[4] We note that Acuity only sought to recover for benefits already paid and did not seek to recover future medical expenses or future lost earnings, which would have likely required expert testimony to support an award. *See Lamont v. Indep. Sch. Dist. No. 395*, 154 N.W.2d 188, 192 (Minn. 1967) (stating that future medical expenses are "a matter which the jury cannot compute blindly without expert testimony" and "cannot be left to their speculation").

> consequences of Mr. Liss' injury. In cases such as this, Defendants may question the reasonableness and necessity of treatment[s] or expenses by providing its own expert testimony to counter Plaintiff's claims. To be clear, Defendant does not dispute that Liss fell and sustained injuries from the fall. Plaintiff paid benefits to Liss already. According to *Tyroll*, it is presumed that the payments were reasonable or proper. No Minnesota law, statutory or court findings, requires Plaintiff to provide expert testimony to show reasonableness of the treatment or the payments made.

In its posttrial order denying Kraus-Anderson's motion for JMOL, the district court noted that "[n]o party questioned or challenged the reasonableness or necessity of any of the information the jury received concerning [Liss's] treatment or the bills for that treatment." Indeed, at trial, there was no dispute that Liss fell on the construction site and suffered a torn rotator cuff. Liss testified that his doctor sent him to Gunderson Health System for imaging of his shoulder and the results showed he needed surgery to repair the tear. He explained that he was unable to work during his injury and recovery from surgery, so Acuity issued him payments for the time he missed. Acuity's claim representative testified that Acuity was required to pay benefits for Liss's injury regardless of who was at fault. Liss's medical records, medical bills, and a list of payments made by Acuity were authenticated by witnesses and received as evidence. Kraus-Anderson made no offer of proof that Liss's expenses were not reasonable.

While the district court referred to the presumption in its pretrial ruling, it is clear from the record that the district court did not instruct the jury about the presumption or its application. It appears that the district court reasoned that if, under the *Tyroll* procedure, it would have been required to apply the presumption that such workers' compensation

benefits were reasonable and necessary, then certainly the jury could determine the reasonableness and necessity of such benefits under the usual preponderance of the evidence standard.

But without deciding whether the district court erred or misapplied the *Tyroll* presumption, we further conclude any such error would be harmless. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) (stating that "[a]lthough error may exist, unless the error is prejudicial, no grounds exist for reversal"). The district court did not instruct the jury to presume that the medical expenses and lost earnings paid by Acuity were reasonable under *Tyroll*. Instead, the district court instructed that Acuity had the burden to "prove the nature, extent, duration, and consequences of [its] harm" and the jury must "decide the amount of money that will fairly and adequately compensate Acuity," permitting the jury to award damages for past medical expenses and lost earnings. We assume that juries follow the jury instructions they are given. *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 630 (Minn. 2012). Thus, as is reflected the jury's award of an amount that constituted only about 30% of the total amount Acuity sought, the jury's verdict did not rest on a presumption that all of the benefits Acuity paid to Liss were per se reasonable.

On this record, we agree with the district court's conclusion that the evidence is sufficient to support a jury verdict awarding damages. The jury's conclusion that some of Liss's expenses were reasonable and necessary to support an award of damages is "sustained [by a] reasonable theory of the evidence" given the testimony that Acuity was required to make benefit payments to Liss and the undisputed facts that he was injured,

needed surgery, and was unable to work. *Longbehn*, 727 N.W.2d at 159. The jury was not required to speculate as to appropriate damages for future medical expenses or future lost wages as they were not sought by Acuity. Instead, the parties made arguments as to what amounts of Liss's past medical expenses and lost earnings payments were reasonable and left the determination to the "the peculiar province of the jury." *Myers*, 621 N.W.2d at 794. Using the testimony and evidence presented by Acuity at trial, including Liss's medical records, medical bills, and Acuity's payment records, the jury determined only past medical expense payments in the amount of $26,876.13 and lost earnings in the amount of $10,285.94 were reasonable and necessary.

Given the deference we afford the jury's verdict and this record, we conclude Acuity carried its burden to show it was entitled to damages and the jury's verdict is not "manifestly against the entire evidence." *Navarre*, 652 N.W.2d at 21. Thus, the district court did not err in denying Kraus-Anderson's motion for JMOL on this basis.

Affirmed.