COURT OF APPEALS
DECISION
DATED AND RELEASED

OCTOBER 8, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0472

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

ANN MILLER, and GRANT MILLER,

Plaintiffs-Respondents,

v.

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, and the AETNA CASUALTY & SURETY COMPANY,

Defendants-Appellants.

APPEAL from a judgment of the circuit court for Douglas County: MICHAEL T. LUCCI, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Massachusetts Mutual Life Insurance Company, the operator of a shopping mall, and its liability insurer appeal a judgment awarding Ann and Grant Miller $323,283.41 for injuries Ann incurred when she fell on ice at the shopping mall. They argue that the Millers' attorney made an improper closing argument, that the Millers failed to present sufficient evidence to justify compensating them for an electric wheelchair, a converted van and two years of nursing home care because expert testimony was required on those

issues, and that the court erroneously permitted an ambulance attendant to give expert testimony regarding safe place compliance. We reject these arguments and affirm the judgment.

The trial court properly exercised its discretion when it refused to grant a new trial based on the Millers' attorney's improper closing argument. *See* ***Smith v. Rural Mutual Ins. Co.***, 20 Wis.2d 592, 604, 123 N.W.2d 496, 504 (1963). The Millers' attorney told the jury that an out-of-state insurance company paid the owner of a horse $2 million when the horse broke its leg.[1] Massachusetts Mutual argues that the statement comments on matters not found in the evidence, reminded the jury that the defendant was an insurance company and was distasteful. The trial court instructed the jury to consider only the evidence presented at trial and that the closing arguments represented counsels' opinions and were not evidence. The court also instructed the jury that it should not alter the verdict because the defendant was an insurance company. The jury is presumed to abide by the court's instructions. ***State v. Pitsch***, 124 Wis.2d 628, 644, 369 N.W.2d 711, 720 n. 8 (1985). Contrary to Massachusetts Mutual's argument, nothing in the amount of the verdict suggests that the jury disregarded these instructions. While the argument was distasteful, the trial court properly concluded that it was not sufficiently inflammatory to warrant a new trial.

Ann and Grant Miller were allowed to testify that Ann needed an electric wheelchair, a converted van for transportation, and two years of nursing home care based on actuarial tables that suggest Ann will live two years longer than Grant. Massachusetts Mutual argues that expert testimony was required to establish that these expenses were necessary and that there was insufficient foundation for the Millers' testimony regarding the price of these items. We disagree. Expert testimony is not necessary unless the subject is outside of the realm of the ordinary experience of mankind and requires special training or background. ***Vultaggio v. General Motors Corp.,*** 145 Wis.2d 874, 882, 429 N.W.2d 93, 95-96 (Ct. App. 1988). When the matter is within the area of common knowledge, a lay opinion will suffice. ***Id.*** Where the extent of injury is properly shown, no expert is required to reach the conclusion that future

[1] Although the closing arguments were not transcribed, the parties do not dispute the general nature of counsel's argument. The trial court acknowledged that the statement was made and agreed that it was improper.

medical and nursing care will be required. ***Crouse v. Chicago & Northwestern Ry. Co.*** 104 Wis. 473, 484, 80 N.W. 752, 755 (1899).

Ann testified that she was unable to walk more than fifteen feet with her walker and that Grant was required to push her in her wheelchair because she has limited use of one arm. Her testimony was supported by Dr. Joseph Henry who testified that Ann could not use her left arm for anything forceful or heavy. The doctor testified that walking and weight bearing was limited because of Ann's discomfort. He opined that her use of a wheelchair was consistent with her condition and would continue for the rest of her life. Dr. Henry also corroborated the need for a van by the past use of a Medi-Van to transport Ann for clinic appointments. We conclude that this eighty-one-year-old woman's need for an electric wheelchair, a modified van for transporting herself and her wheelchair and the need for nursing home care upon her husband's death are matters adequately supported by Dr. Henry's testimony and are not matters requiring additional scientific, technical or specialized evidence.

The Millers were competent witnesses to testify to the price of these items. Grant testified that he investigated the price of wheelchairs, converted vans and nursing home care. Massachusetts Mutual could have cross-examined Grant regarding the nature of his inquiries. There is no need for expert testimony regarding the price of these items.

Finally, the court properly allowed the testimony of the ambulance driver regarding the icy conditions he found at the mall entrance. He testified that he had been to many commercial properties over the years and had generally found that businesses sanded or salted similar icy patches. This testimony did not constitute expert testimony. The ambulance attendant was testifying to his observations and did not provide any opinion whether the slippery entryway violated the safe place statute.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.