

IN THE COURT OF APPEALS OF IOWA

No. 0-575 / 09-1910
Filed November 24, 2010

SANDY CORBIN,
Plaintiff-Appellee,

vs.

PHELAN THOMAS, D.D.S.,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

A dentist appeals from adverse judgment in this dental malpractice case.

AFFIRMED.

Thomas F. Ochs and Raymond R. Stefani II of Gray, Stefani & Mitvalsky,
P.L.C., Cedar Rapids, for appellant.

Marc S. Harding, Des Moines, for appellee.

Heard by Mansfield, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

The jury found Dr. Phelan Thomas seventy-five percent at fault and the plaintiff, Sandy Corbin, twenty-five percent at fault in this dental malpractice case resulting from Dr. Thomas's prescription of, and Corbin's ingestion of amoxicillin, to which she is allergic. On appeal, Dr. Thomas contends causation was not proved and the district court erred in failing to grant a new trial. In the alternative, Dr. Thomas argues the court should have entered a remittitur. Because the jury's fact-findings are supported by substantial evidence, and the district court did not abuse its discretion in denying the motion for new trial, we affirm.

I. Background Facts and Proceedings.

Sandy Corbin has a heart murmur and consequently pre-medicates with antibiotics before dental visits. She does not take penicillin, however, because in the 1960s she had taken penicillin, which resulted in a rash and swelling and then she "lost all the skin from my head to my toes."¹ Her doctor at the time told her, "I should never take [penicillin] again or it would kill me."

Corbin initially visited dentist Dr. Thomas for a checkup in February 2007 upon returning to Iowa. She informed Dr. Thomas's office of her penicillin allergy, which was noted on her patient file.

On June 5, 2007, Corbin went to Dr. Thomas suspecting she had cracked a tooth. She took the antibiotic Clindamycin (prescribed by her primary care physician) before going to the dentist. Dr. Thomas informed Corbin the tooth would need to be pulled, but he could not do it that day. An appointment was set

¹ Dr. James Wille testified she had a severe reaction to penicillin and stated it may have been Stevens-Johnson syndrome, which is an allergic reaction where skin becomes reddened and inflamed and then starts to slough off.

for June 7. Corbin asked that Dr. Thomas's office prescribe an antibiotic prior to the tooth extraction. Dr. Thomas concedes he erroneously prescribed penicillin to Corbin despite the information in and on Corbin's file noting she was allergic to penicillin. Corbin noticed the error, however, and called Dr. Thomas's office.

As a result, Dr. Thomas's office called in a second prescription to the pharmacy. Corbin picked up the prescription on the way to her June 7 dental appointment. Knowing that she needed to take the antibiotic an hour prior to a procedure, she swallowed the medication in the store. Only after taking the medication did Corbin notice it was amoxicillin,² which is synthetic penicillin.

Upon arriving at the dentist's office, Corbin informed Dr. Thomas that his office had again made a mistake and telephoned a prescription for amoxicillin, which she had taken. She told Dr. Thomas she had never had amoxicillin before and worried because it said "cillin." Dr. Thomas told her it was "no big deal" and "people rarely die of that anymore." Corbin's tooth was removed that day.

On June 8, 2007, Corbin called her primary care physician about having taken amoxicillin and reported she had "redness on hands no shortness of breath or chest pain." She also experienced swelling in her hands and itching. Corbin was told "to keep an eye on it and call or go to the ER if has any other problems." The doctor's office notes indicate Corbin was "taking benadryl for the rash."

On June 12, 2007, Corbin was seen at the walk-in clinic as her primary care physician was not available. The medical notes from that visit reflect,

² The dosage was 2000 milligrams. According to Dr. Charles Caughlan, a normal dosage is 250 to 500 milligrams three times per day for several days.

“reaction to ampicillan^[3] that Dentist gave her on last Thursday,” and “mild edema and purplish discoloration on her hands due to the swelling.” Corbin was prescribed a tapering dose of prednisone.

On June 13, 2007, Corbin went to the emergency room because of her continued itching and swelling of her hands and feet; swelling of her face and eyes; purple splotches on her feet and legs; and lack of urine output. The triage notes state:

dental appointment last Thurs
given ampicillan for prophylactic
rash + itching all over Mon →↑→
saw dr on Mon — given Prednisone—
not working. pt having indigestion + ↓ urine output

She was diagnosed with an allergic reaction and urinary infection, given an IV, and prescribed Bactrim, a sulfa-based antibiotic.

On June 15, 2007, Corbin again went to the emergency room and was admitted to the hospital. Her eyes became swollen shut. Her hands had swelled to double their size and her feet were blue. Her kidneys were not functioning properly and her blood pressure was very low. Corbin testified she was carrying sixty pounds of additional weight. She subsequently developed hospital-acquired pneumonia and had to undergo a painful procedure to drain fluid from her lungs. Corbin was released from the hospital a week later with a discharge diagnosis of “adverse drug reaction to amoxicillin.”

Corbin filed this dental malpractice action and trial began on September 14, 2009. At trial, Corbin’s expert, Dr. Charles Caughlan, explained that he and a team of doctors treated Corbin during her hospitalization.

³ The equivalent of amoxicillin.

Dr. Caughlan opined Corbin's hospitalization was the result of a delayed hypersensitivity reaction to amoxicillin.

Dr. Malcomb Findlater, a physician practicing in internal medicine as a hospitalist⁴ testified for the defense and opined Corbin's hospitalization was the result of an allergic reaction to the Bactrim, not the amoxicillin. He testified, "the reaction that [Corbin] had when she presented on June 15 I consider more typical for a sulfa-based antibiotic."

Dr. James Wille, a physician board-certified in allergy and immunology, was asked by Dr. John Even, the "captain" of the team of doctors treating Corbin, to examine her on June 16, 2007. As a result of that examination and the history given by Corbin, Dr. Wille's assessment was "most likely allergic reaction to sulfa." Dr. James Wille was asked to explain how he came to the conclusion that Corbin was experiencing an allergic reaction to sulfa. He testified that he relied upon a patient's history, observation, and physical findings. He stated, "I don't know, it's more of—more of an art than a science. You cannot prove many times, most times if somebody's having an allergic reaction or not particularly to a drug." He further testified that it would not have made a difference in his opinion that Corbin had taken amoxicillin on June 7—not several weeks earlier as was mistakenly indicated in his notes. When asked how long amoxicillin stays within the system, he testified:

⁴ Dr. Findlater testified that a hospitalist coordinates all care for a person admitted to the hospital: duties include seeing the patient daily, arranging for consultants and any needed testing, assisting surgeons and psychiatrists, and discharging the patient.

Well it depends a little bit on your age.^[5] Obviously depends on your metabolism. It depends on how good your liver is

Judging by just numbers, it would be probably easily less than two days. Judging by someone's — I don't know her, I mean, I really don't know her kidney function or how good her liver is. As you age, your metabolism slows down.

When Dr. Caughlan was asked what influence Bactrim may have had, he testified Corbin “was ill before she got the Bactrim. She was already sick. She was already swollen. She was already itchy, and so she was already starting that delayed hypersensitivity reaction which ultimately culminated in her hospitalization and near death.” He testified he disagreed that the allergic reaction was to Bactrim, as opined by Dr. Wille, because Dr. Wille took his history from Corbin when she was critically ill and his notes mistakenly stated Corbin had had penicillin several weeks before. Dr. Caughlan also testified that Dr. Even took into account Dr. Wille's opinion, but “believed in his heart of hearts and with his best medical judgment that amoxicillin caused this.”

The jury returned a verdict for Corbin, finding Dr. Thomas seventy-five percent at fault, Corbin twenty-five percent at fault, and awarding \$125,000 in damages, \$5000 of which was for “mental pain and suffering—future.”

Dr. Thomas filed a motion for new trial, asserting there was no proximate cause for the verdict; and the damages were flagrantly excessive, the result of passion and prejudice, and not supported by sufficient evidence. The trial court ruled, in part:

Upon review of the record and evidence presented herein and the award as rendered by the jury, the Court finds there was substantial evidence in the record to support the jury's award of damages for loss of full mind and body—past, and physical and

⁵ Corbin was sixty-four at the time she was hospitalized.

mental pain and suffering—past. The Court notes that there was a great deal of medical testimony regarding the variety and various reactions, including delayed reactions, resulting from an allergic reaction to penicillin (in this case amoxicillin). There was extensive medical testimony and opinions by both sides regarding the extent of causation of Plaintiff's severe reaction; more specifically, whether and what reactions were actually caused by amoxicillin as opposed to Bactrim. In view of the highly disputed evidence, the jury was free to determine the issue of damages and causation. The court concludes there was sufficient evidence in the record to justify the jury's verdict in regard to their award of past damages. The Court does not find the jury's award of past damages lacks any evidentiary support, is flagrantly excessive, or so out of reason to shock the conscience of the Court.

However, the district court concluded it was error to instruct the jury on the issue of future mental pain and suffering and set aside the jury's \$5000 award.

Dr. Thomas now appeals, contending the trial court erred in refusing to order a remittitur of the damages awarded, and erred in denying the defendant's motion for new trial.

II. Scope and Standard of Review.

"Because the sufficiency of the evidence presents a legal question, we review the trial court's ruling on this ground for the correction of errors of law." *Estate of Hagedorn ex rel. Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004). We review for an abuse of discretion a trial court's denial of a motion for new trial based on a claim of excessive verdict or that the verdict fails to do substantial justice between the parties. *Id.* at 87-88. "To show an abuse of discretion, the complaining party must show the court exercised its discretion on grounds clearly untenable or to an extent clearly unreasonable." *Id.* (internal quotations and citations omitted).

III. Evidence in Support of the Verdict.

We view the evidence in the light most favorable to the judgment. *Speed v. State*, 240 N.W.2d 901, 904 (Iowa 1976). Ordinarily, questions of negligence and proximate cause are for the trier of fact, here the jury. Iowa R. App. P. 6.904(3)(j); see *Oak Leaf Country Club, Inc. v. Wilson*, 257 N.W.2d 739, 746 (Iowa 1977) (noting proximate cause is usually a jury question). Such findings are binding on us if supported by substantial evidence. Iowa R. App. P. 6.904(3)(a). Proximate cause “will be decided as a matter of law only in extraordinary cases,” *Boham v. City of Sioux City*, 567 N.W.2d 431, 435 (Iowa 1997), or when “reasonable minds can come to no other conclusion.” *Peters v. Howser*, 419 N.W.2d 392, 394 (Iowa 1988).

We agree with the district court that there was sufficient evidence to support the jury’s decision that Dr. Thomas’s negligence proximately caused damages. Dr. Thomas admitted he was responsible for the amoxicillin prescription telephoned to the pharmacy by his staff member. The dispute here really centers upon whether all of Corbin’s damages were proximately caused by Dr. Thomas because Dr. Thomas’s evidence was unable to challenge the fact that Corbin suffered an allergic reaction to amoxicillin. Rather, Dr. Thomas presented evidence tending to show that Corbin’s hospitalization was a result of a second allergic reaction, that being to Bactrim.

Drs. Caughlan, Wille, and Findlater all testified that Corbin’s hospitalization was caused by an adverse drug reaction. Drs. Caughlan and

Even diagnosed Corbin as having had an allergic reaction to amoxicillin.⁶ Dr. Caughlan's opinion was based upon Corbin's history of a severe allergic reaction to penicillin and her progressive allergy symptoms before taking Bactrim. We conclude there was substantial evidence that a reasonable juror could find it more probable than not that her hospitalization was the result of an allergic reaction to amoxicillin.

While the defendant presented contrary testimony by Drs. Wille and Findlater, the jury was encumbered with the decision of whose testimony to accept. "It was evidence for the trier of fact to weigh and consider, but our function is only to determine whether the record contains substantial evidence in support of the trial court's finding." *Speed*, 240 N.W.2d at 905.

IV. Damage Award.

Dr. Thomas also contends the damage awards were excessive, but we disagree. Corbin experienced progressively worsening symptoms for several days. Dr. Caughlan testified Corbin was "hours away from death" when she was hospitalized. Corbin was in shock, her hands and feet swollen, her eyes swollen shut, and her kidneys had started to fail. She was in the hospital for seven days and underwent a painful procedure to drain fluid from her lungs. The jury awarded Corbin \$60,000 for past loss of full mind and body and \$60,000 for past physical and mental pain and suffering. The jury also assessed twenty-five

⁶ While Dr. Thomas argues the "the expert medical testimony must be stated in terms of probability," we find Dr. Caughlan's opinion was based upon and "more than mere conjecture or speculation" and was thus sufficient. See *Yates v. Iowa W. Racing Ass'n*, 721 N.W.2d 762, 774 (Iowa 2006); see also *Hansen v. Cent. Iowa Hosp. Corp.*, 686 N.W.2d 476 485 (Iowa 2004) (noting no special buzzwords are necessary to generate a jury question on causation).

percent of the fault upon Corbin. “The amount of damages awarded is peculiarly a jury, not a court, function.” *Gorden v. Carey*, 603 N.W.2d 588, 590 (Iowa 1999). We will not disturb the jury’s verdict here because we conclude the damages awarded were not (1) flagrantly excessive, (2) so out of reason as to shock the conscience or sense of justice, (3) shown to be a result of passion or prejudice, or (4) lacking in evidential support. *See id.*

There is substantial evidence in the record to support the jury’s damage awards, and we will not disturb them by granting the plaintiff a new trial.

V. Remittitur.

Although a verdict is not so excessive as to indicate passion or prejudice, the court has inherent authority to order a remittitur as a condition to avoid a new trial when: “(1) the jury’s damage award was not justified by the evidence before it; (2) the jury failed to respond to the evidence; or (3) the wrong measure of damages was applied.” *WSH Props., L.L.C. v. Daniels*, 761 N.W.2d 45, 52 (Iowa 2008) (citations omitted). We have already concluded there was evidence to justify the verdict. And we are unable to conclude that the jury improperly responded to the evidence or used a wrong measure of damages. We thus conclude the district court properly denied the post-trial motion seeking a conditional new trial.

VI. Summary.

The district court did not abuse its discretion in denying Dr. Thomas’s motion for a new trial as there was substantial evidence supporting a finding that Thomas’s negligent prescription of amoxicillin proximately caused Corbin to experience an allergic reaction and her subsequent hospitalization. The

damages awarded by the jury were not flagrantly excessive, so out of reason as to shock the conscience, the result of passion or prejudice, or lacking in evidentiary support. No ground existed to require a remittitur. Finding no abuse of discretion, we affirm.

AFFIRMED.