

IN THE COURT OF APPEALS OF IOWA

No. 2-1194 / 12-0916
Filed February 27, 2013

ROBIN HOFFMAN,
Plaintiff-Appellant,

vs.

CYDNEY PALMER and LORI DIGMAN,
Defendants-Appellees.

Appeal from the Iowa District Court for Benton County, Marsha Bergan,
Judge.

Appeal from the denial of a motion for new trial in a personal injury action.

AFFIRMED.

Pete Leehey and Anthony Olson of Pete Leehey Law Firm, P.C., Cedar
Rapids, for appellant.

Brenda Wallrichs and Kimberly Hardeman of Lederer Weston Craig,
P.L.C., Cedar Rapids, for appellees.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

EISENHAUER, C.J.

Robin Hoffman appeals from the trial court's denial of his motion for new trial in a personal injury suit. He contends the court abused its discretion in denying his motion because the jury's verdict was contrary to the evidence and inadequate. We affirm.

I. Background Facts and Proceedings

In mid-December 2008, Hoffman and his wife were in their pickup truck traveling along a rural gravel road when Cydney Palmer drove out of her boyfriend's driveway into the road. Hoffman veered to avoid a collision, but the front of Palmer's car struck the rear passenger side panel of Hoffman's truck. The rear passenger side tire blew out, and Hoffman went off the road into a snow-filled ditch. The truck rolled over onto its passenger side. Hoffman and his wife climbed out of the driver's side door. They found Palmer crying in her vehicle. Hoffman told her "accidents happen" and tried to console her. Palmer, Hoffman, and his wife walked to the boyfriend's house and sat in the kitchen. Hoffman declined an offer to call for medical assistance.

In October 2010 Hoffman filed suit against Palmer alleging negligence and seeking damages for past and future loss of income, medical expenses, physical impairment, and pain and suffering. The matter came on for jury trial in April 2012. The jury heard evidence of Hoffman's pre-existing back problems, symptoms, and treatment. It also heard evidence of his post-accident back problems, symptoms, and treatment. The jury returned a unanimous verdict finding Cydney Palmer at fault for the accident and finding her fault was not a

cause of any damage to Hoffman. The court accepted the verdict, found it contained no inconsistent answers, and ordered the case dismissed.

Hoffman filed a motion for new trial, alleging the jury's finding Palmer's fault was not a cause of damages was inconsistent with the evidence. Noting Hoffman did not specify any enumerated ground for a new trial under Iowa Rule of Civil Procedure 1.1004, the court considered three possibilities in its ruling: 1.1004(4) (inadequate damages appearing to be influenced by passion or prejudice), 1.1004(5) (error in fixing the amount of recovery, being too small for the injury alleged), and 1.1004(6) (verdict not sustained by sufficient evidence or contrary to law). The court found no indication of passion or prejudice and noted the jurors showed neither favor nor disfavor to either party. Concerning the evidence supporting the verdict, the court concluded:

The jury's verdict is supported by the record. The motor vehicle accident was the fault of Defendant Cydney Palmer. Evidence supporting the jury's verdict regarding fault was overwhelming. The tough issue in the case was the issue of causation. The Court properly instructed the jury as to the law. The jury was called upon to reconcile medical evidence as well as other evidence to determine the facts. Both drivers involved in the accident (Plaintiff Hoffman and Defendant Palmer) testified that Mr. Hoffman walked away from his overturned truck, declined medical attention, and instead tried to comfort Ms. Palmer. Evidence was uncontroverted that Mr. Hoffman had increased his appointments with his chiropractor in the months and weeks *before* the accident. While reasonable minds could have differed, the Court has no hesitation in saying that eight jurors could reasonably have believed—based on the evidence or lack of evidence at trial—that Mr. Hoffman's unfortunate pain and medical condition was simply caused by his degenerative disc disorder, particularly in light of his work as a Linn County Heavy-Equipment Operator, and that the motor vehicle accident on December 13, 2008, was not the cause.

The court concluded it was not inconsistent to find Palmer at fault in the accident, but not the cause of Hoffman's injuries and pain.

II. Scope and Standards of Review

Generally, we review the denial of a motion for new trial for correction of errors at law. Iowa R. App. P. 6.907; *Ladburg v. Ray*, 508 N.W.2d 694, 697 (Iowa 1993). However, if the motion is based on a discretionary ground, such as the sufficiency of the evidence to support the verdict, we review for abuse of discretion. *Ladburg*, 508 N.W.2d at 697; see *Shepherd Components, Inc. v. Brice Petrides-Donohue & Assocs., Inc.*, 473 N.W.2d 612, 618 (Iowa 1991).

When the challenge is to the sufficiency of evidence to support the jury's findings, we examine the record to determine whether those findings are supported by substantial evidence. *Boham v. City of Sioux City*, 567 N.W.2d 431, 435 (Iowa 1997). We view the evidence in the light most favorable to the verdict, taking into consideration all reasonable inferences the jury may have made. *Id.* The jury is free to accept or reject testimony, even if it is uncontroverted. *Eickelberg v. Deere & Co.*, 276 N.W.2d 442, 447 (Iowa 1979); *Schuller v. Hy-Vee Food Stores, Inc.*, 407 N.W.2d 347, 353 (Iowa Ct. App. 1987). The factual issues of negligence and proximate cause are for the jury to resolve; only in exceptional cases may we decide them as a matter of law. Iowa R. App. P. 6.904(3)(j); *Vogan v. Hayes Appraisal Assocs., Inc.*, 588 N.W.2d 420, 424 (Iowa 1999). Normally, the jury decides the facts, and the court should not set aside the verdict simply because the reviewing court would have reached a different decision. *Waddell v. Peet's Feeds, Inc.*, 266 N.W.2d 29, 32 (Iowa 1978). "Another consideration for this court in examining the trial court's determination is 'the fact the trial court, with benefit of seeing and hearing witnesses, observing the jury and having before it all incidents of the trial, did not

see fit to interfere [with the jury's verdict].” *Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 891 (Iowa 1996) (citation omitted, insertion in original).

III. Merits

Hoffman has a significant history of degenerative back problems and treatments of varying invasiveness, including surgery in 2004. Hoffman was treated by his chiropractor sixteen times in 2008 before the accident, including three times in December. When he returned to his chiropractor two days after the accident, there was no change in the diagnosis or treatment; Hoffman continued his existing treatment plan for six months after the accident.

Six months after the accident, on his third visit to his family physician's office, Hoffman first mentioned the accident and back pain. Subsequent X-rays and MRIs showed continuing degeneration in his lower spine at the same locations as before the accident. Hoffman underwent treatment, including surgery in 2011 at the same location as the 2004 surgery. His low back pain recurred after the second surgery.

The jury heard conflicting medical opinions on any causal relationship between the accident and Hoffman's back problems. Hoffman testified his job description since the accident had not changed and his wages had increased. He acknowledged the problems he experienced with his low back were “the exact same problems” he experienced before the accident.

Hoffman asserts the verdict fails to effect substantial justice because “the uncontroverted evidence demonstrates that the December 2008 crash caused at least some injury to Hoffman” and “expert testimony, lay testimony, and the

medical records clearly indicate that Hoffman's injuries were caused, to some extent, by the crash."

Taking the evidence in the light most favorable to the verdict, we conclude the trial court did not abuse its discretion in denying Hoffman's motion for new trial because there is substantial evidence in the record to support the jury's verdict. "Evidence is not insubstantial merely because we may draw different conclusions from it; the ultimate question is whether it supports the finding actually made, not whether the evidence would support a different finding." *Postell v. Am. Family Mut. Ins. Co.*, 823 N.W.2d 35, 41 (Iowa 2012). We, like the trial court, conclude the jury's verdict is supported by substantial evidence. We affirm the denial of the motion for new trial.

AFFIRMED.