

IN THE COURT OF APPEALS OF IOWA

No. 3-221 / 12-1209
Filed May 15, 2013

LISA WRIGHT,
Plaintiff-Appellant,

vs.

DANIEL WAYNE WILSON,
Defendant-Appellee.

Appeal from the Iowa District Court for Wapello County, Joel D. Yates,
Judge.

Plaintiff in a tort suit argues the damages awarded by the jury are
inadequate. **AFFIRMED.**

Bryan J. Goldsmith of Gaumer, Emanuel, Carpenter & Goldsmith, P.C.,
Ottumwa, for appellant.

Michael J. Moreland of Harrison, Moreland, Webber, and Simplot, P.C.,
Ottumwa, for appellee.

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

EISENHAUER, C.J.

Lisa Wright appeals from a district court ruling denying her motion for new trial following a jury verdict in her personal injury action against Daniel Wayne Wilson. Wright argues the trial court abused its discretion because the jury's verdict is inadequate, unsupported by the evidence, and fails to do justice between the parties. She requests a partial new trial on damages. We affirm.

I. Background Facts and Proceedings.

On September 8, 2006, Wright, a mail carrier, was driving a full-size mail truck. Wright was stopped at a stop sign when her truck was struck from behind by Wilson's vehicle. Wright unbuckled her seatbelt and, as she stood up, Wilson's vehicle hit her truck a second time causing her head to hit "the rubber piece of the top of the window." No medical personnel were called, and Wright finished her mail route.

In September 2008, Wright sued Wilson to recover damages for her injuries. During the May 2012 trial, Wilson stipulated the 2006 accident was his fault. The jury awarded Wright \$12,500 in damages—\$2500 for past medical expenses and \$10,000 for past physical and mental pain and suffering. The jury declined to award damages for past loss of function of the body, past loss of earnings, and future physical and mental pain and suffering. Wright filed a motion for additur or, alternatively, for a partial new trial on damages. The trial court denied the motion.

II. Scope and Standards of Review.

The district court has broad but not unlimited discretion in determining whether a verdict effectuates substantial justice between the parties. Iowa R.

App. P. 6.904(3)(c). Whether damages are so inadequate to warrant a new trial is a determination for the trial court, and we will not disturb its discretion to grant or deny the motion unless an abuse of discretion is shown. *Fisher v. Davis*, 601 N.W.2d 54, 57 (Iowa 1999). “We are slower to interfere with the grant of a new trial than with its denial.” Iowa R. App. P. 6.904(3)(d).

III. Merits.

During the 2012 trial, Wright testified the accident resulted in her suffering from severe and unrelenting headache pain that disrupted her sleep. Wright also testified she missed work for her doctor appointments and because of headache or neck pain. Wright admitted she does not have documentation showing the days she missed work due to appointments or pain. Wright contends undisputed evidence shows her past medical expenses related to the accident total \$17,657.54.

Wilson responds the evidence shows Wright suffered some neck and shoulder pain after the accident, but he disputes whether *all* her claimed past medical bills through January 2012 relate to the September 2006 accident. Wilson argues the evidence shows she had several injuries and ailments clearly unrelated to the accident as well as gaps in her treatment for her neck and shoulder pain. Further, Wilson claims the medical notes do not support her claim of continuous headache pain. Wilson points out Wright failed to call any of the medical providers who treated her in the years immediately following the accident as witnesses, relying only on the testimony of Dr. Timothy J. Miller and physical therapist John Voyles. We turn to the evidence in the record.

A. Medical History. The day after the accident, Wright sought treatment from Ted Norton, her chiropractor since 1997. Prior to the accident, Wright had treatments from Norton for her neck, hips, and low back. Norton's work-release note from the visit states: "Lisa Wright was seen in our office today 9-9-06 due to a back problem. Excuse her from work today." Wright did not return for additional treatments. On September 11, Wright bowled with her bowling team. She testified, however, the pain and restrictions after the accident prevented future bowling and also limited many of her other activities.

One week after the accident, on September 15, 2006, Wright sought treatment from Judy Book, ARNP, who diagnosed neck strain. Book noted Wright had full range of motion in her neck and shoulders and she did not note a complaint of headache pain. Wright testified Book just failed to write down her headache pain. After reviewing Wright's 9-15-06 x-rays, the radiologist reported: "Minimal degenerative change C6 to C7 otherwise normal [cervical] spine." Wright testified she was on limited duty after this visit.

At Wright's September 22 follow up appointment with Book, she was referred to an Ottumwa physical therapist. Book specifically noted "no limitations" on Wright's ability to work. Wright testified her work requires her to walk eight to ten miles per day, drive four miles, lift seventy pounds, and carry thirty-five pounds.

Wright testified her ten physical therapy sessions "worked out pretty good" and when she was discharged on October 13, 2006, her pain had improved. The discharge notes state: "[Wright] feels as if she is ready for discharge, and [I feel she] will take the initiative for her self-care and perform her exercises and

stretches at home to manage her pain.” The long term goals “fully met” at discharge were: minimal upper back pain of one out of ten on the pain scale, minimal tenderness with palpation around the upper back and scapular area to indicate improved tissue healing, and ability to handle normal work activities. Finally, the notes state Wright had full pain-free range of motion of the neck for the left and right without restriction and she was “slightly restricted when looking up.”

Wright testified her pain returned within a few weeks of the physical therapy discharge. She did not see any medical provider for three months before going to a new chiropractor, Dr. Macy, on January 23, 2007. Dr. Macy noted Wright had less than normal left rotation and lateral flexion in her neck. Wright testified her treatments with Dr. Macy offered some relief, but she stopped seeing him on June 10, 2009, because the treatments did not provide permanent relief.

At the request of her attorney, Wright returned to Book for an evaluation on February 22, 2007. Book noted:

The patient presents to the clinic with persistent neck pain. She also had upper shoulder pain which was resolved with [physical therapy], but her neck still bothers her She has been going to Dr. Macy, and he recommended that she return to him three times per week for the next six months She has had a lumbar laminectomy in the past by Dr. Nelson in . . . [1999] and wants to be seen by him again. She states her attorney advised her to be seen by myself for further evaluation since she had a [motor vehicle accident] in September which, at that time, she initially presented to the office on 9-15-06 and then had a follow up on 9-22-06 for musculoskeletal cervical neck and trapezius strain.

. . . .
She does have [range of motion] to her neck. It is slightly limited with right lateralization. Hyperextension of her neck can reproduce the pain. Flexion does not. Also, there is a specific area to the left of her cervical spine which she can palpate and reproduce the pain She has no numbness or tingling that

goes down to her arms. Originally this did, but [physical therapy] has benefitted that. Her hand grasps are strong and equal

Impression/Plan: Cervical Neck Pain: She will have an MRI scheduled of the cervical spine on 2-26-07 She would like to see Dr. Nelson so we will notify his office.

On March 27, 2007, Wright saw Dr. Nelson. He did not find “a marked degree of neurologic impingement at any level” and he did not recommend surgical intervention or epidural steroid injections. Further, “I do not believe she will experience on-gong damage or injury by living with it, which is my recommendation, particularly since she believes her pain and limitations allow doing so.” Dr. Nelson noted Wright “may well need occasional over-the-counter medications.” Dr. Nelson did not restrict her work “in her current capacity as a USPS mail carrier.” Wright testified she complained of having headaches at this appointment and it wasn’t written down.

Wright testified she fell on the ice, injured her lower back, and missed some work, but she doesn’t remember when the fall occurred. Wright also testified this fall did not contribute to her neck pain and headaches.

On February 28, 2008, Wright returned to Dr. Nelson for “a chief complaint of low back and left lower extremity pain, which she reports started in October 2007” and which caused her to miss three days of work. Dr. Nelson noted “her pain is ‘not doing too bad’” and that Wright stated “she must modify social and recreational activities to control pain.” Dr. Nelson also noted Wright did not believe her current flare of low back pain was related to the motor vehicle accident. Dr. Nelson prescribed pain medication for her low back and buttock pain, with his last recheck occurring on May 1, 2008.

Six months later and over two years after the accident, in November and December 2008, Wright went to Dr. Miller in Ottumwa for neck pain. By December 19, 2008, she was pain free and had good range of motion to the sides and good flexion/forward neck motion. Wright had some limitation to neck extension, or backward motion. No additional appointments were scheduled, and she was to return to Dr. Miller on an as-needed basis.

At the request of her attorney and without a medical referral, Wright went to Omaha to see Dr. Nystrom for an evaluation on April 8, 2009. Dr. Nystrom's May 27, 2009 letter opined Wright's condition "developed as a direct consequence of trauma suffered from a car crash in 2006." Dr. Nystrom found she had not yet reached maximum medical improvement and her injury could be addressed surgically for permanent alleviation of "this posttraumatic syndrome including pain, stiffness, headache, etc." On August 7, 2009, Dr. Nystrom ordered work restrictions. Wright testified Dr. Nystrom's injections into the nerves of her neck provided immediate pain relief, but the relief was only temporary. Dr. Nystrom's August 12, 2009 letter states:

There are no objective findings indicating that Ms. Wright's symptoms to any significant part would be a reflection of injury or degenerative process of the spine. It is my understanding . . . all symptoms described in the neck and shoulder regions were established immediately or very shortly following the traumatic episode. The very close temporal relation between the injury and the onset of Ms. Wright's current problems provide evidence for a causative relation. Furthermore, Ms. Wright presents with a clinical syndrome that rarely, if ever, develops without a precipitating trauma of some kind. Therefore, there is at present no alternative explanation for her problem.

Wright testified that the lower half of her body went numb in September 2009, and she “went to her knees. My legs were gone. I hung on to my camper door.” Wright testified she did not fall during this event.

On January 8, 2010, Wright returned to Dr. Miller in Ottumwa. Dr. Miller injected her lower back’s sacroiliac joint and noted:

She has two problems. Number one is multilevel degenerative disc changes and facet arthritis. Number two is left sacroiliac [SI] pain. [She] was here with her neck before, but the buttocks and SI joint have become more of a problem The second problem is she has developed SI pain after a fall Her neck is tender [and] she does show multilevel disc degenerative changes I cannot reasonably replicate her neck pain well in side turning and bending.

On January 22, 2010, Dr. Miller reviewed Dr. Nystrom’s notes and decided to proceed with “diagnostic cervical facet joint injections for whiplash.” Dr. Miller injected two cervical facet joints and Wright’s headache and other pain was gone instantly. However, the pain returned the next day. On January 29, 2010, Dr. Miller performed cervical radiofrequency lesioning to deaden the nerves in Wright’s cervical spine. Wright testified: “The headaches went away. The neck pain went away. The shoulder pain went away.”

Dr. Miller rechecked Wright in February 2010, and she was doing well with “just a bit of central pain, but nothing that really limited her.” Dr. Miller did not restrict her work or activities, and his exam did not reveal any functional difficulties with her neck. Wright was to follow up as needed, and she has not scheduled any additional appointments. Dr. Miller noted: “We may have to look at repeat radiofrequency lesioning in the future. Historically, approximately half the people have to have it repeatedly done. I would hope that she will be the

one-half that does not have that happen.” Dr. Miller testified it would not be odd or rare for chiropractic care or physical therapy to provide some temporary relief in the future. Further:

I am not aware if there were periods between where she did not have pain. During the time that I saw her she had pretty consistent pain, but I don't know the full history

. . . .

It seems . . . her symptoms are presented very quickly after the accident and don't really change a lot over time. I have no [information] there's any other type of injuries prior to that that have similar pain distribution. So, I [would] have to say within a reasonable degree of medical certainty, by the information I have, that the motor vehicle accident was the cause of her cervical pain.

On cross-examination, Dr. Miller acknowledged he did not know about the mechanics of her fall, how long she had been having back pain as a result of the fall, “or any effect that the fall would have on her neck when she injured her back.” After reviewing and comparing MRIs, Dr. Miller testified that due to the passage of time, Wright had degenerative arthritis in her cervical discs and joints at multiple levels. “I'd strongly suspect that some of the changes there are age-related. Again, I don't feel comfortable saying I know for certain what part the accident had in changing her MRI pictures.”

Another gap in medical treatment occurred between Wright's final appointment with Dr. Miller in February 2010 and her first appointment with Dr. Pogel at Iowa Neurology on June 6, 2011. Dr. Pogel noted “history comes from her and she also has a binder from her lawyer two inches thick containing medical records which I did review.” Wright told Dr. Pogel her headaches almost completely went away after Dr. Miller's facet blocks but “she has had a new type of symptom with pain predominately from the shoulder, but radiating down to the

elbow and into her hand with numbness and tingling in all the fingers of the hand increasing with use.” Further:

She did have an episode in 9/09 where the lower half of her body went completely numb and she fell to the ground. Dr. Nystrum did give her a work restriction at that time, but she has not had an episode like that again and overall has been working now full-time without restrictions and actually has not missed very much work as a mail carrier.

. . . .
She does also have history of restless leg syndrome . . . and [it] can awaken her from sleep. It is quite uncomfortable and goes away if she gets up and walks She has had falls, once hurt her hip, but she responded to chiropractic treatment.

Dr. Pogel concluded “she had right carpal tunnel syndrome, possibly right ulnar neuropathy.” He prescribed a drug for restless leg syndrome and referred her to physical therapist John Voyles. Voyles noted Wright was seeing him for arm, hand, elbow, shoulder, and neck pain.

On July 12, 2011, Dr. Pogel noted Wright has an “ecchymosis over her right carpal tunnel where she fell yesterday.” He noted, “I think the majority of her discomfort is still related to chronic myofascial pain.” Dr. Pogel recommended a wrist splint at night, carpal tunnel exercises, and continued physical therapy.

At trial, Voyles testified Wright was referred to him because she was “having considerable loss of motion, stiffness in her neck” and he did not treat her for carpal tunnel syndrome. Voyles’s examination showed Wright’s neck rotation was somewhat restricted at the first visit, but after his treatment “even by the end of the first visit she was able to do full extension actively without any pain.” Voyles testified after twelve visits he was able to resolve Wright’s functional limitations and she “achieved good strength, and cervical range of

motion was within normal limits.” On cross-examination, Voyles agreed his notes for those visits do not reference headache pain. After a break in treatment, Wright returned to Voyles in December 2011 for five more sessions through January 2012. Vogel did not testify to a causal relation between neck issues and the 2006 accident.

B. Jury Verdict—New Trial Motion. We conclude the trial court did not abuse its discretion in refusing to grant a new trial in this dispute about the cause and extent of the injuries and damages Wright suffered as a result of the 2006 accident.

We have set out the extensive medical evidence available to the jury. The medical providers’ notes contradict Wright’s testimony of consistent and unrelenting headache pain, and her testimony that several of the providers simply forgot to write it down could reasonably be found not credible by the jury. The record shows numerous gaps in Wright’s medical treatment for neck pain and Wright’s return to Nurse Book in 2007 and her appointments with Dr. Nystrom in 2009 were at the insistence of her attorney. Wright has been working since the time of the accident with two periods of restriction and she did not produce any records to show lost wages. Wright testified she made more money the year of the accident from her employment as a mail carrier than she did the previous year. The jury may have reasonably concluded that Wright’s injury and pain from the car accident was resolved earlier than Wright subjectively claimed. *See Seastrom v. Farm Bureau Life Ins. Co.*, 601 N.W.2d 339, 346 (Iowa 1999) (stating when the evidence is in conflict, the jury weighs the testimony and determines the credibility of witnesses).

With respect to Dr. Miller's and Dr. Nystrom's opinions, "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 *Young v. Gibson*, 423 N.W.2d 208, 210 (Iowa Ct. App. 1988) (stating jury has the right to reject doctors' testimony that injuries were caused by this accident). Additionally, Dr. Miller stated he had not reviewed all the other medical treatment records. The jury could reasonably conclude Dr. Miller was, therefore, not aware of all relevant information when he formulated his opinion.

Finally, the record also shows Wright had several falls *after* the accident. The jury could have considered the traumatic falls and discounted Wright's subjective complaints and discounted Wright's attempt to attribute all her pain and medical treatments to the accident.

We affirm the judgment of the district court.

AFFIRMED.