

IN THE COURT OF APPEALS OF IOWA

No. 6-1081 / 06-0866
Filed February 28, 2007

**KRISTIN CURRENT, MICHAEL CURRENT and
TANNER CURRENT,**
Plaintiffs-Appellees,

vs.

MATTHEW DEGLOPPER and DONALD DEGLOPPER,
Defendants-Appellants.

Appeal from the Iowa District Court for Mahaska County, Daniel P. Wilson,
Judge.

Defendants appeal from an order granting plaintiffs a new trial.

AFFIRMED.

Patrick L. Woodward of McDonald, Woodward & Ivers, P.C., Davenport,
for appellants.

Kyle T. Reilly of Thomas J. Reilly Law Firm, P.C., Des Moines, for
appellees.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

This is an appeal from an order granting plaintiffs a new trial. Plaintiffs, Kristin and Michael Current, sued Matthew and Donald DeGlopper claiming Kristin was injured when a car driven by Matthew and owned by Donald rear ended a car Kristin was driving. The defendants admitted liability but denied Kristin suffered injury as a result of Matthew's negligence. The jury returned a verdict for the defendants and the district court ordered a new trial.¹ Defendants contend (1) the district court abused its discretion in ordering a new trial and (2) the district court should not have submitted to the jury the plaintiffs' claim for future damages. We affirm.

The accident in question happened at highway speeds, and the car Kristin was driving sustained substantial damages. Kristin did not complain of injuries immediately following the collision. She went home; however, within an hour and a half of the accident she presented herself at the emergency room of the Mahaska County Hospital complaining of being shaken up and that her chest really hurt. The medical record of her visit noted she suffered a seatbelt bruise and a chest abrasion. A muscle relaxant and Ibuprofen were prescribed by the emergency room physician. As a result of the visit she incurred approximately \$249 in medical expenses. For several days following the accident she testified she had pain in her chest, it hurt to move her neck, her whole body hurt, and she stayed in bed. She continued to complain of a series of other problems up to the

¹ The district court also provided that the defendants could avoid a new trial "by entering into an additur in the amount of \$30,000.00 Counsel for the parties shall agree to an additur, in writing, by May 8, 2006, if a new trial is to be avoided." No such agreement was reached. Consequently, the issue of the additur is not before us, and we do not address it.

time of trial, which she contended were attributed to the accident. The defendants contend Kristin suffered no damages in the accident.

The district court in granting a new trial found:

The uncontradicted evidence in this case includes the fact that the vehicle being operated by Kristin Current was “rear ended” by a vehicle operated by Matthew DeGlopper The vehicles were being operated at highway speed and the Current vehicle sustained very significant damage. Kristin Current went to the emergency room . . . approximately one and one-half hours after the collision. [and] [t]he medical record of this visit . . . noted a seat belt bruise and chest abrasion. A muscle relaxant Flexeril and Ibuprofen were prescribed The billing . . . was approximately \$249.00.

The district court while, noting its reluctance to overturn a jury’s verdict and the fact that the defendants could legitimately argue the extent to which Kristin was injured, also found “for the jury to find that Kristin Current incurred no injury/damages proximately caused by DeGlopper’s fault is contrary to the evidence. As a result and in effect, the jury’s verdict results in inadequate damages.”

We review the district court’s action on a motion for new trial for abuse of discretion. *Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 892 (Iowa 1996). The trial court may grant an aggrieved party a new trial when the jury awards excessive or inadequate damages, or when the verdict is not sustained by sufficient evidence, or is contrary to law. *Fisher v. Davis*, 601 N.W.2d 54, 57 (Iowa 1999). We afford the trial court considerable discretion in ruling upon a motion for new trial based upon the ground that the verdict was inadequate. *Id.* We are slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 6.14(6)(d). Whether damages in a given case are adequate depends

upon the particular facts of the case. *Fisher*, 601 N.W.2d at 57 (citing *Witte v. Vogt*, 443 N.W.2d 715, 716 (Iowa 1989)).

The evidence is undisputed that in the accident the car Kristin was driving received substantial damages, she was treated for accident-related injuries within two hours following the accident, and she incurred medical expenses for her treatment, yet she was awarded no damages despite the defendants' admission of liability. We agree with the district court that some damages should have been awarded. While there was conflicting evidence as to whether her other complaints were the result of the accident, there was no justification in the jury totally rejecting her claim. The failure to award adequate damages supports the award of a new trial. See *Cowan v. Flannery*, 461 N.W.2d 155, 159 (Iowa 1990) (affirming grant of new trial based on inadequate damages); *Witte*, 443 N.W.2d at 717 (reversing denial of new trial based on inadequate damages); *Householder v. Town of Clayton*, 221 N.W.2d 488, 494 (Iowa 1974) (same).

The defendants also argue that the district court should not have submitted the plaintiffs' claim for future medical expenses, pain and suffering, and loss of function. The jury did not award damages for these claims. Consequently, this argument is moot. An appeal "is moot if it no longer presents a justiciable controversy because [the contested issue] has become academic or nonexistent." *In re D.C.V.*, 569 N.W.2d 489, 494 (Iowa 1997). A new trial has been ordered, and whether this claim should be submitted to the jury will be dependent on the facts introduced there. We have considered defendants other claims and find them to be without merit

AFFIRMED.