

IN THE COURT OF APPEALS OF IOWA

No. 7-335 / 06-1763

Filed June 13, 2007

CONNIE SUE MILLER,
Plaintiff-Appellee,

vs.

LYNN M. PAVLICEK,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, William L. Thomas,
Judge.

Defendant appeals the district court's grant of a new trial to plaintiff in her
tort action based on an automobile accident. **AFFIRMED.**

Kimberly K. Hardeman and Brenda Wallrichs of Moyer & Bergman, P.L.C.,
Cedar Rapids, for appellant.

Carolyn Beyer of White & Johnson, P.C., Cedar Rapids, for appellee.

Considered by Sackett, C.J., Vogel, J. and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BEEGHLY, S.J.**I. Background Facts and Proceedings**

Around noon on October 2, 2002, Connie Miller was traveling south on Edgewood Road in Cedar Rapids. A light mist or rain was falling at the time, and it was about sixty-seven degrees. The streets were wet. Miller stopped for a red traffic light at the intersection with Glass Road. Lynn Pavlicek was driving south on Edgewood Road behind Miller. Pavlicek's vehicle struck the rear-end of Miller's vehicle.

Miller filed a tort action alleging Pavlicek was negligent and that she was injured in the accident. Miller testified, "After I got to the red light, I saw the defendant's car in the rear view mirror, she was coming pretty fast and it was just to me seemed like she was not going to be able to stop."

Pavlicek testified she was traveling approximately thirty to thirty-five miles per hour on Edgewood Road. She stated nothing obstructed her vision. She saw the traffic signal turn to red, and saw Miller's car come to a stop ahead of her. Pavlicek claimed she was unable to stop in time because she had hydroplaned on the wet roadway. She stated she did not have problems stopping earlier. Pavlicek stated another accident occurred at the same intersection about ten minutes later.

The case was tried to a jury. Pavlicek asked the district court to instruct the jury on the sudden emergency doctrine. The district court refused to give an instruction on this doctrine. The jury returned a verdict finding Pavlicek was not negligent.

Miller filed a motion to vacate the jury's verdict and to grant a new trial. The district court concluded, "The jury's finding that the plaintiff failed to establish that the defendant was at fault is not sustained by sufficient evidence." The court granted Miller's motion for a new trial. Pavlicek appeals.

II. Standard of Review

The scope of our review of a district court's ruling on a motion for new trial depends on the grounds raised in the motion. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). If a motion for new trial is based on a discretionary ground, we review the ruling for abuse of discretion. *Hansen v. Central Iowa Hosp. Corp.*, 686 N.W.2d 476, 480 (Iowa 2004). If the ruling granting a new trial was prompted by a motion on a legal question, as here, our review is for errors of law. *Olson v. Sumpter*, 728 N.W.2d 844, 848 (Iowa 2007). Because a determination of the sufficiency of the evidence presents a legal question, we review the district court's ruling on this ground for the correction of errors at law. *Estate of Hagedorn ex rel. Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004).

III. Merits

A district court may grant a new trial under Iowa Rule of Civil Procedure 1.1004(6) when "the verdict, report or decision is not sustained by sufficient evidence, or is contrary to law." A new trial may be ordered if a jury verdict is not supported by sufficient evidence and fails to effectuate substantial justice. *Olson*, 728 N.W.2d at 850. Evidence is substantial if reasonable minds could find the evidence presented adequate to reach the same findings. *Midwest Home Distrib., Inc. v. Domco Indus., Inc.*, 585 N.W.2d 735, 738 (Iowa 1998). The

reason for granting a new trial must fairly appear in the record. *Bredberg v. Pepsico, Inc.*, 551 N.W.2d 321, 326 (Iowa 1996).

In ruling on the motion for new trial, the district court stated:

The evidence establishes clearly that Ms. Pavlicek had adequate opportunity to view Ms. Miller and her vehicle; that Ms. Pavlicek was aware of the presence of the Miller vehicle; that Ms. Pavlicek was aware that the weather was adverse in that it had been raining for quite some time prior to the accident. Despite all of this information Ms. Pavlicek drove her vehicle directly into the back of the Miller vehicle.

I conclude that the jury's finding that the plaintiff failed to establish that the defendant was at fault is not sustained by sufficient evidence. I conclude, therefore, that plaintiff is entitled to a new trial on all issues in the case.

The district court found the jury's verdict was not supported by sufficient evidence. Where a jury verdict is not supported by sufficient evidence, a new trial may be ordered. *Olson*, 728 N.W.2d at 850. We note that we are slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 6.14(6)(d).

For these reasons we affirm the decision of the district court.

AFFIRMED.