

IN THE COURT OF APPEALS OF IOWA

No. 8-429 / 07-1190
Filed June 25, 2008

ALLISA DOCK,
Plaintiff-Appellant,

vs.

PATRICK NICOLETTO,
Defendant-Appellee.

and

John Nicoletto,
Defendant.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

Plaintiff appeals from a district court ruling denying her motion for new trial
and alternative motion for additur following a jury verdict and judgment entry in
her personal injury action. **AFFIRMED.**

Scott L. Bandstra, Des Moines, for appellant.

Scott Wormsley of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des
Moines, for appellee.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

MILLER, J.

Allisa Dock appeals from a district court ruling denying her motion for new trial and alternative motion for additur following a jury verdict and judgment entry in her personal injury action against Patrick Nicoletto. We affirm the judgment of the district court.

I. BACKGROUND FACTS AND PROCEEDINGS.

On March 15, 2004, Dock's vehicle was rear-ended by a vehicle driven by Nicoletto at an intersection in Des Moines, Iowa. Nicoletto's vehicle was traveling at about five to ten miles per hour when it struck Dock's vehicle. The collision broke the left tail light of Dock's vehicle and left a small dent in the trunk. The only damage to Nicoletto's vehicle was a cracked license plate.

Dock was taken to the emergency room complaining of pain in her neck and lower left back. She was treated and released that day after diagnostic studies failed to reveal any damage to her neck or back. Four days later, Dock sought further medical treatment from her family physician, Dr. Kevin Moore, who had been treating her for chronic neck and back pain since 1998. He directed her to refill her previously prescribed medications and to follow-up with him as needed.

Dock filed a personal injury lawsuit against Nicoletto¹ on March 7, 2006, alleging Nicoletto's negligence caused the accident and her resulting neck and back injuries. She sought damages for past and future medical expenses, loss of earnings and earning capacity, and pain and suffering. Nicoletto admitted he

¹ Dock also named Nicoletto's father, John Nicoletto, as a defendant, claiming he owned the vehicle Nicoletto was driving the day of the accident. She later dismissed John Nicoletto from the lawsuit.

was negligent, but denied his negligence was the proximate cause of damages claimed by Dock.

The case proceeded to trial. The jury returned a verdict in favor of Dock and awarded her \$1840.27 in past medical expenses. Dock filed a motion for new trial and alternative motion for additur, arguing the damages awarded by the jury were inadequate, not sustained by sufficient evidence, and contrary to law. The district court denied the motions.

Dock appeals, claiming the district court abused its discretion in denying her motion for new trial and alternative motion for additur.

II. SCOPE AND STANDARDS OF REVIEW.

The district 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. Iowa R. Civ. P. 1.1004(4), (6). The court has considerable discretion in ruling upon a motion for new trial based upon the ground that the verdict was inadequate. *Fisher v. Davis*, 601 N.W.2d 54, 57 (Iowa 1999). Whether damages are so inadequate as to warrant a new trial is for the district court to decide, and we will ordinarily not disturb its discretion to grant or deny the motion unless an abuse of discretion is shown. *Id.*

III. MERITS.

Dock claims the jury's verdict awarding \$1840.27 for past medical expenses was inadequate, not sustained by sufficient evidence, and contrary to law, because the jury did not award her the full amount of her past medical

expenses² and it did not award her anything for pain and suffering. In support of her argument, Dock cites a number of cases in which our supreme court determined new trials were warranted where the jury awarded the plaintiff medical expenses but little or no damages for pain and suffering. See, e.g., *Cowan v. Flannery*, 461 N.W.2d 155, 160 (Iowa 1990) (finding jury's award of past and future medical expenses with no corresponding award for pain and suffering resulted in an inconsistent verdict unsupported by the evidence); *Shewry v. Heuer*, 255 Iowa 147, 152, 121 N.W.2d 529, 532 (1963) (granting plaintiff new trial where jury awarded him the total "cost of medical services made necessary by his pain and suffering and yet allow[ed] him nothing for the pain and suffering"). We do not believe these cases control the outcome here given the facts of this case.

In *Cowan*, our supreme court recognized it has "not adopted an inflexible rule that every verdict awarding only damages for medical expenses in a personal injury action is inadequate as a matter of law." 461 N.W.2d at 159. Instead, "[w]hether damages in a given case are adequate depends on the particular facts of the case." *Fisher*, 601 N.W.2d at 57; see also *Moore v. Bailey*, 163 N.W.2d 435, 436 (Iowa 1968) ("[P]recedents in this field are of little value. Each case must be decided by . . . its own unique circumstances. . . ."). In this case, although Nicoletto admitted liability, the cause, nature, and extent of Dock's alleged injuries from the accident were disputed.

² Dock asserted she had incurred \$13,000 in past medical expenses at the time of trial. Although she claims on appeal that Nicoletto stipulated to that amount of past medical expenses, our review of the record reveals he simply stipulated to the admission of an exhibit detailing her past medical expenses.

The jury should ordinarily be allowed to settle disputed fact questions. *Cowan*, 461 N.W.2d at 157. Thus, “[a] verdict should not be set aside as either too large or too small simply because the reviewing court would have reached a different conclusion.” *Id.* at 158. Though the evidence may justify a higher award, the determinative question is “whether under the record, giving the jury its right to accept or reject whatever portions of the conflicting evidence it chose, the verdict effects substantial justice between the parties.” *Id.* We conclude the district court could reasonably decide that the jury’s verdict in this case fairly and reasonably compensates Dock for any injuries she sustained as a result of her relatively minor automobile accident with Nicoletto. *See Fisher*, 601 N.W.2d at 57 (“The test is whether the verdict fairly and reasonably compensates the party for the injury sustained.”).

Dock’s symptoms following the accident mimicked the medical problems she experienced prior to that time. Her medical records reveal that she has suffered from chronic neck and back pain since 1998. She was also diagnosed with fibromyalgia and chronic pain syndrome several years before the accident. These conditions caused her substantial pain and affected her ability to work and engage in routine daily activities prior to the accident at issue in this case.

Dr. Moore, who treated Dock for these conditions from their onset, acknowledged at trial that Dock was having difficulty working before the accident. Yet, he opined that the March 2004 accident caused a permanent exacerbation of her pre-existing lower back pain and rendered her unable to work. Nicoletto’s expert witness, on the other hand, testified that the MRIs performed on Dock after the accident were normal and “healthy. By that I mean there is no evidence

of a fracture, no damage to the disk. So that points away from . . . a neurological deficit” or injury. He further testified it would “be very hard to say she sustained an injury to the soft tissues” as a result of the accident.

Dock, however, testified that her pain following the accident was different and worse than the pain she experienced before the accident. She attempted to deny that she suffered from back pain before the accident even when confronted with her medical records and deposition testimony to the contrary, which casts doubt as to her overall credibility. See *Kaiser v. Stathas*, 263 N.W.2d 522, 526 (Iowa 1978) (stating the jury is not required to accept and give effect to testimony which it finds to be unreliable). In addition, although a vocational rehabilitation expert testified that “[a]s a result of [the] accident, she can no longer work for the rest of her life,” Dock admitted she was able to continue to work for two years after the accident.

In light of the foregoing, we do not believe it was illogical for the jury to award Dock some of her past medical expenses but nothing for pain and suffering. Unlike a case such as *Shewry*, 255 Iowa at 152, 121 N.W.2d at 532, where the evidence material to the damage award was undisputed and the jury awarded the plaintiff all of his past medical expenses, the jury here was confronted with conflicting evidence regarding whether the accident exacerbated Dock’s pre-existing neck and back pain and “was required to choose which was correct.” *Moore*, 163 N.W.2d at 437. It is quite possible the jury concluded the only damages Dock suffered as a result of Nicoletto’s negligence were the medical expenses she incurred to determine whether she was injured in the accident. See, e.g., *Valinzo v. Cem-Kam, Inc.*, 698 So. 2d 359, 360 (Fla. Dist.

Ct. App. 1997) (concluding jury verdict awarding plaintiff a small fraction of her medical expenses but no damages for pain and suffering was not inadequate because the jury could have concluded she was only entitled to reimbursement for diagnostic testing).

We additionally note there is no indication in the record, aside from Dock's contention that the award was inadequate, that the jury's verdict was influenced by passion or prejudice. *Waddell v. Peet's Feeds, Inc.*, 266 N.W.2d 29, 32 (Iowa 1978). Nor does Dock allege any error in the jury instructions or any misconduct on the part of the jury. *Id.*

We therefore conclude the district court could reasonably decide that the jury's verdict awarding Dock only a portion of her past medical expenses and nothing for pain and suffering was not inadequate. See, e.g., *Moore*, 163 N.W.2d at 436-37 (finding jury's minimal award for medical expenses and pain and suffering was not inadequate where the evidence regarding the cause and extent of plaintiff's injuries, some of which were pre-existing, was disputed). *But see Fisher*, 601 N.W.2d at 58 (finding jury's verdict awarding plaintiff all claimed medical expenses but nothing for pain and suffering was inadequate). The court thus did not abuse its discretion in denying Dock's motion for new trial and alternative motion for additur. *Kautman v. Mar-Mac Comm. Sch. Dist.*, 255 N.W.2d 146, 148 (Iowa 1977) (stating because plaintiff was not entitled to new trial due to the alleged inadequacy of the verdict, any right to additur is concomitantly foreclosed).

IV. CONCLUSION.

Because the cause, nature, and extent of Dock's injuries were disputed, we conclude the district court could reasonably decide that the jury's verdict awarding Dock only a part of her past medical expenses and nothing for pain and suffering was not inadequate. See *Cowan*, 461 N.W.2d at 159 ("We have affirmed the trial court's denial of a new trial where the evidence of the cause or the extent of injury was disputed."). Thus, the court did not abuse its discretion in denying Dock's motion for new trial and alternative motion for additur. We therefore affirm the judgment of the district court.

AFFIRMED.