

IN THE COURT OF APPEALS OF IOWA

No. 9-605 / 09-0121
Filed August 19, 2009

DANIELLE L. DELL,
Plaintiff-Appellant,

vs.

**HY-VEE, INC., and QUALITY 1
ENTERPRISES, INC.,**
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,
Judge.

Plaintiff appeals from the district court ruling denying her conditional
motion for a new trial. **REVERSED AND REMANDED.**

Nathaniel R. Boulton of Hedberg Law Firm, Des Moines, for appellant.
Kenneth R. Munro and Dallas J. Janssen of Janssen Law Office, Des
Moines, for appellees.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

SACKETT, C.J.

Plaintiff, Danielle Dell, appeals from the district court's ruling denying her conditional motion for a new trial. She contends the district court should have issued an additur or alternatively, granted a new trial because the jury's verdict and award of damages was inconsistent and inadequate. We reverse and remand.

I. BACKGROUND. Danielle slipped and fell on a puddle of water in a Hy-Vee store on July 3, 2005. She felt soreness in her left shoulder immediately after the fall, and after it hurt more the next day, she decided to go to the emergency room. She was given pain medication and instructed to follow-up with her primary care physician. An MRI was taken on July 13, 2005, and she was referred to Dr. Galles. His report stated that there was "mild inflammation or tendinosis" and perhaps a superficial partial tear of the rotator cuff. He diagnosed her as having "post traumatic bursitis." He gave her an injection and prescribed physical therapy. She saw Dr. Galles again in September 2005 where she reported there was not significant improvement in her shoulder. Dr. Galles indicated the problem could not be solved with surgery and suggested more physical therapy. Danielle believed there was nothing further that could be done to help her shoulder and did not attend physical rehabilitation because there were no openings for several months.

Danielle injured her shoulder again while lifting weights at a gym in March 2006. After seeing her physician following this injury, she was referred to Dr. Neff. He diagnosed her with impingement syndrome of the left shoulder with

rotator cuff tendinopathy. During arthroscopic surgery, he performed impingement decompression with acromioplasty and complete release of the coracoacromial ligament. His notes indicate a partial thickness bursal surface rotator cuff tear and a large spur on the distal clavicle. She later had another surgery where a distal clavicle excision was performed.

On July 3, 2007, Danielle filed a petition contending the defendants, Hy-Vee and Quality 1 Enterprises, a cleaning company that Hy-Vee contracted with, were negligent and caused Danielle's shoulder injuries. A jury found Hy-Vee and Quality 1 Enterprises equally at fault and assigned no fault to Danielle. It determined the defendants' negligence was the proximate cause of Danielle's damages. In determining damages, the special verdict form completed by the jury stated,

Question No. 8: State the amount of damages sustained by the Plaintiff proximately caused by a Defendant's fault as to each of the following items of damage. Do not take into consideration any reduction of damages due to Plaintiff's fault. If the Plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was proximately caused by a defendant's fault, enter 0 for that item.

ANSWER:

1. Past medical expenses	\$1000
2. Past pain and suffering	\$0
3. Past Loss of Function of the Body	\$0
4. Lost Wages	<u>\$500</u>
TOTAL (add the separate items of damage)	\$1500

Danielle filed a request for an additur and alternatively requested that a new trial be granted on the issue of damages should the request for an additur be denied. She contended that the jury's award of damages was inadequate and

inconsistent with its finding of liability. The district court denied the request and Danielle appeals.

II. STANDARD OF REVIEW. Our review of a ruling on a motion for a new trial is for an abuse of discretion. *Kuta v. Newberg*, 600 N.W.2d 280, 284 (Iowa 1999). In ruling on such a motion, the district court has broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties.” Iowa R. App. P. 6.904(3)(c). A court may grant a new trial for various causes outlined in Iowa Rule of Civil Procedure 1.1004 including,

1.1004(4) Excessive or inadequate damages appearing to have been influenced by passion or prejudice.

...

1.1004(6) That the verdict, report or decision is not sustained by sufficient evidence, or is contrary to law.

Iowa R. Civ. P. 1.1004(4), (6). 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. ANALYSIS. A jury’s verdict on damages should only be disturbed if it is “flagrantly excessive or inadequate, so out of reason so as to shock the conscience, the result of passion or prejudice, or lacking in evidentiary support.” *Olson v. Prosoco, Inc.*, 522 N.W.2d 284, 292 (Iowa 1994) (quoting *Harsha v. State Sav. Bank*, 346 N.W.2d 791, 799 (Iowa 1984)). In evaluating whether a verdict is inconsistent, we consider whether it “can be reconciled in any reasonable manner consistent with the evidence and its fair inferences, and in light of the instructions of the court.” *Hoffman v. Nat’l Med. Enters., Inc.*, 442

N.W.2d 123, 127 (Iowa 1989). If it cannot be reconciled because it is so logically and legally inconsistent, the verdict will be set aside. *Id.*

In *Cowan v. Flannery*, 461 N.W.2d 155, 159 (Iowa 1990), the court considered whether, in a personal injury action, a verdict was inconsistent and inadequate where a jury had awarded past and future medical expenses, but did not award the plaintiff for loss of earning capacity, loss of bodily function, or pain and suffering. The court stated there is not “an inflexible rule that every verdict awarding only damages for medical expenses in a personal injury action is inadequate as a matter of law.” *Cowan*, 461 N.W.2d at 159. In evaluating prior case law, it found the grant or denial of a new trial depends on whether the evidence on damages is disputed and whether the evidence on the cause or extent of the injury is disputed. *See id.* Even though there was conflicting evidence as to Cowan’s damages and injuries, the court determined the verdict was inconsistent.

It is illogical to award past and future medical expense incurred to relieve headache, neck and back pain and then allow nothing for such physical and mental pain and suffering. Having determined that these medical expenses were recoverable, there seems no way for the jury to disallow recovery for the appellant’s pain and suffering for the same injuries. Although the award may be adequate, a special verdict award of nothing for pain and suffering is inconsistent and unsupported by evidence.

Id. at 160. The inconsistency in such a verdict occurs because the jury’s award recognizes that an injury in fact took place yet denies in effect that any pain and suffering took place. *Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 892 (Iowa 1996).

When a jury is asked to itemize damages into elements, each itemization is a special jury finding that must be supported by substantial evidence. *Matthes v. State Farm Mut. Auto. Ins. Co.*, 521 N.W.2d 699, 703 (Iowa 1994). We find the jury's itemization in this case is not supported by substantial evidence and an inconsistent verdict was rendered. The jury determined that Hy-Vee and Quality 1 were negligent and the proximate cause of some damage to Danielle. In itemizing that damage, it awarded Danielle a sum for past medical expenses, but awarded no damages for her pain and suffering for her injury. This verdict is inconsistent because it identifies an injury caused by the defendants, but fails to compensate the plaintiff for the pain and suffering stemming from the injury.

The defendants argue the verdict is not inconsistent. They contend there was conflicting evidence as to whether Danielle's shoulder problems were caused by the fall. They state the jury's award reflects compensation to Danielle for the initial visits to the doctors to diagnose her problems after the fall. They contend no further award was made because any additional treatments were for injuries unrelated to the fall in Hy-Vee. We do not think the verdict can be logically interpreted this way in light of the evidence. The jury did find the defendants at fault for the fall. Danielle was treated for pain in her shoulder the very next day. It was undisputed that she had never been treated for shoulder problems before the fall. Even if the jury found only a portion of Danielle's shoulder problems related to the fall, it was inconsistent to not award an amount for pain and suffering for those injuries related to the fall.

We cannot reconcile the jury's special findings and therefore must reverse its verdict as to damages. We affirm its verdict as to liability. See *Thompson v. Allen*, 503 N.W.2d 400, 401-402 (Iowa 1993) (ruling that a new trial was required on the issue of damages but not on liability when there was no evidence that the jury's determination of fault was compromised or affected by the evidence of damages). We remand to the district court for a new determination of damages.

REVERSED AND REMANDED.