STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1719

Thomas Neuman,
Respondent,

vs.

Wayne Graving, et al.,
Appellants.

Filed June 30, 2009
Reversed and remanded
Connolly, Judge

Hennepin County District Court
File No. 27-CV-06-16140

William J. Krueger, William J. Krueger, P.A., Suite 205, 888 West County Road D, New Brighton, MN 55112 (for respondent)

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Considered and decided by Connolly, Presiding Judge; Johnson, Judge; and Willis, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

The district court granted a new trial on a portion of a damages award, based on a finding that the jury's verdict was the product of passion and prejudice. Because the district court abused its discretion by granting the new trial when there was sufficient evidence in the record to support the verdict, we reverse and remand.

FACTS

On February 2, 2005, appellant William Graving and respondent Thomas Neuman were involved in a motor-vehicle accident. Appellants conceded liability, and the case went to trial solely on the question of damages.[1]

On July 18, 2007, the jury returned a special verdict. The jury determined that respondent had sustained a permanent injury and a 60-day disability as a result of the accident. The jury awarded respondent $3,296.20 for past pain, disability, and emotional distress; $6,203.80 for past health-care expenses; $0 for diagnostic x-rays and scans; and $5,000 for future pain, disability, and emotional distress.

Respondent brought a motion for judgment notwithstanding the verdict, or alternatively, for additur or a new trial claiming that insufficient damages had been awarded. The district court granted respondent's motion for a new trial with regard to past health-care expenses and diagnostic x-rays and scans, based on a finding that the jury's verdict was the product of passion and prejudice.

[1] There are two appellants in this case. William Graving was the driver of the vehicle involved in the accident, and Lois Verved was the owner of that vehicle.

The second trial began on March 19, 2008, and the jury returned a special verdict awarding respondent $34,777.68 for past health-care expenses and $4,303 for diagnostic testing. Appellants brought a motion for a new trial, judgment as a matter of law, or reinstatement of the first special verdict. The district court denied appellants' motion, and this appeal follows.

D E C I S I O N

Appellants argue that the district court abused its discretion by granting respondent's motion for a new trial. Because the district court has the discretion to grant a new trial, we will not disturb the decision absent a clear abuse of that discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990).

Minnesota Rule of Civil Procedure 59.01 provides, in relevant part, that "[a] new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes: . . . (e) Excessive or insufficient damages, appearing to have been given under the influence of passion or prejudice." It was on this basis that the district court granted respondent's motion for a new trial. Appellants argue that this was an abuse of discretion because the first verdict was not the product of "passion or prejudice."

The parties did not stipulate to the amount of medical damages. The jury found that respondent had suffered a permanent injury and a 60-day disability. The jury then awarded $6,203.80 in past health-care expenses, which was $38,645.68 less than the $44,849.48 that respondent claimed, and awarded nothing for diagnostic x-rays and scans, even though there is no dispute that such tests were conducted. The district court concluded that because the jury had found that respondent suffered from a permanent

injury, "failure to award the full amount of damages for medical expenses. . . leads to a conclusion of passion and prejudice on the part of the jury." To support its conclusion, the district court cited *Adler v. Harper*, No. C3-96-1514, 1997 WL 104796 (Minn. App. Mar. 11, 1997), an unpublished case of this court, and *Wefel v. Norman*, 296 Minn. 506, 207 N.W.2d 340 (1973). In support of its decision, the district court quoted the following language:

> However, where a jury has determined by its answers to other special verdict questions that there is no liability, "'the denial of damages or granting of inadequate damages. . . does not necessarily show prejudice or render the verdict perverse.'" *Because the jury found no permanent injury, we cannot conclude that the failure to award the full amount of damages for medical expenses shows prejudice.*

Adler, 1997 WL 104796, at *2 (emphasis added) (citations omitted).

The district court then applied the *reverse* of the reasoning used in *Adler* and *Wefel* to conclude that when there *is* a jury finding of permanent injury, a failure to award the full amount of damages necessitates a finding of passion and prejudice. This was error. In *Adler*, the parties stipulated to medical expenses of more than $18,000 but, when the jury did not find liability, the court concluded that it was not error to award less than the full amount of damages. *Id.* In this case, there was no stipulation as to the amount of past medical expenses, and respondent has not demonstrated that a finding of permanent injury dictates an award of the full amount requested. If that were the case, there would be no need for the jury to determine medical expenses; they would only need to determine if a permanent injury occurred, and if so, grant the full amount of expenses claimed by respondent. Instead, the burden of proof in this case was still on respondent,

and the jury's verdict indicates that he failed to prove entitlement to the full amount of his claimed medical expenses, despite a finding of permanent injury.

The district court cited *Hennen v. Huff* for the general rule that a jury is not bound to award all medical expenses requested. 388 N.W.2d 408, 411 (Minn. App. 1986), *review denied* (Minn. Aug. 13, 1986). The district court differentiated *Hennen* from this case, however, because the jury in *Hennen* awarded 99% of the amount sought and in this case only 14% was awarded. *Id.* But it is unclear how this alters the general rule that a jury is not bound to award all medical expenses requested. Indeed, in response to a question from the jury, the district court made clear that "[t]he jury may or may not accept those numbers in . . . making its decisions about the costs that were necessarily related to the accident, if any."

Furthermore, the district court found that the jury's award could not be reconciled with the permanent injury/60-day disability finding. But the district court provided no basis for finding a correlation between respondent's permanent injury and the amount of past medical costs. A permanent injury certainly may dictate future medical costs, but the permanency of an injury does not necessarily relate to the expense of the health care required to treat the injury in the past. It may cost more to treat a non-permanent injury such as a broken leg, than it costs to treat a permanent injury, like a severed finger. Respondent had the burden of proving that the past health-care expenses were, as he claimed, $44,849.48. Moreover, in this case, appellants' expert witness testified that there was evidence that respondent had a pre-existing condition in his lower back before the accident, and the expert opined that respondent sustained only a temporary

aggravation of pre-existing symptoms. The witness further opined that respondent's treatment through March 18, 2005, was reasonable and necessary and related to the subject accident. But he found that treatment beyond that date was no longer related to the accident. Thus, the jury's award of only $6,203.80 in past health-care expenses was supported by the evidence presented at trial.

Lastly, the district court found that the zero-dollar award for diagnostic x-rays and scans indicates that the jury was confused, which "can lead to passion or prejudice out of frustration." But when asked by the respondent to grant a judgment as a matter of law in the amount of $4,303 for those very diagnostic x-rays and scans, the district court refused and stated:

> [T]he court notes that Exhibit 1, the Medical Summary, does not explain which of the services were for diagnostic x-rays or scans, and Exhibit 8, Scans and Operative Reports, does not assist a trier of fact who is attempting to determine the costs of scans/x-rays. For example, Exhibit 8 contains a Medical Imaging Report for 3/20/06, but the Medical Summary has four entries for 3/20/06 with four different dollar amounts.

The district court even stated that it could not reasonably arrive at a dollar figure for the diagnostic x-rays and scans based on the evidence submitted as "[o]ne cannot tell which Medical Summary entry goes with which document in Exhibit 8." Therefore, it left the valuation to the jury in the new trial. But this same reasoning could explain why the jury made no award in the first place. Respondent had simply not met his burden of proving a specific dollar value of the x-rays and scans.

We conclude that in this case the district court abused its discretion in granting respondent's motion for a new trial. Therefore, on remand, judgment shall be entered for the amounts listed on the original special-verdict form relating to past health-care expenses and diagnostic x-rays and scans from the first trial. Because we reach this decision, it is unnecessary to address appellants' other arguments.

Reversed and remanded.