STATE OF MINNESOTA
IN COURT OF APPEALS
A09-199

Tamara Haeg,
Appellant,

vs.

George Geiger,
Respondent,

Steve Slater,
Defendant.

Filed November 24, 2009
Affirmed
Harten, Judge*

Anoka County District Court
File No. 02-C5-05-001387

Paula M. Jossart, Christopher J. Moreland, Yaeger, Jungbauer & Barczak, PLC, 745 Kasota Avenue, Minneapolis, MN 55414 (for appellant)

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Considered and decided by Minge, Presiding Judge; Schellhas, Judge; and Harten, 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

HARTEN, Judge

Appellant challenges the denial of her motion for a new trial in her personal injury action against respondent, arguing that the district court abused its discretion in admitting evidence of her *Pierringer* settlement with another defendant and in not instructing the jury on an alternative basis for respondent's duty of reasonable care; appellant also asserts that the jury's findings on negligence and damages were palpably contrary to the evidence. Because we see no abuse of discretion and conclude that the evidence supports the jury's findings, we affirm.

FACTS

On 7 August 2004, appellant Tamara Haeg and respondent George Geiger were two members of a foursome playing in a "four-man best ball" golf tournament at a course that neither had played before. They rode together in a cart that Geiger drove following the cart of the other two golfers, driver Greg Nelson and passenger Cindy Fuller. Steve Slater was part of the foursome that preceded the Haeg-Geiger-Nelson-Fuller foursome.

After leaving the second tee, Nelson drove his cart toward the third tee. Geiger followed Nelson. When they approached the third tee, Haeg noticed that the tee box was empty and that the golfers of the preceding foursome were in their carts. She inferred that the foursome had finished at the third tee and was preparing to move to the fourth tee; she knew that second shots are not permitted in a "best ball" tournament. Nelson stopped his cart, and Geiger stopped a few feet behind Nelson, forward of the tee box and at a 45 degree angle to it. Then Nelson suddenly pulled his cart ahead. After it stopped,

Haeg realized Nelson and Fuller were looking at the tee box that was occupied by Slater, who was hitting a ball. Geiger testified that he had no time to move his cart before Slater hit the ball. The ball veered to the right, bounced off Slater's golf cart, and struck Haeg in the face, breaking her nose and causing the loss of her left eye.

In January 2005, Haeg brought this action against Geiger and Slater.[1] Her claims against Slater were resolved with a *Pierringer* release and dismissed. Geiger's motion for summary judgment was granted, but the summary judgment was reversed and remanded on appeal.[2]

On remand, Haeg moved to exclude evidence of her *Pierringer* settlement with Slater. The district court initially granted the motion, but later denied it because of Geiger's remaining counterclaim against Slater. After the trial, the jury found that Geiger—the only defendant—had not been negligent, that Slater had been negligent, that his negligence caused Haeg's injuries, and that her damages were $372,980.

Haeg's motion for a new trial was denied. She challenges the denial, arguing that the district court abused its discretion in admitting evidence of Haeg's settlement with

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[1] Haeg's suit included a claim against the operator of the golf course, Anoka County, which moved successfully for dismissal on the grounds of statutory immunity. In response to Haeg's motion, Anoka County was not included on the special verdict form. Geiger filed a notice of review challenging this exclusion. Because we affirm the denial of Haeg's motion for a new trial, we dismiss as moot Geiger's challenge to the special verdict form.

[2] *Haeg v. Geiger*, No. A06-1840, 2007 WL 2472545 (Minn. App. 14 Sept. 2007) (concluding that Geiger had a duty of reasonable care to Haeg under both the common law, as the driver of a vehicle in which she was a passenger, and the Restatement (Second) of Torts § 321, as the creator of an unreasonable risk of physical harm), *review denied* (Minn. 13 Nov. 2007).

Slater and in not instructing the jury on an alternative basis for Geiger's duty of reasonable care; she also asserts that the jury's answers to the special verdict questions on negligence were perverse and palpably contrary to the evidence and that the jury's verdict on damages was manifestly and palpably contrary to the evidence.

D E C I S I O N

1. Evidence of the Settlement

The district court admitted evidence of the existence, but not the amount, of Haeg's *Pierringer* settlement with Slater. A district court ruling on the admission of evidence will not be disturbed unless it is an abuse of discretion or is based on an erroneous view of the law. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997). To be entitled to a new trial on the basis of an evidentiary ruling, a party must demonstrate prejudicial error. *Id.* at 46. "The extent to which a settlement should be disclosed to the jury will vary from case to case and must rest in the sound discretion of the trial court." *Frey v. Snelgrove*, 269 N.W.2d 918, 922 (Minn. 1978).

> Where the settlement and release agreement is executed during trial, the court should usually inform the jury . . . if for no other reason than to explain the settling tortfeasor's conspicuous absence from the court room.
>
> Although a release agreement is admissible under Rule 408 of the Rules of Evidence, where it is offered for a purpose such as proving bias or prejudice of a witness, it is within the trial court's discretion to determine whether to admit the actual agreement into evidence, or the details thereof. The jury should be given those facts necessary to arrive at a fair verdict to all parties, but as a general rule the amount paid in settlement should never be submitted. . . .
>
> The foregoing procedures are guidelines to be applied so as to assure a fair trial to all parties and may be modified when that end would not be served. A trial court's deviation would not constitute error if those modifications substantially protect the rights of all parties and preserve the adversary process.

Id. at 923 (quotation omitted). In denying Haeg's motion for a new trial, the district court noted that disclosing the release preserved both Haeg's and Geiger's right to a fair trial.

> The need to explain Defendant Slater's absence was essential, as his actions on the day of the incident were recounted by every witness. In addition the jury had to apportion fault between Geiger and Slater, and limited disclosure prevented any jury concern as to the reasons for Slater's lack of participation at trial. To protect [Haeg], the jury did not hear the terms of or amount of the settlement.

Haeg argues that evidence of the settlement led the jury to focus entirely on Slater, but Slater's importance to the jury resulted not from the settlement but from the facts. In a case to recover for damages caused by the impact of a golf ball, a jury asked to apportion damages would necessarily focus on the individual who hit the ball. Haeg also claims that the jury concluded from the evidence of the settlement that Slater had admitted his liability and had fully compensated her for her injuries. But, because the jury did not know the amount of the settlement and had been asked to determine the amount that would compensate Haeg, it could not have concluded that Haeg had already been fully compensated by Slater. Moreover, Geiger could not have had a fair trial if he had been presented as the only party liable for Haeg's injuries.

The district court did not abuse its discretion by admitting evidence of Haeg's settlement with Slater.

2. Jury Instruction

"The district court has broad discretion in determining jury instructions and [this court] will not reverse in the absence of abuse of discretion." *Hilligoss v. Cargill, Inc.*,

649 N.W.2d 142, 147 (Minn. 2002). "Where [jury] instructions overall fairly and correctly state the applicable law, appellant is not entitled to a new trial." *Id*. "Errors [in a jury instruction] are likely to be considered fundamental or controlling if they destroy the substantial correctness of the charge as a whole, cause a miscarriage of justice, or result in substantial prejudice." *Lindstrom v. Yellow Taxi Co*., 298 Minn. 224, 229, 214 N.W.2d 672, 676 (1974) (quotation omitted).

The jury was instructed using CIVJIG 25.10, to-wit, that Geiger had a duty of reasonable care to Haeg and that "[r]easonable care is the care a reasonable person would use in the same or similar circumstances." 4 Minnesota Practice, CIVJIG 25.10 (2006). Haeg asserts that the jury should also have been instructed that Geiger had a corresponding duty to Haeg, imposed by the Restatement (Second) of Torts § 321, to exercise reasonable care to prevent the effects of the risk caused by his stopping the cart near the tee. But notwithstanding two sources, Geiger had only a single duty to Haeg—the duty of reasonable care, imposed by both common law and the Restatement (Second) of Torts § 321. *Haeg*, 2007 WL 2472545, at *5 ("[Geiger] owed [Haeg] a duty of reasonable care—both as a matter of common-law negligence and under the Restatement (Second) of Torts § 321—not to place her in harm's way by parking in front of the tee box.").

Haeg argues that a jury must be instructed on every possible source of a duty. *But see Stenvik v. Constant*, 502 N.W.2d 416, 421 (Minn. App. 1993), *review denied* (Minn. 24 Aug. 1993) (finding no error when jury was instructed on two of three possible sources of one party's duty to use reasonable care towards the other). But when a party is

permitted to argue a particular position on the facts and circumstances presented by the evidence, no prejudice results from giving a general rather than a specific jury instruction. *Conover v. N. States Power Co*., 313 N.W.2d 397, 402 (Minn. 1981) (no reversible error in omitting specific instruction when each party was permitted to argue its theory of the case). Here, Haeg argued to the jury her theory of the case: i.e., that Geiger, having stopped the cart forward of the tee box in a zone of danger, had a duty to move it.

The omission of a particular jury instruction on Restatement (Second) of Torts § 321 did not cause "substantial prejudice" to Haeg. *See Lindstrom*, 298 Minn. at 229, 214 N.W.2d at 676.[3]

3. Jury's Verdict

"The test is whether the special verdict answers can be reconciled in any reasonable manner consistent with the evidence and its fair inferences. If the answers to special verdict questions can be reconciled on *any* theory, the verdict will not be disturbed." *Dunn v. Nat'l Beverage Corp*., 745 N.W.2d 549, 555 (Minn. 2008) (quotations and citation omitted).

Haeg challenges the jury's finding that Geiger was not negligent. But the jury heard testimony supporting that finding from at least four witnesses.

[3] Haeg also argues that the jury's finding that Geiger's negligence was not a cause of the accident was irrelevant because the jury was given an erroneous instruction on standard of care. But, since the jury found that Geiger was not in fact negligent, this argument is moot.

First, Geiger testified that he knew the rule against second shots was rigidly followed in "best ball" play and therefore did not know that Slater was planning to take a second shot. He answered, "No", when asked if he (1) intentionally deviated from the golf cart path; (2) intentionally parked his cart in a position of danger; (3) knew that another gravel path was the most direct path for golf carts to use; and (4) believed when he parked the cart that he was in a position of danger. Geiger also testified that he stopped where he did because Nelson, who was driving the cart ahead of his, stopped and Geiger "had to stop behind him," and that he didn't move the cart behind the tee box "[b]ecause Mr. Nelson had stopped in front of me. And he took off, and I had no time to proceed forward."

Second, Nelson testified that: (1) he was "head and shoulders" in experience and ability above the other golfers in his foursome; (2) he had never before seen a second shot (or "mulligan") taken in a best ball tournament; (3) he believed Slater to be drunk while going around the golf course; (4) he first saw Slater running in the direction of both his golf cart and the tee box after picking up his golf ball; and (5) he moved his cart from its position in front of Geiger's cart because he was "too lazy" to walk the short distance to the tee box.

Third, Slater testified that: (1) after his first shot went 10 or 15 feet to the side, he took a second shot or "mulligan"; (2) he remembered only looking at his ball and focusing on his swing, not seeing golf carts; (3) he did not look over at the area where the carts were; (4) he "was directing [his] ball and [his] shot . . . . [and] wasn't paying

attention to people driving up as [he] was shooting"; and (5) his ball first hit his own cart, in which his wife was sitting.

Fourth, Haeg testified that (1) when she saw the empty tee box and people in the carts, "my thought was that the foursome ahead of us had finished hitting and they were getting ready to go onto the next—out into the fairway"; (2) her cart was directly behind Nelson's cart, which pulled straight ahead; and (3) she "was watching them pull away, wondering why. And as they pulled away and stopped, they turned around and looked and I followed their eyes to the tee box. And that's when I saw someone standing up there ready to hit, and he hit a ball."

The special verdict findings that Geiger was not negligent and that his negligence was not a cause of the accident can be reconciled with this evidence.

4. Damage Amount[4]

A reviewing court does not set aside a jury verdict on damages "unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict." *Raze v. Mueller*, 587 N.W.2d 645, 648 (Minn. 1999) (quotations omitted). The jury awarded Haeg $42,980 for past health care expenses; $100,000 for past pain, disfigurement, embarrassment, emotional distress and disability; $30,000 for future health care expenses; and $200,000 for future pain, disfigurement, embarrassment, emotional distress and disability, a total of $372, 980. She argues that the total amount is insufficient, but does not point out which particular award is

[4] Although she alleged the inadequacy of the damages award, Haeg moved only for a new trial, not for additur.

insufficient or offer any argument other than general references to her own testimony and that of her physician.

Moreover, the jury found that Geiger, the sole defendant, was not liable, and that finding was supported by evidence. "[W]here a jury has answered other questions so as to determine that there is no liability on the part of the defendant, which finding is supported by credible evidence, the denial of damages or granting of inadequate damages to the plaintiff does not necessarily show prejudice or render the verdict perverse." *Heroff v. Metro. Transit Comm'n*, 373 N.W.2d 355, 357 (Minn. App. 1985), (quotation omitted), *review denied* (18 Nov. 1985). Accordingly, even assuming arguendo that the jury's verdict was insufficient, it was not perverse or a basis for granting a new trial.

Finally, Haeg speculates that the award is insufficient due to the jury's prejudice resulting from its belief that Slater had already compensated Haeg "to a significant, if not entirely adequate, degree for her injuries." But, once again, the jury knew nothing of the terms of the settlement agreement and had no basis for deciding whether it was significant or adequate.

Haeg is not entitled to a new trial because of the jury's damages award, its findings on negligence, the admission of evidence of her settlement with Slater, or the jury instructions.

Affirmed.