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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2224

LaVerle Richey,
Appellant,

vs.

Chris Magnuson, et al.,
Respondents.

Filed July 27, 2010
Reversed and remanded
Shumaker, Judge

Cass County District Court
File No. 11-CV-08-2381

Jeremy R. Stevens, Andrea B. Niesen, Bird, Jacobsen & Stevens, P.C., Rochester, Minnesota (for appellant)

John E. Valen, Valen Law Office, Walker, Minnesota (for respondents)

Considered and decided by Shumaker, Presiding Judge; Larkin, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

SHUMAKER, Judge

In this personal-injury action for damages, appellant-employee contends that the district court erred by granting judgment as a matter of law to respondent-employers on the ground that appellant's exclusive remedy falls within the Minnesota Workers' Compensation Act. Because appellant has shown that she is entitled to the "intentional injury exception" to the act, we reverse and remand.

FACTS

On theories of assault, battery, and negligent retention and supervision, appellant LaVerle Richey brought this personal-injury action for money damages against her employers, respondents Chris Magnuson and Hal Magnuson. At the conclusion of Richey's case-in-chief in a jury trial, the district court granted the Magnusons' motion for judgment as a matter of law, ruling that Richey's claims are barred by the Minnesota Workers' Compensation Act (WCA). Richey contends on appeal that this ruling was reversible error.

The Magnusons own and operate a restaurant known as the Ranch House Supper Club.[1] Richey worked there as a waitress and bartender under the supervision of Chris Magnuson.

[1] Although Richey claims that Chris Magnuson is an employee of the Ranch House, the complaint contains no assertion that the Ranch House is a corporation or other entity subject to suit. Rather, it appears that "Ranch House Supper Club" is simply a name under which the individual respondents do business.

Richey testified to three occasions on which Chris Magnuson allegedly committed battery against her. The first occurred as Richey was bending over a beer cooler trying to locate a specific beer a customer had ordered. Chris Magnuson came up behind her and punched her in the back near her kidneys, saying in an angry tone of voice, "I told you that f--king beer was not in the cooler." Richey testified that the punch "really hurt" and it "brought tears to my eyes right away." Without objection, Richey testified that she believed Chris Magnuson intended to injure her and knew that the punch would injure her.

In the second incident, Richey was squatting down to look for a bottle of wine in a cooler. Chris Magnuson also looked, found the wine, and squeezed Richey's neck "really hard," saying: "Haven't you worked here long enough that you don't know your f--king wines by now?" Richey's neck hurt for "a few hours afterwards," and she testified without objection that she believed Chris Magnuson intended to injure her and knew that squeezing her neck would have that result.

The final incident involved Richey's suggestion that, since she had only one day of work on her time card, it might be more convenient simply to carry it over to the next pay period. Upon that suggestion, Chris Magnuson grabbed a bunch of time cards, hit Richey on the head with them, and said: "What the f--k do you think these time cards are here for now if they're not to be filled out now?" The cards striking her head hurt Richey "a little," and again she testified without objection that she believed Chris Magnuson intended to injure her and knew that the action would do so.

In addition to physical pain in each incident, Richey testified that she felt embarrassed, humiliated, and degraded because other workers or restaurant patrons witnessed Chris Magnuson's physical and verbal conduct.

Richey testified that she did not complain about any incident to Chris Magnuson or to Hal Magnuson, nor did she call the police or seek any medical attention. On cross-examination, she stated that she "didn't sustain a physical injury."

In moving for judgment as a matter of law, the Magnusons emphasized, among other things, that "Richey has conceded that she received no actual physical injury." In its findings of fact in support of the judgment as a matter of law, the court stated that "the employee suffered no physical injuries . . . . The only matters complained of are brief periods of pain lasting at the most two or three days on one occasion."

D E C I S I O N

The district court may grant a motion for judgment as a matter of law if "a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." Minn. R. Civ. P. 50.01. If reasonable jurors could draw different conclusions from the evidence, judgment as a matter of law is not appropriate. *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009). In reviewing a judgment granted as a matter of law, this court "must accept as true the evidence favorable to the adverse party and all reasonable inferences which can be drawn from that evidence." *Claflin v. Commercial State Bank*, 487 N.W.2d 242, 247 (Minn. App. 1992), *review denied* (Minn. Aug. 4, 1992).

In granting the respondents' motion for judgment as a matter of law, the district court ruled that Richey's "exclusive remedy is under the Workers' Compensation Act." Subject to exceptions, the WCA provides the exclusive remedies for an employee's work-related injuries. The record shows that each of the three alleged incidents occurred on the premises of the Ranch House, during business hours, and while Richey was engaged in employment functions. Furthermore, Chris Magnuson's alleged conduct during each of the incidents evinced her concern about an employment issue. Thus, unless the record supports, with sufficient evidence, a finding of an exception to the WCA, Richey's action is barred.

For decades, the courts of this state have recognized an "intentional injury exception" to the WCA. *Meintsma v. Loram Maint. of Way, Inc.*, 684 N.W.2d 434, 440 (Minn. 2004); *Gunderson v. Harrington*, 632 N.W.2d 695, 702-03 (Minn. 2001); *Hildebrandt v. Whirlpool Corp.*, 364 N.W.2d 394, 395 (Minn. 1985); *Breimhorst v. Beckman*, 227 Minn. 409, 35 N.W.2d 719 (1949); *Boek v. Wong Hing*, 180 Minn. 470, 231 N.W. 233 (1930). From the caselaw a "well-settled standard" for this exception has emerged, namely, that the evidence must support a finding of "'conscious and deliberate intent to inflict injury.'" *Gunderson*, 632 N.W.2d at 702 n.7.

"Intent" is manifested in an affirmative act designed to cause a particular result or conduct that the actor knows is substantially certain to produce such result. *RAM Mut. Ins. Co. v. Meyer*, 768 N.W.2d 399, 403-04 (Minn. App. 2009). Mere negligence is not sufficient to satisfy the requirement of intent. *Id* .at 579. "Intent may be inferred from all

the facts and circumstances, such as exhibitions of anger, threats, gestures and other conduct." *Dahlin v. Fraser*, 206 Minn. 476, 478, 288 N.W. 851, 853 (1939).

To satisfy the "intentional injury exception" to the WCA, there must be an intent to inflict an "injury." In support of their motion for judgment as a matter of law, the Magnusons argued that no "physical injury" occurred and that Richey conceded that she suffered no physical injury. And the district court ruled that "Richey "suffered no physical injuries." It is apparent that, by "physical injury," the Magnusons and the court had in mind an external, objectively manifested injury. But, under the law, compensable bodily injury includes pain. *See Dawydowycz v. Quady*, 300 Minn. 436, 440, 220 N.W.2d 478, 481 (1974) (among the relevant factors in deciding an award of damages are past and future pain); *Krueger v. Henschke*, 210 Minn. 307, 309, 298 N.W. 44, 45 (1941) (to be adequate, a damages award should include a fair estimate of an injured person's suffering). The uncontroverted evidence adduced during Richey's case-in-chief shows that, in each of the three incidents of which she complains, she suffered some degree of pain, despite the lack of objective symptoms.

With a proper understanding of the elements of "intent" and "injury," we can reframe the dispositive issue in terms of our standard of review as follows: Did Richey produce sufficient evidence from which a reasonable jury could infer that, by punching Richey in the back and by squeezing Richey's neck, and by accompanying such conduct with angry words, Magnuson desired to cause pain of some degree, or knew that her punch and squeeze were substantially certain to cause some degree of pain? We hold that, on the record before us, the question must be answered in the affirmative.

Accordingly, Richey has made a sufficient showing that the intentional-injury exception to the WCA applies, and the district court erred in granting judgment as a matter of law on the premise that the WCA bars Richey's lawsuit.

Because our holding is dispositive of the appeal, it is unnecessary to address other matters argued by the parties, and we offer no opinion on those matters, with one exception. The Magnusons argue that not only did Richey fail to prove a physical injury, she also did not plead a physical injury. That is true, for the amended complaint alleges only emotional and dignitary types of harm. However, it is the rule that the pleadings are deemed to be amended to conform to the evidence. Minn. R. Civ. P. 15.02. Richey testified without objection that she experienced physical pain from the punch and the neck squeeze; thus the complaint is deemed amended to conform with that evidence.

Reversed and remanded.