COURT OF APPEALS DECISION DATED AND FILED

February 9, 1999

Marilyn L. Graves Clerk, Court of Appeals of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-1097

STATE OF WISCONSIN

IN COURT OF APPEALS DISTRICT III

RENEE J. STIBBE AND CHRISTOPHER STIBBE,

PLAINTIFFS-APPELLANTS,

V.

MEMORIAL MEDICAL CENTER, INC.,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Ashland County: ROBERT E. EATON, Judge. *Affirmed*.

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Renee and Christopher Stibbe appeal a judgment dismissing their personal injury action against Memorial Medical Center, Inc., and its insurer. The Stibbes allege that Renee slipped and fell on a wet spot in the hospital pharmacy while she was making a delivery. The jury found that the hospital was not negligent and that Renee suffered only nominal damages. The

Stibbes argue: (1) the verdict is perverse because it is inconsistent and reflects the jury's failure to follow the court's instructions; (2) the court improperly admitted an unauthenticated tape recording of a telephone conversation Renee had with an insurance adjuster; and (3) they are entitled to a new trial in the interest of justice. We reject these arguments and affirm the judgment.

Stibbe testified that she slipped and fell on a wet spot in the pharmacy. Her testimony was impeached by numerous prior inconsistent statements. The hospital presented two witnesses who testified that they found no wet spot where she fell. They testified that Stibbe stumbled briefly, went down on one knee and immediately got up, looking embarrassed. The jury found neither the hospital nor Stibbe negligent. It found \$1,400 for past medical expenses, \$200 for past lost wages and \$0 for pain and suffering.

A verdict is perverse when the jury clearly refuses to follow the trial court's instruction on a point of law or the verdict reflects highly emotional, inflammatory or immaterial considerations or an obvious pre-judgment with no attempt to be fair. *See Redepenning v. Dore*, 56 Wis.2d 129, 134, 201 N.W.2d 580, 583 (1972). When reviewing a trial court ruling that a verdict is not perverse, this court defers to the trial court's decision because it is in a better position to determine whether perversity permeated the verdict. *Id.* When reviewing the jury's verdict, this court must sustain the verdict if it is supported by any credible evidence. *See Nieuwendorp v. American Family Ins. Co.*, 191 Wis.2d 462, 472, 529 N.W.2d 594, 598 (1995).

The jury's verdict is not perverse, internally inconsistent or contrary to the court's instruction on the law. The verdict reasonably reflects the jury's finding that Stibbe suffered a minor bruise as a result of a fall on a dry floor. The

jury reasonably found minimal damages consisting of medical expenses and lost wages incurred when she sought medical attention to insure that she was not more seriously injured. Having absolved the hospital of negligence and having determined that Renee suffered a minor bruise, the jury reasonably determined that her pain and suffering was not sufficient to be compensated with money. *See Dickman v. Schaeffer*, 10 Wis.2d 610, 617, 103 N.W.2d 922, 926 (1960).

The trial court properly admitted the tape recording into evidence. Its existence was first brought to the jury's attention by the Stibbes' counsel who read portions of the transcribed recording to the jury. The trial court allowed the hospital's counsel to present other portions of the transcript under the doctrine of completeness, § 901.07, STATS. The Stibbes argue that the recording itself, however, was not admissible because it was not properly authenticated. No witness identified the voices on the tape.

The tape recording was properly admitted as a self-authenticating recording. An item is admissible if the trial court is satisfied that it is what its proponent claims. See § 909.01, STATS. Here, the voice on the recording not only identified herself as Renee Stibbe, but also provided her address, phone number, date of birth, social security number, how long she has lived at her current address, her marital status, her education, employment, course of treatment and circumstances of the accident. The content of the conversation adequately identified the speaker to support admitting the recording into evidence. See Campbell v. Wilson, 18 Wis.2d 22, 30 n.1, 117 N.W.2d 620, 625 n.1 (1962). The trial court properly left to the jury the question whether the voice was actually that of Renee Stibbe.

Finally, the Stibbes challenge the trial court's refusal to grant a new trial in the interest of justice. Their arguments that the real controversy has not been fully tried or that justice has miscarried repeat the issues previously rejected by this court. We conclude there is no basis for a new trial in the interest of justice.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.