COURT OF APPEALS
DECISION
DATED AND FILED

December 11, 2012

Diane M. Fremgen
Clerk of Court of Appeals

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* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2011AP2860 **Cir. Ct. No. 2008CV291**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

DEBORAH STRICKLAND AND RANDY G. STRICKLAND,

PLAINTIFFS-APPELLANTS-CROSS-RESPONDENTS,

WISCONSIN PHYSICIANS SERVICE INSURANCE CORPORATION,

INVOLUNTARY-PLAINTIFF,

V.

AMCO INSURANCE COMPANY,

DEFENDANT-RESPONDENT-CROSS-APPELLANT.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Washburn County: EUGENE D. HARRINGTON, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. AMCO Insurance Company provided underinsured motorist coverage to Randy Strickland and his wife, Deborah.[1] After Strickland was involved in a collision with an underinsured motorist, the Stricklands sued AMCO, seeking to recover various damages related to neck and shoulder injuries Strickland allegedly sustained in the accident. A jury awarded Strickland $20,000 for past health care expenses, $5,000 for past impairment of earning capacity, and $20,000 for past pain and suffering. It also awarded Deborah $5,000 for loss of society and companionship. However, the jury declined to award any damages for future health care expenses, future impairment of earning capacity, or future pain and suffering. The Stricklands appeal, arguing the jury's verdict is contrary to the great weight of the evidence and is perverse. They also ask us to grant a new trial in the interest of justice. We reject the Stricklands' arguments and affirm.

¶2 In a cross-appeal, AMCO asserts the circuit court erred by striking an offer of judgment AMCO made to the Stricklands. The court reasoned the offer was invalid because it was a joint offer that failed to specify separate sums for Strickland's and Deborah's separate claims. We agree that the offer of judgment was invalid. We therefore affirm on the cross-appeal.

BACKGROUND

¶3 Strickland was involved in a motor vehicle accident on March 2, 2007. While Strickland's vehicle was waiting to make a right-hand turn, a collision occurred between vehicles operated by Shawn Cahill and Joseph

[1] For clarity, we refer to Randy Strickland as "Strickland" and Deborah Strickland as "Deborah." When referring to both Randy and Deborah Strickland, we use "the Stricklands."

Nordstrom. As a result, the Nordstrom vehicle struck the left side of Strickland's vehicle.

¶4 At the accident scene, Strickland reported pain in his left shoulder, ribs, and hip. He was transported to a local emergency room but was released the same day. Strickland, who worked as a chiropractor, missed approximately fourteen days of work following the accident. He was then put on "light duty" status for about three months. He did not miss any other work as a result of the accident.

¶5 Following the accident, Strickland sought medical and chiropractic care for pain in his neck and left shoulder. On about March 5, 2007, he consulted with a chiropractic colleague, Dr. Daniel Dock, who ordered an MRI. The MRI revealed no acute injury to Strickland's neck or shoulder. Instead, it revealed degenerative changes to the neck and a genetic variant in the shoulder known as a "type II acromion." Patients with type II acromions are predisposed to have shoulder impingement problems and rotator cuff injuries. Strickland's MRI also revealed arthritic changes in the shoulder joint.

¶6 Strickland was subsequently examined by Dr. Scott Cameron, an orthopedic surgeon, on March 12, 2007. Cameron concluded Strickland had "some type of muscle contusion to his left upper extremity." Cameron prescribed physical therapy and suggested that Strickland modify his activities.

¶7 Strickland returned to Cameron in December 2007, again complaining of shoulder pain. Cameron ordered an MRI of Strickland's shoulder, and based on the MRI, he diagnosed Strickland with impingement syndrome of the left shoulder. Consequently, in February 2008, Cameron administered a cortisone injection to Strickland's shoulder. At trial, Strickland testified the

injection provided relief for only six weeks. Cameron's notes, however, reflected that the injection "really worked well, and [Strickland] got better[.]" Cameron did not see Strickland again until July 2009, at which point Strickland indicated the shoulder pain had "crept back[.]" Cameron then ordered another MRI, which showed "minimal partial thickness tearing of the rotator cuff."

¶8 Strickland returned to Cameron in August 2009 for a second cortisone injection. Strickland reported the second injection provided very little relief. Consequently, Cameron suggested arthroscopic surgery to "decompress that subacromial space [of the shoulder] where the impingement is occurring[.]" Strickland declined to undergo the surgery.

¶9 In the meantime, Strickland received chiropractic treatment from Dr. Steven Owens. Strickland saw Owens regularly from March 2007 until May 2007, and then more sporadically until November 2007. After that, Strickland did not return to Owens until April 22, 2008, one day after Strickland was involved in a second car accident. Following the second accident, Strickland continued to see Owens regularly up until the time of trial.

¶10 With respect to the first accident, Strickland ultimately recovered $40,000 from Nordstrom's liability insurance carrier. He also received $5,000 from AMCO under its policy's medical expense coverage. The Stricklands then filed suit against AMCO, seeking additional damages under the policy's underinsured motorist provision. Pursuant to WIS. STAT. § 807.01(1),[2] AMCO made an offer of judgment to the Stricklands in the amount of $40,000 in "new

[2] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

money"—that is, $40,000 above and beyond the amounts the Stricklands had already recovered. The Stricklands declined AMCO's offer, and the case proceeded to trial. AMCO conceded that Nordstrom's negligence caused the March 2007 accident, thereby invoking underinsured motorist coverage under AMCO's policy. Thus, the only issue for trial was the extent of the Stricklands' damages.

¶11 At trial, Strickland testified that, as a result of the March 2007 accident, he experiences headaches, neck pain, left shoulder pain, mid-back pain, left arm and hand pain, and numbness in his right thumb. He stated that, because he is left-hand dominant, he has had to change the way he performs certain chiropractic maneuvers. In general, he has experienced decreased stamina and endurance since the accident and cannot see as many patients per day. He has also decreased his involvement in other activities, such as mountain biking and ski patrol. However, he admitted on cross-examination that he does not take any prescription pain medications and takes over-the-counter pain medications only once every three or four months. He also conceded none of his treating doctors have placed any formal restrictions on his activities.

¶12 Doctor Dock testified Strickland sustained a "rotator cuff injury" in the March 2007 accident and also suffered a herniated disc in his cervical spine. He testified the injuries to Strickland's shoulder and neck were permanent and should be treated with monthly chiropractic visits.

¶13 Doctor Owens similarly testified Strickland suffered a permanent injury in the March 2007 accident. On cross-examination, though, Owens conceded that Strickland was "holding up relatively well" as of May 2007. He also admitted that, after November 2007, he did not see Strickland again until

April 22, 2008, one day after Strickland was involved in a second car accident. Owens testified that he treated Strickland for injuries stemming from the second accident from April 22, 2008 until September 30, 2008. Although Owens continued to treat Strickland until the time of trial, he asserted these later treatments were related to injuries Strickland sustained in the first accident, not the second.

¶14 Doctor Cameron was unavailable for trial, but his video deposition was played for the jury, and the transcript of another deposition was read into the record. Cameron testified Strickland suffered a "traumatically-induced impingement syndrome" in the March 2007 accident. When asked whether Strickland's injury was permanent, Cameron testified it was "heading that way." Cameron recommended that Strickland undergo arthroscopic shoulder surgery, which he testified had a 90-95% success rate. He testified that, after the surgery, Strickland would be able to continue his chiropractic practice "until the shoulder started talking to him again." Cameron opined that would occur approximately ten years after the surgery. At that point, Strickland would likely have a full rotator cuff tear that would require additional surgery.

¶15 On cross-examination, Cameron conceded the MRI performed five days after the accident did not show any acute injury to Strickland's shoulder and instead showed arthritis and a type II acromion. He stated the MRI showed "a shoulder that's set up to have problems …. I'd say that's a guy that definitely could be looking at some impingement and shoulder problems in the future." He also admitted the shoulder joint tends to deteriorate with age, and he conceded Strickland may have eventually needed shoulder surgery with or without the accident.

¶16 The jury also heard the testimony of Dr. William Simonet, an orthopedic surgeon who performed an independent medical examination of Strickland. Like Cameron, Simonet was unavailable for trial, but his two video depositions were played for the jury. Simonet opined that the only injury Strickland sustained in the March 2007 accident was a bruise on the left side of his chest. Simonet stated Strickland may have suffered some muscle soreness in his neck and shoulder following the accident, but he did not sustain any permanent injury. Simonet testified it was reasonable for Strickland to go to the emergency room after the accident, and a one-time follow-up visit with Strickland's primary care provider would have been appropriate, but no other medical care was necessary. Simonet also testified it was reasonable for Strickland to take fourteen days off of work after the accident, but he opined Strickland did not require any additional work restrictions going into the future. Finally, Simonet testified that Strickland's neck and shoulder complaints were related to "naturally occurring age-related degenerative processes," Strickland's type II acromion, or the physical demands of Strickland's profession, rather than the March 2007 accident.

¶17 The jury also heard evidence about the accident's effect on Strickland's income. Although Strickland testified he could not see as many patients per day as he did before the accident, Strickland's accountant, Timothy Meister, testified Strickland's income was "remarkably consistent and recession proof" before and after the accident. Meister also acknowledged that Strickland's adjusted gross income was "the highest [it had] ever been" in the two years preceding trial.

¶18 Strickland's vocational expert, Gerald Kaiser, nevertheless testified the accident had a sizeable effect on Strickland's future earning capacity. Kaiser stated that, if Strickland continued practicing as a chiropractor, he would suffer a

loss of earning capacity of over $10,000 per year due to the accident. Kaiser also opined that, if Strickland's injuries forced him to abandon his practice, his loss of earning capacity would be somewhere between $20,000 and $52,000 per year.

¶19 In contrast, defense vocational expert Edward Utities testified that Strickland would not suffer any future loss of earning capacity due to the accident. Utities noted that Strickland had no work restrictions. He opined that, without work restrictions, there can be no future loss of earning capacity. He conceded, however, that Strickland sustained a past loss of income because of the accident. By prorating Strickland's yearly income, Utities determined Strickland lost $1,600 during the fourteen days immediately following the accident. Utities also estimated Strickland lost approximately $3,000 during his subsequent three-month light duty period. In total, Utities determined Strickland lost $4,730 in income.

¶20 The jury ultimately awarded Strickland $20,000 for past health care expenses, $5,000 for past loss of earning capacity, and $20,000 for past pain and suffering. It also awarded Deborah $5,000 for loss of society and companionship. However, the jury declined to award any damages for future health care expenses, future loss of earning capacity, or future pain and suffering.

¶21 The Stricklands filed motions after verdict, seeking a new trial because the jury's verdict was contrary to the great weight of the evidence and was perverse. They also asked the court to strike AMCO's offer of judgment, arguing it was a joint offer and was therefore invalid. The court declined to grant a new trial, and entered judgment in accordance with the jury's verdict. The court did, however, grant the Stricklands' motion to strike AMCO's offer of judgment. The Stricklands now appeal, and AMCO cross-appeals.

DISCUSSION

I. The Stricklands' appeal

¶22 The Stricklands first argue the circuit court should have granted a new trial, pursuant to WIS. STAT. § 805.15(1),[3] because the jury's verdict was contrary to the great weight of the evidence. We owe great deference to a circuit court's decision denying a new trial because the circuit court is in the best position to observe and evaluate the evidence. *See* ***Sievert v. American Family Mut. Ins. Co.***, 180 Wis. 2d 426, 431, 509 N.W.2d 75 (Ct. App. 1993), *aff'd*, 190 Wis. 2d 623, 528 N.W.2d 413 (1995). Thus, we will not disturb the circuit court's decision absent an erroneous exercise of discretion. ***Id.*** We will reverse only if the court's decision is based upon a mistaken view of the evidence or an erroneous view of the law. ***Id.***

¶23 The Stricklands argue the jury's verdict is contrary to the great weight of the evidence because the jury awarded damages for past loss of earning capacity, health care expenses, pain and suffering, and loss of society and companionship, but did not award any future damages. According to the Stricklands, there were two distinct theories presented at trial: (1) the Stricklands' theory that Strickland suffered a permanent injury in the March 2007 accident that required extensive medical care and affected his capacity to enjoy life and make a living; and (2) the defense theory that Strickland suffered no acute injury in the accident, required only minimal medical care, and did not sustain any future loss

[3] WISCONSIN STAT. § 805.15(1) permits a party to "move to set aside a verdict and for a new trial because of errors in the trial, or because the verdict is contrary to law or to the weight of evidence, or because of excessive or inadequate damages, or because of newly-discovered evidence, or in the interest of justice."

of earning capacity. According to the Stricklands, the jury was required to adopt one of these theories in its entirety. Thus, they contend that, "if [the] jury accepted the defense proposition, it could not have awarded $50,000 [for past damages]; having awarded that, based on the great weight of the evidence, it was not reasonable to award nothing in the future."[4] We disagree.

¶24 Contrary to the Stricklands' assertion, the jury was not required to make an absolute choice between the parties' divergent theories of the case. Instead, based on the evidence before it, the jury could reasonably conclude that Strickland was injured in the March 2007 accident but the injury was not permanent. The jury could therefore reasonably award $50,000 for past damages but decline to award any future damages. The jury's verdict is not contrary to the great weight of the evidence.

¶25 Doctors Dock, Owens, and Cameron each testified that Strickland suffered permanent injuries in the accident. The jury could have believed these doctors' testimony that Strickland was injured in the accident, but disbelieved their testimony that the injury was permanent. *See* ***State v. Saunders***, 196 Wis. 2d 45, 53-54, 538 N.W.2d 546 (Ct. App. 1995) (A jury may believe part of a witness's testimony and disbelieve another part of the same witness's testimony.). There was ample evidence that Strickland did not suffer any permanent injury related to the March 2007 accident.

[4] At times, the Stricklands' brief appears to suggest that the jury's verdict is inconsistent. However, the Stricklands do not clearly raise the issue of inconsistency or present a developed argument explaining how the various verdict answers are "'logically repugnant to one another.'" *See* ***Kain v. Bluemound E. Indus. Park, Inc.***, 2001 WI App 230, ¶40, 248 Wis. 2d 172, 635 N.W.2d 640 (quoting ***Fondell v. Lucky Stores, Inc.***, 85 Wis. 2d 220, 228, 270 N.W.2d 205 (1978)). We need not address undeveloped arguments. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶26 For instance, Doctor Simonet testified that, while Strickland exhibited bruising and muscle soreness following the accident, he did not sustain any permanent injury. Strickland himself testified he does not take any prescription pain medications and takes over-the-counter pain medications only once every three to four months. Strickland also conceded that, aside from taking fourteen days off and being on light duty status for three months, he has not missed any work due to the accident. These facts suggest that, even if Strickland suffered an injury in the March 2007 accident, he was no longer injured at the time of trial.

¶27 Other evidence suggested that any lingering pain Strickland experienced at the time of trial was unrelated to the March 2007 accident. Doctor Cameron testified that, after he gave Strickland a cortisone injection in February 2008, Strickland "got better" and did not return for further treatment for over a year.[5] The jury could reasonably conclude that Strickland's renewed shoulder pain more than one year after the injection was not related to the accident, but was instead related to Strickland's arthritis, his type II acromion, or age-related deterioration of the shoulder joint. Indeed, Cameron testified that the shoulder joint tends to deteriorate with age, and that Strickland's shoulder in particular was "set up to have problems[.]" Additionally, while Dr. Owens testified Strickland sustained a permanent neck injury in the accident, he conceded that Strickland ceased treating with him in November 2007 and did not return until April 22,

[5] At trial, Strickland testified the first cortisone injection provided relief for only six weeks, but his testimony was contradicted by Dr. Cameron's notes. Furthermore, the fact that Strickland did not return for further treatment for over a year undermines his claim that the first injection was ineffective. The jury was entitled to disbelieve Strickland's testimony regarding the efficacy of the first injection. *See* ***State v. Norman***, 2003 WI 72, ¶68, 262 Wis. 2d 506, 664 N.W.2d 97 ("The jury is the ultimate arbiter of a witness's credibility.").

2008, one day after Strickland was involved in a second car accident. Again, the jury could reasonably conclude Strickland's renewed pain in April 2008 was not related to the March 2007 accident.

¶28 Thus, there was ample evidence to support a jury finding that Strickland was injured in the March 2007 accident, but his injuries were not permanent. Moreover, based on Utities' testimony, the jury could reasonably conclude that Strickland lost some income because of the accident but did not suffer any future loss of earning capacity. If the jury made these findings, it could reasonably award the Stricklands $50,000 for past damages, but nothing for future damages. The jury's verdict is not contrary to the great weight of the evidence.

¶29 The Stricklands also contend the jury's verdict is perverse. "A verdict is perverse when the jury clearly refuses to follow the direction or instruction of the trial court upon a point of law, or where the verdict reflects highly emotional, inflammatory or immaterial considerations, or an obvious prejudgment with no attempt to be fair." ***Redepenning v. Dore***, 56 Wis. 2d 129, 134, 201 N.W.2d 580 (1972). The Stricklands do not explain how the jury's verdict meets this standard. Instead, they merely provide two block quotations from other cases, without addressing how the principles discussed in those cases are applicable to this case. Their perversity argument is undeveloped, and we will not address it further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶30 Finally, the Stricklands ask us to grant a new trial in the interest of justice, pursuant to WIS. STAT. § 752.35. Our discretionary reversal power is formidable, ***State v. Williams***, 2006 WI App 212, ¶36, 296 Wis. 2d 834, 723

N.W.2d 719, and we exercise it "only in exceptional cases[,]" ***State v. Armstrong***, 2005 WI 119, ¶114, 283 Wis. 2d 639, 700 N.W.2d 98.

¶31 The Stricklands contend discretionary reversal is warranted because Dr. Simonet deflected questions during cross-examination and "tout[ed] whatever he felt was consistent with the motive of the insurance company." They suggest Simonet's testimony "underscores the difficulty of videotape depositions of recalcitrant defense medical examiners" who "simply do not take questions fairly but volunteer whatever they want and are uncontrollable when a court does not sit in judgment of them." The Stricklands, however, do not cite any specific examples of this behavior from Simonet's testimony. We will not search the record for evidence to support a party's arguments. *See* ***Grothe v. Valley Coatings, Inc.***, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463. Additionally, to the extent the Stricklands argue Simonet should not have been allowed to testify by video, we note that they apparently did not object to the use of his video deposition at trial. Furthermore, the Stricklands' own medical expert also testified by video.

¶32 The Stricklands also argue that "[t]here needs to be a way to control these money-making medical types who parade as 'independent' examiners." The Stricklands attempt to paint Simonet as an expert for hire, noting that he performed 320 independent medical evaluations during 2009 and the first half of 2010 and that he charges $1,500 per examination and $2,000 for a video deposition. However, Simonet testified he has twenty-five years of experience as an orthopedic surgeon, performs over 500 surgeries per year, and sees 100 patients in his office each week. He testified the fees he charges as an expert witness reflect what he would make if he spent the same amount of time performing surgery or seeing patients. Regardless, the monetary compensation Simonet

received for his testimony goes to its weight, not its admissibility. The Stricklands have not persuaded us that Simonet's testimony was improper, or that this is an "exceptional case" meriting discretionary reversal.

II. AMCO's cross-appeal

¶33 In its cross-appeal, AMCO argues the circuit court erred by striking its offer of judgment. Under WIS. STAT. § 807.01(1), if a defendant serves an offer of judgment on a plaintiff, and the plaintiff rejects the offer and fails to recover a more favorable judgment, "the plaintiff shall not recover costs but defendant shall recover costs to be computed on the demand of the complaint." Here, AMCO submitted a single offer of judgment to Strickland and Deborah, offering them $40,000 in "new money." The circuit court concluded AMCO's offer was invalid because it failed to specify the separate sums Strickland and Deborah would receive.

¶34 The application of WIS. STAT. § 807.01(1) to the facts of this case presents a question of law that we decide independently. ***Staehler v. Beuthin***, 206 Wis. 2d 610, 624, 557 N.W.2d 487 (Ct. App. 1997). The validity of an offer of judgment under § 807.01 depends on whether it allows the offeree to "fully and fairly evaluate the offer from his or her own perspective." ***Id.*** at 624-25. "It is the obligation of the party making the offer to do so in clear and unambiguous terms, with any ambiguity in the offer being construed against the drafter." ***Id.*** at 625.

¶35 AMCO cites four cases for the proposition that joint offers of judgment are valid under WIS. STAT. § 807.01(1) if made to plaintiffs whose interests are "legally aligned." However, these cases are not on point. In ***Tullgren v. Karger***, 173 Wis. 288, 289, 181 N.W. 232 (1921), two architects sought to recover the value of services they performed for the defendants. In their answer,

the defendants "offer[ed] to allow judgment to be taken against them" for $200. ***Id.*** at 290. The issue on appeal was whether the offer could be entered into evidence and considered by the jury during the trial. ***Id.*** at 295-96. The court held the defendants' offer was not an offer of judgment and therefore could be admitted into evidence. ***Id.*** Thus, the court never addressed whether the joint nature of the offer rendered it invalid under the predecessor statute to § 807.01(1).

¶36 In ***Beers v. Kuehn***, 84 Wis. 33, 33, 54 N.W. 109 (1893), the plaintiffs alleged they were entitled to additional compensation for grading the defendant's lot. A jury determined the plaintiffs were entitled to recover $280 under their contract with the defendant. ***Id.*** In its decision, the supreme court noted, "The judgment recites that an offer of judgment was made by defendant, and that the plaintiffs had failed to recover a more favorable judgment[.]" ***Id.*** at 33-34. The issue on appeal, however, was whether the trial court erred by instructing the jurors "that they were not entitled to find a verdict for the reasonable value of the [plaintiffs'] work." ***Id.*** at 34. The court was never asked to address the validity of the defendant's offer of judgment.

¶37 Similarly, in ***Auley v. Ostermann***, 65 Wis. 118, 127, 25 N.W. 657 (1885), a case involving a single defendant and multiple plaintiffs, the court noted that the defendant had made an offer of judgment before trial. The court then stated that, under the predecessor statute to WIS. STAT. § 807.01(1), the defendant was entitled to recover his costs because the plaintiffs failed to obtain a more favorable judgment. ***Id.*** Again, though, the court was never asked to address the offer's validity. It therefore never considered whether the joint offer allowed each plaintiff to "fully and fairly evaluate the offer from his or her own perspective." *See* ***Staehler***, 206 Wis. 2d at 624-25.

¶38 Finally, AMCO cites ***Cordes v. Hoffman***, 19 Wis. 2d 236, 120 N.W.2d 137 (1963). There, Mary Cordes was injured in a car accident. ***Id.*** at 237. She and her husband, Henry, sued the other driver and his insurer. ***Id.*** Before answering the complaint, the defendants made an offer of damages in the amount of $1,500, under the predecessor statute to WIS. STAT. § 807.01(2). ***Id.*** The Cordes rejected the offer. ***Id.*** Following a trial, Mary was awarded $850 for her personal injuries, and Henry was awarded $267.50 for medical expenses and $55 for damages to his truck. ***Id.*** at 237-28.

¶39 On appeal, the supreme court considered whether a defendant may make an offer of damages before answering the plaintiff's complaint. The court concluded such an offer was invalid. ***Id.*** at 239-40. In doing so, the court distinguished offers of damages from offers of judgment, stating, "Upon the service of the complaint, the defendant might have offered judgment under [the predecessor to WIS. STAT. § 807.01(1)], in which case if the plaintiffs had rejected the offer and the plaintiffs failed to recover a more favorable judgment the defendant would have been entitled to full costs." ***Id.*** at 239. Thus, the court noted that, hypothetically, the defendants could have made an offer of judgment instead of an offer of damages. However, the court did not address whether the joint nature of the hypothetical offer of judgment would have rendered it invalid, nor did the court discuss the Cordes' ability to fully and fairly evaluate the offer. *See* ***Staehler***, 206 Wis. 2d at 624-25. Consequently, like the other cases AMCO cites, ***Cordes*** does not control the operative issue in AMCO's cross-appeal.

¶40 Instead, we agree with the Stricklands that ***Bockin v. Farmers Insurance Exchange***, 2006 WI App 220, 296 Wis. 2d 694, 723 N.W.2d 741, is applicable. There, a lump-sum offer of judgment was made to a minor plaintiff, but it would also have released a medical expense claim belonging to the child's

mother. ***Id.***, ¶¶3–6, 12, 14. The court held that, because the minor and parent had separate claims, the minor could not fully and fairly evaluate the offer. ***Id.***, ¶¶12, 18-19. The offer was therefore invalid under WIS. STAT. § 807.01(1). ***Id.***, ¶19.

¶41 This case presents a similar situation. Strickland has a claim for personal injury, and Deborah has a separate claim for loss of society and companionship. *See* ***Arnold v. Shawano Co. Agric. Soc'y***, 106 Wis. 2d 464, 469, 317 N.W.2d 161 (Ct. App. 1982) ("A spouse's action for loss of consortium for an injury to the other spouse is a separate cause of action that never belonged to the other spouse."). Because AMCO's offer of judgment failed to differentiate between Strickland's and Deborah's separate claims, neither plaintiff could fully and fairly evaluate the offer from his or her own perspective. The offer was therefore invalid, and the court correctly struck it from the record.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.