COURT OF APPEALS
DECISION
DATED AND FILED

October 9, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 96-1888

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

LAURA FORD AND MICHAEL FORD,

PLAINTIFFS-RESPONDENTS,

NATIONAL ASSOCIATION OF LETTER CARRIERS, HEALTH BENEFIT PLAN, DEAN HEALTH PLAN, INC., AND DONNA SHALALA, SECRETARY OF HEALTH & HUMAN SERVICES,

INVOLUNTARY-PLAINTIFFS,

V.

WAL-MART STORES, INC., AND NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Rock County: JOHN H. LUSSOW, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Roggensack, JJ.

PER CURIAM. Wal-Mart Stores, Inc., and National Union Fire Insurance Company (Wal-Mart) appeal from a judgment against them in this personal injury case. Laura Ford alleged that her back was injured when she was struck by a defective door at a Wal-Mart store on July 26, 1990. Because the issues on appeal relate to damages rather than to liability, we confine our discussion of the background facts to that issue. Laura had a history back problems before the incident in question, including several surgeries. One of those occurred on May 17, 1990, approximately two months before the Wal-Mart incident, and involved the installation of plates and screws in her spine to stabilize it and increase the chance of spinal fusion. X-rays taken sixteen days before the incident showed that the hardware was intact. X-rays taken in September 1990, approximately six weeks after the incident, showed that two of the screws had fractured. Laura had additional surgery in November 1990 to remove the hardware then in place and repeat the fusion procedure with new screws and plates.

The jury awarded Laura $500,000 for past pain and suffering and $43,000 for past medical expenses, and awarded her husband Michael Ford $150,000 for loss of consortium. The trial court denied Wal-Mart's post-verdict motions, and it appeals.

Wal-Mart argues that it is entitled to a new trial on all issues because the jury awards for pain and suffering and loss of consortium were perverse. It concedes that in the usual case excessiveness of the damages, by itself, is not enough to label a verdict perverse. However, it argues, where the excessiveness is "gross and readily apparent" nothing more is needed. Wal-Mart does not argue that the award is perverse for any reason other than excessiveness, such as jury dishonesty or improper motives. As an alternative position, Wal-Mart argues that

it is entitled to the less drastic remedy of a reduction in the damage awards or a new trial on damages, on the ground that the awards are not supported by the evidence.

As to our standard of review, the Fords argue that we should defer to the trial court's exercise of discretion in denying the post-verdict motions. Wal-Mart argues that the trial court's analysis of the evidence was insufficient to warrant deference, and that we should review the evidence *de novo*. We need not decide this point because, regardless of whether we defer to the trial court's decision, the standard of review is highly deferential to the verdict. The general rule for appellate review of damage awards is that any credible evidence of the damage claimed is sufficient to sustain the award. ***Roach v. Keane***, 73 Wis.2d 524, 539, 243 N.W.2d 508, 517 (1976). However, where the award reflects a rate of compensation "beyond reason," we may find the damages excessive. ***Id***. The parties agree that in reviewing the evidence, we are obliged to view it in the light most favorable to the award.

We first consider the award of $500,000 for past pain and suffering. For purposes of this review, we accept Wal-Mart's argument that an award of damages would not be appropriate for any time after November 1991, when Laura's spine was determined to have fused as originally intended. Thus, according to Wal-Mart, Laura's claim for damages is limited to the three months before and including the surgery to replace the fractured screws, and to the year following that surgery.

There was testimony from Laura and members of her family that in the several weeks before the Wal-Mart incident she had experienced considerable improvement as a result of the most recent surgery. After the incident, she

experienced increased pain and decreased mobility until the surgery several months later to replace the fractured screws. That surgery required several weeks of hospitalization, and involved grafting of bone and removal of muscles from bone, which then had to "heal back into the bones." Laura testified that the post-operation recuperative period was "hell." She said that she was unable to move or breathe without being in excruciating pain, and that this lasted for several months.

We conclude this is sufficient evidence to support the award for pain and suffering. It is difficult to say with any precision what an appropriate award is for several months of "hell." The amount awarded is high, but we cannot say it is unsupported by any credible evidence or is beyond reason.

We reach a similar conclusion regarding the award of $150,000 to Michael for loss of consortium. Consortium involves a broad range of elements such as love, companionship, affection, society, sexual relations and the right of support or performance of marital services. ***Kottka v. PPG Indus. Inc.,*** 130 Wis.2d 499, 519, 388 N.W.2d 160, 169 (1986). It may also involve increased care for the injured spouse or increased responsibility for the children. ***Peeples v. Sargent,*** 77 Wis.2d 612, 642, 253 N.W.2d 459, 471 (1977). Michael testified to Laura being "pretty much an invalid" for about a month after the surgery to replace the screws. He had to help her dress and undress, and get in and out of chairs. He had to do "just about" everything. Other family members testified about Laura's depression and reduced mobility. Loss of consortium is also not subject to precise determination, and this award is not so high as to be unsupported by the evidence.

Wal-Mart also argues that the award of $43,000 for medical damages must be reversed because Laura failed to prove the medical necessity of

the procedures that were done. In particular, Wal-Mart argues, she did not prove that all the medical expenses during what it believes to be the relevant time period were necessitated by the Wal-Mart incident.

Laura responds by setting forth certain discussions during trial which led to a stipulation between the parties about medical bills. However, Laura does not expressly claim there was a stipulation that the treatments were medically necessary. Rather, she claims that the parties agreed each could argue to the jury whether the claimed expenses were necessary. Wal-Mart responds that it stipulated only to the reasonableness of the fees charged, and not to the medical necessity of the procedures. That may be true; however, Wal-Mart is arguing more than that on appeal. Its argument is that the proof of record was not sufficient, as a matter of law. If this is so, the issue of the necessity of past medical expenses should not have been decided by the jury. ***Smith v. St. Paul Fire & Marine Ins. Co.***, 56 Wis.2d 752, 761, 203 N.W.2d 34, 39 (1973).

Interpretation of a stipulation is a question of law, which we review *de novo.* *See* ***Duhame v. Duhame***, 154 Wis.2d 258, 262, 453 N.W.2d 149, 150 (Ct. App. 1989). The colloquy among the parties and the court, which Laura cites as the basis for the stipulation, occurred at the close of the Fords' case, when they planned to call Laura as a witness to review the individual medical bills item by item. The stipulation concerned Exhibit 12, which is a summary of medical expenses showing dates of service, care providers, amounts billed and amounts paid. The narration began with Wal-Mart's attorney agreeing that Laura did not need to be recalled to go through each bill for all the medical services provided, which bills he indicated were then present in court. The Fords' attorney then continued with the agreement reached in regard to the use that could be made of Exhibit 12: "All parties will stipulate that the medical bills itemized on this

exhibit are reasonable in amount and the parties will be free then to argue to the jury based on the testimony of the various doctors whether or not they were necessary as a result of the incident." The attorney later stated: "I would ask that the court instruct the jury that by stipulation of the parties this summary of medical bills has been deemed reasonable in amount and then further instruct the jury that it's for them to decide whether or not they were necessary as a result of the Wal-Mart incident." Counsel for Wal-Mart agreed the terms of their stipulation had been correctly stated. The trial court then admitted Exhibit 12. Later, it instructed the jury in the manner requested when it said:

> Question 8(a) asks what sum of money will fairly and reasonably compensate plaintiff Laura Ford for the damages sustained by her from the date of accident which were the result of the accident with respect to medical and hospital expenses.
>
> In your answer to Question 8(a), you will fix upon such a sum of money as you find has been reasonably and necessarily incurred by the plaintiff for the hospital and medical care required for the treatment of her personal injuries….

Wal-Mart made no objection to the instruction given. Therefore, we conclude the parties stipulated that the proof on the issue of whether the medical expenses were necessary as a result of the Wal-Mart incident was legally sufficient to reach the jury. We will not disturb that stipulation here. Therefore, we affirm the judgment of the trial court.

By the Court.—Judgment affirmed.

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