IN THE COURT OF APPEALS OF IOWA

No. 0-798 / 10-0346
Filed January 20, 2011

EDWARD B. HENCHEY,
Plaintiff-Appellant,

vs.

TONY J. DIELSCHNEIDER,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Robert Sosalla, Judge.

Edward Henchey appeals the district court's grant of Tony Dielschneider's motion for a directed verdict. **AFFIRMED.**

Michael W. Fay, Cedar Rapids, for appellant.

Randall E. Nielsen of Pappajohn, Shriver, Eide & Nielsen, P.C., Mason City, for appellee.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

TABOR, J.

Plaintiff Edward Henchey alleges he sustained injuries in a car accident when defendant Tony Dielschneider rear-ended his vehicle. At trial, the district court granted Dielschneider's motion for a directed verdict, concluding Henchey failed to present adequate proof the accident caused his alleged injuries. Because we agree Henchey did not offer substantial evidence of causation, we affirm the district court's directed verdict.

I. Background Facts and Procedures

On July 13, 2006, Henchey and Dielschneider were involved in a motor vehicle accident in Marion, Iowa. Henchey testified that he was stopped at a traffic light with his hand on the gear shift when Dielschneider's vehicle rear-ended his car. He explained that the collision "drove [his] thumb backwards on the gear shift" causing "a quick pain in [his] hand" that "went away." He also stated that he "got a quick pain [in his] back" that also "went away," and that he experienced a "crimp[] in [his] neck." When asked what physical problems he experienced after the accident, Henchey replied: "My hand. The back of my neck . . . from the top of my knee to my hip, on the top of my hip it's numb." Henchey also stated that the Veteran's Administration (VA) Hospital said he had a pinched nerve in his wrist.

The record is imprecise regarding the continuity of the pain Henchey experienced in his hand after the accident. Henchey testified that upon impact, he "got a quick pain in [his] hand, then it went away," and that the pain later

returned.[1] Henchey testified that his right wrist still causes him pain and prevents him from pulling the throttle back on a motorcycle, causes his fingers to sometimes "lock against the palm of [his] hand" which renders his hand "useless," prevents him from engaging in his hobby of woodworking, and precludes him from writing with his dominant right hand.

Henchey testified that he experienced a "crimp" in his neck at the time of the accident and said in his deposition that he began feeling pain in his neck again about "six months after the accident." He also said that he "felt a little twinge" in his back upon impact, which subsided. Henchey indicated the pain in his back returned, but the record is imprecise regarding when he began feeling pain again.[2] Henchey testified that he takes pain medication as a result of the injuries sustained in the collision. Henchey seeks damages—totaling $140,000—for personal injuries, pain and suffering, and loss of function.

Dielschneider admits rear-ending Henchey's vehicle, testifying that he applied his brakes before the collision and was traveling, at most, fifteen miles per hour at impact. Dielschneider denies that the accident caused Henchey's asserted injuries. He points out the medical records show that Henchey was

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[1] Henchey testified that at the time of the accident he "felt . . . a pain in [his] right hand and it all went away, and then a few maybe a couple weeks later . . . these things started on." In response to a question during his deposition inquiring, "[h]ow long after the accident did you notice pain in your hand or your wrist," Henchey responded, "I don't know how much—my hand was probably three or four months."

[2] Henchey said he "felt a little twinge in [his] left back on the bottom . . . and it all went away, and then a few, maybe a couple weeks later, yeah, these things started on." In response to a question during his deposition inquiring, "[h]ow long after the accident did you notice pain in your hand or your wrist," Henchey responded, "I don't know how much—my hand was probably three or four months; my back was—four days later on my back, four days later, and then that went away."

diagnosed with osteoarthrosis in at least one knee before the accident and contends the medical records "suggest onset dates of . . . [Henchey's] alleged conditions that were remote in time from the date of the accident."

Henchey filed suit, alleging Dielschneider negligently operated his motor vehicle, which resulted in an accident that proximately caused his injuries. The case proceeded to trial on January 25, 2010; Henchey presented only his own testimony and offered as exhibits medical records from Mercy Medical Center and the VA hospital in Iowa City. The defense presented testimony from Dielschneider and read into the record passages from Henchey's deposition. At the close of all evidence, Dielschneider moved for a directed verdict, pointing out that "at no point in those medical records does any doctor or medical professional state that they believe this car accident caused any of those problems." The court observed that the Mercy Medical Center records do not refer to an accident at all, and that the first reference to the accident in the VA records is not until November 13, 2006. The district court was "troubled" by the fact there was a "delay of . . . four months . . . from the time of the accident until there was a first report to any treating facility of any necessity of any medical treatment related to the accident."

The court granted Dielschneider's motion for a directed verdict, expressing concern that "[t]he state of the record is such that at this point the jury is simply left to speculate whether [Henchey's] problems . . . [are] a direct result of the accident or not." The court concluded medical testimony was required in this case to show "a causal relationship between the physical problems that

[Henchey] [is] experiencing now and the events of July 13, 2006." Absent the medical testimony regarding causation, the judge concluded he "[had] to grant the motion for directed verdict," explaining that:

> Part of the record in this case is that Mr. Henchey is a wood carver. He's right handed. He uses his right hand to carve wood. That could, in a layperson's mind, be what it is that caused him to have a carpal tunnel type situation in his wrist. That's why the jury is left to speculate.

Henchey appeals, contending the issue should have been submitted to the jury because Dielschneider admitted liability and because Henchey submitted sufficient evidence regarding the causal connection between the collision and the claimed injuries. He asks us to remand the case for trial. Dielschneider resists, arguing Henchey presented insufficient evidence to submit the issue of causation to the jury.

II. Scope & Standard of Review

We review a district court's grant of a motion for directed verdict for correction of errors at law. *Dettmann v. Kruckenberg*, 613 N.W.2d 238, 250 (Iowa 2000). We view the evidence in the light most favorable to the nonmoving party to determine whether it generates a fact question. *Id.*; *Godar v. Edwards*, 588 N.W.2d 701, 705 (Iowa 1999). "Where substantial evidences does not exist to support each element of a plaintiff's claim, the court may sustain the motion." *Dettmann*, 613 N.W.2d at 251. "'Evidence is substantial if reasonable minds could accept it as adequate to reach the same findings.'" *Id.* (citation omitted). If reasonable minds could differ on a factual issue, the issue is for the jury to decide. *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 391 (Iowa 2001).

III. Analysis

Dielschneider urges us to affirm the directed verdict, arguing Henchey failed to present evidence sufficient to submit the causation issue to a jury. He contends that "medical matters not within the common knowledge of the jury must be proved with expert testimony sufficient to prove the injury was caused by the Defendant's negligence" but here, Henchey presented "no medical or other expert testimony . . . to create even a question as to the proximate cause between this motor vehicle accident and . . . [Henchey's] alleged injuries." Dielschneider asserts Henchey's case could not survive a directed verdict without (1) expert testimony showing the accident "probably" caused the injury, or (2) expert testimony establishing the accident "possibly" caused the injury, together with lay testimony that the injury did not exist before the accident. He argues that because Henchey presented neither expert testimony regarding the causal relationship between the accident and the injury, nor testimony establishing he did not suffer from the injuries at issue before the accident, he failed to generate a jury question. Dielschneider asserts that "faced with [the evidence,] the jury in the present case could not have found a causal connection between [Henchey's] injuries and the accident without speculation beyond their common knowledge."

A. Principles and Application

"[A] plaintiff in a tort action based on negligence can only recover damages for those injuries suffered as a proximate cause of the defendant's negligence." *Doe v. Cent. Iowa Health Sys.*, 766 N.W.2d 787, 792 (Iowa 2009).

Before the court can submit to the jury Henchey's claim that the car accident caused the alleged injuries to his hand, neck, and back, the record must contain substantial evidence supporting a causal connection. *See id.* "The proof must establish causal connection beyond the point of conjecture. It must show more than a possibility." *Ramberg v. Morgan*, 209 Iowa 474, 482, 218 N.W. 492, 498 (1928).

To establish that substantial evidence supports a causal connection between Dielschneider's action and Henchey's injuries, Henchey must show "something more than the evidence is consistent with [Henchey's] theory of causation." *Doe*, 766 N.W.2d at 792. Rather, "[t]he evidence must show [Henchey's] theory of causation is 'reasonably probable—not merely possible, and more probable than any other hypothesis based on such evidence.'" *Id.* at 793 (citation omitted); *see also Chenoweth v. Flynn*, 251 Iowa 11, 16, 99 N.W. 310, 313 (1959) ("Mere possibility does not ordinarily generate a jury question, it leaves the jury to speculate upon a speculation.").

With respect to the necessity of expert testimony in generating substantial evidence, our supreme court has explained:

> When the causal connection between the tortfeasor's actions and the plaintiff's injury is within the knowledge and experience of an ordinary layperson, the plaintiff does not need expert testimony to create a jury question on causation.
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> . . . .
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> [However,] [w]hen the causal connection between the tortfeasor's actions and the plaintiff's injury is not within the knowledge and experience of an ordinary layperson, the plaintiff needs expert testimony to create a jury question on causation.

Doe, 766 N.W.2d at 793.

Here, Dielschneider admits liability. The only issue we must decide is whether the district court correctly determined that Henchey failed to show that the accident proximately caused his claimed injuries. While the trial record is not perfectly clear, Henchey appears to allege that he sustained injuries to his right hand, neck, and lower back in the collision. After considering the evidence in the light most favorable to Henchey, we agree with the district court that expert testimony was required to generate substantial evidence supporting Henchey's contention that the car accident caused the alleged injuries to his hand and back. Because Henchey did not provide the requisite expert testimony, substantial evidence on the causal component of the claim did not exist. Moreover, even assuming expert testimony is not required to establish the rear-end collision caused an injury to Henchey's neck,[3] we conclude Henchey did not present substantial evidence supporting that contention either and we affirm the district court's directed verdict.

In regard to the hand injury, we cannot say it is common knowledge possessed by laypersons that a car collision that "dr[ives] [a person's] thumb backwards on the gear shift" of the car causes a person's fingers to then occasionally "lock against the palm of his hand," rendering the hand "useless," or prevents a person from engaging in other activities like driving a motorcycle. *See* Mark McCormick, *Opinion Evidence in Iowa*, 19 Drake L. Rev. 245, 260 (1970) ("[W]here the connection is not obvious, only a medical expert could express an

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[3] *See Foddrill v. Crane*, 894 N.E.2d 1070, 1077 (Ind. Ct. App. 2008) (holding causal connection between rear-end collision and neck injury was not so complex that a layperson would be unable to understand it without expert testimony).

intelligent opinion connecting the trauma to the injury."). We note that Henchey's medical records indicate he was previously involved in a motorcycle accident in 1992 in which he sustained multiple fractures—including fractures in his wrists. We agree with the district court's conclusion that this evidence leaves "the jury . . . left to speculate" on the cause of Henchey's injury and does not amount to substantial evidence of causation. *See Chenoweth*, 251 Iowa at 16, 99 N.W. at 313.

Likewise, we conclude substantial evidence does not support Henchey's contention that the collision caused his back problems. When asked what physical problems he experienced after the accident, Henchey replied that the "top of [his] hip [is] numb" and that he cannot "stand up for more than five minutes" because of his back pain. Again, we cannot say it is common knowledge that a car collision will cause the lower portion of one's back to feel numb or that it will impede a person from standing for more than five minutes. In addition, like the district court, we are "troubled" by the fact there was a "delay of . . . four months . . . from the time of the accident until" Henchey first mentioned the collision to medical personnel and sought treatment for an injury alleged to have been sustained in the crash. We further note that Henchey reported the motor vehicle accident in conjunction with a complaint about his hand and made no mention that the accident caused him back pain. In fact, in reviewing his medical records, it appears that Henchey never mentioned back pain in conjunction with the car crash. The district court correctly concluded that these facts do not amount to substantial evidence that the car accident caused an

injury to Henchey's back—on the facts presented, a conclusion that the two are related is mere speculation.

Moreover, even assuming common knowledge supports the contention that a rear-end car collision can cause an occupant of a vehicle to sustain whip-lash injuries, Henchey did not present sufficient non-expert evidence to support his contention that the collision in this case caused his neck pain. The only evidence in the record regarding Henchey's neck injury appears to be his testimony that his neck "crimped" when Dielschneider collided with his car, that he began feeling pain "in the back of [his] neck six months after the accident," which persisted until four months before the trial in this case, and that as a consequence of the pain in his neck he "very seldom turn[s] quickly to the right anymore." It does not appear that he reported the neck pain to medical personnel and his medical records do not mention the car crash in conjunction with neck pain. We agree that evidence of momentary pain in his neck at the time of the collision, which subsided and then returned six months later, standing alone, does not amount to substantial evidence demonstrating the collision caused injury to Henchey's neck.

We further note that although medical testimony is not necessary to overcome a motion for directed verdict with respect to damages for pain and suffering, this argument was not addressed by the district court nor raised on appeal. Henchey waived this claim in the district court by not seeking a ruling on the claim of pain and suffering and waived this claim on appeal by failing to argue or cite any authority in support of it. Iowa R. App. P. 6.903(2)(*g*)(3); *Meier v.*

Senecaut, 641 N.W.2d 532, 537 (Iowa 2002) ("When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal."); *Genetzky v. Iowa State Univ.*, 480 N.W.2d 858, 861 (Iowa 1992) (holding party waived error on an issue where the party cited no authority and made no argument in the appellate brief with respect to that claim).

After reviewing the record in the light most favorable to Henchey, we agree with the district court's conclusion that "[t]he state of the record is such that at this point the jury is simply left to speculate whether [Henchey's] problems . . . [are] a direct result of the accident or not." Consequently, we affirm the district court's directed verdict.

AFFIRMED.