

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-9531
Summary Calendar

DONNA ISBELL,

Plaintiff-Appellant,

v.

WAL-MART STORES, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
91 CV 4577 M5

June 29, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Donna Isbell sued Wal-Mart Stores, Inc. for injuries sustained in a Wal-Mart store. Wal-Mart stipulated liability, and the issue of damages was tried to a jury. Isbell was awarded damages of \$26,000. Disappointed, she filed a motion for a new trial, which was denied. Isbell appeals the denial of that motion. We affirm.

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

I. FACTUAL AND PROCEDURAL BACKGROUND

On March 9, 1991, while shopping at a Wal-Mart store in Slidell, Louisiana, appellant Donna Isbell was injured when a styrofoam sign suspended from the store's ceiling fell and struck her from behind. The extent of injuries sustained remains disputed. Isbell consulted an internist and an orthopedic surgeon after the incident about alleged injuries to her head, neck, shoulder, arm, and hand. One of those physicians, the orthopedic surgeon, recommended surgery to fuse herniated cervical discs at an estimated cost of \$20,000. At the request of Wal-Mart, Isbell was further examined by two additional doctors, a neurologist and an orthopedic surgeon. Both deemed surgery unnecessary. Isbell herself indicated at trial that she did not intend to undergo surgery, for fear of possible adverse consequences. Between the date of the accident and the time of trial, Isbell incurred approximately \$6,000 in non-surgical medical expenses.

Because Wal-Mart stipulated its liability for the sign's falling, the proceeding focused entirely on the extent of damages.¹ On October 22, 1992, the jury, with a magistrate judge presiding, awarded Isbell \$26,000 in a general verdict. Isbell moved for a partial new trial, limited to the issue of damages.

¹ Mrs. Isbell was initially joined by her husband, who filed suit for loss of consortium. Mr. Isbell voluntarily dismissed his entire claim. Furthermore, Mrs. Isbell voluntarily dropped her additional claim for past and future wage loss.

She appeals the denial of that motion.

II. DISCUSSION

A. The district court's refusal to submit a special verdict

Isbell claims that the district court erred by rejecting her proposed jury verdict form which contained a list, for the jury to fill in, of various types of damages that she alleges she sustained, such as pain and suffering and mental anguish. The court instead submitted the following, two-pronged general interrogatory:

1. Do you find from a preponderance of the evidence that the plaintiff, Donna Isbell, sustained injuries as a result of the incident in the Wal-Mart Store on March 9, 1991?
2. What amount, in dollars, do you find would fairly and adequately compensate the plaintiff, Donna Isbell, for her injuries?

Isbell argues that as a general matter, without the ability to itemize, juries are prone to award only quantifiable medical expenses and fail to award general damages (e.g., for pain and suffering). Isbell cites no authority for this novel claim. She essentially seeks a new trial on the grounds that the district court's refusal to request a special verdict rendered the jury award inadequate.

It is well established that the district court has discretion whether to use either a general or a special verdict. We review only for gross abuse of discretion. See Miley v. Oppenheimer & Company, 637 F.2d 318, 334 (5th Cir. 1981) (quoting

5A Moore's Federal Practice § 49.03(1)). In this case the magistrate judge explained her belief that special verdicts are "more likely to cause reversible error" than general verdicts. Whatever may be the truth of that proposition as a general matter, we do not believe that the district court abused its discretion in refusing to submit a special verdict form here. The magistrate judge's instructions to the jury included an itemized list of categories of damages. The magistrate judge also specifically encouraged Isbell's counsel to suggest itemized elements of damages to the jury in his closing argument, in order to compensate for any alleged disadvantage created by a general verdict. Under the circumstances, the jury could not have failed to understand the items of damages that it should consider. Isbell's request that we overturn the magistrate judge's refusal to grant a new trial on this ground is therefore denied.

B. The alleged awarding of only special medical damages

Isbell further argues that the jury awarded only special medical damages and did not award any amount of money for general damages, thus entitling her to a new trial. Isbell first observes as a matter of simple mathematics that "\$20,000 [the amount estimated for possible future surgery] plus \$6,000 [the amount of past medical expenses incurred] equals \$26,000." Isbell then concludes that the jury's refusal to grant general damages is in direct conflict with its finding that she was injured.

We do not believe that the only reasonable construction of the evidence and verdict compels the conclusion that the jury failed to award general damages. Only one of the numerous doctors whose testimony was considered at trial recommended surgery, which he alone estimated would cost \$20,000. His conclusion was strongly disputed by two specialists, both of whom concluded that Isbell did not need surgery. Moreover, and perhaps most convincingly, Isbell herself indicated at trial that she did not intend to undergo surgery. It is therefore entirely conceivable that the jury concluded that Isbell would in fact not have surgery, and so calculated \$20,000 as an appropriate figure for general damages. We agree with the district court's conclusion when it denied Isbell's motion for a new trial:

The Court is of the opinion that the jury's verdict represents a thorough, fair, and accurate assessment of the evidence. Although there was some testimony regarding the approximate cost of a certain surgical procedure, the greater weight of the evidence was to the effect that plaintiff was not in need of and did not intend to undergo surgery in the future.

We have a duty to search for an interpretation of the jury verdict that renders it consistent and reasonable. See Gonzales v. Missouri Pacific Railroad Co., 511 F.2d 629, 633 (5th Cir. 1975) ("The Seventh Amendment mandates this Court to search for a view of the case that makes the jury's answers consistent."). In this case, the district court's interpretation is clearly supported by the record. We accordingly reject Isbell's view that a new trial is in order because the jury inconsistently determined that Isbell had been injured but then refused to award

general damages.

C. The district court's response to a jury inquiry

Finally, Isbell argues that the district court significantly erred in its response to a jury inquiry. The jury interrupted its deliberations to ask the court whether Isbell had received medical treatment after July, 1992. The court responded that such information must be found in evidence presented at trial. Isbell argues that the trial record did not include evidence of a September, 1992 visit to her doctor because the court's pre-trial order required expert reports to be exchanged sixty days before the pre-trial conference, which was held on October 5, 1992. She therefore contends that she should have been allowed to supplement the record at the time of the jury inquiry and that the court's refusal to respond gave the jury the mistaken impression that she had not seen a doctor after July.

We find the magistrate judge's refusal to supplement the record appropriate. In the month between the September visit to a doctor and the close of trial, Isbell never raised issue of the admissibility of evidence regarding the visit. If the jury assumed that Isbell had not returned to a doctor, it was not because the court refused to supplement the evidence at the time of the inquiry but rather because Isbell failed during the trial to even attempt to submit evidence of her visit. The district court indicated its possible willingness to have admitted the evidence:

It's never been my understanding that the cutoff dates worked to exclude relevant facts from the date of the cutoff period or the cutoff date to the date of trial. And if there was something that was a necessity needed to be placed before the jury, or counsel wanted it placed before the jury, that should have been discussed. It was not discussed.

In sum, when Isbell failed to offer evidence of a later visit at trial, she effectively waived the right to object to the jury's ignorance of that visit. We therefore conclude that the magistrate judge's response to the jury's inquiry does not provide grounds for a new trial.

III. CONCLUSION

For the foregoing reasons we AFFIRM the district court's denial of Isbell's motion for a new trial.