STATE OF MICHIGAN

COURT OF APPEALS

JERALD MILLER and KIM MILLER,

Plaintiffs–Appellants,

v

DONALD FISHER,

Defendant–Appellee.

UNPUBLISHED
November 26, 1996

No. 175465
LC No. 92-015871

Before: Saad, P.J., and Holbrook and G. S. Buth,* JJ.

PER CURIAM.

In this negligence action, plaintiffs Jerald and Kim Miller appeal from the trial court's judgment entered upon a jury verdict and order denying their motions for new trial or additur. We affirm.

While plaintiffs were at defendant's home, defendant attempted to light a bonfire in his backyard. Although the facts are grossly disputed, defendant apparently used Coleman fuel-oil from his garage to help ignite the fire. After pouring the fuel-oil on a pile of brush, defendant lit a match. Jerald, who was standing near the pile and possibly aiding defendant in attempting to light the fire, was burned on both legs.

Plaintiffs brought suit against defendant alleging negligence and loss of consortium. The jury awarded $500 on Jerald's negligence claim, which was reduced by $250 because the jury found him 50% comparatively negligent. Plaintiffs moved for a new trial on the issue of damages only or for additur, in the alternative. The trial court denied both motions ruling that, although it could not understand why the damages were so low, it was not going to quarrel with the jury's position. On appeal, plaintiffs contend that the court erred in denying their motions and also contest certain evidentiary rulings made during trial.

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* Circuit judge, sitting on the Court of Appeals by assignment.

I

A trial court has broad discretion in granting a new trial on the basis of inadequate damages. This Court will not interfere with its decision to grant or deny the motion absent a palpable abuse of discretion. *Arnold v Darczy*, 208 Mich App 638, 639-640; 528 NW2d 199 (1995). Our inquiry is only whether the jury's verdict was within the range of the evidence. *Means v Jowa Security Services*, 176 Mich App 466, 477; 440 NW2d 23 (1989). With respect to a motion for additur, we afford due deference to the trial court's decision to grant or deny the motion and will not reverse absent an abuse of discretion. *Arnold*, 208 Mich App at 640. Again, our inquiry is limited to whether the verdict is supported by the evidence. *Wilson v General Motors*, 183 Mich App 21, 38; 454 NW2d 405 (1990).

Here, the uncontroverted medical invoices totaled $225.74. Jerald's wage loss evidence was minimal, in light of his 1991 income tax return showing a gross annual income of $5,916. Defendant testified that Jerald did not scream and that immediately after the injury, Jerald described the burns as being "no worse than a sunburn." Although the jury verdict was low, it was within the general range of the evidence presented. We find no palpable abuse of discretion.

II

With regard to Kim's loss of consortium claim, we are not persuaded that the scant testimony presented at trial regarding conjugal fellowship, companionship and other services, requires us to reverse the verdict. The jury was free to reject this testimony and decline to award her damages. *Flones v Dalman*, 199 Mich App 396, 406; 502 NW2d 725 (1993).

III

Plaintiffs also contend that the trial court abused its discretion by granting defendant's motion in limine to exclude testimony regarding the parties' alcohol consumption before the fire. However, since plaintiffs' objection to excluding this evidence at trial differs from those raised on appeal, the issue is not preserved for our review. *Begola Services v Wild Brothers*, 210 Mich App 636, 642; 534 NW2d 217 (1995). Furthermore, given that defendant was ultimately found liable, we are not persuaded that a substantial right of plaintiffs is affected if we decline to address this issue. *Wischmeyer v Schanz*, 449 Mich 469, 483; 536 NW2d 760 (1995).

IV

Next, plaintiffs contend that the trial court abused its discretion in admitting a photograph of the brush pile that depicted a beer bottle in the background. However, we decline to consider the issue since *plaintiffs* requested that the photograph be admitted. A party cannot request a certain action by the trial court and then argue on appeal that the action was error. *People v McCray*, 210 Mich App 9, 14; 533 NW2d 359 (1995).

V

Finally, plaintiffs argue that the trial court abused its discretion in admitting a pack of matches. Plaintiffs first contend that admission of the matches (which purportedly established that Jerald lit one match and was thus comparatively negligent) unfairly surprised them at trial. Plaintiffs claim that defendant did not comply with MCR 2.310 (production of documents and things) because defendant's response to plaintiffs' motion to produce the matches indicated that they did not exist. However, we are not persuaded that the admission of the matches was prejudicial. Although plaintiffs argued that they would have had the pack examined by an expert, plaintiffs are unable to explain how an expert would assist the jury in evaluating this evidence.

Plaintiffs also argue that the matches were improperly admitted because there was no evidence of a proper chain of custody. While we recognize that a condition precedent to the admission of an item into evidence is authentication that the matter is what its proponent claims, *Haberkorn v Chrysler*, 210 Mich App 354, 366; 533 NW2d 373 (1995), the admission of real evidence does not require a perfect chain of custody. *People v White*, 208 Mich App 126, 130-131; 527 NW2d 34 (1995). Rather, a deficiency in the chain of custody goes to the weight of the evidence. *Id*. Since there was evidence that these matches were the ones found at the scene of the bonfire, the matches were appropriately authenticated. Therefore, the trial court did not abuse its discretion in admitting the matches into evidence.

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ George S. Buth