STATE OF MICHIGAN

COURT OF APPEALS

SANDRA FULTZ and OTTO FULTZ,

Plaintiffs-Appellees/Cross-Appellants,

v

CREATIVE MAINTENANCE, INC.,

Defendant-Cross-Defendant/Cross-Appellee,

and

COMM-CO EQUITIES, NAMER JONNA, LAITH JONNA, ARKAN JONNA, MOHSIN KOUZA, and GLADYS KOUZA,

Defendants-Cross-Plaintiffs-Appellants/Cross-Appellees.

UNPUBLISHED
March 19, 2002

No. 223928
Oakland Circuit Court
LC No. 95-501433-NO

SANDRA GAIL FULTZ and OTTO FULTZ,

Plaintiffs-Appellees,

v

UNION-COMMERCE ASSOCIATES,[1] COMM-CO EQUITIES, NAMER JONNA, ARKAN JONNA, LAITH JONNA, MOHSIN KOUZA, and GLADYS KOUZA,

Defendants-Appellees,

and

No. 224019
Oakland Circuit Court
LC No. 95-501433-NO

[1] Plaintiffs stipulated to the dismissal of Union Commerce Associates below and Union Commerce Associates is not a party to this appeal.

CREATIVE MAINTENANCE, LTD.,

Defendant-Appellant.

Before: Whitbeck, P.J., and Holbrook, Jr., and Zahra, JJ.

PER CURIAM.

In both cases, defendants appeal as of right from the judgment on the jury verdict. Defendants assert various arguments challenging the verdict. Plaintiffs' cross-appeal challenges the award of damages and the jury's finding of no-cause of action with respect to their consortium claim. We affirm.

I. Facts

This case arises from injuries plaintiff Sandra Fultz suffered on December 7, 1994 when she slipped and fell on ice in the parking lot of a Farmer Jack grocery store. Sandra Fultz was employed at the Farmer Jack. The parking lot was used by Farmer Jack customers and employees and was owned by Comm-Co.[2] It is undisputed that Comm-Co and Creative Maintenance had an oral agreement, whereby Creative Maintenance was obligated to plow and salt the parking lot.

On July 28, 1995, plaintiffs filed their complaint, alleging that Comm-Co and the responsible snow removal company[3] were negligent in failing to keep the parking lot free of dangerous snow and ice. The complaint further alleged breach of contract in regard to the snow removal company. Plaintiff Otto Fultz asserted a consortium claim.

Prior to trial, a default was entered against Comm-Co following its counsel's failure to pay a $500 court-ordered sanction. Plaintiffs' claims proceeded to trial. In regard to Comm-Co, only the determination of damages was at issue at trial. The jury found that Creative Maintenance was negligent and that its negligence was the proximate cause of Sandra Fultz's injuries. The jury assessed damages in the following amounts: $28,000 for medical expenses and lost wages, $12,000 pain and suffering, $0 future damages, and $10,000 future pain and suffering. Comm-Co and Creative Maintenance were both found fifty percent liable. The jury also found that Otto Fultz did not sustain damages for loss of society, companionship and sexual relationship. Last, the jury determined that there was a contract between Comm-Co and Creative Maintenance, but that Creative Maintenance did not breach the contract.

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[2] We will generally refer to the defendants-appellants involved in Docket No. 223928 collectively as "Comm-Co" given that Namer Jonna, Laith Jonna, Arkan Jonna, Mohsin Kouza, and Gladys Kouza are partners in Comm-Co Equities.

[3] At the time suit was filed, plaintiffs did not know the identity of Creative Maintenance.

II. Analysis

A. Defendant Comm-Co's Issues on Appeal

Comm-Co first argues that the trial court erred in entering the default.[4] This Court reviews a trial court's decision to enter a default for an abuse of discretion. *Zaiter v Riverfront Complex, Ltd*, 463 Mich 544, 552; 620 NW2d 646 (2001); *Barclay v Crown Building & Development, Inc*, 241 Mich App 639, 642, 651; 617 NW2d 373 (2000). "Where there has been a valid exercise of discretion, appellate review is sharply limited." *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999). A trial court's ruling will not be set aside unless there has been a clear abuse of discretion. *Id*. "An abuse of discretion involves far more than a difference in judicial opinion." *Id*. Such an abuse occurs only when the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, the defiance of judgment, or the exercise of passion or bias. *Id*.

The record in the present case establishes that Comm-Co indicated in its answers to plaintiffs' interrogatories that it did not know the identity of the owner of the premises where the injury occurred.[5] As a result, plaintiffs suggest that they were led to believe Union Commerce Associates actually owned the premises. It was not until the case went to mediation that Comm-Co's counsel admitted Comm-Co owned the parking lot in question. Comm-Co did not admit in writing that it owned the property until January 1997. Moreover, despite interrogatories on the subject and personal inquiries from plaintiffs' counsel, Comm-Co failed to immediately identify Creative Maintenance as the snow removal company involved in the incident. Comm-Co did not offer a reasonable explanation for its delay in light of the record suggesting Creative Maintenance maintained the Farmer Jack property for approximately seven years prior to the incident and submitted regular bills to Comm-Co.

In addition to those delays in providing plaintiffs accurate, basic information, Comm-Co plainly violated two court orders. On May 6, 1997, the trial court granted plaintiffs' motion for production of maintenance logs and phone messages, ordering that Comm-Co produce the items within fourteen days. Comm-Co failed to timely produce the items, and on October 15, 1997, plaintiffs brought their first motion for default. In response to the motion, Comm-Co explained that it did not produce the items because it found, after further investigation, the items did not actually exist. Comm-Co did not claim to have attempted to address the nonexistence of the items with the court following entry of the May 6, 1997 order.

The trial court did not grant the requested default at that time, but instead ordered Comm-Co to pay a $500 sanction. That order was entered on December 19, 1997, and served to Comm-Co in early January 1998. Plaintiffs' counsel did not receive payment within seven days as the order specified. As a result, in March 1998, plaintiffs brought their second motion for default and for default judgment. The record suggests that plaintiffs' counsel received the $500 payment

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[4] Comm-Co does not specifically challenge the denial of its motion to set aside the default, but instead only argues that the trial court erred in originally entering default.

[5] Comm-Co's answers to plaintiffs' interrogatories were submitted after the trial court ordered that answers be submitted within one week "or default will be entered."

just two days prior to the hearing on that motion. Comm-Co's counsel claimed the delay in payment was due to "internal problems" at his law firm. The court ultimately granted plaintiffs' motion for default.

On that record, we cannot conclude that the trial court clearly abused its discretion in entering the default. Comm-Co claims that its conduct was not sufficiently egregious to warrant entry of default. However, where Comm-Co blatantly disregarded two court orders for significant periods of time[6] and failed to provide accurate discovery information to plaintiffs in a timely fashion, Comm-Co's conduct cannot be said to have been merely "'accidental or involuntary.'" See *Kalamazoo Oil v Boerman*, 242 Mich App 75, 86; 618 NW2d 66 (2000), quoting *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999). Under these circumstances, the trial court's decision to enter default was not grossly violative of fact and logic. *Alken-Ziegler, supra* at 227.

Furthermore, contrary to Comm-Co's claim, it is evident that the trial court adequately considered other sanctions prior to entering default. The court opted to impose the $500 sanction instead of entering default on plaintiffs' first motion for default. Moreover, the record of the second default hearing indicates the trial court carefully considered the circumstances of the case before deciding to enter the default.[7]

Comm-Co also claims that the default was improperly entered as a discovery sanction under MCR 2.313 because it was based on the failure to pay a monetary sanction. We disagree. The monetary sanction in this case was essentially a discovery sanction that was imposed as a direct result of Comm-Co's failure to obey the order to provide the maintenance logs and phone messages. See MCR 2.313(B)(2). Moreover, it is evident that the trial court entered the default as a result of Comm-Co's pattern of delay with respect to discovery, not merely because of its counsel's failure to pay the $500 sanction.

Comm-Co's additional claim regarding the need for an evidentiary hearing prior to entry of the default also lacks merit. Comm-Co had an adequate opportunity to respond to plaintiffs' first motion for default. Comm-Co filed a written response and argued at the hearing that its failure to produce the requested maintenance logs and phone messages was due to the nonexistence of those items, not a wilful disregard of the trial court's order. The court heard that

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[6] Comm-Co violated the order to produce the maintenance logs and phone messages without explanation for more than one hundred fifty days. Comm-Co also failed to pay the $500 sanction for approximately one hundred fifty days after the court ordered payment at the hearing on plaintiffs' motion and approximately sixty days after actual service of the order.

[7] After hearing the parties' arguments, the court took the matter under advisement, stating:

> Gentlemen, I've heard enough arguments. I want to review this matter because this [sic] very serious, one that I'm concerned about the deviation from the Court's orders. I'm concerned about sanctions that are available and the seriousness of those sanctions. I have not had a chance to review the entire file. I want to look at the respective orders. We'll give you an answer by written order. Thank you.

argument and decided to impose the $500 sanction. Comm-Co had a similar adequate opportunity to respond to plaintiffs' second motion for default. In its written response and at the hearing on the motion, Comm-Co's counsel explained that he was not served the order for sanctions until early January 1997, and did not timely pay the $500 as a result of "internal problems" at his firm. He specified that the failure to pay the sanction was unintentional and did not prejudice plaintiffs. Comm-Co has not indicated any additional explanation for it and its counsel's failure to comply with the court orders that would have come to light had the court held an additional evidentiary hearing. We conclude that Comm-Co was, at all times, given a full and fair opportunity to explain that its noncompliance was not willful and that its conduct did not prejudice plaintiffs. See *Traxler v Ford Motor Co*, 227 Mich App 276, 288; 576 NW2d 398 (1998). Therefore, Comm-Co was not deprived its due process rights when the trial court denied its motion for an evidentiary hearing.

Next, Comm-Co argues that the trial court erred in failing to submit the issue of comparative negligence to the jury. Where a default has been entered against a defendant as a sanction for discovery abuses, the trial court has discretion to allow or prohibit evidence of a party's comparative negligence at a trial on damages. *Kalamazoo Oil*, *supra* at 88. The trial court was in the best position to know the severity of the discovery abuses and to decide the extent of the necessary sanction. *Id.* at 87-88. Given the specific circumstances leading to the default against Comm-Co, we cannot say that the trial court's decision not to submit the issue of comparative negligence to the jury constituted an abuse of discretion.

Comm-Co further argues that it was entitled to a directed verdict or JNOV because any danger associated with the icy parking lot was open and obvious. Comm-Co contends that it was, at least, entitled to a jury determination of the open and obvious issue. In *Lugo v Ameritech Corp*, 464 Mich 512; 629 NW2d 384 (2001), our Supreme Court clarified that "the open and obvious doctrine should not be viewed as some type of 'exception' to the duty generally owed invitees, but rather as an integral part of the definition of that duty." *Id*. at 516. Upon entry of the default, the issue of Comm-Co's liability was settled. Thus, any issue in regard to Comm-Co's duty was also settled at that time. That being the case, the trial court properly precluded Comm-Co from arguing to the jury that the risk was open and obvious to plaintiff. Allowing Comm-Co to introduce the open and obvious issue would have essentially allowed it to re-litigate the issue of its duty to plaintiff. *Id*. For those same reasons, the court also properly denied Comm-Co's motion for directed verdict.

Last, Comm-Co argues that the trial court erred in failing to excuse a juror challenged for cause soon after trial began. This Court reviews a trial court's denial of a challenge for cause for an abuse of discretion. *People v Williams*, 241 Mich App 519, 521; 616 NW2d 710 (2000); *Colbert v Primary Care Medical, PC*, 226 Mich App 99, 102; 574 NW2d 36 (1997). On the first day of trial, a juror informed a court officer that she believed she recognized the Jonnas. The trial judge immediately questioned the juror on the record regarding her familiarity with the parties. The juror indicated that she was formerly employed by a relative of the Jonna defendants. She stated that she did not care for that employer and quit the job because of the relationship with the employer. The juror clarified that she did not know the parties to this case and did not have negative feelings for the defendants. She stated that she would try to resolve the case in a fair manner. Under these circumstances, we cannot say that the trial court's

decision to deny defendant Comm-Co's request to excuse the juror was grossly violative of fact and logic. *Alken-Ziegler, supra* at 227.

B. Defendant Creative Maintenance's Issues on Appeal

Creative Maintenance first argues that the trial court erred in denying its motion for JNOV because it did not owe plaintiffs any duty of care. A trial court's decision to grant or deny a motion for JNOV is reviewed de novo. *Attard v Citizens Ins Co of America*, 237 Mich App 311, 321; 602 NW2d 633 (1999), citing *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 672; 591 NW2d 438 (1998). Likewise, "questions regarding duty are for the court to decide as a matter of law," *Mason v Royal Dequindre, Inc*, 455 Mich 391, 397; 566 NW2d 199 (1997), and are subject to de novo review, *Benejam v Detroit Tigers, Inc*, 246 Mich App 645, 648; 635 NW2d 219 (2001). In reviewing a decision on a motion for JNOV, this Court must view the testimony and all legitimate inferences in the light most favorable to the nonmoving party. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998). "'If reasonable jurors could honestly have reached different conclusions, the jury verdict must stand.'" *Central Cartage Co v Fewless*, 232 Mich App 517, 524; 591 NW2d 422 (1998). Only if the evidence fails to establish a claim as a matter of law is JNOV appropriate. *Forge, supra*.

According to Creative Maintenance, plaintiffs were merely third-party beneficiaries of the snow removal contract and a duty was not owed to plaintiffs to support a finding of negligence. A relationship giving rise to a duty can stem from a contract. *Courtright v Design Irrigation, Inc*, 210 Mich App 528, 530; 534 NW2d 181 (1995); *Antoon v Community Emergency Medical Service, Inc*, 190 Mich App 592, 595; 476 NW2d 479 (1991). A contracting party has a common law duty to perform with ordinary care the thing agreed to be done. *Home Ins Co v Detroit Fire Extinguisher Co, Inc*, 212 Mich App 522, 529; 538 NW2d 424 (1996); *Osman v Summer Green Lawn Care, Inc*, 209 Mich App 703, 707-708; 532 NW2d 186 (1995), overruled in part on other grounds *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999). Privity is not required. *Id.* at 710. However, there must be some misfeasance distinct from a breach of contract. *Courtright, supra* at 530-531.

In the present case, evidence suggested that Creative Maintenance engaged in misfeasance distinct from any breach of contract. One who undertakes to render services to another, which he should recognize as necessary for the protection of a third person, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care in his undertaking, if: (1) his failure to exercise reasonable care increases the risk of harm, or (2) he has undertaken to perform a duty owed by the other to the third person, or (3) the harm is suffered because of reliance of the other or the third person upon the undertaking. *Courtright, supra* at 531, quoting Second Restatement of Torts 2d, § 324A. "'[T]hose forseeably injured by the negligent performance of a contractual undertaking are owed a duty of care.'" *Auto-Owners Ins Co v Michigan Mut Ins Co*, 223 Mich App 205, 212; 565 NW2d 907 (1997), quoting *Osman, supra* at 708.

It is undisputed that Comm-Co and Creative Maintenance had a contract, under which Creative Maintenance was obligated to plow and salt the parking lot as needed. In *Osman*, this Court held that a snow removal company had a common law duty, apart from any contractual

duty, to provide snow removal services in a reasonable manner. *Osman, supra* at 707-708.[8] Here, Creative Maintenance Vice-President David Sherman testified that the parking lot was plowed only one time on the day in question and salt was laid only near the store's main entrance. Expert testimony suggested the conditions were ripe for significant accumulation of ice, and several witnesses testified that a significant amount of ice, in fact, accumulated in the parking lot. Sherman claimed that he returned to the site late in the day, but admitted he did not spread salt or plow at that time. Under these circumstances, Creative Maintenance had a duty to use reasonable care in removing dangerous ice and snow, which was distinct from its obligations under its contract with Comm-Co. *Osman, supra* at 707-708. Moreover, the evidence suggested that Creative Maintenance breached that duty when it did not take reasonable steps to remove or prevent the icy conditions that caused plaintiff's fall.

Creative Maintenance's claim that there was not adequate evidence at trial regarding the applicable standard of care lacks merit. The trial court instructed the jury: "Ordinary care means the care a reasonably careful person would use." There was sufficient evidence at trial regarding the weather forecasts and the actual conditions resulting from the storm to allow the jury to infer that Creative Maintenance breached the standard of ordinary care.[9] Accordingly, the court properly denied Creative Maintenance's motion for JNOV.

Next, Creative Maintenance argues that the trial court erred in failing to instruct the jury regarding comparative negligence. This Court reviews claims of instructional error de novo. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). We will not find reversible error in regard to jury instructions "if, on balance, the instructions given adequately and fairly presented the theories of the parties and the applicable law." *Murdock v Higgins*, 454 Mich 46, 60; 559 NW2d 639 (1997).

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[8] Creative Maintenance's effort to distinguish *Osman* on the basis that the defendant snow-removal company's liability in *Osman* was based on its contractual assumption of liability is unpersuasive. The *Osman* Court explained:

> Even if the language [of the contract] were able to shift liability to [the owner], defendant would still owe plaintiff a common-law duty separate and apart from the contract itself. Duty of care not only arises out of contractual relationship, but it also arises by operation of law, a general duty owed by defendant to the public of which plaintiff is a part. [*Clark v Dalman*, 379 Mich 251, 260-261; 150 NW2d 755 (1967)]. Therefore, even though plaintiff was not in privity of contract, she was owed a duty of ordinary care by defendant. [*Osman, supra* at 710.]

[9] We reject Creative Maintenance's claim that the jury's finding of negligence was erroneous given its finding that Creative Maintenance did not breach the contract with Comm-Co. The jury's findings are consistent with the determination that Creative Maintenance owed a duty to plaintiffs that was separate and distinct from its obligations under the snow removal contract. *Courtright, supra* at 530; see *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 398; 628 NW2d 86 (2001) (stating: "[I]f there is an interpretation of the evidence that provides a logical explanation for the findings of the jury, the verdict is not inconsistent.").

Creative Maintenance claims that an instruction on comparative negligence was necessary because the evidence at trial established that plaintiff chose not to take an alternate route to her car and chose to carry heavy groceries through the parking lot with knowledge of the icy conditions. The standards for determining the comparative negligence of a plaintiff are the same as those of a defendant, and the question is one for the jury unless all reasonable minds could not differ or because of some ascertainable public policy consideration. *Rodriquez v Solar of Michigan, Inc*, 191 Mich App 483, 488; 478 NW2d 914 (1991). After a thorough review of the record, we conclude that the trial court properly denied Creative Maintenance's request for an instruction on comparative negligence.

It is evident that plaintiff had actual notice of the icy conditions. Plaintiff testified that a coworker told her it was icy and that she, herself, observed the ice upon leaving the store. However, the evidence established that there was no non-icy route to the cars in the parking lot. While plaintiff acknowledged that she could have walked a ways next to the store where it appeared salt had been laid, she explained that she did not do so because the area was not well lit. According to a diagram admitted at trial, even had plaintiff walked in that unlit area, she would have had to cross the icy part of the parking lot where she fell. Plaintiff fell approximately one car length from her car. Given that plaintiff would have been required to traverse the ice no matter what route she took, the fact that she chose the route she did is not evidence supporting a finding of comparative negligence.

In regard to plaintiff's decision to carry groceries to her car, plaintiff estimated that the groceries weighed a total of twenty-five pounds. However, there was no evidence at trial to suggest that the groceries actually contributed to plaintiff's fall. It is undisputed that plaintiff was not loading the groceries into her car when she fell. Plaintiff testified that she did not believe the weight of the groceries contributed to her fall. Testimony regarding the slippery nature of the parking lot suggested the icy condition of the lot posed an unreasonable risk even had plaintiff decided to leave her groceries at the front of the store before walking to her car. Given the lack of evidence that the groceries contributed to plaintiff's fall, the jury would have been left to speculate regarding whether plaintiff's conduct of carrying the groceries constituted comparative negligence. Therefore, the trial court properly denied Creative Maintenance's request for a jury instruction on the issue. *Murdock, supra*.

Last, Creative Maintenance argues that the trial court erred in failing to instruct the jury regarding the open and obvious doctrine. We reject this argument. Creative Maintenance was not the premises owner. Plaintiffs' claims against Creative Maintenance were based on the company's failure to perform under its snow removal contract in a reasonable manner. The open and obvious doctrine applies to premises liability claims. Thus, the open and obvious nature of the risks was not pertinent to plaintiffs' claims against Creative Maintenance and the trial court properly denied Creative Maintenance's request for a jury instruction on the subject.

C. Plaintiffs' Issues on Cross-Appeal

Plaintiffs argue that the verdict of no-cause of action in regard to Otto Fultz's consortium claim was against the great weight of the evidence. We disagree. "'The grant or denial of a motion for new trial on the ground that the verdict is against the great weight of the evidence rests within the sound discretion of the trial court, and the exercise of that discretion will not be disturbed on appeal unless a clear abuse is shown.'" *Arrington v Detroit Osteopathic Hospital*

Corporation v (On Remand), 196 Mich App 544; 493 NW2d 492 (1992), quoting *Bosak v Hutchinson*, 422 Mich 712, 737; 375 NW2d 333 (1985). A motion brought on the basis that a verdict is against the great weight of the evidence should be granted only when the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result. *People v Lemmon,* 456 Mich 625, 627, 642; 576 NW2d 129 (1998); see *LaFleche v Ybarra,* 242 Mich App 692, 695; 619 NW2d 738 (2000). The jury's verdict should not be set aside if there is competent evidence to support it; the trial court cannot substitute its judgment for that of the factfinder. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999).

Here, there was competent evidence to support the verdict on the consortium claim. The evidence at trial indicated that Otto Fultz had shoulder surgery two days prior to his wife's fall. While Otto claimed he was relying on his wife to help care for him during his recovery, he acknowledged that his daughter was able to provide care for him and his wife. There was no evidence regarding any affect the incident had on the couple's sexual relationship. Moreover, there was no evidence establishing that Sandra Fultz's injuries negatively affected the couple's companionship. Under these circumstances, the jury verdict did not preponderate heavily against the verdict. *Lemmon, supra*.

Plaintiffs also argue that the trial court erred in denying their motion for new trial or additur when the jury verdict for past and future non-economic damages was inadequate. Again, we disagree. A trial court's decision regarding additur is reviewed on appeal for an abuse of discretion. MCL 600.6098(4); *Palenkas v Beaumont Hospital,* 432 Mich 527, 533; 443 NW2d 354 (1989). The trial court, having witnessed the testimony and the evidence as well as the jury's reactions, is in the best position to evaluate the credibility of the witnesses and make an informed decision and, thus, due deference should be given to the trial court's decision. *Id.* at 534; *Phillips v Deihm*, 213 Mich App 389, 404; 541 NW2d 566 (1995).

In determining whether additur is appropriate, the proper consideration is whether the jury award was supported by the evidence. *Setterington v Pontiac General Hospital*, 223 Mich App 594, 608; 568 NW2d 93 (1997). The inquiry is limited to objective criteria relating to the actual conduct of the trial or the evidence adduced to determine if an adjustment should be made. *Id*. The adequacy of the amount of the damages is generally a matter for the jury. *Kelly v Builders Square, Inc*, 465 Mich 29, 35; __ NW2d __ (2001), quoting *Brown v Arnold*, 303 Mich 616, 627; 6 NW2d 914 (1942). "[I]f a damage award falls reasonably within the range of the evidence and within the limits of what reasonable minds would deem just compensation for the injury sustained, the jury award should not be disturbed." *Frohman v Detroit*, 181 Mich App 400, 415; 450 NW2d 59 (1989).

Here, the evidence supported the jury's award of damages. The evidence established that plaintiff suffered a severe broken ankle, which required two surgeries. Plaintiff testified that she still has swelling and discomfort in the ankle. Plaintiff's physician testified that the fractures were healed at the time of plaintiff's second surgery and the plate could be removed from her ankle if she desired. Plaintiffs do not point to any uncontroverted damages that the jury failed to include, *Bosak, supra* at 732, but instead essentially argue that the nature of the injuries warranted greater damages. We conclude that the jury award was within the range that reasonable minds would deem just compensation. *Frohman, supra*. As such, the trial court did not abuse its discretion in denying plaintiffs' motion for additur.

Affirmed.

/s/ William C. Whitbeck
/s/ Donald E. Holbrook, Jr.
/s/ Brian K. Zahra