

**ORIGINAL**

**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA  
DISTRICT COURT NO. 08-02-C-2089  
SUPREME COURT NO. 20030302**

**20030302**

Sandra Duma,

Plaintiff/Appellant,

v.

Shawn Keena, Todd Keena,  
And Laurie Keena,

Defendants/Appellees.

**FILED**  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

**FEB - 2 2004**

**STATE OF NORTH DAKOTA**

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**APPEAL FROM THE DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT  
BURLEIGH COUNTY, NORTH DAKOTA  
THE HONORABLE BRUCE B. HASKELL**

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**PLAINTIFF/APPELLANT'S BRIEF**

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### CASES

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Grenz v. Kelsch, 436 N.W. 2d 552 (N.D. 1989)

ISSUE PRESENTED FOR REVIEW

- I. Does the inconsistency of the jury's answers to Special Verdict questions entitle Plaintiff Duma to a new trial?

## **I. FACTORAL AND PROCEDURAL BACKGROUND**

On November 11, 1999, plaintiff, Sandy Duma, while riding as a passenger in a vehicle being driven by John Adams, heading North on Highway 83 from Bismarck to Wilton, North Dakota, was injured when the vehicle in which she was riding collided with a vehicle being driven by defendant Shawn Keena. Plaintiff Duma alleged that defendant Keena was negligent in that he failed to yield the right of way when attempting to cross Highway 83. Ms. Duma sustained injuries to her knees, hips, ribs, lower back and neck, and suffered from headaches. (App. 3).

Ms. Duma claimed that, while she had in fact put her seatbelt on, it came off when the collision occurred. (App. 14) Defendants' contended that Ms. Duma was not wearing her seatbelt. (App. 5)

After a jury trial, the Honorable Bruce B. Haskell presiding, the jury returned its Special Verdict on April 16, 2003, a copy of which appears in the Appendix at Page 7. Plaintiff Duma moved for a new trial, which was denied on August 19, 2003. (App. 22)

## **II. LEGAL ARGUMENT**

**PLAINTIFF DUMA IS ENTITLED TO A NEW TRIAL BECAUSE THE JURY'S ANSWERS TO SPECIAL VERDICT QUESTIONS ARE INCONSISTENT AND CANNOT BE RECONCILED.**

Plaintiff Duma bases her appeal on the grounds that the Special Verdict answers returned by the jury are inconsistent and cannot be reconciled. Consequently, it is impossible to determine the result of the trial, the jury's decision or even which party actually prevailed.

The Court has entered Judgment, a copy of which appears in the Appendix at Page 21, based upon its interpretation of the jury's decision. However, plaintiff Duma contends that that interpretation is not correct. In fact, plaintiff Duma was actually the prevailing party.

In Question 5, the jury answered "No" to the question of whether Plaintiff Sandra Duma was at fault. (The jury was here saying Ms. Duma was not at fault for the accident, as distinguished from being at fault for her injuries. We know this because of a question from the jury and the Court's response. See Court Exhibit . (App. 10)

In Question 6, the jury answered "No" to the question of whether Sandra Duma's fault was a proximate cause of her injuries.

In Question 7, the jury concluded that "taking all of the fault that proximately caused the plaintiff's damages as 100%," the percentage attributed to Ms. Duma was "0".

Thus, the jury concluded that (1) Sandra Duma was not at fault, (2) that any fault on the part of Sandra Duma was not a proximate cause of her injuries, and that (3) Sandra Duma was responsible for "0" percent of the fault which caused her damages.

The jury then, in Question 8 awarded Sandra Duma \$15,000.

It is true that in Question 9-A and 9, the jury concluded that Sandra Duma was not wearing a seatbelt at the time of the collision and that she would have avoided 100 percent of her injuries had she been wearing a seatbelt. Those answers, though, are basically irrelevant given the jury's answers to Questions 5, 6 and 7. It appears the jury concluded Ms. Duma was initially wearing her seatbelt, but it came off as Ms. Duma claimed, consequently, finding no fault on her part and that she did not cause any part of her injuries. Defendant Shawn Keena caused 60 percent of Ms. Duma's \$15,000 in damages and is therefore obligated to her in the amount of

\$9,000, plus costs and disbursements.

On the other hand, the trial court apparently concluded that, based on answers to Questions 9 and 9A, Ms. Duma could have avoided all of her injuries and should receive no award.

Given the inconsistency of the jury's answers there is simply no way to reconcile the verdict and determine what the jury in fact intended to do. There are legitimate arguments for both interpretations. Consequently, it is respectfully submitted that these circumstances constitute an irregularity in the proceedings of the jury which entitles plaintiff Duma to a new trial.

In Grenz v. Kelsch, 436 N.W. 2d 552 (N.D. 1989) this court said:

“The test for reconciling apparent conflicts in the jury's answers is: Whether the answers may fairly be said to represent a *logical and probable decision* on the relevant issues as submitted. If after a review of the district court's judgment no reconciliation is possible and the inconsistency is such that the special verdict will not support the judgment entered below or any other judgment, then the judgment must be reversed and the case remanded for a new trial.” (436 NW 2d at 553)

It is respectfully submitted that the jury's answers are entirely inconsistent and cannot be reconciled. Clearly, the jury found that Ms. Duma was not at fault in causing her injuries. See answers to Questions 6 and 7. The trial court, however, concluded that the jury's answer to Question 9, to the effect that 100 percent of her injuries would have been avoided had she been wearing a seatbelt, precluded recovery. We submit that it is impossible to determine what the jury in fact intended to be its verdict, and that Ms. Duma is therefore entitled to a new trial

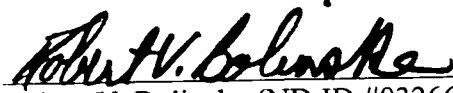
### III. CONCLUSION

For the above stated reasons it is respectfully submitted that the jury's actual verdict



cannot be determined and that, consequently, Ms. Duma is entitled to a new trial.

Dated this 2 day of February, 2004.

A handwritten signature in black ink, reading "Robert V. Bolinske", written over a horizontal line.

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