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ADAM S. MARTENSEN, APPELLEE AND CROSS-APPELLANT, v. REJDA BROTHERS, INCORPORATED, APPELLANT AND CROSS-APPELLEE.

808 N.W.2d 855

Filed February 10, 2012. No. S-11-010.

1. **Judgments: Verdicts.** To sustain a motion for judgment notwithstanding the verdict, the court resolves the controversy as a matter of law and may do so only when the facts are such that reasonable minds can draw but one conclusion.
2. **Motions for New Trial: Appeal and Error.** A motion for new trial is addressed to the discretion of the trial court, whose decision will be upheld in the absence of an abuse of that discretion.
3. **Costs: Appeal and Error.** The decision of a trial court regarding taxing of costs is reviewed for an abuse of discretion.
4. **Judgments: Statutes: Appeal and Error.** Statutory interpretation is a matter of law in connection with which an appellate court has an obligation to reach an independent, correct conclusion irrespective of the determination made by the trial court.
5. **Negligence: Proof.** In order to recover in a negligence action, a plaintiff must show a legal duty owed by the defendant to the plaintiff, a breach of such duty, causation, and damages.
6. **Negligence.** The question whether a legal duty exists for actionable negligence is a question of law dependent on the facts in a particular situation.
7. ____. The existence of a duty serves as a legal conclusion that an actor must exercise that degree of care as would be exercised by a reasonable person under the circumstances.
8. ____. Duty rules are meant to serve as broadly applicable guidelines for public behavior, i.e., rules of law applicable to a category of cases.
9. **Negligence: Employer and Employee.** In negligence cases, an employer stands in a special relationship with its employee who is in imminent danger or injured and thereby helpless, and such employer owes the employee a duty of reasonable care with regard to risks that arise within the scope of the relationship.
10. **Trial: Evidence: Appeal and Error.** To constitute reversible error in a civil case, the admission or exclusion of evidence must unfairly prejudice a substantial right of a litigant complaining about evidence admitted or excluded.
11. **Costs.** The costs of litigation and expenses incident to litigation may not ordinarily be recovered unless provided for by statute or a uniform course of procedure.
12. **Statutes: Legislature: Intent.** An appellate court will place a sensible construction upon a statute to effectuate the object of the legislation, as opposed to a literal meaning that would have the effect of defeating the legislative intent.
13. **Statutes: Intent.** In construing a statute, a court must look to the statutory objective to be accomplished, the evils and mischiefs sought to be remedied, and the purpose to be served, and then must place on the statute a reasonable or liberal construction that best achieves the statute's purpose, rather than a construction that defeats the statutory purpose.

14. **Prejudgment Interest.** Under Neb. Rev. Stat. § 45-103.02(1) (Reissue 2010), where the claim is unliquidated and the plaintiff's offer of settlement is exceeded by the judgment, prejudgment interest accrues on the full amount of the judgment starting on the date of the plaintiff's first offer of settlement which offer is exceeded by the judgment.

Appeal from the District Court for Custer County: KARIN L. NOAKES, Judge. Affirmed in part, and in part reversed and remanded with directions.

Justin R. Herrmann, Jeffrey H. Jacobsen, and David H. Kalisek, of Jacobsen, Orr, Nelson, Lindstrom & Holbrook, P.C., L.L.O., for appellant.

Steven H. Howard, of Dowd, Howard & Corrigan, L.L.C., for appellee.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

MILLER-LERMAN, J.

NATURE OF CASE

The district court for Custer County entered judgment in favor of the appellee and cross-appellant, Adam S. Martensen, in his negligence action against the appellant, Rejda Brothers, Incorporated (Rejda). Martensen had alleged that he was injured in an accident when he was working in a pasture on a ranch owned and operated by Rejda and that Rejda, as his employer, was negligent when it failed to make a timely effort to search for, discover, and rescue him. On October 7, 2010, the court awarded damages based on the jury verdict of $750,000, plus taxable court costs of $168.56 and prejudgment interest of $4,724.16. A subsequent motion by Rejda for judgment notwithstanding the verdict or for a new trial was overruled.

Rejda appeals and claims, inter alia, that the court erred when it concluded that Rejda owed a legal duty to Martensen upon which recovery for negligence could be based and when it determined that the jury's verdict was supported by the evidence and not contrary to law. Martensen cross-appeals and claims, inter alia, that the court erred when it failed to award

the entire $3,417.29 of court costs that he claimed were taxable to Rejda and when it awarded prejudgment interest on $150,000 representing the portion of the $750,000 verdict that exceeded an unaccepted pretrial offer of judgment of $600,000 made by Martensen. With respect to the appeal, we affirm the award based on the jury verdict. With respect to the cross-appeal, we affirm the award of taxable costs; however, we conclude that the district court erred in its reading of Neb. Rev. Stat. § 45-103.02(1) (Reissue 2010), and we reverse the amount of prejudgment interest awarded, set aside the judgment, and remand for a recalculation of prejudgment interest consistent with this opinion.

STATEMENT OF FACTS

Martensen worked as a farmhand on a ranch owned and operated by Rejda. On the afternoon of March 15, 2004, Martensen was repairing fences in a pasture on the ranch. He drove an all-terrain vehicle (ATV) to perform the work, and an accident occurred in which the ATV overturned and pinned Martensen's right leg. Martensen was not discovered until the next day. As a result of his injuries, Martensen underwent an above-knee amputation of his right leg.

As an agricultural employee, Martensen was not covered by the Nebraska Workers' Compensation Act. See Neb. Rev. Stat. § 48-106(2) (Reissue 2010). Martensen therefore filed this negligence action against Rejda. He alleged, inter alia, that Rejda was negligent when it failed to make a timely effort to search for, discover, and rescue him. Prior to trial, Martensen made an offer of settlement in which he stated he would accept $600,000. Rejda rejected the offer. The case proceeded to trial.

At trial, Martensen testified that on the day of the accident, he worked at repairing fences on adjacent pastures on the ranch. One pasture consisted of 80 acres, and the other pasture consisted of 400 acres. Martensen had lunch with Russell Rejda, the president of Rejda, and told him that he had a little work left to do on the 80-acre pasture and that he would then start on the 400-acre pasture. Martensen helped Russell move panels at the Rejda feedlot for 1 to 1½ hours after lunch.

Martensen then drove the ATV to the 80-acre pasture, intending to work on fences. As he was approaching the area where he intended to work, the ATV overturned on him, pinning his right leg. Martensen tried to push the ATV off but did not have the strength to do so. He felt sensation in his right leg until shortly after dark, when the leg started going numb, and he eventually did not feel it anymore. Martensen did not have a cellular telephone or other means to summon help, but he tried yelling to get someone's attention. Martensen thought that when he did not show up for supper, others would come looking for him; however, no one came until the next day. When he heard a loud vehicle, he yelled for attention and two people found him. Rescuers were summoned, and Martensen was taken by helicopter to a hospital.

Russell testified that he had lunch with Martensen on the day of the accident. He recalled talking about the fencework Martensen was doing, but he thought Martensen had completed or mostly completed work on the 80-acre pasture. Between 5 and 6 o'clock that afternoon, Russell was working in a calving barn and thought he heard an ATV driving by the barn. Russell thought that it was Martensen driving the ATV, but he did not see the ATV or its driver. That evening, Russell noted that Martensen, who was living in the basement of Russell's ranchhouse, had not returned. Russell discussed Martensen's absence with his father, Donald Rejda, a shareholder of Rejda, and told him that he thought he had heard Martensen drive by the barn. Russell checked with some bars in nearby towns where he thought Martensen might have gone that evening, but Martensen had not been seen in those places. Russell did not recall calling Martensen's friends or family or any law enforcement or emergency agencies that night.

Donald testified that at around 7 o'clock on the night of the accident, he talked to Russell and learned that Martensen had not come in yet. Donald considered whether they should search for him but decided it was not necessary after Russell said he thought he had heard the ATV earlier. Donald testified that around 10 o'clock the next morning, he and Russell searched the ranch for 45 minutes to an hour; however, they

concentrated on the fence line of the 400-acre pasture and did not find Martensen. While they were searching, Donald's wife notified Martensen's father that Martensen was missing. Martensen's father came to the ranch and organized a search party. Donald testified that after the search party was organized, members of the search party found Martensen within 10 minutes after beginning their search.

During direct examination at trial, Martensen's counsel asked Russell, "As President of Rejda[,] does the corporation accept any responsibility for not finding . . . Martensen sooner?" Rejda objected on the basis of relevance and because the question called for a conclusion. The court overruled the objection and instructed Russell to answer. Russell responded, "I'm trying to figure out the wording on that. I, you know, I guess so, yes." Later in the trial, the court sustained Rejda's objection when Martensen's counsel asked Donald, "As a primary shareholder and Vice President, do you believe the corporation is responsible for [Martensen's] loss of his leg?"

In a videotaped deposition played to the jury, the doctor who treated Martensen testified that the conditions that led to amputation of his right leg developed during the time his leg was pinned by the ATV and that if the ATV had been taken off immediately, such conditions would probably not have developed. The doctor estimated that amputation became inevitable between 6 and 8 hours after the onset of the trauma. Other witnesses placed the time of irreversible damage at different times.

Following the trial, the district court entered judgment based on the jury's verdict in favor of Martensen in the amount of $750,000. The court also awarded taxable court costs of $168.56 and prejudgment interest of $4,724.16. Prejudgment interest was awarded on the $150,000 amount by which the jury verdict exceeded the $600,000 offer of settlement which Rejda had not accepted. The court overruled Rejda's motion for judgment notwithstanding the verdict or for a new trial, in which Rejda argued, inter alia, that the court erred in finding that Rejda owed a duty to Martensen upon which a recovery for negligence could be based.

Rejda appeals, and Martensen cross-appeals.

ASSIGNMENTS OF ERROR

Rejda claims, summarized and restated, that the district court erred when it (1) concluded that Rejda had a duty to come to the aid of Martensen, (2) overruled Rejda's objection to Martensen's questioning of Russell as to whether the company accepted responsibility for failing to find Martensen sooner, and (3) overruled Rejda's motion for judgment notwithstanding the verdict or for a new trial and entered judgment in favor of Martensen based on the jury's verdict.

In his cross-appeal, Martensen claims that the district court erred when it (1) awarded only a portion of the $3,417.29 court costs that Martensen asserted were taxable to Rejda and (2) misinterpreted § 45-103.02 and thereby awarded prejudgment interest limited to that portion of the judgment that exceeded Martensen's pretrial offer of settlement of $600,000 rather than on the entire amount of the $750,000 verdict. In the event the district court's judgment based on the jury's verdict is reversed and the cause remanded for a new trial, Martensen additionally claims that the court erred when it excluded expert testimony offered by Martensen. Because we affirm the jury verdict and remand only for a calculation of prejudgment interest, we do not reach the expert testimony issue raised by Martensen in his cross-appeal.

STANDARDS OF REVIEW

[1] To sustain a motion for judgment notwithstanding the verdict, the court resolves the controversy as a matter of law and may do so only when the facts are such that reasonable minds can draw but one conclusion. *Lacey v. State*, 278 Neb. 87, 768 N.W.2d 132 (2009).

[2] A motion for new trial is addressed to the discretion of the trial court, whose decision will be upheld in the absence of an abuse of that discretion. *Robinson v. Dustrol, Inc.*, 281 Neb. 45, 793 N.W.2d 338 (2011).

[3] The decision of a trial court regarding taxing of costs is reviewed for an abuse of discretion. *City of Falls City v. Nebraska Mun. Power Pool*, 281 Neb. 230, 795 N.W.2d 256 (2011).

[4] Statutory interpretation is a matter of law in connection with which an appellate court has an obligation to reach an

independent, correct conclusion irrespective of the determination made by the trial court. *State ex rel. Wagner v. Gilbane Bldg. Co.*, 280 Neb. 223, 786 N.W.2d 330 (2010).

ANALYSIS

Appeal: The District Court Did Not Err When It Concluded Rejda Owed a Duty to Martensen and Did Not Err in Its Evidentiary Ruling, and the Jury's Verdict Was Supported by Evidence.

This case involving an agricultural employee is not covered under the Nebraska Workers' Compensation Act, specifically § 48-106(2); thus, Martensen brought his action in negligence. Rejda claims the district court erred in this negligence action when it concluded that Rejda owed a duty to Martensen. Rejda maintains that a duty does not arise until the employer has actual knowledge of the employee's helplessness or illness and that Rejda had no such knowledge until after Martensen's absence was noted on March 16, 2004. Rejda contends that it acted diligently in responding to Martensen's absence. In sum, Rejda contends that it initially had no duty and that upon the triggering of the duty, if any, it acted reasonably.

On appeal, Rejda asserts that it has no liability and that thus, the district court erred when it denied its various motions, including for judgment notwithstanding the verdict or for a new trial. Rejda also challenges various evidentiary rulings and asserts that the evidence was insufficient to support the jury's verdict in various respects, including a claim of failure of proof of causation. As explained below, we reject Rejda's description of the existence of the legal duty, find no prejudicial evidentiary rulings, and determine that the evidence supports the jury's verdict. We find no merit to the appeal.

[5,6] In order to recover in a negligence action, a plaintiff must show a legal duty owed by the defendant to the plaintiff, a breach of such duty, causation, and damages. *Ginapp v. City of Bellevue*, 282 Neb. 1027, 809 N.W.2d 487 (2012). The question whether a legal duty exists for actionable negligence is a question of law dependent on the facts in a particular situation. *Id.* In *A.W. v. Lancaster Cty. Sch. Dist. 0001*, 280 Neb. 205, 784 N.W.2d 907 (2010), we abandoned the risk-utility test and

adopted the duty analysis in the Restatement (Third) of Torts: Liability for Physical and Emotional Harm (2010) (Restatement (Third)). *A.W.* was decided prior to the jury trial of this case. More recently in *Ginapp, supra*, and *Riggs v. Nickel*, 281 Neb. 249, 796 N.W.2d 181 (2011), we again followed the duty analysis in the Restatement (Third).

The parties assert that no modern Nebraska case has considered the duty analysis in the circumstances of this case, and we agree. The district court concluded that Rejda owed a duty to Martensen but did not elaborate on the contours of the duty. Rejda relies on the Restatement (Second) of Torts § 314B(2) (1965) and urges us to conclude that its duty did not arise until it had actual knowledge that Martensen was hurt. Martensen refers us to the "original" Restatement of Agency as the source of duty in this negligence action. Brief for appellee at 21. Based on the analytical framework we adopted in *A.W., supra*, we conclude that the legal duty applicable to the circumstances of this case is controlled by the principles stated in the Restatement (Third), *supra*, § 40(a) and (b) (Proposed Final Draft No. 1, 2005), entitled "Duty Based on Special Relationship with Another."

The Restatement (Second), *supra*, § 314B(2) at 122, upon which Rejda relies as the source for duty arising upon knowledge, provides:

> Duty to Protect Endangered or Hurt Employee
>
> . . . .
>
> . . . If a servant is hurt and thereby becomes helpless when acting within the scope of his employment and this is known to the master or to a person having duties of management, the master is subject to liability for his negligent failure or that of such person to give first aid to the servant and to care for him until he can be cared for by others.

The Restatement (Third), *supra*, § 40 at 752, provides:

> Duty Based on Special Relationship with Another
>
> (a) An actor in a special relationship with another owes the other a duty of reasonable care with regard to risks that arise within the scope of the relationship.
>
> (b) Special relationships giving rise to the duty provided in Subsection (a) include:

> . . . .
> (4) an employer with its employees who are:
> (a) in imminent danger; or
> (b) injured and thereby helpless[.]

The comment to subsection (b)(4), entitled "*Duty of employers*," contains the following explanation:

> This Subsection retains the requirements contained in the Restatement Second of Torts of imminent danger and helplessness. However, this Subsection rejects the requirement of knowledge or foreseeability of the danger as an aspect of the duty determination. This is consistent with the treatment of foreseeability throughout this Restatement as a matter encompassed within the negligence determination, and not in the threshold question of duty.

Restatement (Third), *supra*, § 40, comment *k*. (Tentative Draft No. 5, 2007).

[7,8] As a general matter, the existence of a duty serves as a legal conclusion that an actor must exercise that degree of care as would be exercised by a reasonable person under the circumstances. See *A.W. v. Lancaster Cty. Sch. Dist. 0001*, 280 Neb. 205, 784 N.W.2d 907 (2010). We have stated that "[d]uty rules are meant to serve as broadly applicable guidelines for public behavior, i.e., rules of law applicable to a category of cases." *Id*. at 212-13, 784 N.W.2d at 914-15. We have recognized that "whether a duty exists is a policy decision." *Id.* at 215, 784 N.W.2d at 916 (emphasis omitted). We have recognized that special relationships can give rise to a duty. See, *A.W., supra*; *Brandon v. County of Richardson*, 261 Neb. 636, 624 N.W.2d 604 (2001). The employer-employee relationship can be a special relationship under the circumstances outlined in the Restatement (Third) and can give rise to a duty in negligence cases. See Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 40(a) and (b) (Proposed Final Draft No. 1, 2005), entitled "Duty Based on Special Relationship with Another."

In *A.W., supra*, we noted that, as explained in the Restatement (Third), "foreseeability" determinations are determinations of fact. Applying a similar analysis, we now note that determinations of actual "knowledge" are also fact specific. Thus, the

comment to the Restatement (Third) quoted above notes and we agree that the treatment of knowledge as it relates to the duty arising out of a special relationship between an employer and employee is a matter encompassed within the negligence fact determination but not in the threshold question of duty.

[9] We find the Restatement (Third) reasoning to be sound and consistent with our jurisprudence, and we adopt § 40(a) and (b)(4) of the Restatement (Third), *supra*. Thus, in negligence cases, an employer stands in a special relationship with its employee who is in imminent danger or injured and thereby helpless, and such employer owes the employee a duty of reasonable care with regard to risks that arise within the scope of the relationship. Such is the duty applicable to this negligence case.

Based on the foregoing analysis, we reject Rejda's contention that it had no duty to Martensen until it had actual knowledge that Martensen was hurt. On the contrary, Rejda had a duty to Martensen under the circumstances. Although our clarification of duty differs from that urged by the parties, such difference has no impact on the outcome of our appellate review. This is because Rejda successfully introduced all the evidence regarding knowledge, causation, and damages it relied on in its defense of the case under the theory of the case as it understood it. Such evidence went to the fact determinations within the province of the jury and is compatible with our analytical framework.

At trial, Rejda sought, through the introduction of extensive evidence, to establish the fact that it lacked knowledge of Martensen's predicament. The jury considered the evidence and decided this fact against Rejda. At trial, Rejda sought, through the introduction of extensive evidence, to establish the fact that its alleged breach of duty did not proximately cause damage to Martensen. In this regard, certain evidence introduced by Rejda to the effect that Martensen suffered irreversible damages shortly after the accident was meant to convince the jury that its failure of diligence, if any, did not proximately cause Martensen's injuries and damages. The jury considered this evidence and decided these facts against Rejda. Given the duty, the record shows that Martensen established causation and

damages, and Rejda's evidence to the contrary did not persuade the jury otherwise.

As one of its assignments of error, Rejda claims that the district court erred when it overruled its objection to a question put to Russell asking him, as president of Rejda, whether the corporation accepted responsibility for not finding Martensen sooner, to which Russell responded, "I guess so, yes." Rejda asserts that the question was irrelevant, called for an improper legal conclusion, and invaded the province of the jury. We reject this assignment of error.

[10] To constitute reversible error in a civil case, the admission or exclusion of evidence must unfairly prejudice a substantial right of a litigant complaining about evidence admitted or excluded. *Richardson v. Children's Hosp.*, 280 Neb. 396, 787 N.W.2d 235 (2010). Whether or not it was error for the court to allow the question, we conclude that such error would not constitute reversible error.

At trial, Martensen's attorney asked, "As President of Rejda[,] does the corporation accept any responsibility for not finding . . . Martensen sooner?" The question was rather unclear, as evidenced by the witness' response, "I'm trying to figure out the wording on that. I, you know, I guess so, yes." Neither the question nor the answer stated that Rejda was legally liable for Martensen's injuries. Instead, it could be understood as stating that the witness regretted not finding Martensen sooner, but not necessarily admitting legal liability for his injuries. Furthermore, the court instructed the jury on the elements it must find in order to find Rejda liable for negligence, and the jury would have needed to find those elements rather than relying on the witness' expression of regret for not finding Martensen sooner. Noting that the question and answer were unclear and were not an acceptance of legal liability, we conclude that the court order overruling Rejda's objection to the question did not prejudice a substantial right of Rejda.

We have considered each of Rejda's assignments of error. Rejda moved for judgment notwithstanding the verdict or for a new trial. To sustain a motion for judgment notwithstanding the verdict, the court resolves the controversy as a matter of law and may do so only when the facts are such that reasonable

minds can draw but one conclusion. *Lacey v. State*, 278 Neb. 87, 768 N.W.2d 132 (2009). A motion for new trial is addressed to the discretion of the trial court, whose decision will be upheld in the absence of an abuse of that discretion. *Robinson v. Dustrol, Inc.*, 281 Neb. 45, 793 N.W.2d 338 (2011). Each of these motions was based on assertions of errors which we have considered and we find to be without merit. The denials of these motions did not constitute error. The law and evidence supported the verdict. The district court's rulings and its acceptance of the verdict were not error.

Cross-Appeal: The District Court Did Not Err in Its Award of Costs, but Did Err in Its Calculation of Prejudgment Interest.

On cross-appeal, Martensen claims that the district court erred when it awarded him costs of $168.56 rather than the $3,417.29 which he sought and further erred in its calculation of prejudgment interest. We find no merit to the assignment of error regarding costs and affirm the costs ruling. However, we do find merit to the claim that the district court erred in the amount it awarded as prejudgment interest, and we reverse the prejudgment interest award, set aside the judgment, and remand for a recalculation of prejudgment interest consistent with this opinion.

[11] The decision of a trial court regarding taxing of costs is reviewed for an abuse of discretion. *City of Falls City v. Nebraska Mun. Power Pool*, 281 Neb. 230, 795 N.W.2d 256 (2011). In *Bartunek v. Gentrup*, 246 Neb. 18, 516 N.W.2d 253 (1994), a negligence action, we stated that the costs of litigation and expenses incident to litigation may not ordinarily be recovered unless provided for by statute or a uniform course of procedure. We continue to adhere to this principle. See *City of Falls City, supra*. The district court granted taxable costs in the amount of $168.56 representing the cost of the filing fee and subpoenas. There is no error in awarding these costs. See *id.* The remainder of the costs sought by Martensen involve deposition reporting and copying charges. Martensen does not direct us to authority which would warrant the award of these additional claimed costs, and we are not persuaded we should depart from *Bartunek*. We reject this assignment of error on

cross-appeal. The district court did not err in its costs award to Martensen, and we affirm the costs award.

On cross-appeal, Martensen also claims that the district court erred in the amount it awarded as prejudgment interest. Martensen specifically contends that the district court misinterpreted § 45-103.02 when it awarded prejudgment interest applicable only to the $150,000 amount by which the $750,000 jury verdict exceeded Martensen's pretrial $600,000 offer of settlement. We find merit to Martensen's argument on cross-appeal regarding prejudgment interest.

Section 45-103.02(1) regarding prejudgment interest on unliquidated claims is at issue with respect to this assignment of error on cross-appeal. Section 45-103.02(1) provides:

> Except as provided in section 45-103.04, interest as provided in section 45-103 shall accrue on the unpaid balance of unliquidated claims from the date of the plaintiff's first offer of settlement which is exceeded by the judgment until the entry of judgment if all of the following conditions are met:
>
> (a) The offer is made in writing upon the defendant by certified mail, return receipt requested, to allow judgment to be taken in accordance with the terms and conditions stated in the offer;
>
> (b) The offer is made not less than ten days prior to the commencement of the trial;
>
> (c) A copy of the offer and proof of delivery to the defendant in the form of a receipt signed by the party or his or her attorney is filed with the clerk of the court in which the action is pending; and
>
> (d) The offer is not accepted prior to trial or within thirty days of the date of the offer, whichever occurs first.

[12,13] Statutory interpretation is a matter of law in connection with which an appellate court has an obligation to reach an independent, correct conclusion irrespective of the determination made by the trial court. *State ex rel. Wagner v. Gilbane Bldg. Co.*, 280 Neb. 223, 786 N.W.2d 330 (2010). An appellate court will place a sensible construction upon a statute to effectuate the object of the legislation, as opposed to a literal meaning that would have the effect of defeating the legislative

intent. *Walton v. Patil*, 279 Neb. 974, 783 N.W.2d 438 (2010). In construing a statute, a court must look to the statutory objective to be accomplished, the evils and mischiefs sought to be remedied, and the purpose to be served, and then must place on the statute a reasonable or liberal construction that best achieves the statute's purpose, rather than a construction that defeats the statutory purpose. *Id.*

With regard to the prejudgment interest issue, each party offers a conflicting interpretation of § 45-103.02(1), which provides that prejudgment interest "shall accrue on the unpaid balance of unliquidated claims from the date of the plaintiff's first offer of settlement which is exceeded by the judgment until the entry of judgment" if certain conditions are met. Martensen asserts that the statute provides that when the final judgment exceeds the offer of settlement, interest is to be calculated on the entire amount of the judgment, whereas Rejda contends that prejudgment interest is available only on the amount by which the judgment exceeds the offer of settlement. The district court followed Rejda's approach. Although Rejda cites to § 6.b. of the introduction to chapter 4 of NJI2d Civ. to support its and the district court's interpretation, there does not appear to be a published opinion that addresses this question.

There is no dispute that Martensen served his offer of settlement for $600,000 on May 19, 2009, in compliance with § 45-103.02, and that the offer was not accepted by Rejda. The district court awarded prejudgment interest on the $150,000 amount by which the $750,000 verdict exceeded the $600,000 offer.

Offers to settle and offers of judgment are generally encouraged. We have stated that "it is the policy of the law to encourage rather than discourage the settlement of controversies by the parties out of court." *Tadros v. City of Omaha*, 273 Neb. 935, 942, 735 N.W.2d 377, 382 (2007). Ordinarily, prejudgment interest is unavailable on unliquidated damages, such as in the instant case. See *Countryside Co-op v. Harry A. Koch Co.*, 280 Neb. 795, 790 N.W.2d 873 (2010). An unaccepted offer to settle proposed by a plaintiff which is later exceeded by a judgment exposes the party who is found liable and who

declined to settle to prejudgment interest on an unliquidated claim which otherwise might have been immune from prejudgment interest. See *R & D Properties v. Altech Constr. Co.*, 279 Neb. 74, 776 N.W.2d 493 (2009).

Section 45-103.02(1) controls the award of prejudgment interest on an unliquidated claim where an offer has been refused and the judgment exceeds the offer. We focus on § 45-103.02(1), which we again quote:

> Except as provided in section 45-103.04, interest as provided in section 45-103 shall accrue on the unpaid balance of unliquidated claims from the date of the plaintiff's first offer of settlement which is exceeded by the judgment until the entry of judgment if all of the following conditions are met[.]

Although this statutory language is somewhat awkward, it is obviously intended to describe both the offer to which it applies and the time from which prejudgment interest begins to accrue on that offer. The district court misread the statute and concluded that the prejudgment interest that was due was limited to the "balance" of the judgment which exceeded the offer. This was an error of law.

[14] Contrary to the district court's reading of § 45-103.02(1), the phrase "which is exceeded by the judgment" characterizes and identifies the kind of "offer of settlement" to which prejudgment interest shall apply. Section 45-103.02(1) provides for prejudgment interest on the full amount of the judgment, and the phrase "the date of the plaintiff's first offer of settlement" sets the time from which prejudgment interest shall start accruing. This is a sensible reading of the statute. See *Walton v. Patil*, 279 Neb. 974, 783 N.W.2d 438 (2010). Thus, under § 45-103.02(1), where the claim is unliquidated and the plaintiff's offer of settlement is exceeded by the judgment, prejudgment interest accrues on the full amount of the judgment starting on the date of the plaintiff's first offer of settlement which offer is exceeded by the judgment. To the extent that § 6.b. of the introduction to chapter 4 of NJI2d Civ. is to the contrary, it is disapproved.

The district court misread § 45-103.02(1) and mistakenly concluded that prejudgment interest was available only on the

$150,000 amount by which the judgment exceeded the offer. This was error. Accordingly, we reverse the district court's ruling regarding the award of prejudgment interest and set aside the judgment. We remand with instructions to recalculate prejudgment interest on the entire $750,000 jury verdict, commencing on the date of Martensen's offer of settlement which was later exceeded by the judgment.

CONCLUSION

For reasons explained above, we determine that the district court did not err when it accepted the jury verdict and awarded specified costs to Martensen, and we affirm these rulings. However, the district court erred in the manner by which it calculated prejudgment interest. We reverse this ruling and set aside the judgment, and we remand the cause with directions to the district court to recalculate prejudgment interest on the entire $750,000 award and direct that judgment thereafter be entered on the $750,000 award, costs as already determined, plus the recalculated amount of prejudgment interest.

AFFIRMED IN PART, AND IN PART REVERSED AND REMANDED WITH DIRECTIONS.

GERRARD, J., not participating in the decision.

WRIGHT, J., not participating.

IN RE INTEREST OF S.C., ALLEGED TO BE A DANGEROUS SEX OFFENDER. S.C., APPELLANT, V. MENTAL HEALTH BOARD OF THE FIFTH JUDICIAL DISTRICT, APPELLEE.

810 N.W.2d 699

Filed February 10, 2012. No. S-11-186.

1. **Judgments: Appeal and Error.** On a question of law, an appellate court reaches a conclusion independent of the court below.
2. **Mental Health: Judgments: Appeal and Error.** The district court reviews the determination of a mental health board de novo on the record. In reviewing a district court's judgment, an appellate court will affirm unless it finds, as a matter of law, that clear and convincing evidence does not support the judgment.