

STATE OF MICHIGAN
COURT OF APPEALS

DAVID MOTSINGER, Personal Representative
of the Estate of SAMUEL J. MOTSINGER, JR., Decea

UNPUBLISHED
January 17, 1997

Plaintiff-Appellant,

v

No. 188380
LC No. 93-328984

K-MART CORPORATION,

Defendant-Appellee.

Before: Smolenski, P.J., and Michael J. Kelly and J.R. Weber,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment of no cause of action entered in favor of defendant following a jury trial in this pharmacy malpractice case. We affirm.

Plaintiff brought suit against defendant alleging that, because one of defendant's pharmacists negligently misfilled a prescription for decedent, defendant caused decedent's death from multiple drug overdose. Plaintiff claimed that the misfilled prescription caused decedent to become confused, which then led to his accidentally taking too much medication, causing his death. Defendant admitted to negligently misfilling the prescription; however, defendant claimed that its negligence was not the proximate cause of decedent's death in that decedent purposely committed suicide.

Plaintiff first argues that the trial court abused its discretion in allowing expert testimony comparing the effects of a medication decedent received while in the hospital to the effects of the medication which was misfilled, because the testimony was not relevant. We disagree.

We review a trial court's evidentiary ruling for an abuse of discretion. *Koester v Novi*, 213 Mich App 653, 663; 540 NW2d 765 (1995). Relevant evidence is evidence that has any tendency to make the existence of a fact at issue more probable or less probable than it would be without the evidence. Where evidence goes to support or challenge a party's theory of the case, it is relevant. Because testimony comparing the effects of a similar drug which decedent received while in the hospital,

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

to the effects of the medication misfilled was relevant to support defendant's theory of the case and disprove plaintiff's theory, we find that the evidence was relevant. *Id.* Therefore, we hold that the trial court did not abuse its discretion in allowing this testimony into evidence.

Next, plaintiff claims that the trial court abused its discretion in denying his motion for a new trial on the basis that the verdict was against the great weight of the evidence, and on the basis that the court committed an error of law in admitting the testimony comparing the two medications. We disagree.

We review a motion for a new trial for an abuse of discretion. *Scott v Illinois Tool Works*, 217 Mich App 35, 40-41; ___ NW2d ___ (1996); *Phillips v Mazda Motor Mfg*, 204 Mich App 401, 410-411; 516 NW2d 502 (1994). Because the record indicates that evidence was presented to support either side, and because we have previously determined that the trial court properly allowed in testimony comparing the two medications, we hold that the trial court did not abuse its discretion in denying plaintiff's motion. *Scott, supra* at 40-41.

Finally, plaintiff claims that the trial court abused its discretion in conducting the voir dire. Because plaintiff failed to object below or state his dissatisfaction with the jury, plaintiff failed to preserve this issue for appellate review. *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995).

Affirmed.

/s/ Michael R. Smolenski

/s/ Michael J. Kelly

/s/ John R. Weber