STATE OF MICHIGAN

COURT OF APPEALS

RONALD JAMES MANNING,

Plaintiff-Appellant,

v

DAVID CHESTER BUCHWALD and DONTO EXPRESS, INC.,

Defendants-Appellees.

UNPUBLISHED
January 21, 1997

No. 185381
Wayne Circuit Court
LC No. 93-316238

Before: Jansen, P. J., and Reilly and E. Sosnick,* JJ

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action entered on a jury verdict in this negligence action. Plaintiff argues that the trial court erred in denying his motions for a directed verdict on liability, for judgment notwithstanding the verdict and for a new trial and in awarding defendants offer of judgment sanctions, including attorney fees. We affirm.

Plaintiff was injured in a traffic accident involving himself and defendant Buchwald. Buchwald, who was driving a semi-trailer leased by defendant Donto Express, was attempting to make a wide right turn from the left northbound lane of traffic. Plaintiff was traveling in the right lane of traffic and, although he took evasive action, his van struck Buchwald's semi while it was crossing the right lane of traffic and entering a driveway. The jury found that Buchwald was not negligent, and the trial court subsequently entered a judgment of no cause of action.

Plaintiff first argues that the verdict was against the great weight of the evidence. We disagree. Plaintiff relies too heavily on the fact that Buchwald violated a traffic ordinance in making the turn. Although such a violation is evidence of negligence, it does not create a presumption or a prima facie showing of negligence. *Johnson v Bobbie's Party Store*, 189 Mich App 652, 661; 473 NW2d 796 (1991). In this case, Buchwald presented testimony suggesting that he used due care in making the turn, and plaintiff presented testimony suggesting that Buchwald did not. The trial court determined that the

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

verdict was not against the overwhelming weight of the evidence. *Severn v Sperry Corp*, 212 Mich App 406, 412; 538 NW2d 50 (1995). Giving that determination substantial deference, we conclude that the trial court did not abuse its discretion. *Id.*

Plaintiff next argues that the trial court erred in denying his motion for a directed verdict on liability. We disagree. Given that the traffic violation itself is merely evidence of negligence, *Johnson*, *supra* at 661, and considering the evidence presented in the light most favorable to defendants, the trial court properly determined that there remained issues of fact for the jury to resolve, *Hatfield v St Mary's Med Cen*, 211 Mich App 321, 325; 535 NW2d 272 (1995). Therefore the trial court did not err in denying plaintiff's motion for a directed verdict on liability.

Plaintiff next argues that the trial court abused its discretion in denying his motion for judgment notwithstanding the verdict. Again, we disagree. Considering the evidence in the light most favorable to defendants, we find that reasonable minds could differ with respect to the appropriate verdict. *Severn*, *supra* at 412. Plaintiff also argues that his motion for judgment notwithstanding the verdict or a new trial should have been granted because the jury must have based its decision on the abolished last clear chance doctrine. Because we believe that a reasonable jury could reach a verdict of no cause of action based on proper legal doctrines, we find no merit to this argument. Further, the trial court did not instruct the jury on the last clear chance doctrine and, absent clear evidence to the contrary, we presume that the jury followed the trial court's instructions on how to determine negligence. See *Bordeaux v Celotex Corp*, 203 Mich App 158, 164-165; 511 NW2d 899 (1994).

Plaintiff's last argument on appeal is that the trial court abused its discretion in awarding defendants offer of judgment sanctions which included attorney fees. We disagree. Although the trial court has the discretion to refuse to include attorney fees in offer of judgment sanctions in the interests of justice, such awards are favored. *Luidens v 63rd District Court*, ___ Mich App ___; ___ NW2d ___ (Docket No. 165935, issued 9/17/96). Parties' economic standing should not determine whether they face the risks of sanctions under MCR 2.405. *Id.* The reasonableness of the refusal is also not within the "interest of justice exception." *Id.* Defendants' offer was substantial enough to preclude being considered a token offer made for gamesmanship, *id.*. and, as noted in other cases, plaintiff could have avoided these sanctions simply by making a counteroffer. See *Sanders v Monical Machinery*, 163 Mich App 689, 692-693; 415 NW2d 276 (1987). Thus, plaintiff has not presented any compelling or unusual circumstances justifying the denial of attorney fees in this case. *Luidens*, *supra.* The trial court did not abuse its discretion in awarding these sanctions.

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ Edward Sosnick