6STATE OF MICHIGAN

COURT OF APPEALS

SATTAR SHAIA,

Plaintiff-Appellant,

v

JOSEPH NORBER d/b/a
OAKFERN MANOR APARTMENTS,

Defendant-Appellee.

UNPUBLISHED
April 29, 1997

No. 195862
Oakland Circuit Court
LC No. 94-475102-NO

Before: Sawyer, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying his motion for a new trial and/or judgment notwithstanding the verdict pursuant to MCR 2.611 and MCR 2.605.[1] We affirm.

Plaintiff filed the motion for new trial and/or judgment notwithstanding the verdict after the jury found defendant negligent and plaintiff injured, but did not find that defendant's negligence was a proximate cause of plaintiff's injuries. Plaintiff argues that by returning a verdict that defendant was negligent, the jurors were saying that defendant landlord failed to timely remove the buildup of snow and ice from the parking lot of the apartment building where plaintiff was a tenant. In addition, by returning a verdict that plaintiff was injured, the jurors found that plaintiff was injured as a result of his fall on January 11, 1994, in the parking lot. However, plaintiff argues that contrary to the great weight of the evidence, the jury did not find that his injuries were proximately caused by the defendant's negligence. In addition, the plaintiff argues that the jury's verdict was inconsistent with both the facts and the law.

In reviewing a trial court's ruling on a motion for judgment notwithstanding the verdict, this Court must view the testimony and all legitimate inferences from it in the light most favorable to the nonmoving party. *Terzano v Wayne Co*, 216 Mich App 522, 525-526; 549 NW2d 606 (1996). The trial court's determination that a verdict is not against the great weight of evidence is given substantial deference as this Court analyzes the record on appeal of a granting or denial of a motion for new trial. *Arrington v Detroit Osteopathic Hosp (On Remand)*, 196 Mich App 544, 560; 493 NW2d 492 (1992). Without a clear abuse of discretion, the trial court's decision to grant or deny judgment

notwithstanding the verdict or a motion for new trial will not be disturbed on appeal. *Bordeaux v Celotex Corp*, 203 Mich App 158, 170; 511 NW2d 899 (1993).

Plaintiff must prove four elements to prevail on his negligence claim: (1) a legal duty owed by the defendant to the plaintiff; (2) a breach of that duty; (3) the plaintiff suffered damages; and (4) the defendant's breach was the proximate cause of the damages suffered. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993). The parties stipulated to element (1). The jury found that plaintiff proved elements (2) and (3). Therefore, only element (4) is at issue in this appeal.

Proximate cause is usually a factual issue for the jury to determine. *Schutte v Celotex Corp*, 196 Mich App 135, 138; 492 NW2d 773 (1992). Even when uncontradicted, the jury may disbelieve even the most positive evidence. *Cebulak v Lewis*, 320 Mich 710, 719; 32 NW2d 21 (1948). The jury's findings that plaintiff's injuries were not caused by the slip and fall accident was supported by the evidence and not against the great weight of the evidence. The only evidence connecting plaintiff's slip and fall accident to his injuries was plaintiff's testimony at trial and plaintiff's statements to his treating doctors. For the following reasons, a rational trier of fact could question the credibility of plaintiff and believe that no proximate cause existed between defendant's negligence and plaintiff's injuries.

First, although plaintiff was previously involved in an automobile accident in which he was injured and although he was receiving treatment at the time he slipped and fell in defendant's parking lot, he did not tell any of the doctors who treated him for the slip and fall injuries of the automobile accident. Second, plaintiff claimed that prior to the slip and fall accident he was easygoing, very patient and did not get in fights. Yet he admitted that prior to the accident he had gotten in a fight with his roommate that was so violent that blood was left in various areas of the apartment. Plaintiff also admitted that prior to the slip and fall accident, he was jealous of his girlfriend and had gotten into fights with her. Third, plaintiff's doctors uniformly stated that they had to rely on plaintiff for his pre-accident history and the changes in personality brought on by the accident. None of plaintiff's doctors even attempted to corroborate plaintiff's claims. In addition, the psychiatrist and the neuropsychologist who treated plaintiff after the slip and fall accident, both admitted that the neurological testing performed on plaintiff was affected by plaintiff's deficient English skills. In fact, many of the tests were discounted because either plaintiff could not finish them or the results were likely inaccurate. This included a personality test which would have been more of an objective determination of plaintiff's present behavior than the self history provided by plaintiff. Moreover, the results of the objective tests that were performed on plaintiff were either normal or the test results were directly contradicted by defendant's witness.

The credibility of plaintiff's witnesses were also placed in doubt when one witness testified that he had previously testified hundreds of times and that only 15% of his testimony was on behalf of defendants. In addition, another witness was evasive concerning the number of times he had testified which may have negatively impressed the jury. Further, the fact that plaintiff owed his treating physicians $30,000 in outstanding medical bills at the time of trial, may have caused the jury to believe that the doctors would be inclined to testify favorably for plaintiff with the expectation that he would receive a large cash judgment and pay their outstanding medical bills. This is supported by the fact that one of his treating physicians recommended plaintiff to his trial attorney. For all of these reasons, a

rational trier of fact could reasonably question the credibility of plaintiff and his witnesses and find that no proximate cause existed between plaintiff's injuries and defendant's negligence.

Plaintiff also argues that it is inconsistent for a jury to find that defendant breached his duty and plaintiff suffered injuries, but not find a proximate cause between the breach and the injuries. However, it is not inconsistent to find a breach of duty and injuries but no proximate cause. Rather, breach of duty, injuries and proximate cause all must be shown to prove negligence. *Schultz*, *supra* at 449. Moreover, plaintiff had the opportunity to object to the verdict form during trial and, although he objected to the wording of the damage section, he made no mention of other portions of the verdict form. The verdict returned by the jury was consistent and plaintiff's motion was properly denied.

Accordingly, we find that the trial court properly denied plaintiff's motion for judgment notwithstanding the verdict or new trial because the verdict was not against the great weight of the evidence and was not internally inconsistent.

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Mark J. Cavanagh

[1] The circuit court assumed plaintiff meant to cite MCR 2.610.