

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROOSEVELT HOLT,

Plaintiff/Appellant/Cross-Appellee,

v

CITY OF DETROIT,

Defendant/Appellee/Cross-Appellant,

and

LEONARD BAITLER, BERNARD WALKER,  
JOHN DOE and JACK DOE,

Defendants.

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UNPUBLISHED

September 12, 1997

No. 191493

Wayne Circuit Court

LC No. 94-416244-NO

Before: Markey, P.J., and Jansen and White, JJ.

PER CURIAM.

Plaintiff, Roosevelt Holt, appeals as of right from a December 11, 1995, order of dismissal entered after the trial court denied plaintiff's motions for judgment notwithstanding the verdict and a new trial. Defendant, City of Detroit, cross-appeals from the trial court's denial of both of its motions for summary disposition pursuant to MCR 2.116(C)(7) and (C)(8). We affirm.

On appeal, plaintiff argues that the trial court erred in denying his motion for judgment notwithstanding the verdict and abused its discretion in denying his motion for a new trial. We disagree. In reviewing a trial court's failure to grant a plaintiff's motion for judgment notwithstanding the verdict, this Court examines the testimony and all legitimate inferences that may be drawn in the light most favorable to the defendant. If reasonable jurors could honestly have reached different conclusions, neither the trial court nor this Court may substitute its judgment for that of the jury. *Scott v Illinois Tool Works, Inc.*, 217 Mich App 35, 39; 550 NW2d 809 (1996); *Thorin v Bloomfield Hills Bd of Ed.*, 203 Mich App 692, 696; 513 NW2d 230 (1994). The trial court's function with respect to a motion for a new trial is to determine whether the overwhelming weight of the evidence favors the losing party.

This Court's function is to determine whether the trial court abused its discretion in ruling on the motion. *Scott, supra*.

Plaintiff sought to establish that the bus driver was aware of the assailant's unruly and disruptive behavior and did nothing to control the situation, that when the bus driver finally intervened, he ejected plaintiff and the assailant from the bus, and cursed, yelled at, and pushed plaintiff, who was visibly bleeding from his head and facial area, and that this alleged behavior by the bus driver contravened the recommended behavior established in the DOT manual. Defendant relied on evidence that the incident happened quickly, and that no one expected the assailant to attack anyone. Defense counsel conceded that the driver was rude, but argued that he was not negligent in his handling of the assailant.

Further, the evidence presented by defendant could be viewed as raising doubts concerning whether the attack actually occurred on a DOT bus. Plaintiff was unable to identify the bus driver, no reports were filed regarding the incident, and no blood was found on any of the buses.

After examining the testimony and all legitimate inferences that may be drawn from them in the light most favorable to defendant, we conclude that the trial court did not err in denying plaintiff's motion for judgment notwithstanding the verdict because reasonable jurors could have honestly reached different conclusions regarding whether the bus driver was negligent if, in fact, the incident occurred on the bus. *Scott, supra; Thorin, supra*.

We further hold that the trial court did not abuse its discretion in denying plaintiff's motion for a new trial because the trial court did not abuse its discretion in concluding that the overwhelming weight of the evidence did not favor plaintiff. *Scott, supra*. Although plaintiff presented more witnesses at trial than defendant, the facts were contradictory. The jury was in a position to judge the credibility of the witnesses, and a question of fact was created regarding the bus driver's alleged negligence. *Snell v UACC Midwest, Inc*, 194 Mich App 511, 517; 487 NW2d 772 (1992).

Given that defendant City of Detroit prevailed below and we are denying plaintiff's appeal, we need not reach the issues that defendant raises on cross appeal.

Affirmed.

/s/ Jane E. Markey  
/s/ Kathleen Jansen  
/s/ Helene N. White