

STATE OF MICHIGAN
COURT OF APPEALS

LARRY MIFSUD and DONNA MIFSUD,

Plaintiff-Appellees,

v

ESAM ASKER,

Defendant-Appellant.

UNPUBLISHED

October 3, 1997

No. 193273

Oakland Circuit Court

LC No. 93-466470-NO

Before: Sawyer, P.J., and Hood and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right a jury verdict which found that defendant had committed an assault and battery and/or caused intentional infliction of emotional distress upon plaintiff Larry Mifsud (hereinafter plaintiff)¹ and the trial court's order denying defendant's motion for new trial, judgment notwithstanding the verdict, and/or remittitur. We affirm.

Plaintiff, a West Bloomfield Township police officer, followed defendant into his driveway after he witnessed defendant committing traffic violations. Defendant assaulted plaintiff as he attempted to reach his house and plaintiff slipped on a patch of ice and fell against defendant's car. As he was on the ground, plaintiff also felt a very hard blow to the back of his neck. Plaintiff's German Shepherd partner attacked defendant in response to plaintiff's command. After the incident, until trial two years later, plaintiff experienced constant migraine headaches and pain in his neck and arm. Plaintiff was able to return to work without restrictions, but with the assistance of prescription pain medicine.

Defendant first argues that the trial court erred by allowing in the speculative expert testimony of plaintiff's witnesses because no medical evidence existed to support the conclusion that he would become disabled in the future based on the present injury. We disagree.

A trial court's decision to admit expert testimony under MRE 702 or to exclude it as speculative is reviewed for an abuse of discretion. *Phillips v Deihm*, 213 Mich App 389, 401; 541 NW2d 566 (1995). A person may be qualified to testify as an expert witness by virtue of the person's knowledge, skill, experience, training, or education in the subject matter of the testimony. Where such testimony is purely speculative, it should be excluded or stricken pursuant

to MRE 403. *Phillips v Mazda Motor Mfg (USA) Corp*, 204 Mich App 401, 412; 516 NW2d 502 (1994). The weight given to the testimony of experts is for the jury to decide. *Phillips, supra* at 401-402.

In the present case, plaintiff testified as to his continuous migraine headaches and pain in his neck, hand, and shoulder. Plaintiff's doctor corroborated plaintiff's testimony with the results of an MRI which showed that plaintiff still had tendonitis eighteen months after the initial injury. Furthermore, plaintiff's vocational rehabilitation expert testified that although plaintiff had no work restrictions, the evidence showed he was not able to fully perform his duties and his supervisor accommodated his limitations. Additionally, the expert did not believe that plaintiff would be able to perform the duties of a police officer if he were to change his employment because of the limitations. Thus, because there was medical evidence to support the testimony that plaintiff would have future disability based upon his present injuries, we find that the testimony of the experts was not speculative. Accordingly, the trial court did not abuse its discretion in admitting the evidence.

Next, defendant argues that the trial court should have granted his motion for directed verdict or motion for judgment notwithstanding the verdict on the claim for future loss of earning capacity because plaintiff failed to meet his burden of proof as to that claim. We disagree.

We review a trial court's denial of a motion for judgment notwithstanding the verdict to determine whether there are material issues of fact upon which reasonable minds might differ.² The nonmoving party is given the benefit of every reasonable inference that can be drawn from the evidence. If reasonable minds could differ as to whether the plaintiff has met his burden of proof, a judgment notwithstanding the verdict is inappropriate. *Byrne v Schneider's Iron & Metal, Inc*, 190 Mich App 176, 178-179; 475 NW2d 854 (1991). The evidence showed that plaintiff was still experiencing pain eighteen months after the injury. Furthermore, the testimony revealed that, although plaintiff had no work restrictions, he was unable to fully perform his duties and his supervisor accommodated his limitations. Moreover, plaintiff had been advised by his vocational rehabilitation doctor not to change his employment because plaintiff would not be able to fully perform the duties required of a police officer. Thus, giving plaintiff the benefit of every reasonable inference that could be drawn from the evidence, we find that the trial court did not abuse its discretion in denying defendant's motion for judgment notwithstanding the verdict.

Defendant also argues that the trial court erred in allowing plaintiff's counsel to cross-examine defendant's accountant regarding defendant's assets because the information was elicited to show how much wealth defendant possessed. We disagree.

We review a trial court's evidentiary rulings for an abuse of discretion. *Sackett v Atyeo*, 217 Mich App 676, 683; 552 NW2d 536 (1996). The scope and duration of cross-examination is in the trial court's sound discretion and will not be reversed absent a clear showing of abuse. *Wischmeyer v Schanz*, 449 Mich 469, 474-475; 536 NW2d 760 (1995).

Testimony of a witness is relevant to show bias or prejudice on the part of the witness. MRE 401; *Popp v Crittenton Hosp*, 181 Mich App 662, 664; 449 NW2d 678 (1989). Although relevant,

the prejudicial effect must not outweigh its impeachment value. *Id.*; MRE 403. A broad range of evidence may be elicited on cross-examination for the purpose for discrediting a witness. *Wischmeyer, supra* at 474. A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. MRE 611(b).

The exchange between plaintiff's counsel and the witness reveals that counsel asked the witness if he received a fee for the work he performed for defendant, how many pieces of property defendant owned, and if he was the accountant for all four properties. In response to defendant's objection, plaintiff's counsel explained that the questions were relevant because the witness had an interest in what would happen to defendant and therefore, affected his credibility. It was relevant for the jury to know that the witness was defendant's accountant, the extent of his responsibilities with defendant, and that he earned a fee from him. This was especially relevant in light of the fact that he testified that defendant was not drunk thirty minutes before the encounter with plaintiff. Furthermore, the witness was not questioned as to the value or the worth of defendant's holdings and the questions were brief and directly to the point. Thus, we find that the testimony elicited on cross-examination was relevant to show the witness' bias toward defendant and his credibility. Although the trial court ruled that the testimony was admissible because it went to weight and not to credibility, we will not reverse where the right result was reached for the wrong reason. *Welch v Dist Court*, 215 Mich App 253, 256; 545 NW2d 15 (1996).

Defendant argues that plaintiff's counsel vouched for plaintiff's honesty and stated his personal beliefs during closing arguments. We note at the outset that defendant failed to object to the closing arguments and, therefore, this issue is deemed waived on appeal. We have reviewed the record and see no potential for a miscarriage of justice in declining to review this issue. *Phillips v Mazda Motor Mfg (USA) Corp*, 204 Mich App 401, 413; 516 NW2d 502 (1994).

Finally, defendant argues that the cumulative effect of the errors, as well as the excessive amount of the verdict, requires the granting of a new trial, judgment notwithstanding the verdict, and/or remittitur. Having found no error constituting reversal, defendant's claim is without merit. *Gore v Rains & Blosck*, 189 Mich App 729, 744; 473 NW2d 813 (1991).

Affirmed.

/s/ David H. Sawyer

/s/ Harold Hood

/s/ Joel P. Hoekstra

¹ Plaintiff Donna Mifsud's claim is for loss of consortium.

² A motion for directed verdict as to this claim could not be found in the lower court record, although defendant implies in his question presented that he brought such a motion. Moreover, defendant does not present a directed verdict argument. We note that defendant did bring a motion for directed verdict as to other claims.