STATE OF MICHIGAN

COURT OF APPEALS

BRIAN ONNELA,

Plaintiff-Appellee,

v

WAL-MART STORES, INC. d/b/a SAM'S CLUB,

Defendant-Appellant.

UNPUBLISHED
July 28, 1998

No. 200814
Oakland Circuit Court
LC No. 95-502471 NO

Before: Markman, P.J., and Saad and Hoekstra, JJ.

PER CURIAM.

This case arises from plaintiff's slip and fall on a patch of ice covered by snow in a Sam's Club parking lot. Defendant appeals as of right from the trial court's order entering judgment on the jury verdict in favor of plaintiff as well as the court's order denying its motion for directed verdict, judgment notwithstanding the verdict (JNOV), and/or new trial. We affirm.

Defendant argues that because it was not negligent, but took reasonable precautions and measures to prevent an injury from occurring on its property, the trial court should have granted its motions for a directed verdict, JNOV, and new trial. We disagree. First, we review de novo the trial court's denial of its motion for a directed verdict. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). Like the trial court, we must consider the evidence in the light most favorable to the nonmoving party, making all reasonable inferences in favor of the nonmoving party. *Id.* If the evidence offered at trial is such that reasonable jurors could honestly have reached different results, then the trial court may not substitute its judgment for that of the jury and must deny the motion for a directed verdict. *Berryman v K-Mart Corp*, 193 Mich App 88, 91; 483 NW2d 642 (1992).

This Court has previously cautioned that it disfavors directed verdicts, particularly in negligence cases. *Vsetula v Whitmyer*, 187 Mich App 675, 679; 468 NW2d 53 (1991). Here, we find that two factual issues precluded a directed verdict in defendant's favor. First, plaintiff presented evidence of a factual issue about whether defendant acted reasonably under the circumstances. There was evidence establishing that the parking lot had been salted earlier in the morning and possibly later in the day; however, there was a factual dispute about whether the precipitation stopped for a period and whether

defendant then took further precautions. Second, even if defendant had continued to salt the area, there was a factual dispute about whether salting the property was an adequate measure or whether defendant should have taken additional cautionary measures, such as shoveling the path and clearing the snow and ice away. Rational jurors could reach different results upon this evidence. Therefore, we hold that the trial court properly denied defendant's motion for a directed verdict.

Similarly, our standard of review for judgments notwithstanding the verdict requires review of the evidence and all legitimate inferences in the light most favorable to the nonmoving party. *Orzel v Scott Drug Co*, 449 Mich 550, 558; 537 NW2d 208 (1995). Only if the evidence so viewed fails to establish a claim as a matter of law should a motion for judgment notwithstanding the verdict be granted. *Id.* Again, because when viewed in the light most favorable to plaintiff the evidence was sufficient to establish plaintiff's claim, we hold that the trial court properly denied defendant's motion for JNOV.

Last, when reviewing a trial court's denial of a motion for new trial, we generally defer to the trial court's ruling because it had the unique opportunity to hear the witnesses and assess their credibility. *In re Leone Estate*, 168 Mich App 321, 324; 423 NW2d 652 (1988). The trial court must determine whether the overwhelming weight of the evidence favors the losing party, while this Court determines whether the trial court abused its discretion in making that determination. *Bordeaux v Celotex Corp*, 203 Mich App 158, 170; 511 NW2d 899 (1993). We will not set aside a jury verdict if there is competent evidence to support it. *King v Taylor Chrysler-Plymouth, Inc*, 184 Mich App 204, 210; 457 NW2d 42 (1990).

An invitor is required to take reasonable steps within a reasonable time to diminish the hazard of injury after an accumulation of ice and snow. *Anderson v Wiegand*, 223 Mich App 549, 557-558; 567 NW2d 452 (1997) (citing *Quinlivan v The Great Atlantic and Pacific Tea Co, Inc*, 395 Mich 244, 252-261; 235 NW2d 732 (1975)).[1] From the testimony at trial, it was entirely conceivable that the jury could have resolved the matter in favor of defendant and concluded that defendant satisfied this duty and was not negligent on the day in question. However, it was equally as plausible that the jury would find the way it did, i.e., that defendant was negligent and its negligence caused plaintiff's injury and damages. Where there is evidence upon which to base the jury's verdict, this Court should not sit as a superjury and substitute its resolution of a dispute. *Whitson v Whiteley Poultry Co*, 11 Mich App 598, 601; 162 NW2d 102 (1968). Because there was competent evidence to support the jury's verdict for plaintiff, we decline to set the verdict aside as against the great weight of evidence. See *King, supra* at 210.

Defendant also argues that the trial court should have granted its motion for a new trial because the jury's finding that plaintiff was negligent and its finding that plaintiff's negligence was not a proximate cause of his injuries were inconsistent and contrary to the great weight of evidence. We disagree. Proximate cause is "that which in a natural and continuous sequence, unbroken by any new, independent cause, produces the injury, without which such injury would not have occurred." *McMillian v Vliet*, 422 Mich 570, 576; 374 NW2d 679 (1985) (quoting *Weissert v Escanaba*, 298 Mich 443, 452; 299 NW 139 (1941)). In order to show proximate cause, it must be proven that the injury was a probable, reasonably anticipated, and natural consequence of the negligent conduct. *Allen v Owens-Corning Fiberglas Corp*, 225 Mich App 397, 401; 571 NW2d 530 (1997). There may be

more than one proximate cause of an injury. *Id.* Two causes frequently operate concurrently so that both constitute a direct proximate cause of the resulting harm. *Id.* Accordingly, a defendant cannot escape liability for its negligent conduct simply because the negligence of another may also have contributed to a plaintiff's injury. *Id.* at 401-402. When a number of factors contribute to produce an injury, one actor's negligence will be considered a proximate cause of the harm if it was a "substantial factor" in producing the injury. *Id.* at 402. Whether certain conduct was the proximate cause of an injury is generally a factual question for the jury. *Id.* at 403.

We are unpersuaded by defendant's argument that plaintiff's decision to wear tennis shoes, rather than winter boots, was the proximate cause of his accident, even if it was found to be negligent conduct. Nor do we find merit in defendant's claim that plaintiff should be held at least partially responsible for the damages because he took a route to the door that was not cleared or designated for travel. Although this fact would have been relevant if plaintiff was actually injured on the snow- and ice-covered route, the undisputed evidence was that plaintiff fell, and was found lying on a handicapped-designated spot located before either of the routes to the door. Plaintiff may have been negligent in attempting to take a route covered with snow rather than following the slushy but paved path, but we are not convinced that such conduct was a substantial factor or the proximate cause of the injury. More important, the jury was apparently not convinced by these factors. Therefore, we hold that the trial court did not abuse its discretion in denying defendant's motion for a new trial.

Defendant next argues that the trial court should have granted its motion for remittitur because the jury award was excessive and resulted from passion and bias for plaintiff. Defendant claims that this issue is preserved because he raised it to the lower court below; however, there is no transcript of this hearing in the record. See MCR 7.210(B)(1)(a). Moreover, there is not an order of the lower court referring to or deciding the issue of remittitur. "Without the record of the trial court's ruling from the bench, it is simply not possible for us to determine whether the trial court abused its discretion or properly exercised it." *McLemore v Detroit Receiving Hospital and University Medical Center*, 196 Mich App 391, 401-402; 493 NW2d 441 (1992). Therefore, appellate review of this issue is precluded.

Affirmed.

/s/ Stephen J. Markman
/s/ Henry William Saad
/s/ Joel P. Hoekstra

[1] The parties do not dispute that plaintiff was an invitee on defendant's property because he was there to conduct a business transaction beneficial to both parties. See *Stanley v Town Square Cooperative*, 203 Mich App 143, 146-147; 512 NW2d 51 (1993).