STATE OF MICHIGAN

COURT OF APPEALS

LAURA LEE SMREKAR,

Plaintiff-Appellee,

v

JEEP CORPORATION, AMERICAN MOTORS CORPORATION and CHRYSLER CORPPRATION,

Defendants-Appellants.

UNPUBLISHED
August 10, 1999

No. 201521
Wayne Circuit Court
LC No. 94-424069 NP

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

PER CURIAM.

Defendants appeal as of right from a judgment entered in favor of plaintiff after a jury trial in this products liability case. We affirm.

First, defendants claim that plaintiff did not establish a prima facie case of design defect. We disagree. The evidence presented below indicated that there was a substantial risk of injury associated with the protruding pins on the removable upper doors in light of the fact that there was nowhere to store the doors on or within the vehicle, and although the doors could be placed pins down, there was evidence that there were features of the vehicle and the doors that made it foreseeable that vehicle users would find it preferable to place the doors pins up. The evidence, viewed most favorably to plaintiff, *Zander v Ogihara Corp,* 213 Mich App 438, 441; 540 NW2d 702 (1995), supported a finding that the risk of injury would have been apparent to the ordinary juror. Plaintiff also presented evidence of a viable, inexpensive alternative design in the form of a reinforced, zippered carrying case. Therefore, viewed in a light most favorable to plaintiff, the evidence supported a finding by the jury that defendants negligently failed to eliminate an unreasonable risk of foreseeable injury by failing to provide an on-board storage system for the upper doors. *Prentis v Yale Mfg Co,* 421 Mich 670, 695; 365 NW2d 176 (1984); *Owens v Allis-Chalmers Corp,* 414 Mich 413, 429-432; 326 NW2d 372 (1982); *Haberkorn v Chrysler Corp,* 210 Mich App 354, 364; 533 NW2d 373 (1995). Because plaintiff presented a prima facie case of defective design, the trial court properly denied defendants' motion for

directed verdict as well as defendants' motion for judgment notwithstanding the verdict. *Goldman v Phantom Freight, Inc*, 162 Mich App 472, 477; 413 NW2d 433 (1987).

Defendants next claim that the trial court abused its discretion by allowing plaintiff to reopen the direct examination of her expert witness, Carl Thelin. We disagree. On issues of reopening proofs, this Court's attitude has generally been one of noninterference. *Knoper v Burton*, 12 Mich App 644, 649; 163 NW2d 453 (1968), rev'd on other grds 383 Mich 62 (1970). Here, plaintiff was merely given an opportunity to further question her expert regarding the elements of her prima facie case. Defendants were not prejudiced by the court's decision, particularly since they had not yet commenced their cross-examination of Thelin. Moreover, defendants were surely expecting testimony regarding the elements of plaintiff's prima facie case. Thus, there has been no showing of undue hardship or surprise in this case. *Knoper, supra*. For these reasons, we conclude that the trial court did not abuse its discretion in allowing plaintiff to reopen her direct examination of Thelin. *Helmer v Dearborn National Ins*, 319 Mich 696, 698-699; 30 NW2d 399 (1948); *Fabbrini Foods v United Canning*, 90 Mich App 80, 91; 280 NW2d 877 (1979).

Lastly, we reject defendants' claim that the trial court abused its discretion in allowing plaintiff to present the rebuttal testimony of Ricky LeBlanc. LeBlanc's testimony contradicted the testimony offered by defendants' witnesses, James Thornton and Leon Neal. His testimony directly responded to their claims that it was not foreseeable that someone would store the upper doors in the vehicle with the pins pointing up. Because LeBlanc's testimony was responsive to evidence introduced by defendants, it was proper rebuttal testimony. *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996); *Sullivan Industries, Inc v Double Seal Glass Co*, 192 Mich App 333, 348; 480 NW2d 623 (1991). Moreover, the fact that LeBlanc's testimony overlapped evidence admitted in plaintiff's case-in-chief does not change the fact that LeBlanc's testimony was proper rebuttal evidence. *Figgures, supra* at 399. Thus, the trial court did not abuse its discretion in admitting LeBlanc's testimony in rebuttal. *Id.* at 398; *Lopez v GMC*, 224 Mich App 618, 637; 569 NW2d 861 (1997).

Affirmed.

/s/ Michael J. Kelly
/s/ Kathleen Jansen
/s/ Helene N. White