

STATE OF MICHIGAN
COURT OF APPEALS

ALPHONSO C. WILSON,

Plaintiff-Appellant,

v

JIM H. BRIDGES, JR., and CHRYSLER
TRANSPORT, INC.,

Defendants-Appellees.

UNPUBLISHED

March 17, 2000

No. 207735

Wayne Circuit Court

LC No. 96-608726 NI

Before: White, P.J., and Sawyer and Griffin, JJ.

PER CURIAM.

This case arises out of an automobile accident that occurred at a busy intersection when plaintiff, who was heading northbound, collided with a truck owned by defendant Chrysler Transport and driven by its employee, defendant Jim Bridges. At the time of the accident, Bridges was heading southbound, but was in the process of making a left hand turn. Plaintiff claimed that he had a green light and that Bridges failed to wait until the on-coming traffic had cleared before completing his left turn. Bridges, however, claimed that he began to complete his turn after the light turned red, and was struck broadside by plaintiff, who failed to stop at the red light. Plaintiff claimed that he suffered permanent and disabling injuries to his neck and lower back as a result of the accident. Following a trial, the jury returned a verdict of no cause of action, finding that Bridges was not negligent. After the trial court entered a judgment of no cause of action on the jury verdict, plaintiff moved for judgment notwithstanding the verdict or a new trial, which the trial court denied. Plaintiff now appeals of right. We affirm.

On appeal, plaintiff claims that the trial court abused its discretion by admitting evidence of Bridges' prior driving history, including safety awards, showing that Bridges had never caused any accidents or been at fault in any prior accidents. We agree.

We agree that evidence of Bridges' past driving record was inadmissible under MRE 406 because such evidence involves reputation, not habit. Specifically, the challenged evidence should have been excluded because it was not evidence of defendant's regular response to a repeated situation or his routine practice, but rather evidence of his general disposition to drive carefully. *LaDue v Lebanon Twp*, 222 Mich 301, 306; 192 NW 636 (1923); *McKinstry v Valley Clinic*, 428 Mich 167, 182; 405

NW2d 88 (1987); *McNabb v Green Real Estate Co*, 62 Mich App 500; 233 NW2d 811 (1975). The evidence of Bridges' driving history was also inadmissible character evidence under MRE 404(a)(4), because it did not "refer only to character for truthfulness or untruthfulness" and was not offered after Bridges' character for truthfulness had been attacked under MRE 608(a). Finally, evidence showing the absence of accidents of which Bridges was at fault constituted negative evidence that was inadmissible to show the absence of negligence under well-established Michigan case law. *Larned v Vanderlinde*, 165 Mich 464; 131 NW 165 (1911); *Langworthy v Green Twp*, 88 Mich 207; 50 NW 130 (1891); *LaDue*, *supra* at 301; *Grubaugh v City of St Johns*, 82 Mich App 282; 266 NW2d 791 (1978); *McAuliff v Gabriel*, 34 Mich App 344; 191 NW2d 128 (1971).

Although the trial court erred in failing to exclude the evidence of Bridges' driving record, we nevertheless conclude that the error does not require reversal. MCR 2.613(A). In *Morrow v Bofferding*, 458 Mich 617, 634; 581 NW2d 696 (1998), our Supreme Court observed:

An error in the admission of evidence will be found if it affects a substantial right of a party. MRE 103. Further, such an error is not harmless if the error was prejudicial. An error in the admission or exclusion of evidence is ground for granting a new trial if refusal to take this action appears inconsistent with substantial justice. MCR 2.613(A); *People v Mateo*, 453 Mich 203, 214; 551 NW2d 891 (1996).

The Supreme Court in *Morrow* cited to its decision in *Mateo*, *supra*, wherein the Court summarized the standard for evaluating harmful error for purposes of MCL 769.26; MSA 28.1096, MCR 2.613(A), and MRE 103, concluding that reversal is required only if such an error is prejudicial, noting that the appropriate inquiry "focuses on the nature of the error and assesses its effect in light of the weight and strength of the untainted evidence." *Mateo*, *supra* at 215.

In denying plaintiff's motion for judgment notwithstanding the verdict or new trial, the trial court stated that based on its observations made during the course of the trial, plaintiff's "credibility was extremely, extremely questionable" and the "jury didn't believe him." The trial court's observation may or may not be an accurate assessment of the reason for the jury's verdict. Defendant's asserted lack of credibility is not clearly apparent upon a review of the record. On the other hand, the trial court was in a position to make observations that this Court cannot. In any event, our review of the record leads us to the conclusion that defendant's driving record was not a focal point in the case. It was mentioned in defense counsel's opening statement; the evidence was introduced; plaintiff's counsel, in closing argument, did an excellent job of explaining to the jury why the evidence lacked any probative value; and defense counsel did not argue otherwise in his closing. Defense counsel's only reference to the evidence in closing was in a different context.¹ Counsel did not argue that Bridges' driving record was evidence that he was not at fault in the accident.

Taking into account the nature of the error in light of the weight and strength of the other evidence in the case, we conclude that although the trial court abused its discretion in admitting the evidence, the evidence did not affect the trial such that denial of a new trial is inconsistent with substantial justice, and the trial court did not abuse its discretion in denying the motion for new trial.

Plaintiff's final two issues relate to the question of damages, an issue the jury did not reach. In light of our resolution of the preceding issue, we need not consider plaintiff's remaining two issues.

Affirmed.

/s/ Helene N. White

/s/ David H. Sawyer

¹ Plaintiff's counsel had asserted that Bridges was being untruthful, and had initially lied at his deposition when asked if he had been involved in accidents before. Defense counsel argued that Bridges did not intentionally lie when he answered the question, but had simply misunderstood the question, making the point that Bridges had nothing to lie about because his driving record was so good. The complete reference to Bridges' driving record in defense counsel's closing was:

Ladies and gentlemen, I made so [sic] an issue out of liability. You're going to have to decide for yourself on that. I think the evidence shows that Mr. Bridges is a very credible man. He was honest, he said he has a fourth grade education. It's tricky when you're asked questions at a deposition and the people are grilling you looking for the - - Mr. Buckfire, said, "did you have any accidents and he said no." Now why would Mr. Bridges lie when he has a fantastic driving record like that? He has 29 years with only three accidents and in that time he didn't cause any of them. Is that something that he would have been trying to hide? No, he didn't understand the question and you can twist that anyway but I think it shows he's a very credible man.