

STATE OF MICHIGAN
COURT OF APPEALS

AMY A. LUDTKE and DAVID LUDTKE,

Plaintiffs-Appellants,

v

CINDY LYNN IRISH,

Defendant-Appellee.

UNPUBLISHED

July 28, 2000

No. 212268

Wayne Circuit Court

LC No. 96-609691-NI

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

PER CURIAM.

Plaintiffs brought a negligence action against defendant for injuries sustained by plaintiff Amy Ludtke in an automobile collision. The jury found that defendant was not negligent and returned a verdict of no cause of action in her favor. Plaintiffs appeal as of right. We affirm.

The trial court did not abuse its discretion by refusing to allow the admission of the traffic report into evidence. Plaintiffs' counsel sought to introduce the report in order to show that the investigating police officer concluded that defendant was at fault and issued her a traffic citation arising from the accident. The fact that someone was deemed responsible by a police officer and issued a traffic citation arising from an automobile accident is not admissible as substantive evidence of conduct in a civil case arising out of the same accident. *Kirby v Larson*, 400 Mich 585, 598-600; 256 NW2d 400 (1977); *Ilins v Burns*, 388 Mich 504, 509-510; 201 NW2d 624 (1972). Accordingly, the trial court did not abuse its discretion in excluding the report.

The trial court did not abuse its discretion when it refused to allow the investigating police officer to give his opinion regarding the sequence of collisions or which driver was at fault. As previously noted, the fact that defendant was deemed responsible by the officer and issued a traffic citation arising from the collision is not admissible as substantive evidence of her conduct in this civil case. *Kirby, supra; Ilins, supra*. Additionally, the officer testified that he was not able to form an opinion regarding the sequence of the collisions or which driver was at fault based on the physical evidence at the scene. Under the circumstances of this case, any opinion of the officer was effectively an assessment of credibility. Plaintiffs cannot attack defendant's credibility or bolster plaintiff Amy Ludtke's credibility in this manner. MRE 608(a); *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985).

Next, the trial court did not abuse its discretion by refusing to allow plaintiffs to introduce defendant's prior driving record as evidence. Plaintiffs have not shown that defendant's driving record was relevant as defined by MRE 401 and, therefore, it was properly excluded under MRE 402.

Finally, the trial court did not abuse its discretion by refusing to allow plaintiffs to add an additional expert witness on the first day of trial. Allowing the unlisted expert to testify would have unfairly surprised defendant, who had no opportunity to depose this witness or obtain expert testimony to refute that witness' opinions. *Grubor Enterprises v Kortidis*, 201 Mich App 625, 628; 506 NW2d 614 (1993); *Carmack v Macomb Co Community College*, 199 Mich App 544, 546; 542 NW2d 746 (1993).

Affirmed.

/s/ Michael J. Kelly

/s/ Kurtis T. Wilder