STATE OF MICHIGAN

COURT OF APPEALS

AMY A. LUDTKE and DAVID LUDTKE,

Plaintiff-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UNPUBLISHED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.

WHITE, J. (*concurring*).

I agree that plaintiffs have not shown an abuse of discretion by the trial court in refusing to admit the police report and disallowing certain testimony of the officer. While the officer was qualified to express an opinion, plaintiffs failed to establish that the officer in fact had an opinion based on his observations at the scene. The only record evidence in this regard is the officer's negative answer to the court's question whether the officer was able to "determine who hit who first from looking at the accident scene." Plaintiffs made no separate record establishing that the officer had an opinion regarding the sequence of events based on the officer's observations, or the party's admissions.

Regarding the police report, plaintiffs did not offer the report as anything other than substantive evidence of the matters in the report. The report contained a series of diagrams, depicting the two different versions of the collision. It also described the three drivers' versions of what happened. The report was largely consistent with the testimony at trial. While Renaud's statement to the officer could be seen as inconsistent with her testimony at trial, plaintiffs did not seek to use the report to elicit evidence of a prior inconsistent statement. Even if the report itself was admissible, it contained hearsay. Plaintiffs are mistaken in characterizing *Solomon v Shuell*, 435 Mich 104; 457 NW2d 669 (1990), as holding that where the persons giving statements to the officer also testify at trial, the statements in the report are no longer hearsay. Further, the notation in the report that a citation was issued was inadmissible in the absence of competent testimony supporting the officer's conclusion, and plaintiffs did not suggest redacting the report. Lastly, while plaintiffs offer the alternative ground of past recollection recorded, MRE 803(5) provides that such evidence may be read, but not received as an exhibit.

I agree that defendant's driving record was irrelevant.

Plaintiffs' final argument relates to damages and is moot in light of our affirmance on liability.

/s/ Helene N. White