STATE OF MICHIGAN

COURT OF APPEALS

RICHARD C. SIGISMOND, Plaintiff-Appellant/Cross Appellee,	UNPUBLISHED June 29, 2001
v	No. 217310 Macomb Circuit Court
SUPER CAR WASH SYSTEMS WEST, INC., Defendant-Appellee/Cross Appellant.	LC No. 96-006897-NO

Before: Cavanagh, P.J., and Cooper and K. F. Kelly, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's denial of his motion for a new trial or additur and defendant cross-appeals as of right the trial court's denial of its motions for summary disposition and directed verdict. We affirm.

On appeal, plaintiff argues that the trial court abused its discretion in denying his motion for a new trial or additur because the jury rendered an inadequate verdict when it failed to award noneconomic damages after finding defendant negligent and awarding economic damages. We disagree. This Court reviews a trial court's decision on a motion for a new trial or additur for an abuse of discretion. See *Bean v Directions Unlimited, Inc*, 462 Mich 24, 34-35; 609 NW2d 567 (2000); *Setterington v Pontiac General Hosp*, 223 Mich App 594, 608; 568 NW2d 93 (1997).

Awards for personal injury damages, particularly pain and suffering, rest within the sound discretion of the trier of fact. *Meek v Dep't of Transportation*, 240 Mich App 105, 122; 610 NW2d 250 (2000). There is no absolute standard for the measurement of such damages. *Id*. There is no requirement that the jury award damages for pain and suffering or mental anguish, even when the jury awards economic damages. See *Setterington*, *supra* at 608-609. Similarly, there is no legal requirement that the jury award damages even in instances where liability was found. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 172-173; 568 NW2d 365 (1997).

Review of the evidence presented by plaintiff at trial fails to reveal that the trial court abused its discretion when it found that plaintiff did not present significant or persuasive evidence in support of his claim for noneconomic damages. There was little to no testimony regarding plaintiff's level of pain, incapacitation, ability to function or perform activities of daily

living, use of pain medication, unreasonable physical limitations, or other physical or psychological complications from the injury. Dr. Nowinski's testimony repeated plaintiff's subjective complaints but his objective findings were limited primarily to a slight loss of ankle range of motion and a slight size differential in plaintiff's ankles. Affording due deference to the trial court's unique opportunity to observe the evidence and witnesses and evaluate the jury's reaction to the evidence, we conclude that the trial court did not abuse its discretion. See *Setterington*, *supra* at 609.

On cross-appeal, defendant argues that the trial court erred in denying its motions for summary disposition or directed verdict because the open and obvious doctrine operated to relieve defendant of any duty to plaintiff regarding allegedly dangerous conditions. We disagree. This Court reviews a trial court's rulings on motions for summary disposition and directed verdict de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Thomas v McGinnis*, 239 Mich App 636, 643; 609 NW2d 222 (2000).

A landowner does not have a duty to warn invitees of open and obvious dangers. *Hughes v PMG Building, Inc*, 227 Mich App 1, 10; 574 NW2d 691 (1997). Whether a danger is open and obvious depends upon whether it is reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection. *Id*. However, despite the obviousness of danger, a landowner may still have a duty to protect an invitee against unreasonable risks of harm. *Singerman v Municipal Service Bureau, Inc*, 455 Mich 135, 142-143; 565 NW2d 383 (1997).

Considering the evidence in a light most favorable to plaintiff, the trial court properly denied defendant's motions for summary disposition and directed verdict. Although the ice and water conditions were apparent to plaintiff prior to his slip and fall, he had traversed the area without incident on three occasions before allegedly stepping in transmission fluid that was not visible to him although he was watching where he was walking. Defendant allegedly knew of the dangerous condition and failed to reduce the hazard, although patrons commonly retrieved towels to further dry their vehicles after the car wash. There were disputed issues of material fact, including whether the transmission fluid was present in the area, whether it was visible, and whether it caused or contributed to plaintiff's fall. Further, a reasonable factfinder could determine that, even if plaintiff should have seen the transmission fluid, it posed an unreasonable and unanticipated risk of harm to plaintiff in light of the circumstances. Therefore, this case was properly submitted to the jury.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly