STATE OF MICHIGAN

COURT OF APPEALS

GILBERT PEREZ,

Plaintiff-Appellee,

and

TRAVELERS INSURANCE COMPANY,

Intervening Plaintiff-Appellee,

V

BLACK CLAWSON COMPANY,

Defendant/Cross-Plaintiff/Third-Party Plaintiff,

and

SORENSON PAPERBOARD COMPANY,

Defendant/Cross-Defendant,

and

BIG M PAPERBOARD, INC.,

Defendant-Appellant,

and

MERRITT SORENSON and SIMPLEX PAPER COMPANY,

Third-Party Defendants.

UNPUBLISHED
August 28, 2001

No. 221010
Lenawee Circuit Court
LC No. 93-005782-NO

GILBERT PEREZ,

Plaintiff-Appellee,

and

TRAVELERS INSURANCE COMPANY,

Intervening Plaintiff-Appellee,

V

BIG M PAPERBOARD, INC.,

Defendant-Appellant,

and

SIMPLEX PAPER COMPANY, TORONTO PAPERBOARD, INC., and SORENSON PAPERBOARD COMPANY,

Defendants.

No. 221075
Lenawee Circuit Court
LC No. 94-006317-NO

Before: Jansen, P.J., and Collins and Cooper, JJ.

PER CURIAM.

Defendant, Big M Paperboard, Inc.,[1] appeals as of right from an order entering judgment in favor of plaintiff, Gilbert Perez, following a jury trial on plaintiff's negligence claim. The jury awarded plaintiff $195,000 for past economic damages, $5,000 for past non-economic damages, $61,000 for future medical expenses, $90,000 for future wage loss, and $90,000 for future non-economic damages. The total damages awarded by the jurors were $441,000. After subtracting $227,500 that plaintiff received in previous settlements, the trial court adjusted the remaining

[1] Defendant, Big M Paperboard, Inc., and plaintiff, Gilbert Perez, are the only parties participating in this appeal, and hereinafter will be referred to as defendant and plaintiff respectively.

damages to present value and judgment was entered in favor of plaintiff and against defendant for $139,843.44 plus costs. We affirm the judgment for plaintiff, but remand to the trial court for entry of an amended order of judgment consistent with this opinion.

This case arose from plaintiff's workplace injury on a paper-cutting and rewinding machine ("machine"), which was previously owned and modified by defendant. Although defendant no longer owned the machine or the paper mill where the machine was located at the time of plaintiff's injury, and plaintiff was employed by the successive owner of the machine and mill at the time of his injury, plaintiff alleged that his injuries resulted from the modifications made to the machine by defendant.

Defendant first contends that the trial court abused its discretion when it permitted the introduction of expert testimony on the federal occupational safety and health act standards ("OSHA"), 29 USC 651 *et seq.*, and the Michigan occupational safety and health act standards ("MIOSHA"), MCL 408.1001 *et seq.*, pertaining to paper-cutting machines. We disagree. We review a trial court's decision to admit evidence for an abuse of discretion. *Chmielewski v Xermac, Inc*, 457 Mich 593, 613-614; 580 NW2d 817 (1998). We will find an abuse of discretion "'only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made.'" *Berryman v K Mart Corp*, 193 Mich App 88, 98; 483 NW2d 642 (1992), quoting *Gore v Raines & Block*, 189 Mich App 729, 737; 473 NW2d 813 (1991).

Evidence is relevant when it "'has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" MRE 401; *Dep't of Transportation v Van Elslander*, 460 Mich 127, 129; 594 NW2d 841 (1999), quoting *Yates v Keane*, 184 Mich App 80, 82; 457 NW2d 693 (1990). The violation of safety regulations, such as OSHA and MIOSHA, may be admissible as evidence of the standard of care. *Co-Jo, Inc v Strand*, 226 Mich App 108, 115; 572 NW2d 251 (1998), citing *Beals v Walker*, 416 Mich 469, 481; 331 NW2d 700 (1982).

In this case, plaintiff had to prove the following elements by a preponderance of the evidence: (1) defendant owed plaintiff a duty; (2) defendant breached that duty; (3) defendant's breach of this duty caused plaintiff's injuries; and (4) plaintiff suffered damages as a result of defendant's breach of this duty. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). Plaintiff's theory of negligence was that defendant's modifications to the machine were unreasonably dangerous and caused plaintiff's injuries.

Admiral Ben Lehman, a consulting engineer and a former Navy Admiral, who offered expert testimony on the machine, testified to the American National Standards Institute ("ANSI") safety standards governing the machine. Lehman further testified that the OSHA and MIOSHA standards applicable to slitter knives were identical to the ANSI standard.

The safety standard regulations were relevant to aid the jurors in determining what standard of care defendant owed plaintiff and whether defendant breached the standard of care. Specifically, OSHA and MIOSHA regulations were relevant to show how a reasonably prudent mill owner would have modified a paper-cutting machine. Accordingly, we are satisfied that the

trial court did not abuse its discretion when it admitted testimony on the OSHA and MIOSHA regulations.

Defendant next contends that the trial court erred in adopting plaintiff's interpretation of MCL 600.6306 because MCL 600.6306 unambiguously required the trial court to reduce the future damages to present cash value before subtracting the previous settlements received by plaintiff. We agree. Questions of statutory interpretation are questions of law which we review de novo. *Cheron, Inc v Don Jones, Inc,* 244 Mich App 212, 215-216; 625 NW2d 93 (2000).

The relevant version of MCL 600.6306[2] states in pertinent part:

> Sec. 6306. (1) After a verdict rendered by a trier of fact in favor of a plaintiff, an order of judgment shall be entered by the court. The order of judgment shall be entered against each defendant, including a third-party defendant, in the following order and in the following judgment amounts:
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> ***
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> (c) All future economic damages, less medical and other health care costs, and less collateral source payments determined to be collectible under section 6303(5) reduced to gross present cash value.
>
> (d) All future medical and other health care costs reduced to gross present cash value.
>
> (e) All future noneconomic damages reduced to gross present cash value.
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> ***
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> (3) If there is an individual who was released from liability pursuant to section 2925d, the total judgment amount shall be reduced, as provided in subsection (5), by an amount equal to the amount of the settlement between the plaintiff and that individual.
>
> (4) If the plaintiff was assigned a percentage of fault pursuant to section 6304, the total judgment amount shall be reduced, as provided in subsection (5), by an amount equal to the percentage of plaintiff's fault. (5) When reducing the judgment amount as provided in subsections (3) and (4), the court shall determine the ratio of total past damages to total future damages and shall allocate the amounts to be deducted proportionally between the past and future damages.

The relevant version of MCL 600.2925d [3] states in pertinent part:

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[2] MCL 600.6306 was amended in 1995, and the amendments became effective in March 1996. PA 1995, No 161, § 1. Plaintiff's case against defendant was filed in October 1994; therefore, the pre-1995 version of MCL 600.6306 governs this case.

> When a release or a covenant not to sue or not to enforce judgment is given in good faith to 1 or 2 or more persons liable in tort for the same injury or same wrongful death:
>
> ***
>
> (b) It reduces the claim against the other tortfeasors to the extent of any amount stipulated by the release or the covenant or to the extent of the amount of consideration paid for it, whichever amount is greater.

When reviewing questions of statutory construction, our primary purpose is to ascertain and give effect to the Legislature's intent. *Nawrocki v Macomb Co Road Comm*, 463 Mich 143, 159; 615 NW2d 711 (2000). We must first examine the plain language of the statute. *Id.* When the plain language of the statute is clear, judicial construction is neither permitted nor required. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW3d 119 (1999). The Legislature's use of the word "'shall' indicates that the required action is mandatory, not permissive, unless this interpretation 'would clearly frustrate legislative intent as evidenced by other statutory language or by reading the statute as a whole.'" *Kosmyna v Botsford Community Hospital*, 238 Mich App 694, 699; 607 NW2d 134 (2000), quoting *Browder v Int'l Fidelity Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1982).

By its express terms, MCL 600.6306(1)(c)-(e) mandates that a trial court shall first reduce any future damages awarded by the trier of fact to gross present value before reducing the amount of judgment by the amount of the settlement the plaintiff received from other parties as directed in (3) and before performing the proportionate reduction between future and past damages specified in (5). Because the plain language of MCL 600.6306 is clear and unambiguous, further judicial construction is neither necessary nor permitted. *Sun Valley Foods, supra* at 236. Moreover, the use of the word "shall" in MCL 600.6306 indicates that the trial court was required to follow the order specified in the statute when entering an order of judgment for plaintiff and that the trial court did not possess the discretion to adopt a different interpretation of MCL 600.6306. *Kosmyna, supra* at 699. As such, we conclude that the trial court erred when it found that MCL 600.6306 was ambiguous and conferred discretion upon it to determine when to reduce the future damages to present cash value.

(…continued)

[3] MCL 600.2925d was amended in 1995, and the amendments became effective in March 1996. PA 1995, No 161, § 1. Plaintiff's case against defendant was filed in October 1994; therefore, the pre-1995 version of MCL 600.2925d governs this case.

Affirmed in part, reversed and remanded in part. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Jeffrey G. Collins
/s/ Jessica R. Cooper