

STATE OF MICHIGAN
COURT OF APPEALS

ERSKINE LONGMIRE, as Personal
Representative of the Estate of JALENCIA
LONGMIRE,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
September 24, 2002

No. 232953
Wayne Circuit Court
LC No. 98-809946-NI

Before: O'Connell, P.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment of no cause of action following a jury trial. We affirm.

This case arose out of a traffic accident in which plaintiff's seven-year-old daughter, Jalencia Longmire, was struck and killed by a vehicle while crossing a street in Detroit. Plaintiff's claims against the owner and operator of the vehicle were settled. This appeal involves plaintiff's case against the city of Detroit for failing to install a traffic control device at the nearest intersection to keep the street reasonably safe for public travel.

Plaintiff first argues that the trial court abused its discretion in refusing to qualify Irving Rozian as an expert. We review the admission or exclusion of expert testimony for an abuse of discretion. *Tobin v Providence Hosp*, 244 Mich App 626, 654; 624 NW2d 548 (2001).

Admission of expert testimony is governed by MRE 702, which provides:

If the court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

There are three prerequisites to the admission of expert testimony: (1) the witness must be an expert, (2) there must be facts in evidence that require or are subject to examination and analysis by a competent expert, and (3) there must be knowledge in a particular area that belongs more to

an expert than the common man. *Davis v Link, Inc*, 195 Mich App 70, 73; 489 NW2d 103 (1992).

Under MRE 702, an expert may be qualified by virtue of his knowledge, skill, experience, training, or education. *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 400; 628 NW2d 86 (2001). Although Michigan endorses a broad application of these requirements in qualifying an expert, *Grow v W A Thomas Co*, 236 Mich App 696, 713; 601 NW2d 426 (1999), the subject matter of the expert's testimony should be "directly related to and within the immediate scope of the witness' expertise." *Franzel v Kerr Mfg Co*, 234 Mich App 600, 621; 600 NW2d 66 (1999).

An abuse of discretion exists where the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Dep't of Transportation v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000). In the instant case, although Rozian testified that he had experience in accident reconstruction, his testimony indicated that the vast majority of his education, training, and experience was in the fields of electrical engineering and industrial design rather than civil engineering or human factors engineering. Because civil engineering and human factors engineering were not "directly related to and within the immediate scope of the witness' expertise," *Franzel, supra* at 621, the court did not abuse its discretion in refusing to qualify Rozian as an expert.

Plaintiff next argues that defendant's special jury instruction three gave a legal standard pertaining only to state and county road commissions, not to cities. The instruction read, in relevant part, that the law "requires the city to maintain its streets and roadways in a manner reasonably safe and convenient for public travel," but does not require the city "to maintain its streets and roadways so as to make them as safe as humanly possible for public travel." We review claims of instructional error de novo, examining the jury instructions as a whole to determine whether there is error requiring reversal. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

Under MCR 2.516(D)(4), a trial court may give additional instructions concerning an area that was not covered in the standard jury instructions as long as the additional instructions accurately state the law and are "applicable, concise, understandable, conversational, unslanted, and nonargumentative." *Mull v Equitable Life Assurance Society*, 196 Mich App 411, 422; 493 NW2d 447 (1992). The trial court's decision regarding supplemental instructions will not be reversed unless failure to vacate the verdict would be inconsistent with substantial justice. *Mull, supra* at 423.

In this case, the contested instruction accurately stated the law with respect to defendant's duty. Governmental agencies, including cities, have a duty to maintain the highways in their jurisdictions "in reasonable repair so that [they are] reasonably safe and convenient for public travel." MCL 691.1402(1). The term "highways" includes streets. MCL 691.1401(e). Furthermore, the instructions properly stated that defendant was not required to make the street "as safe as humanly possible" for public travel but only "reasonably" safe. *Wechsler v Wayne Co Rd Comm*, 215 Mich App 579, 594; 546 NW2d 690 (1996), remanded in light of *Pick v Szymczak*, 451 Mich 607; 548 NW2d 603 (1996), 455 Mich 862 (1997), app dis (No. 204994, order issued 1/20/98). Because the instruction accurately stated the law, it was not erroneous.

Both parties' arguments on appeal focus on which governmental entities, if any, may be held liable for failing to install traffic control devices. However, the contested instruction makes no mention of traffic control devices. Instead, the instruction focused solely on defendant's duty to keep the street reasonably safe for public travel. The jury heard extensive testimony regarding the criteria for placing a traffic control device at a corner near the accident site. Nothing in the jury instructions would have prevented the jury from finding that the lack of a traffic control device made the street not reasonably safe. Therefore, because vacating the verdict would not be consistent with substantial justice, reversal on this ground is not appropriate. *Mull, supra* at 423.

Plaintiff's remaining arguments with respect to SJI 12.04 and special instructions one and two were not stated in the questions presented; therefore, they are not properly presented for appeal. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000). Regardless, these arguments are without merit. The standard jury instruction explained the jaywalking ordinance, and undisputed facts indicated that the decedent violated the ordinance. Furthermore, because the issue of comparative negligence was not reached, any error was harmless. With respect to the remaining two special instructions, these were agreed to by plaintiff's counsel and cannot now be complained of as erroneous. *Hilgendorf v St John Hosp & Medical Center Corp*, 245 Mich App 670, 683; 630 NW2d 356 (2001).

Finally, plaintiff argues that the trial judge's hurry to complete the trial, combined with his departure for vacation during the jury deliberation and verdict phases of the trial, prejudiced plaintiff's case before the jury. However, this argument is without merit. Plaintiff failed to object to the trial court's conduct or to move for a mistrial on this ground; therefore, this issue was not preserved for review. *Haberkorn v Chrysler Corp*, 210 Mich App 354, 363; 533 NW2d 373 (1995).

A trial judge has wide discretion and power in matters of trial conduct, and a decision will only be reversed if the trial court's conduct or comments unduly influenced the jury, thereby depriving plaintiff of the right to a fair and impartial trial. *City of Lansing v Hartsuff*, 213 Mich App 338, 349-350; 539 NW2d 781 (1995). Furthermore, MCL 600.1501(3) specifically provides that the court need only adjourn until a judge authorized to hold court is in attendance, and that judges of circuit courts may hold court for each other. Unlike the situation in *Scott v Angie's, Inc*, 153 Mich App 652; 396 NW2d 429 (1986), on which plaintiff relies, the trial judge did not leave the courtroom during the presentation of the evidence and never left the courtroom unattended. Because there is no indication that the trial court's conduct deprived plaintiff of the right to a fair and impartial trial, reversal is not warranted.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard Allen Griffin
/s/ Joel P. Hoekstra