STATE OF MICHIGAN

COURT OF APPEALS

ADVANCED FRICTION MATERIALS CO., Plaintiff/Counter-Defendant-Appellee/Cross-Appellant,	UNPUBLISHED December 13, 2002
v	No. 216543 Oakland Circuit Court
STERLING-DETROIT CO., Defendant/Counter-Plaintiff-Appellant/Cross-Appellee.	LC No. 95-510130-CK ON REMAND

Before: Neff, P.J., and Holbrook, Jr., and Jansen, JJ.

PER CURIAM.

This case is back before us on remand from the Michigan Supreme Court. The Supreme Court has directed us to reconsider this matter in light of *Kelly v Builders Square, Inc*, 465 Mich 29; 632 NW2d 912 (2001). *Advanced Friction Materials Co v Sterling-Detroit Co.*, ___ Mich ___; 644 NW2d 762 (2002).

The underlying facts of this contract action were set forth in our prior opinion:

> Plaintiff manufactures automatic transmission bands. Defendant designs, builds and sells automated and semi-automated manufacturing equipment. Plaintiff was awarded a contract to supply transmission bands to General Motors Corporation (GM) for use in GM's Northstar engine. Apparently, plaintiff did not have all of the equipment it needed to manufacture the bands in their entirety . . . . In two separate purchase orders, plaintiff contracted with defendant to supply two of the missing components: a "heat treat system" and a "splitter." For a variety of reasons, the components were not delivered and installed on time. [*Advanced Friction Materials Co v Sterling-Detroit Co*, unpublished opinion per curiam of the Court of Appeals, issued July 20, 2001 (Docket No. 216543), slip op p 1.]

All three judges of this Court agreed that the trial court had not erred in denying plaintiff's motion for judgment notwithstanding the verdict (JNOV). However, in her concurrence/dissent, Judge Jansen disagreed with the majority's conclusion that the trial court had not abused its discretion in ordering a new trial. *Id.* at slip op p ___ (JANSEN, J., concurring in part and dissenting in part). The majority reasoned as follows:

> After finding that defendant had not breached "*any* contract or *any* express or implied warranty" with plaintiff, the jury found that plaintiff had not breached any contract by failing to pay the amounts remaining on the heat treat system and the splitter, as well as the other equipment supplied. We agree with the trial court that given the layout and language employed in the verdict form, the verdict of no course of action for both parties is inconsistent. If defendant did not breach its contracts to supply the heat treat system and the splitter, and given plaintiff's admission that it still owed certain amounts on the contract prices for those components, it is inconsistent to find that plaintiff is not in breach for failure to pay these amounts due. [*Id.* at slip op 2.]

In its remand order, the Supreme Court observed that "MCR 2.611(A)(1) doesn't identify inconsistency in verdicts as a ground for granting a new trial." *Advanced Friction Materials Co v Sterling-Detroit Co.*, ___ Mich ___; 644 NW2d 762 (2002). "On remand," the Supreme Court continues, " the Court of Appeals shall assess on what basis, if any, the trial court could justify ordering a new trial." *Id.*

In *Kelly*, the majority articulated the following rule of law: "A court may grant a new trial following a jury verdict only for one of the reasons stated in MCR 2.611(A)(1)." *Kelly, supra* at 41. We do not read this rule to mean that a motion for new trial can never be predicated on the argument that the verdict was inconsistent or incongruous. Rather, we believe *Kelly* mandates that whatever argument is advanced in support of a motion for a new trial, including the argument that a verdict is inconsistent or incongruous, the argument must be raised in the context of the grounds set forth in the court rule.

The trial court in *Kelly* had ordered a new trial based on finding that the jury's damage award was inconsistent. *Id.* at 33. Because "MCR 2.611(A)(1) does not identify inconsistency or incongruity as a ground for granting a new trial," *Kelly, supra* at 39, the *Kelly* majority concluded that the trial court "lacked a legal basis to grant a new trial." *Id.* at 41. However, the majority never states that inconsistency or incongruity can never serve as the predicate to an argument raised under one of the grounds listed in MCR 2.611(A)(1). Indeed, in rejecting the dissent's assertion that an inconsistent or incongruous verdict is contrary to law and thus may be set aside under MCR 2.611(A)(1)(e), the majority does not indicate it is doing so because it has rejected the dissent's premise. Rather, the majority concludes that it need not address the merits of this argument because the trial court did not base its grant of a new trial on the grounds that it was contrary to law. *Kelly, supra* at 41.

In the case at bar, the trial court did not specifically link its finding of an inconsistent verdict to the specific grounds identified in MCR 2.611(A)(1)(a) through (g). This does not end our inquiry, however. By its plain language MCR 2.611(A)(1)(a) does not exhaust the grounds on which a court may grant a new trial. "When interpreting a court rule, we apply the same rules as when we engage in statutory interpretation. The overriding goal of judicial interpretation of a court rule is to give effect to the intent of the authors." *Wilcoxon v Wayne Co Neighborhood Legal Services*, ___ Mich App ___; ___ NW2d ___ (2002).

MCR 2.611(A)(1)(h) states that a grant of a new trial may be based on "[a] ground listed in MCR 2.612 warranting a new trial." One of the identified grounds for relief from judgment in MCR 2.612(C)(1) is subrule (f), which reads: "Any other reason justifying relief from the

operation of the judgment." This subrule is not limited to a particular class of argument, nor is it restricted by reference to a particularized standard of judicial review. Rather, the subrule "provides the court with '"'a grand reservoir of equitable power to do justice in a particular case."'" *Heugel v Heugel*, 237 Mich App 471, 481; 603 NW2d 121 (1999), quoting *Compton v Alton SS Co*, 608 F2d 96, 106 (CA 4, 1979), quoting 7 Moore's Federal Practice § 60.27(2), p 375. We believe that an inconsistent verdict fits within the broad category "any other reason," and thus can serve as a basis, under MCR 2.611(A)(1) for granting a new trial.

Nonetheless, despite the seemingly comprehensive sweep of subrule (f) implicit in the "any other reason" language, we note that application of the rule has been limited to extraordinary circumstances where action by the court is necessary to accomplish justice. See *Heugel, supra* at 482.[1] See also *Cohan v Riverside Park Place Condominium Ass'n, Inc (After Remand)*, 140 Mich App 564, 567; 365 NW2d 201 (1985), discussing the scope of GCR 1963, 528.3(6), the predecessor to subrule (f). While we believe that in the context of an inconsistent or incongruous verdict, extraordinary circumstances could exist justifying the grant of a new trial, we do not believe this standard is reached in the case at bar. Accordingly, we hold that the trial court abused its discretion in granting a new trial.

This court's holding regarding plaintiff's motion for JNOV remains undisturbed by the remand order. Nonetheless, to avoid any possible confusion, we reaffirm that the trial court did not err in denying plaintiff's motion for JNOV. The evidence was sufficient to create an issue for the jury on whether defendant had breached the two contracts involving the heat treat system and the splitter. *Wilson v General Motors Corp*, 183 Mich App 21, 36; 454 NW2d 405 (1990).

We affirm the trial court's denial of plaintiff's motion for JNOV and reverse the court's grant of a new trial. The jury's verdict is reinstated.

/s/ Janet T. Neff
/s/ Donald E. Holbrook, Jr.

---

[1] In another context, our Supreme Court has cautioned against interpreting the scope of subrule (f) too broadly. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 234; 600 NW2d 638, n 7 (1999) ("[W]e caution that the 'any reason justifying relief' language should not be read so as to obliterate the analysis we have set forth regarding MCR 2.603(D)(1). Otherwise, the exception in MCR 2.612(C)(1)(f) could swallow the rule set forth in MCR 2.603(D)(1).").