

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN WULFF,

Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

December 27, 2002

No. 235110

Wayne Circuit Court

LC No. 98-837044-NF

Before: Whitbeck, C.J., and Zahra and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right a trial court order effectuating a jury verdict of no cause of action in favor of defendant. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This action arises out of plaintiff's claim for unpaid medical expenses against defendant, plaintiff's no-fault automobile insurer. Plaintiff was involved in an automobile accident in 1994. Plaintiff brought this suit in 1998, alleging that as a result of the accident, she sustained a closed head injury and/or psychological injury, specifically organic mood disorder and depression.¹ Plaintiff sought all personal protection insurance benefits from defendant pursuant to the applicable no-fault and contract provisions. Following a trial, the jury returned a verdict of no cause of action, finding that plaintiff did not sustain accidental bodily injury as a result of the motor vehicle accident.

Plaintiff argues on appeal that the trial court erred in denying her motions for judgment notwithstanding the verdict (JNOV) and a new trial when the great weight of the evidence indicated that plaintiff sustained an accidental bodily injury arising out of a motor vehicle accident under MCL 500.3105(1). We disagree. This Court reviews de novo a trial court's decision with regard to a motion for JNOV. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 260; 617 NW2d 777 (2000). "A motion for JNOV should be granted only when there was insufficient evidence presented to create an issue for the jury." *Pontiac School Dist v Miller Canfield Paddock & Stone*, 221 Mich App 602, 612; 563 NW2d 693 (1997). "In

¹ It should be noted that defendant provided plaintiff with no-fault medical benefits for thirteen months following the accident. After defendant refused to continue coverage, plaintiff brought the instant claim.

reviewing a decision regarding a motion for JNOV, this Court must view the testimony and all legitimate inferences that may be drawn therefrom in a light most favorable to the nonmoving party. If reasonable jurors could have honestly reached different conclusions, the jury verdict must stand.” *Morinelli, supra* at 260-261.

Similarly, “[a] trial court’s decision regarding a motion for a new trial is reviewed for an abuse of discretion.” *Meyer v City of Centerline*, 242 Mich App 560, 564; 619 NW2d 182 (2000). The trial court’s function in deciding a motion for a new trial is to determine whether the overwhelming weight of the evidence favors the losing party and its conclusion that the verdict was not against the great weight of the evidence is given substantial deference by this Court. *Morinelli, supra* at 261. Furthermore, when a party claims that a jury’s verdict was against the great weight of the evidence, this Court may overturn that verdict only when it was manifestly against the clear weight of the evidence. However, the jury’s verdict should not be set aside if there is competent evidence to support it. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999).²

In this case, there was sufficient and competent evidence to support the jury’s verdict that plaintiff did not sustain accidental bodily injury in the accident. “Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle” MCL 55.3105(1). Personal protection benefits for injuries arising out of the use of a motor vehicle are provided only where the causal connection between an injury and the use of a motor vehicle is more than “but for,” incidental, or fortuitous. *Thornton v Allstate Ins Co*, 425 Mich 643, 646; 391 NW2d 320 (1986). Defendant presented evidence that plaintiff did not suffer a closed head injury in the 1994 accident. In fact, defendant’s expert opined that plaintiff did not sustain a traumatic brain injury as a result of the 1994 motor vehicle accident. The evidence further indicated that plaintiff’s emotional status was not related to the 1994 accident and that the cause of plaintiff’s psychological distress was unclear. Indeed, there was ample evidence presented that could have explained plaintiff’s post-accident mood disorder and depression. Accordingly, the trial court did not err in denying plaintiff’s motion for JNOV or a new trial as the verdict was not against the great weight of the evidence and reasonable jurors could have honestly reached different conclusions based on the evidence. *Morinelli, supra*; *Ellsworth, supra*.

Affirmed.

/s/ William C. Whitbeck
/s/ Brian K. Zahra
/s/ Christopher M. Murray

² We note that with respect to both post trial motions, plaintiff only argued the sufficiency of the evidence, and raised no issues as to the conduct of trial.