STATE OF MICHIGAN

COURT OF APPEALS

JAMES KELLER,

Plaintiff-Appellant,

v

PAUL F. DUNLAP,

Defendant-Appellee.

UNPUBLISHED
December 27, 2002

No. 237657
Macomb Circuit Court
LC No. 1999-001036-NI

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

MEMORANDUM.

Plaintiff appeals as of right a jury verdict in favor of defendant in this automobile-related personal injury claim. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff first maintains that the trial court erred in allowing defendant to introduce a photograph depicting a 40-mile-per-hour speed limit sign that allegedly faced defendant as he drove through the intersection where the accident occurred. Plaintiff claims that this information was irrelevant because it did not depict the actual speed limit on the portion of the highway upon which defendant traveled, as depicted in plaintiff's conflicting photograph showing a 35-mile-per-hour speed limit sign facing the opposite direction. Because plaintiff's attorney specifically admitted at trial that the question was disputed and necessary to the determination of whether defendant was negligent, the evidence was admissible. See MRE 401; MRE 402; *Dep't of Transportation v VanElslander*, 460 Mich 127, 129; 594 NW2d 841 (1999). Thus, the trial court did not abuse its discretion in allowing the introduction of defendant's photograph.

In addition, even if admission of this evidence was erroneous, plaintiff has not shown that he is entitled to relief. An error in admitting evidence is harmless unless its admission was "inconsistent with substantial justice." MCR 2.613(A); *Davidson v Bugbee*, 227 Mich App 264, 266; 575 NW2d 574 (1997). At trial, plaintiff was free to argue his case, contest defendant's veracity about whether he was speeding and contend that defendant's photograph did not depict the actual speed limit, and plaintiff did so argue. Thus, any erroneous admission of the photograph was not inconsistent with substantial justice.

Plaintiff next argues that the trial court should have ordered a new trial because the verdict was against the great weight of the evidence. However, plaintiff did not move in the trial court for a new trial. Absent a motion for new trial, a challenge to a verdict on the ground that it

is against the great weight of the evidence is not preserved for appellate review. *Hyde v University of Michigan Bd of Regents*, 226 Mich App 511, 525; 575 NW2d 36 (1997). Failure to raise the issue by the appropriate motion waives the issue on appeal, *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997), unless failure to consider the issue would result in a miscarriage of justice. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999). Because the evidence was sufficient to support the jury's verdict, a miscarriage of justice will not result from our failure to review this issue. The jury chose to believe defendant's contention that he was not speeding notwithstanding his inability to recall his exact speed. This credibility determination is within the province of the factfinder. See *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996). See, also, *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998). Plaintiff has failed to avoid forfeiture of this unpreserved issue.

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh