STATE OF MICHIGAN

COURT OF APPEALS

RICHARD WALES, Guardian of BRETT WALES, Incapacitated Person,

Plaintiff-Appellant/Cross-Appellee,

v

AIG INSURANCE COMPANY,

Defendant-Appellee/Cross-Appellant,

and

ALLIED BENEFIT SYSTEMS, INCORPORATED,

Defendant.

UNPUBLISHED
March 2, 2004

No. 241940
Washtenaw Circuit Court
LC No. 00-001049-NF

Before: Talbot, P.J., and Owens and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from a jury verdict of no cause of action in favor of defendant on plaintiff's claim for no-fault benefits, MCL 500.3105(1).[1] We affirm.

Brett Wales suffered traumatic brain injuries when he came to be outside of a car, in which he was an occupant, while the vehicle was moving at approximately 35 miles per hour. He had no recollection of the circumstances giving rise to his injuries. At issue, in the trial court, was whether Brett came to be outside of the car accidentally or whether he intended to injure himself when he got out of the moving vehicle. If he intended his injuries, he could not recover personal injury protection benefits. MCL 500.3105(4); *Schultz v Auto Owners Ins Co*, 212 Mich App 199, 201-202; 536 NW2d 784 (1995). Brett's wife, Wendy Knutsen, was the only other

[1] Defendant filed a cross appeal challenging the trial court's denial of its motions for summary disposition and directed verdict. Because of our disposition of plaintiff's claim of appeal, we do not address the cross appeal.

person in the car at the time Brett got out, and she testified that she did not see how he got out of the car. She further testified that he gave no warning that he was going to leave the car. Contrary to Knutsen's testimony, Officer Brandon Bullock of the Hamburg Township Police Department, and clinical social worker Alethia Battles from the trauma burn unit at the University of Michigan Medical Center both testified that Knutsen had told them that Brett threatened to jump from the car before departing from the vehicle.

Plaintiff contends that the statements of Bullock and Battles were inadmissible hearsay. Plaintiff's argument follows that, because the hearsay statements formed the sole basis upon which a reasonable trier of fact could have found in favor of defendant, and only admissible evidence should be considered in determining a motion for summary disposition, plaintiff's pretrial motion for summary disposition should have been granted. We disagree. The trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *Davidson v Bugbee*, 227 Mich App 264, 266; 575 NW2d 574 (1997). Moreover, an error in admission of evidence does not present a basis for vacating, modifying, or otherwise disturbing a judgment unless refusal to do so would be inconsistent with substantial justice. *Id*.

Knutsen's testimony regarding her statements to police and medical personnel delineating the statements made by Brett implicates two levels of potential hearsay. Each level of potential hearsay must meet an exception to the hearsay rule for the evidence to be admissible. *Maiden v Rozwood*, 461 Mich 109, 125; 597 NW2d 817 (1999), citing *Merrow v Bofferding*, 458 Mich 617, 626-627; 581 NW2d 696 (1998). Because Brett's state of mind was at issue during the trial, Knutsen's statements about what Brett said fall under the exception to the hearsay rule for statements of a then existing mental, emotional or physical condition, MRE 803(3). See *People v Fisher*, 449 Mich 441, 449-451; 537 NW2d 577 (1995); *People v Furman*, 158 Mich App 302, 314-315; 404 NW2d 206 (1987). This level of potential hearsay thus meets an exception to the hearsay rule and is admissible.

Officer Bullock testified that Knutsen told him that she and Brett had been arguing, and that Brett said "I'm out of here" before jumping out of the car. Although Bullock testified at trial that he spoke with Knutsen minutes after the accident, and that she seemed upset while talking to him, the trial court made the determination of the admissibility of Bullock's testimony on defendant's pretrial motion. The trial court found that Knutsen's statements to Bullock were excited utterances, admissible under MRE 803(2), because seeing one's husband lying unconscious at the side of the road, bleeding, was an inherently shocking event, despite plaintiff's representation that Knutsen was calm when she was speaking to Bullock. On this record, we cannot conclude that the trial court's decision was an abuse of discretion. *Davidson, supra*. Plaintiff provides no legal support for the argument that the trial court's pretrial decision to admit Bullock's testimony was in error, and it is not the function of this Court to find law supporting plaintiff's position. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

Somewhat more problematic is the trial court's finding that Battles' testimony, that Knutsen had told her that Brett had threatened to jump from the moving vehicle before jumping, was admissible because Knutsen's statements to Battles were statements made for purposes of medical treatment or diagnosis, MRE 803(4). Because there is some controversy over the admissibility of statements made to mental health professionals under MRE 803(4), we decline to affirm the jury's verdict for this reason. However, this Court will not reverse the trial court

when the trial court reached the correct result but for a different reason. *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 475 (1997).

The evidence established at trial that Battles' social work note, in which she had recorded the statement that Brett had threatened to jump and then did, was a record of a regularly conducted activity.[2] See *Merrow, supra,* at 626-628. Such records are admissible under MRE 803(6). In *Merrow*, the Court held that a regularly conducted medical and incident history taken when the plaintiff was admitted to the hospital was admissible as a record of a regularly conducted activity. *Id*. A contested hearsay statement within that record had to fall into its own hearsay exception to be admissible. *Id*. As already discussed, Knutsen's statements about what Brett said were admissible pursuant to MRE 803(3). Thus, the trial court properly admitted Battles' testimony. Moreover, Battles' testimony was cumulative to that given by Officer Bullock, and the admission of cumulative evidence does not constitute an abuse of discretion. *DaFoe v Michigan Brass & Electric Co*, 175 Mich App 565, 567; 438 NW2d 270 (1989).

Plaintiff's sole issue raised on appeal questioned the denial of the motion for summary disposition where the testimony of Battles and Bullock was inadmissible. The testimony was admissible, leaving plaintiff's claims without support.

Affirmed.

/s/ Michael J. Talbot
/s/ Donald S. Owens
/s/ Karen M. Fort Hood

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[2] While not the reason the trial court ultimately found the evidence admissible, defendant argued in defense of plaintiff's pretrial motion for summary disposition that Battles' social work note, from which she later testified, was a record regularly kept and was admissible under *Merrow, supra.* The trial court ultimately found Battles' testimony about Knutsen's statements admissible as statements made for purposes of seeking medical treatment or diagnosis, MRE 803(4). This Court will not reverse a determination of the trial court where it reached the right result, albeit for the wrong reason. *Zimmerman, supra*. Because of a lack of clarity in the legal precedent for admitting statements made to psychological care workers under MRE 803(4), we hold the testimony more clearly admissible under MRE 803(6).