

STATE OF MICHIGAN
COURT OF APPEALS

GLADYS HARPER, Guardian and Conservator
for DONALD HARPER, a Legally Incapacitated
Person,

UNPUBLISHED
October 18, 2005

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION,

No. 255339
Wayne Circuit Court
LC No. 02-207992-NF

Defendant-Appellee.

Before: Owens, PJ, and Fitzgerald and Schuette, JJ

PER CURIAM.

Plaintiff appeals as of right the judgment of no cause of action entered in favor of defendant following a jury trial. We affirm.

Plaintiff first claims that the trial court abused its discretion by imposing arbitrary time limits upon counsel for the elicitation of testimony from witnesses at trial. We disagree.

Because plaintiff did not object to the imposition of time limits at trial, the issue is unpreserved, and appellate relief is not available absent plain error affecting plaintiff's substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). MRE 611 provides a trial court with broad powers to control the conduct of a trial, including the manner in which witnesses are examined. *Hartland Twp v Kucykowicz*, 189 Mich App 591, 595; 474 NW2d 306 (1991). The method and order in which evidence is admitted at trial rests within the discretion of the trial court. *Id.* While plaintiff asserts the time limitations were arbitrary and unnecessarily restricted the elicitation of relevant testimony, she fails to delineate what testimony was precluded from presentation. Further, while the trial court sporadically reminded counsel that their time limits were expiring, there is no indication in the record that, had counsel not complied with the restriction, the trial court would have actually precluded the completion of testimony. A party may not merely announce a position on appeal and then leave it to this Court to discover and rationalize the basis for the claim. *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). The record does not indicate that the trial court abused its discretion in limiting the time available to both counsel for presentation of proofs. See *Phillips v Mazda Motor Mfg (USA) Corp*, 204 Mich App 401, 415-416; 516 NW2d 502 (1994).

Plaintiff next contends the jury's verdict was against the great weight of the evidence or the product of passion or prejudice and should be set aside. We disagree.

When a litigant asserts that a jury verdict is contrary to the great weight of the evidence, this Court may overturn the jury's verdict only when it is manifestly against the clear weight of the evidence. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 499; 668 NW2d 402 (2003). If there is competent evidence to support a jury's verdict, it should not be set aside. *Id.* Plaintiff argues the jury's verdict was in error because it accepted defendant's expert's opinion, which was not based on a reasonable inference and was mere speculation. This Court has ruled that an expert's opinion is improper when it is derived from assumptions that are not consistent with the established facts. *Badalamenti v William Beaumont Hosp*, 237 Mich App 278, 286; 602 NW2d 854 (1999). Here, the jury was confronted with conflicting opinions regarding the cause of Harper's intellectual and cognitive deficits. Both plaintiff and defendant relied on testimony regarding the duration of Harper's substance abuse history, along with the administration and interpretation of neuropsychological testing. While there was conflicting evidence regarding the onset of Harper's substance abuse history, there was no relevant or substantial disagreement whether he consumed substantial amounts of alcohol and other illicit substances.

The evidence presented did not preponderate so heavily against the verdict that it would constitute a miscarriage of justice to permit the jury's verdict to stand. Plaintiff's contention of error is solely regarding conflicting testimony of the two neuropsychologists that evaluated Harper. As a result of this conflicting testimony, an issue of credibility arose with regard to the nature and cause of Harper's cognitive deficits. The evaluation and determination of this issue was properly within the province of the jury. *Anton v State Farm Mut Auto Ins Co*, 238 Mich App 673, 689; 607 NW2d 123 (1999). Giving proper deference to the trial court, we cannot say that it was error to deny either plaintiff's motion for new trial or judgment notwithstanding the verdict. Plaintiff's assertion that the jury's verdict was the product of bias or prejudice owing to Harper's history of substance abuse is not properly before this Court because plaintiff provides no argument, citation to authority, or evidence to support this assertion. *In re Toler, supra*, p 477. To the extent any bias or prejudice may have existed, it was addressed by the trial court's instruction to the jurors to not permit their sympathies or prejudices to influence their decision.

Plaintiff next contends the trial court improperly permitted defendant to argue the reasonableness of treatment costs for Harper by referencing the overall profit margin for the residential treatment program. We disagree.

A trial court's decision to admit or exclude evidence is reviewed by this Court for an abuse of discretion. *Waknin v Chamberlain*, 467 Mich 329, 332; 653 NW2d 176 (2002). Plaintiff contends that the trial court improperly permitted defendant to question a witness about the disproportion between the fees charged for Harper's monthly treatment services and the actual costs incurred by the service provider for Harper's care. Specific information pertaining to costs and expenses for Harper's care was within the proper realm of inquiry given defendant's contention that the services were neither necessary – not being related to a compensable injury – nor reasonable, and plaintiff's acknowledgment that the reasonableness of the fees was the only issue in the case. Notably, over days of trial and testimony, defendant's questioning and comment on this topic comprised only a few pages of inquiry on one day of trial, which was properly delimited by the trial court.

Defendant, in closing argument, reasserted its contention that the cost of Harper's care was not justified given the disproportion between profit realized compared to actual expenses incurred by the treatment provider. This was not sufficient to support plaintiff's assertion of error. Attorneys are permitted to draw reasonable inferences from testimony during closing argument. *In re Miller*, 182 Mich App 70, 77; 451 NW2d 576 (1990). Attorneys are granted wide latitude with respect to closing arguments. *Dunn v Lederle Laboratories*, 121 Mich App 73, 90; 328 NW2d 576 (1982). Defendant's argument that charges were not reasonable was permissible given that the reasonableness of fees for services rendered was an issue at trial. Moreover, the trial court's instruction to the jury that remarks by attorneys did not constitute evidence was sufficient to cure any prejudice that may have arisen. *Tobin v Providence Hosp*, 244 Mich App 626, 641; 624 NW2d 548 (2001).

Plaintiff's final issue is that the cumulative effect of the trial court's errors impeded her right to a fair trial. We disagree.

Claims of cumulative error are reviewed to determine whether the combination of alleged errors resulted in the denial of a fair trial. *Stitt v Holland Abundant Life Fellowship (On Remand)*, 243 Mich App 461, 471; 624 W2d 427 (2000). Although "the cumulative effect of several errors can constitute sufficient prejudice to warrant reversal where the prejudice of any one error would not," *People v LeBlanc*, 465 Mich 575, 591; 640 NW2d 246 (2002), because we find no error, reversal is not required, *Stitt, supra*.

Affirmed.

/s/ Donald S. Owens
/s/ E. Thomas Fitzgerald
/s/ Bill Schuette