STATE OF MICHIGAN

COURT OF APPEALS

CAPITOL INDUSTRIES, INC., Plaintiff-Appellant,	UNPUBLISHED December 20, 2005
v	No. 256702 Ingham Circuit Court
SECURA INSURANCE, Defendant-Appellee.	LC No. 02-000535-CZ

Before: Fitzgerald, PJ. and O'Connell and Kelly, JJ.

MEMORANDUM.

Plaintiff appeals as of right a judgment of no cause of action in this claim for insurance coverage. We affirm.

Plaintiff filed a claim for insurance coverage for equipment that was allegedly destroyed when a break-in occurred at its business location. Defendant denied the claim when it discovered information indicating that plaintiff's sole shareholder, Richard Collins, hired someone to cause the damage. On the verdict form, the jury answered "yes" to the question "Did Richard Collins arrange, bring about or otherwise cause the vandalism damage to the equipment of Plaintiff Capitol Industries Inc. . . . ?" The trial court subsequently entered a judgment of no cause of action.

Plaintiff first argues that the trial court erred when it allowed an incompetent witness to testify. Generally, the decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Campbell v Sullins*, 257 Mich App 179, 196; 667 NW2d 887 (2003).

Plaintiff argues that Scott Ueberroth was incompetent to testify because he had given *previous* testimony while under the influence of alcohol and drugs.

> Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules. [MRE 601.]

During Ueberroth's trial testimony, he stated that he had been drunk when he gave previous

statements to the police, an insurance investigator, and at his deposition. After hearing this, the trial court inquired whether Ueberroth was currently under the influence of alcohol. Ueberroth stated that he was sober and had been sober for about a year. The court then allowed him to continue testifying. Plaintiff did not present any evidence in the trial court or on appeal that, at the time of trial, Ueberroth was incompetent to give testimony. Therefore, we conclude that the trial court did not abuse its discretion in admitting this testimony.

Plaintiff next argues that the trial court committed reversible error by taking the role of weighing the credibility of the witness away from the jury when the trial court, outside the jury's presence, threatened the witness with perjury charges and then, in front of the jury, questioned the witness about the veracity of his testimony. We conclude that plaintiff waived this issue when it did not object to the trial court's questioning, but instead relied on the testimony elicited by the judge in its closing argument. A party is not allowed to assign as error on appeal something that its own counsel deemed proper at trial because to do so would permit the party to harbor error as an appellate parachute. *Hilgendorf v St John Hosp & Medical Ctr Corp*, 245 Mich App 670, 683; 630 NW2d 356 (2001).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly