STATE OF MICHIGAN

COURT OF APPEALS

JAMES K. GREYDANUS and SUZANNE GREYDANUS, Plaintiffs-Appellants, v STEPHEN A. NOVAK and DENNIS N. NAGEL, Defendants-Appellees.	UNPUBLISHED January 24, 2008 No. 273221 Ottawa Circuit Court LC No. 04-051084-NO

Before: Davis, P.J., and Murphy and White, JJ.

PER CURIAM.

Plaintiffs James and Suzanne Greydanus appeal as of right the trial court's September 11, 2006, judgment of no cause of action that was entered on a jury's verdict finding no negligence relative to a jet ski accident that gave rise to this litigation. We affirm.

Plaintiffs claim that the trial court erroneously excluded a physician's letter and the testimony of their two expert witnesses. We review a trial court's decision to exclude evidence for an abuse of discretion. *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 269; 730 NW2d 523 (2006). An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). "However, decisions regarding the admission of evidence frequently involve preliminary questions of law, e.g., whether a rule of evidence or statute precludes admissibility of the evidence[, and we review] questions of law de novo." *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

Plaintiffs assert that, because Nathan Ware, an accident reconstruction expert, had not yet expressed an opinion regarding how the accident occurred, they had no duty to supplement their interrogatory answers and, therefore, the trial court abused its discretion in excluding Ware's testimony from trial. Contrary to MRE 103(a)(2), plaintiffs never made an offer of proof regarding Ware's testimony. This generally precludes us from reviewing the admissibility of Ware's testimony. *Hashem v Les Stanford Oldsmobile, Inc*, 266 Mich App 61, 94; 697 NW2d 558 (2005). We recognize that Ware did not plan to formulate an opinion regarding the jet ski accident until after hearing defendant Nagel's testimony concerning his version of events surrounding the accident and that plaintiffs might not even call Ware if his opinion were not favorable to their negligence claim. However, even though plaintiffs' expert sat through the trial and heard Nagel's testimony, plaintiffs failed to make an offer of proof after the testimony.

The purposes of pretrial discovery regarding expert witnesses include eliminating surprise and allowing the other party to adequately prepare for cross-examination. *Nelson Drainage Dist v Bay*, 188 Mich App 501, 506-507; 470 NW2d 449 (1991); *Roe v Cherry-Burrell Corp*, 28 Mich App 42, 49; 184 NW2d 350 (1970). Had the trial court allowed Ware to testify, defendants would not have learned of Ware's opinion until the middle of trial. This would have subjected defendants to unfair surprise and left them unable to adequately prepare for cross-examination of Ware. *Nelson Drainage*, *supra* at 506-507. Under these circumstances, the trial court did not abuse its discretion in excluding the testimony of Ware. Even if the trial court should have allowed Ware to testify and assuming that defendants were late in raising the issue, plaintiffs have not established the requisite prejudice that must be shown before reversal is warranted. MCR 2.613(A)(harmless error). Given that Nagel did testify at trial, it became incumbent on plaintiffs to at least make a record to show whether Ware would have actually testified and, if so, to show that Ware would have offered an opinion supporting a finding of negligence that would undercut Nagel's testimony and that would affect the jury's verdict. Indeed, while plaintiffs' appellate brief concludes in cursory fashion that Nagel's version of events was impossible and could easily have been rebutted, plaintiffs offer no explanation or theory whatsoever with respect to why it was impossible and how it could have been rebutted. Reversal is not warranted. Because the remaining arguments presented by plaintiffs on appeal relate to evidence tied to damages and because the jury found that there was no negligence, which finding remains intact, it is unnecessary to reach the remaining arguments as they are irrelevant for purposes of properly resolving this appeal.

Affirmed.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Helene N. White