STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN INSURANCE COMPANY,

Plaintiff-Appellee,

v

LAKE SHORE ELECTRIC OF WEST MICHIGAN, INC., and MICHAEL KENNETH WELMERINK,

Defendants,

and

MICHAEL JOHN BECKER and DENISE BECKER,

Defendants-Appellants.

UNPUBLISHED
May 20, 2008

No. 276110
Newaygo Circuit Court
LC No. 04-018746-CK

Before: Owens, P.J., and Meter and Schuette, JJ.

PER CURIAM.

After a bench trial, defendants-appellants Michael and Denise Becker appeal as of right from the trial court's declaratory judgment in favor of plaintiff Michigan Insurance Company. This case stems from a serious automobile accident in which Michael Becker was injured while riding in a car driven by Michael Welmerink. The trial court concluded that the commercial automobile insurance policy issued by Michigan Insurance Company to Lake Shore Electric of West Michigan, Inc. (Lake Shore) did not provide coverage for the accident in question. We affirm.

Appellants first argue that the trial court incorrectly shifted the burden at trial to them, requiring reversal. We disagree. Both the determination regarding which party bears the burden of proof at trial and the trial court's decision in a declaratory judgment action are reviewed de novo. *Toll Northville LTD v Northville Twp*, 480 Mich 6, 10; 743 NW2d 902 (2008); *Pickering v Pickering*, 253 Mich App 694, 697; 659 NW2d 649 (2002).

In a declaratory action, the plaintiff generally has the burden to prove each fact alleged. *Shavers v Attorney Gen*, 402 Mich 554, 589; 267 NW2d 72 (1978). A court's written order reflects the final decision in this case, and any contrary oral statements made by the trial court

are not controlling. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977). Although the trial court apparently misspoke in its oral opinion, the court's supplemental written opinion demonstrates that the court properly reviewed the evidence, assigned plaintiff the burden of proof in this action, and concluded that plaintiff carried its burden based on the evidence presented at trial. Accordingly, no error occurred with regard to this issue.

Appellants next argue that the trial court erroneously found that Welmerink did not have a business purpose when driving on the day of the accident. We disagree. We review a trial court's findings of fact in a bench trial for clear error and its legal conclusions de novo. MCR 2.613(C); *City of Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 249; 701 NW2d 144 (2005). "A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake has been committed." *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

The trial court's quick issuance of its decision in favor of plaintiff (immediately following closing arguments) does not evince any improper conduct. The court actively questioned many witness during trial, and its quick issuance of its decision does not indicate that the trial court failed to properly consider all the evidence before issuing its decision.

Regardless, we acknowledge that the trial court did not directly address any testimony in its decision that supported Welmerink's claim that he was driving for a business purpose on the day of the accident. Although some testimony supported Welmerink's claim, the court apparently relied primarily on its implicit finding that Welmerink's claim was incredible, and there was sufficient evidence to support such a finding. Moreover, credibility is ultimately left for the trier of fact, and we will not disturb their credibility determinations on appeal. MCR 2.613(C); *Mogle v Scriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000).

However, under the law of the case doctrine,[1] the trial court abused its discretion by admitting Welmerink's hearsay statement as substantive evidence at trial. We review a trial court's decision regarding the admission of evidence for an abuse of discretion. *Barnett v Hidalgo*, 478 Mich App 151, 158-159; 732 NW2d 472 (2007). We review de novo questions of law regarding the admissibility of evidence. *Id.* at 159. "[A]dmitting evidence that is inadmissible as a matter of law constitutes an abuse of discretion." *Id.* This Court's prior ruling in *Michigan Ins Co v Lake Shore Electric of West Michigan, Inc*, unpublished opinion per curium of the Court of Appeals, issued May 30, 2006 (Docket No. 266389), that the recorded statements were not admissible under MRE 801(d)(2)(a) or MRE 803(3) is the law of the case. Therefore, the trial court abused its discretion by admitting and reviewing the recorded hearsay statements as substantive evidence at trial. See *Grace v Grace*, 253 Mich App 357, 363; 655 NW2d 595 (2002).

---

[1] This precise issue was not raised below and is therefore unpreserved. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). However, review of the issue is appropriate because the issue involves a question of law with all the necessary facts having been presented on appeal. *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 640; 734 NW2d 217 (2007).

However, error requiring reversal may not be predicated on an evidentiary ruling unless a substantial right was affected or the error appears inconsistent with substantial justice. MCR 2.613(A); MRE 103(a); *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004). Although the recorded hearsay statements were not admissible as substantive evidence, the trial court primarily focused on the issue of credibility in its decision, and those statements were strong evidence with regard to Welmerink's credibility. Specifically, the challenged recorded conversation suggested that Welmerink later modified his stated reason for traveling on the day of the accident only after his individual no-fault insurer denied his claim for benefits. Accordingly, there was sufficient, appropriate testimony, including the recorded statements, on which the trial court relied to support its conclusion that Welmerink's claim was incredible. As a result, we conclude that no substantial right was affected and that the error was not inconsistent with substantial justice.

Affirmed.

/s/ Donald S. Owens
/s/ Patrick M. Meter
/s/ Bill Schuette