

STATE OF MICHIGAN
COURT OF APPEALS

GARY GRAY and SHERRYL MCDONALD-GRAY,

Plaintiffs-Appellants,

v

BRENT BOCK,

Defendant-Appellee.

UNPUBLISHED

June 24, 2008

No. 278560

St. Clair Circuit Court

LC No. 05-001647

Before: Meter, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a judgment in their favor and a post-judgment order denying their motion for a new trial on the issue of damages. We affirm. This appeal is being decided without oral argument under MCR 7.214(E).

Gary Gray was injured while riding in a car driven by defendant Brent Bock. Plaintiffs sued Bock. Plaintiffs alleged that, as a result of defendant's negligence, Gary Gray suffered a serious impairment of body function and had not been able to work since the accident. Sherryl McDonald-Gray sought damages for loss of consortium. The trial court granted plaintiffs' motion for summary disposition on the issue of negligence, but denied the motion on the issue of threshold injury.

The case proceeded to trial on the issues of whether Gary Gray was injured in the accident, whether his injuries constituted a serious impairment of body function, and the amount of damages. Gary Gray's request for wage loss was limited to those losses occurring more than three years after the accident.¹ During the trial, defendant made several references to the fact that Gary Gray received no-fault wage loss benefits for the three years following the accident.

The jury found that Gary Gray suffered injuries as a result of the accident and that his injuries constituted a serious impairment of body function. The jury awarded Gary Gray \$12,000

¹ Gary Gray received wage loss benefits for the three years following the date of the accident, as provided under the no-fault act. See MCL 500.3107(1)(b).

for his economic losses and \$20,000 for his noneconomic losses. The jury awarded no damages to Sherryl McDonald-Gray. In the judgment, the trial court awarded Gary Gray these damages, but awarded defendant case evaluation sanctions in the amount of \$13,272. The judgment also included pre-judgment interest in the amount of \$1,802.98.

Plaintiffs moved for a new trial on the issue of damages. Plaintiffs argued that the trial court denied them a fair trial by allowing defendant to introduce evidence that they were insured. In response, defendant asserted that plaintiffs attempted to misrepresent their financial condition by contending that they had exhausted their savings and were on the verge of poverty. And defendant argued that, under these circumstances, references to Gary Gray's receipt of no-fault wage loss benefits was not improper. The trial court denied plaintiffs' motion for a new trial.

The decision to grant or deny a motion for a new trial is within the discretion of the trial court. *Coble v Green*, 271 Mich App 382, 389; 722 NW2d 898 (2006). An abuse of discretion occurs when the result is outside the range of principled outcomes. *Barnett v Hidalgo*, 478 Mich 151, 158; 732 NW2d 472 (2007).

In *Cacavas v Bennett*, 37 Mich App 599, 604; 194 NW2d 924 (1972), citing MCL 500.3030, this Court noted that neither party may refer to the available insurance coverage before the trier of fact. The Court explained that it would be error that warranted reversal "to intentionally interject the subject of insurance if the sole purpose is to inflame the passions of the jury" *Id.* However, the Court also recognized that it would not be error "if the subject is only incidentally brought into the trial, is only casually mentioned, or is used in good faith for purposes other than to inflame the passions of the jury." *Id.*

Plaintiffs assert that defendant violated this rule by mentioning that Gary Gray received no-fault wage loss benefits for the first three years after the accident—a period for which they were not even seeking compensation—and that the reference to those benefits fatally prejudiced their case. Cf. *Kokinakes v British Leyland, Ltd*, 124 Mich App 650, 653-655; 335 NW2d 114 (1983). We disagree.

Plaintiffs' position, as reflected in counsel's opening statement and Gary Gray's direct testimony, was that plaintiffs had exhausted their savings as a result of Gary Gray's inability to work following the accident, and were facing severe financial hardship. Defendant sought to rebut this inference by pointing out that Gary Gray had received no-fault wage loss benefits for three years following the accident. Decisions from this Court indicate that mention of insurance under such circumstances, while not preferred, does not necessarily warrant reversal. See, e.g., *Cogo v Moore*, 119 Mich App 747, 755-756; 327 NW2d 345 (1982) (stating that the plaintiff's reference to insurance was not error when designed to rebut defense counsel's assertion that client was unemployed and unable to pay judgment); *Cacavas*, *supra* at 604 (stating that the defendant's reference to insurance was not error when made to rebut the plaintiffs' assertions of inability to secure hospitalization). Further, Gary Gray's testimony was inconsistent with certain statements made in a document entitled "Ordinary and Necessary Services Affidavit." Under these circumstances, the references to insurance were properly offered for the limited purpose of challenging credibility. *Id.* at 604; see also MRE 411.

The trial court correctly held that the admission of evidence regarding Gary Gray's receipt of no-fault wage loss benefits was proper, and did not abuse its discretion by denying plaintiffs' motion for a new trial on that basis.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael R. Smolenski
/s/ Deborah A. Servitto