STATE OF MICHIGAN

COURT OF APPEALS

BARBARA MORRISON, Plaintiff-Appellant,	UNPUBLISHED June 26, 2008
v	No. 274414 Oakland Circuit Court
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant-Appellee.	LC No. 2005-065815-CK

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

PER CURIAM.

Plaintiff appeals as of right from an order of no cause of action in favor of defendant following a jury trial. We affirm.

I. FACTS

This is an action to recover personal injury protection (PIP) no-fault benefits for an injury arising out of an October 1, 2001, automobile accident. Plaintiff and defendant previously entered into a settlement for claims arising from the date of the accident until September 4, 2003. Plaintiff subsequently filed this action seeking reimbursement of additional PIP benefits allegedly due after September 4, 2003. Defendant's position at trial was that plaintiff's continuing medical problems after September 4, 2003, were unrelated to the October 2001 automobile accident. The jury was given a special verdict form and answered "No" to the first question that asked, "Did the plaintiff sustain an accidental bodily injury?" The trial court thereafter entered an order of no cause of action in favor of defendant and denied plaintiff's posttrial motion for judgment notwithstanding the verdict (JNOV) or a new trial.

II. MOTION FOR JNOV

Plaintiff first argues that the trial court erred in denying her motion for JNOV. We disagree.

A. Standard of Review

Denial of a motion for JNOV is reviewed de novo. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003). A motion for JNOV should be

granted only if the evidence, viewed in the light most favorable to the nonmoving party, fails to establish a claim as a matter of law. *Id.*

B. Analysis

Plaintiff argues that there was no dispute that she was injured in the October 2001 automobile accident because defendant paid PIP benefits for the period between the accident and September 4, 2003. The question at trial, however, was whether plaintiff continued to suffer the effects of an accidental bodily injury after September 4, 2003. The jury was repeatedly instructed that the relevant time period began after September 4, 2003. It is logical that the jury would read the question, "Did the plaintiff sustain an accidental bodily injury?" to refer to the time period after September 4, 2003, rather than the initial accident in October 2001.

Plaintiff had a history of lower back problems before the accident, including prior back surgeries. Conflicting evidence was presented at trial with regard to whether plaintiff's continuing medical problems were attributable to trauma caused by the automobile accident or to a degenerative condition. An independent medical examiner did not find any residual problems attributable to the October 2001 accident, and instead believed that plaintiff's back problems were attributable to a degenerative condition that would continue to worsen over time. He also stated that plaintiff's stature and diabetes made her condition more difficult to manage. The evidence presented to the trial court, viewed in a light most favorable to defendant, did not establish an accidental bodily injury as of September 4, 2003, as a matter of law. Therefore, the trial court properly denied plaintiff's motion for JNOV.

We need not address whether an error may have occurred in either the jury instructions or the verdict form because the plaintiff explicitly agreed to both during the trial and did not preserve or raise either on appeal. *Moskalik v Dunn*, 392 Mich 583, 592; 221 NW2d 313 (1974).

III. MOTION FOR NEW TRIAL

Plaintiff also argues that the trial court abused its discretion in denying plaintiff's motion for a new trial because the jury's verdict was against the great weight of the evidence. Again, we disagree.

A. Standard of Review

A trial court's decision whether to grant a new trial is reviewed for an abuse of discretion. *Kelly v Builders Square, Inc*, 465 Mich 29, 34; 632 NW2d 912 (2001). A new trial may be granted when a verdict is against the great weight of the evidence, MCR 2.611(A)(1)(e), but a verdict should be overturned under this rule only when it is "manifestly against the clear weight of the evidence." *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999) (citation omitted). "The trial court cannot substitute its judgment for that of the factfinder, and the jury's verdict should not be set aside if there is competent evidence to support it." *Id.* "This Court will give substantial deference to a trial court's determination that the verdict is not against the great weight of the evidence." *Id.*

Further, a jury's verdict should not be overturned if there is a logical explanation for the verdict when considering the manner in which the legal principles were argued and applied in the

context of the present case. *Bean v Directions Unlimited, Inc*, 462 Mich 24, 31-32; 609 NW2d 567 (2000); *Allard v State Farm Ins Co*, 271 Mich App 394, 407; 722 NW2d 268 (2006).

B. Analysis

Plaintiff argues that the jury's verdict was against the great weight of the evidence because "there was a complete lack of dispute over whether plaintiff sustained an injury" and defendant "unequivocally admitted that she sustained [an] injury." We disagree.

Although defendant did not dispute that plaintiff was injured in the October 2001 automobile accident, and also did not dispute that plaintiff continued to have medical problems after September 4, 2003, defendant did dispute that plaintiff's continuing medical problems involved an accidental injury attributable to the 2001 automobile accident. As discussed previously, there was competent evidence that plaintiff's continuing medical problems were attributable to a degenerative condition, not an accidental bodily injury. Therefore, the jury's verdict that plaintiff was not suffering from an accidental bodily injury after September 2003 is not contrary to the great weight of the evidence, and the trial court did not abuse its discretion in denying plaintiff's motion for a new trial.

Affirmed.

/s/ William C. Whitbeck
/s/ Donald S. Owens
/s/ Bill Schuette