STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL PICKENS,

Plaintiff-Appellant,

v

HOSPITAL CONSOLIDATED LAB and YAKOV LYATKER,

Defendants-Appellees,

and

ST. JOHN HEALTH and PROVIDENCE HEALTH,

Defendants.

UNPUBLISHED
August 4, 2009

No. 279677
Oakland Circuit Court
LC No. 2006-074414-NI

Before: Talbot, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Following a jury trial in this negligence case, plaintiff appeals as of right a judgment of no cause of action. Because no evidentiary error constituted plain error affecting plaintiff's substantial rights and because the trial court did not err in denying plaintiff's motion for a directed verdict, we affirm.

This case arises out of an automobile accident involving three vehicles. Plaintiff's vehicle was struck from behind by the vehicle driven by Reem Alsabti, and Alsabti's vehicle was rear-ended by the vehicle driven by defendant Yakov Lyatker. One of the issues before the jury was whether Alsabti's vehicle struck plaintiff's vehicle only after it was rear-ended by Lyatker's vehicle, or whether Alsabti's vehicle struck plaintiff's vehicle before it was rear-ended by Lyatker's vehicle and then again after it was struck by Lyatker's vehicle.[1]

[1] Defendant Hospital Consolidated Lab owned the vehicle driven by Lyatker. Lyatker was driving the vehicle within the scope of his employment with Hospital Consolidated Lab. (continued…)

Plaintiff first argues on appeal that defendant asked numerous improper questions on cross-examination of plaintiff, introducing irrelevant and prejudicial evidence of plaintiff's insurance policies and benefits and his history of psychotherapy in an attempt to sway the jurors' opinion. Because plaintiff failed to object to defendant's questions at trial, we review plaintiff's evidentiary issues for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

Relevant evidence, which is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence," is generally admissible. MRE 401, 402. However, evidence, even if relevant, "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." MRE 403. "Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury." *Shaw v Ecorse*, 283 Mich App 1, 26; ___ NW2d ___ (2009) (quotation omitted). Finally, "[o]nce either party has put some fact into evidence, the other party has an unquestioned right to fully develop all facts and circumstances surrounding the subject matter." *Olweean v Wayne Co Rd Comm*, 385 Mich 698, 702; 190 NW2d 108 (1971).

Plaintiff complains that defendant asked him about his insurance compensation after the accident in order to convince the jury that he was not in need of any recovery. On direct examination, plaintiff testified that, since the accident, he had been in "financial ruin." Defendant, by asking plaintiff about his insurance compensation, merely challenged the truthfulness of plaintiff's testimony. There was no plain error. Similarly, there was no error in defendant questioning plaintiff about the subject of previous therapy sessions. Plaintiff testified that he sought therapy for the emotional damage he suffered after the accident. Thus, it was not improper for defendant to question plaintiff about his previous therapy to determine the extent that plaintiff's need for therapy resulted from the accident.

Plaintiff next complains that defendant improperly asked him whether he informed the State of Michigan that he was receiving insurance benefits at the same time he was collecting unemployment payments. We agree with plaintiff that this line of questioning was not relevant to any fact of consequence. We also agree with plaintiff that defendant's line of questioning regarding whether he was investigated by his insurance company about misrepresenting where he lived was not relevant to any fact in consequence. However, reversal is not required. Plaintiff has not established that either line of questioning affected his substantial rights. *Kern*, *supra*.

Plaintiff also complains that defendant, by alluding to a statement plaintiff made to an employee of his insurance company, improperly injected the notion that plaintiff was already well compensated. In fact, defendant merely asked plaintiff if he gave a statement to the employee as a predicate to impeach plaintiff's testimony with the substance of the statement. In his question, defendant made no reference to liability or benefits. There was no plain error.

(…continued)

Defendants St. John Health and Providence Health were dismissed with prejudice before trial by stipulation of the parties.

Plaintiff next argues on appeal that the trial court erred when it denied plaintiff's motion for a directed verdict. We review de novo a trial court's decision on a motion for a directed verdict. *Roberts v Saffell*, 280 Mich App 397, 401; 760 NW2d 715 (2008), aff'd ___ Mich ___ (2009). We must the view the evidence in the light most favorable to the nonmoving party. *Moore v Detroit Entertainment, LLC*, 279 Mich App 195, 201-202; 755 NW2d 686 (2008). "A directed verdict is appropriate only when no factual question exists upon which reasonable minds could differ." *Roberts*, *supra* at 401.

Plaintiff argues that his testimony and Alsabti's testimony unequivocally established that Alsabti's vehicle struck his vehicle only after it was rear-ended by Lyatker's vehicle. Alsabti testified that her vehicle only hit plaintiff's vehicle once, after it was struck by Lyatker's vehicle. Plaintiff testified that his vehicle was "hit extremely hard," and that, because of the speed of Alsabti's vehicle, Alsabti could not have hit his vehicle as hard as it was hit. However, plaintiff also testified that he felt or heard a "bang, bang" or a "bam, bam" at the time of the accident. He further testified that he did not know for a fact if there were two impacts, but he "felt like" there were two impacts. Accordingly, there is conflicting testimony regarding whether there were one or two impacts between Alsabti's vehicle and plaintiff's vehicle. Because there is a factual question on which reasonable minds could differ, the trial court did not err in denying plaintiff's motion for a directed verdict.[2]

Finally, to the extent that plaintiff argues there was "insufficient evidence" to support the jury's verdict, the argument is abandoned. Plaintiff has failed to properly address the merits of the asserted error. *Ypsilanti Twp v Kircher*, 281 Mich App 251, 287; 761 NW2d 761 (2008).

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra

[2] We decline to address plaintiff's argument that a directed verdict was appropriate either because the laws of physics provide an explanation for two "bangs" or "bams" from one impact or because Lyatker failed to rebut the presumption of MCL 257.402(a). Defendant did not rely on either of these two theories below when arguing the directed verdict motion.