STATE OF MICHIGAN

COURT OF APPEALS

CITY OF DETROIT, Plaintiff-Appellee,	UNPUBLISHED February 11, 2010
v	Nos. 285258; 288429 Wayne Circuit Court
CROWN ENTERPRISES, INC., Defendant-Appellant.	LC No. 00-012666-CC

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

This case involves a condemnation action. In Docket No. 285258, defendant Crown Enterprises Inc. appeals as of right a judgment, following a jury trial, awarding it $2 million as just compensation for 19.09 acres of property that plaintiff City of Detroit condemned for use in the Conner Creek Combined Sewerage Overflow Basin Project. In Docket No. 288429, defendant appeals by leave granted[1] an order denying defendant's motion for compound interest on the judgment. For the reasons set forth in this opinion, we affirm.

I. Facts and Procedural History

In 1995, defendant entered into an agreement to purchase 71.57 acres of land from Chrysler Corporation. The property purchased by defendant consisted of a 52.48-acre parcel, which defendant purchased for $2,361,645, and a 19.09 parcel, which defendant purchased for $200,000. On April 18, 2000, plaintiff filed an eminent domain action against defendant, seeking to take the 19.09-acre parcel for construction of its Conner Creek Combined Sewerage Overflow Basin.[2] Pursuant to MCL 213.55, plaintiff made a good faith written offer to acquire the property from defendant for $1,223,000. Defendant rejected the offer, and there was a jury

[1] *Detroit v Crown Enterprises Inc.*, unpublished order of the Court of Appeals, entered February 10, 2009 (Docket No. 288429). In its order granting leave to appeal, this Court, on its own motion, consolidated the case with Docket No. 285258.

[2] The trial court granted summary disposition in plaintiff's favor regarding the necessity of the taking, and this Court affirmed. *Detroit v Crown Enterprises, Inc*, unpublished opinion per curiam of the Court of Appeals, issued February 19, 2002 (Docket No. 232451).

trial to determine just compensation for the taking. At trial, the parties submitted conflicting evidence regarding the highest and best use of the property at issue and the value of the property. Defendant presented the testimony of Richard Urban, Edward Wovas, Kevin Metcalf, Andrew Chamberline and Jill Voigt, who testified generally that it was feasible, both logistically and financially, to use the property at issue as an intermodal vehicle distribution facility, or mixing center, where finished automobiles would be delivered from automobile manufacturing plants, loaded onto trains, and then distributed across the United States. Defendant also presented expert testimony regarding the value of the property as an intermodal vehicle distribution facility. Chamberline, a professional real estate appraiser, testified that the value of the entire parcel before the taking was $25 million and that the value of the remaining property after the taking was $8 million; therefore, plaintiff lost $17 million as a result of the taking. Voigt, a business valuation expert with Deloitte & Touche, testified that the property had an overall value of $32 million. On the other hand, plaintiff presented the rebuttal testimony of Dr. John Taylor, who testified that the use of the property as an intermodal vehicle distribution facility was not feasible for a number of reasons, as well as the testimony of appraiser Sharon Harbin, who testified that the highest and best use for the property in question was as "a trucking facility that might do warehousing and . . . store trucks" and valued the property at $1.23 million. According to Harbin, she did not value the property as an intermodal vehicle distribution facility because the property did not have certain qualities that would have permitted its use as such a facility and because there was no evidence that it would be economically feasible. Harbin stated that she was "not going to consider something when it's that far fetched."

At the conclusion of trial, the jury awarded defendant just compensation damages in the amount of $2 million. The trial court entered a judgment of $2,000,000 in favor of defendant, plus interest, costs and attorney fees. Defendant, dissatisfied with the just compensation award, moved for a new trial or, in the alternative, additur. Defendant argued, in relevant part, that it was entitled to a new trial because juror 19 was a resident of Oakland County, not Wayne County, because the jury's award was against the great weight of the evidence and was based on the speculative and unreliable testimony of plaintiff's expert, Dr. John Taylor, and because the cumulative effect of errors denied defendant a fair trial. In the alternative, defendant argued that the trial court should grant additur in the amount of $17 million.

The trial court ordered the parties to depose juror 19 and otherwise denied defendant's motion for new trial. On December 3, 2007, the deposition of juror 19 was taken. Thereafter, defendant filed a supplemental brief and a second supplemental brief in support of its motion for new trial or additur, arguing again that a new trial was warranted based on juror 19's residence. The trial court denied defendant's motion for new trial based on juror 19's residence, stating on the record:

> But I find that the motion for a new trial shall be denied. I find that the trial court is entitled to rely on the representations made under oath by the juror in voir dire. She said she lived in Northville. She does live in Northville, I acknowledge that. I find that she lives in Northville and there was never any indication that she did not live in Wayne County.
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> As to the issue of prejudice, clearly there's prejudice in the finding of the jury by way of the verdict result but that's not the kind of prejudice that's talked about. It would be entirely prejudicial to the maintenance of a sane society of

> justice for one side or another to profit by the dissembling of a juror who under oath said she lives in Northville. Obviously we assumed it was Wayne County but nobody ever thought to question it nor did I.
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> In a later hearing, the trial court also denied defendant's motion for additur, stating:
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> The request for an additur to seventeen million dollars is denied. Historically the lawyers agreed that a verdict in this case would be six of eight jurors.[3] I ruled that the jury did not find against the great weight of evidence. Additionally, I find that the business enterprise was speculative as a matter of fact due to the lacking of proper permits and/or the ability to interrupt traffic flow on Jefferson at Connor Creek with trains at least one mile in length. There is no basis for me to change the verdict of the jury. . . . The jury did not find against the weight of the evidence that was presented in the case. Therefore, the motion is denied.

The judgment awarded interest as provided by MCL 213.65, but did not specify whether interest was simple or compound. In August 2008, defendant filed a motion seeking compound interest on the judgment. According to defendant, compound interest was required by Const 1963, art 10, § 2 and MCL 213.65. Defendant further argued that this Court's decision in *Dep't of Transportation v Joslyn Land Co*, 175 Mich App 551; 438 NW2d 260 (1988), was wrong because it ignored the plain language in MCL 213.65, and that *Joslyn* was not dispositive of whether simple interest constitutes just compensation under Const 1963, art 10, § 2. The trial court denied defendant's motion for compound interest based on *Joslyn* and did not address defendant's constitutional argument.

As stated above, defendant appeals the $2 million judgment in its favor as of right, and the trial court's denial of its motion for compound interest by leave granted.

II. Analysis

A. Plaintiff's Rebuttal Expert

Plaintiff offered Dr. Taylor at trial as a rebuttal witness regarding the feasibility of using the property as an intermodal vehicle distribution center, and Dr. Taylor testified that using the property in the manner proposed by defendant was not viable for numerous reasons. According to defendant, the trial court abused its discretion in admitting Dr. Taylor's testimony because he was not qualified under MRE 702. Furthermore, defendant contends that Dr. Taylor did not rely on admissible evidence in formulating his opinion on the feasibility of defendant's intermodal vehicle distribution facility.

"[T]his Court reviews a trial court's rulings concerning the qualifications of proposed expert witnesses to testify for an abuse of discretion." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). The abuse of discretion standard recognizes "'that there will be

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[3] In fact, the parties actually agreed that the verdict would require the votes of eight of ten jurors.

circumstances in which . . . there will be more than one reasonable and principled outcome.'" *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006), quoting *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Under this standard, "[a]n abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard*, 476 Mich at 557.

MRE 702 establishes preconditions for the admission of expert opinion testimony and provides:

> If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

The trial court must act as a gatekeeper to ensure that any expert testimony admitted at trial is reliable. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 779-780; 685 NW2d 391 (2004). The exercise of the trial court's "gatekeeper role" is within its discretion, but the trial court may not abandon its obligation or perform the function inadequately. *Id.* at 780. "The burden is on the party *offering* the expert to satisfy the preconditions established by MRE 702." *Id.* at 789.

Contrary to defendant's argument, we find that Dr. Taylor was qualified to testify as a rebuttal expert in this case based on his knowledge, skill, experience, training, or education. MRE 702. Dr. Taylor was a professor at Grand Valley State University and had been for five or six years; he taught logistics, transportation courses and marketing courses. He had previously been a professor at Wayne State University for ten years. In addition, Dr. Taylor had worked for Clark Equipment Company, which manufactures material handling equipment used in logistics operations and warehouses, for seven years. He had also "spent three years in logistics consulting doing consulting on location of distribution centers, where the best locations were, that type of thing." When asked if he had done any research on logistics and transportation management, Dr. Taylor responded:

> Yes, my specialties tend to be in the area of border crossing issues, inter-modal movements involving trucks and rail, work on ocean vessels coming into the Great Lakes versus using barge or using rail instead. Those comparisons, I've published about fifteen articles on logistics and transportation topics including in journals such [as] Transportation Journal, Journal of Transportation Law, Journal of Business Logistics, and so on and so forth. And I've done a number of reports for state government.

In addition, Dr. Taylor has "testified before a congressional committee on the topic of freight transportation and the need for investment in freight transportation . . . ." He has also testified before many state legislative committees and worked closely with logistics executives at Chrysler, GM and Ford, in placing students and organizing auto industry logistics forums. Dr. Taylor is also member of professional transportation and logistical associations and has been appointed to governmental commissions for transportation issues.

Based on this testimony, we find that Dr. Taylor was qualified to testify based on his knowledge, skill, experience, training, or education. MRE 702. At trial defendant offered the testimony of numerous witnesses who testified generally that it was feasible, both logistically and financially, to use the property as an intermodal vehicle distribution center. Dr. Taylor was a rebuttal witness for defendant on the issue of the feasibility of using the property as an intermodal vehicle distribution center. Dr. Taylor's testimony was proper rebuttal testimony because it was responsive to evidence introduced by defendant that tended to establish that using the property as an intermodal vehicle distribution center was feasible, both logistically and financially. *People v Pesquera*, 244 Mich App 305, 314; 625 NW2d 407 (2001). An opposing party's disagreement with an expert's opinion or interpretation of the facts is directed to the weight to be given the testimony and not its admissibility. *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 401; 628 NW2d 86 (2001); see also *Gilbert*, 470 Mich at 788-789 ("[I]n some circumstances, an expert's qualifications pertain to weight rather than to the admissibility of the expert's opinion."). Any gaps or weaknesses in Dr. Taylor's expertise should have been explored on cross examination, *Wischmeyer v Schanz*, 449 Mich 469, 480; 536 NW2d 760 (1995), and defendant had the opportunity to cross-examine Dr. Taylor and did, in fact, cross-examine Dr. Taylor vigorously and at length. The trial court did not abuse its discretion in admitting his testimony.

Defendant also argues that portions of Dr. Taylor's testimony violated MRE 703 because certain parts of his testimony were based on hearsay. In relevant part, MRE 703 provides that "[t]he facts or data in the particular case upon which an expert bases an opinion or inference shall be in evidence. . . ." Defendant asserts that certain portions of Dr. Taylor's testimony were based on hearsay or double hearsay. However, defendant does not specifically identify the alleged hearsay that Dr. Taylor's testimony was based on and does not assert how the testimony constituted hearsay as defined by MRE 801. A party may not merely announce their position and leave it to this Court to unravel and elaborate for them their arguments and search for authority to support or reject their position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). We decline to address this argument due to defendant's cursory treatment of the argument. *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). However, we observe that any violation of MRE 703 would be harmless because the bulk of Dr. Taylor's testimony is clearly based on his direct, personal knowledge. MCR 2.613(A). We therefore hold that the trial court did not abuse its discretion in admitting Dr. Taylor's testimony and that any gaps or weaknesses in Dr. Taylor's expertise went to the weight of the testimony, and not its admissibility.

B. New Trial

Defendant also argues that the trial court erred in denying its motion for a new trial. This Court reviews a trial court's decision to grant or deny a motion for a new trial for an abuse of discretion. *Gilbert*, 470 Mich at 761.

MCR 2.611(1) provides that a new trial may be granted when the substantial rights of the parties are materially affected or for any of the following reasons:

> (a) Irregularity in the proceedings of the court, jury, or prevailing party, or an order of the court or abuse of discretion which denied the moving party a fair trial.

(b) Misconduct of the jury or of the prevailing party.

(c) Excessive or inadequate damages appearing to have been influenced by passion or prejudice.

(d) A verdict clearly or grossly inadequate or excessive.

(e) A verdict or decision against the great weight of the evidence or contrary to law.

(f) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at trial.

(g) Error of law occurring in the proceedings, or mistake of fact by the court.

(h) A ground listed in MCR 2.612 warranting a new trial.

Defendant argues that the trial court abused its discretion in denying its motion for a new trial based on the fact that juror 19 was not qualified under MCL 600.1307a to be a juror because the trial was held in Wayne County and juror 19 was a resident of Oakland County. MCL 600.1307a contains the requirements for a person to be qualified as a juror. In relevant part, these qualifications require a person to be "a resident in the county for which the person is selected[.]" MCL 600.1307a(1)(a). If a potential juror does not satisfy one of the qualifications in MCL 600.1307a(1), a party may challenge the potential juror for cause. MCR 2.511(D)(1). "If . . . the court finds that a ground for challenging a juror for cause is present, the court on its own initiative should, or on motion of either party must, excuse the juror from the panel." MCR 6.412(D)(2). Similarly, MCL 600.1337 provides that "[w]hen the court finds that a . . . juror is not qualified to serve as a juror . . . , the court shall discharge him or her from further attendance and service as a juror." However, under MCL 600.1354(1):

> Failure to comply with the provisions of this chapter shall not be grounds for a continuance nor shall it affect the validity of a jury verdict unless the party requesting the continuance or claiming invalidity has made timely objection and unless the party demonstrates actual prejudice to his cause and unless the noncompliance is substantial. An objection made at the day of a scheduled trial shall not be considered timely unless the objection, with the exercise of reasonable diligence, could not have been made at an earlier time.

Defendant argues at length that juror 19 was a resident of Oakland County rather than Wayne County. We need not decide whether juror 19 resided in Wayne or Oakland County, however, because even assuming that juror 19 was not a resident of Wayne County and was therefore not qualified to serve as a juror under MCL 600.1307a(1), the trial court did not abuse its discretion in denying defendant's motion for a new trial based on juror 19's residence because the three conditions of MCL 600.1354(1) to overturn a jury verdict based on noncompliance with MCL 600.1307a are not satisfied.

First, defendant did not object to juror 19 serving on the jury before trial and did not express dissatisfaction with the impaneled jury. During voir dire, juror 19 stated three separate times that she lived in Northville. When the trial court asked the juror what town she lived in, she replied, "I just moved to Northville." When counsel for plaintiff asked juror 19, "You're living in Dearborn?", she replied, "No, I live in Northville." Finally, when counsel for defendant was questioning juror 19, he asked, "And you currently live in Northville, Michigan?" and juror 19 responded, "[y]es[.]" Defendant's argument on appeal suggests that juror 19 was deceptive and gave false answers in her response to questions about her residency during voir dire; our review of the record reveals that juror 19's responses to questions regarding her residency were not false or deliberately deceptive. To the contrary, she honestly answered the questions that were asked of her. This Court can take judicial notice of the fact that the city of Northville is located in both Wayne and Oakland Counties. Juror 19's apartment is located in a part of Northville that is located in Oakland County. Importantly, neither the trial court nor counsel for the parties asked juror 19 what county she lived in during voir dire. "Diligence" requires "a careful inquiry of a prospective juror under oath." *Gustafson v Morrison*, 57 Mich App 655, 663; 226 NW2d 681 (1975); see also MCL 600.1354(1) ("An objection made at the day of a scheduled trial shall not be considered timely unless the objection, with the exercise of reasonable diligence, could not have been made at an earlier time."). Defense counsel never asked juror 19 what county she resided in, did not object to juror 19's presence on the jury based on her residence, and did not express dissatisfaction with the impaneled jury. Assuming that juror 19 did not reside in Wayne County, defense counsel's lack of diligence in questioning juror 19 regarding the county of her residence was a factor in juror 19 ultimately ending up on a jury for which she was not qualified to serve.

Second, defendant has not established that he was actually prejudiced by the presence of juror 19 on the jury. A juror's failure to disclose information that the juror should have disclosed constitutes actual prejudice if it deprived the parties of an impartial jury. *People v Miller*, 482 Mich 540, 548-549; 759 NW2d 850 (2008). "[J]urors are 'presumed to be . . . impartial, until the contrary is shown.'" *Id.* at 550, quoting *Holt v People*, 13 Mich 224, 228 (1865). In this case, defendant was not prejudiced by juror 19 serving on the jury because there is no evidence that juror 19's service on the jury deprived defendant of an impartial jury. Defendant asserts that it was prejudiced by juror 19 serving on the jury because of juror 19's acknowledgement that she was especially influential as a juror. However, juror 19's post-trial deposition testimony reveals that juror 19 was, in fact, impartial. She asserted that she did not harbor any bias or prejudice for or against either party and that nothing about her residency influenced her decision as a juror. Even if juror 19 was an especially influential juror, there is no evidence that she was improperly influential because there is simply no evidence that she was not impartial.

Relying on *Gustafson, supra*, defendant argues that defendant was prejudiced by juror 19 serving on the jury because the parties agreed that although there were ten jurors, only eight votes were necessary for a verdict, and two jurors voted against the verdict. Thus, defendant contends, because juror 19 voted for the verdict, her vote was necessary to sustain the verdict. In *Gustafson*, the plaintiff brought a wrongful death action against the defendants, and the jury returned a verdict of no cause of action. *Gustafson*, 57 Mich App at 657. The plaintiff appealed, arguing that the trial court erred in failing to grant her motion for a new trial on the ground that a juror gave false answers in response to questions on his jury questionnaire and during jury voir dire. *Id.* This Court found that the juror did give false answers on the jury questionnaire and

during voir dire and reversed the trial court's denial of the plaintiff's motion for a new trial based on the juror's false statements. This Court's rationale for reversing the trial court was that the plaintiff would have successfully challenged the juror for cause if the juror had been truthful and that the jury was therefore an improperly constituted tribunal. *Id.* at 664. Defendant asserts that *Gustafson* also held that there was actual prejudice because the juror's vote was necessary to sustain the verdict. *Gustafson* did not so hold. While this Court noted in *Gustafson* that the verdict could not stand without the juror in question's vote, *id.* at 662, this fact was not the basis for reversal. Furthermore, *Gustafson* is inapplicable to the instant case because the cases are factually distinguishable. The juror in *Gustafson* gave false answers on the jury questionnaire and during voir dire. In contrast, the instant case does not involve a juror who gave false answers. As was stated above, juror 19 responded truthfully to the questions that were asked of her during voir dire. In addition, the plaintiff in *Gustafson* vigilantly questioned the juror during voir dire, whereas in the instant case defendant never asked juror 19 regarding the county of her residence. For these reasons, we reject defendant's reliance on *Gustafson*.

The final inquiry under MCL 600.1354(1) is whether the noncompliance was substantial. Assuming that juror 19 did not live in Wayne County, she was not qualified to serve as a juror under MCL 600.1307a. Even if this is a substantial noncompliance, because defendant failed to object and did not establish prejudice, the trial court did not abuse its discretion in denying defendant's motion for a new trial on this basis.

Defendant also argues that the trial court abused its discretion in denying its motion for new trial because the jury's award was grossly inadequate, against the great weight of the evidence, contrary to law and based on the inadmissible expert testimony of Dr. Taylor.

The trial court did not err in denying defendant's motion for new trial based on the admission of Dr. Taylor's testimony because, for the reasons stated above, Dr. Taylor's testimony was properly admitted.

In addition, the trial court did not abuse its discretion in denying defendant's motion for new trial based on defendant's assertion that the jury's award was against the great weight of the evidence. A verdict is against "the great weight of the evidence only if the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008). Generally, conflicting testimony and questions of witness credibility are not sufficient grounds to grant a new trial. *Id.*

In general, defendant presented evidence that the highest and best use of the property was as an intermodal vehicle distribution facility and that this use was logistically and financially feasible. As stated above, this evidence was presented primarily through the testimony of Urban, Wovas, Metcalf, Chamberline and Voigt. In contrast, plaintiff presented the testimony of Dr. Taylor and Harbin that use of the property as an intermodal facility was not feasible. In addition, the parties presented conflicting testimony regarding the value of the property. For defendant, Chamberline testified that the value of the entire parcel before the taking was $25 million and the value of the remaining property after the taking at $8 million, and that as a result of the taking plaintiff therefore lost $17 million. On the other hand, plaintiff presented the testimony of Sharon Harbin, who valued the property at $1.23 million.

Defendant challenges Harbin's valuation methods, arguing that she considered improper comparables and that her testimony "was riddled with deficiencies[.]" However, Harbin's methods of valuing the property go to the weight or credibility of her testimony. "Absent exceptional circumstances, issues of witness credibility are for the trier of fact." *Unger*, 278 Mich App at 232. Furthermore, a jury verdict should not be set aside if there is competent evidence to support it, *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 498; 668 NW2d 402 (2003), and "[a]n award of just compensation that falls within the range of testimony ought not to be disturbed." *Hartland Twp v Kucykowicz*, 189 Mich App 591, 598; 474 NW2d 306 (1991). In this case, the testimony of Dr. Taylor and Harbin supports the jury's verdict. Furthermore, the value placed on the parcel by the jury, $2 million, clearly falls within the range of testimony. Therefore, the trial court did not abuse its discretion in denying defendant's motion for a new trial based on the great weight of the evidence.

For the same reasons, the jury's award was not grossly inadequate. In this case, plaintiff presented competent evidence that it was not feasible to use the property as an intermodal vehicle distribution facility and that the value of the property was $1.23 million. Defendant is correct that a jury verdict may properly be set aside if there is no logical explanation for it in light of the evidence. *Robertson v Blue Water Oil Co*, 268 Mich App 588, 595-596; 708 NW2d 749 (2005). However, there is a logical explanation for the jury's award in this case, and the explanation is that the jury accepted the testimony of Dr. Taylor that it was not feasible to use the property as an intermodal vehicle distribution facility and rejected defendants' experts' testimony regarding the feasibility of the property's use as such a facility. Questions regarding the credibility of witnesses and the weight accorded to evidence are questions for the jury. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004). The jury's award was $2 million, which is higher than the $1.23 million value established by plaintiff's expert, although not as high as the value established by defendant's experts. And, as stated above, the jury's award clearly falls within the range of testimony. Therefore, the evidence did support the jury's award. The trial court did not abuse its discretion in denying defendant's motion for new trial based on the gross inadequacy of the verdict.

In the alternative, defendant argues that the trial court should have granted additur under MCR 2.611(E)(1). In deciding a motion for additur, the court must limit its inquiry to objective considerations of the evidence and conduct of trial because the primary consideration in deciding a motion for additur is whether the jury award is supported by the evidence. *Palenkas v Beaumont Hosp*, 432 Mich 527, 532; 443 NW2d 354 (1989). As explained above, the jury's award was supported by the evidence. Thus, there was no basis for granting additur.

C. Cumulative Error

Defendant argues that the cumulative effect of the trial court's errors warrants a new trial. This Court reviews a cumulative error claim "to determine if the combination of alleged errors denied defendant a fair trial." *People v Knapp*, 244 Mich App 361, 387; 624 NW2d 227 (2001). "The cumulative effect of several minor errors may warrant reversal even where individual errors in the case would not warrant reversal." *Id.* at 388. Defendant's claims of individual error are without merit. Thus, reversal under a cumulative error theory is unwarranted. *People v Mayhew*, 236 Mich App 112, 128; 600 NW2d 370 (1999).

D. Compound Interest

Defendant argues that the trial court erred in denying its motion for compound interest on the judgment. According to defendant, this Court's decision in *Joslyn*, upon which the trial court relied, was wrongly decided, and MCL 213.65 and the just compensation provision of the Michigan Constitution, Const 1963, art 10, § 2, require compound interest on eminent domain judgments.

Review of this issue involves interpreting MCL 213.65. This Court reviews de novo issues of statutory interpretation. *People v Gardner*, 482 Mich 41, 46; 753 NW2d 78 (2008). Review of this issue also requires this Court to consider whether Const 1963, art 10, § 2, requires the payment of compound interest in this case. This Court reviews de novo questions of constitutional law. *Sidun v Wayne Co Treasurer*, 481 Mich 503, 508; 751 NW2d 453 (2008).

Interest on a judgment is only allowed where it is specifically authorized by statute. *Dep't of Transportation v Schultz*, 201 Mich App 605, 610; 506 NW2d 904 (1993). MCL 213.65 permits the payment of interest on a condemnation judgment award. MCL 213.65(1) provides that "[t]he court shall award interest on the judgment amount or part of the amount from the date of the filing of the complaint to the date that payment of the amount or part of the amount is tendered." MCL 213.65(2) provides: "Interest shall be computed at the interest rate applicable to a federal income tax deficiency or penalty."

In *Joslyn*, this Court considered whether MCL 213.65 allows for compound interest on a condemnation judgment and concluded that the statute provides only for simple interest at the rate set by 26 USC 6621:

> The cardinal rule of statutory construction is to give effect to the intent of the Legislature. *Gage v Ford Motor Co*, 423 Mich 250, 260; 377 NW2d 709 (1985). The language of the statute is the best source for ascertaining the Legislature's intent. *Fox & Associates, Inc v Hayes Twp*, 162 Mich App 647, 651; 413 NW2d 465 (1987), lv gtd 430 Mich 858 (1988). The language used in § 15 of the UCPA provides that interest be computed at the rate applicable to a federal income tax deficiency or penalty, but does not specifically mention whether interest should be calculated in the same manner as provided for federal income tax deficiencies or penalties. Legislative inclusion of something by specific mention usually excludes that which is not mentioned. *Id.* at 654. In the absence of specific statutory language adopting the method of interest calculation used in the Internal Revenue Code, strict construction of § 15 leads us to conclude that the Legislature intended only to adopt the interest rate applicable to a federal income tax deficiency or penalty and not the method of calculating that interest. Due to the absence of any language providing for compounded interest, we hold that § 15 provides only for simple interest at the rate set by 26 USC 6621.
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> Where the Legislature has intended to allow compounded interest on a money judgment, it has specifically provided for such in the language of the statute. See MCL 600.6013(2)-(6); MSA 27A.6013(2)-(6). Here the Legislature easily could have written § 15 to provide for daily compounding of interest or use of the same method of interest computation as provided in the Internal Revenue Code, but chose not to. Instead, MCL 213.65; MSA 8.265(15) provides for interest solely on the judgment amount. Since interest which accrues on the

> judgment is not part of the judgment, the statute does not permit interest on the accrued interest. . . . [*Joslyn*, 175 Mich App at 553-554.]

This Court is not bound by *Joslyn* because it was decided before November 1, 1990. MCR 7.215(J)(1). However, we reject defendant's invitation to overrule *Joslyn*. As a general rule, the law in Michigan favors simple interest over compound interest, although the general rule will yield in the face of a statute authorizing compound interest. *Norman v Norman*, 201 Mich App 182, 184-185; 506 NW2d 254 (1993). Although MCL 213.65 was amended in 1996, the post-amendment version of the statute is nearly identical to the pre-amendment version, except that the post-amendment version breaks the statute into three subsections and adds some language. In the amended version of the statute, as in the pre-amended version, MCL 213.65 is silent regarding compound interest. Thus, the same rationale and rules of statutory construction relied on by this Court in *Joslyn* also support the conclusion that the amended version of MCL 213.65 provides for simple interest on a condemnation judgment. As this Court observed in *Joslyn*, "[w]here the Legislature has intended to allow compounded interest on a money judgment, it has specifically provided for such in the language of the statute. . . ." *Joslyn*, 175 Mich App at 554. The Legislature did not specifically provide for compound interest in the amended version of MCL 213.65. Furthermore, the amended version of MCL 213.65, like the pre-amendment version, "does not specifically mention whether interest should be calculated in the same manner as provided for federal income tax deficiencies or penalties." *Id*. For these reasons, we agree with *Joslyn*'s holding that MCL 213.65 provides for simple interest on a condemnation judgment.

Defendant argues that the just compensation clause of the Michigan Constitution, Const 1963, art 10, § 2, requires the payment of compound interest on an eminent domain judgment. In relevant part, the just compensation clause provides that "[p]rivate property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law. . . ." Const 1963, art 10, § 2 (footnote omitted). Defendant "has a constitutional right to interest from the date of a taking until the date of compensation." *Miller Bros v Dep't of Natural Resources*, 203 Mich App 674, 690; 513 NW2d 217 (1994). However, neither this Court nor the Michigan Supreme Court has held that there is a constitutional right to *compound* interest on a condemnation judgment. Defendant cites federal cases and a case from New Jersey that have held that just compensation requires the payment of compound, rather than merely simple, interest on eminent domain judgments. The rationale for payment of compound interest is that if the landowner had received the full value of the just compensation at the time of the taking, the landowner would have had the opportunity to invest the funds and earn a compound interest on those funds. See, e.g., *United States v 429.59 Acres of Land*, 612 F2d 459, 464-465 (CA 9, 1980); *Borough of Wildwood Crest v Smith*, 563 A2d 73, 75 (NJ Super, 1988).

None of the cases cited by defendant regarding this issue are binding on this Court, and to rule that Const 1963, art 10, § 2 requires payment of compound interest would be inconsistent with *Joslyn* even though the panel in *Joslyn* did not explicitly consider the constitutional issue. Because we agree with the reasoning and ruling in *Joslyn*, we decline to overrule it. Moreover, although there were more than seven years between the date of the filing of the complaint, April 18, 2000, and the judgment, which was dated September 28, 2007, the judgment awarding defendant $2 million as just compensation indicates that plaintiff already paid defendant $1,230,000. We therefore find that on its facts, this case does not present a case warranting

compound interest. The trial court properly declined to award compound interest on the judgment.

III. Conclusion

For the reasons stated above, we affirm the judgment of the trial court and the trial court's denial of defendant's motion for compound interest on the judgment.

Affirmed. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Jane M. Beckering
/s/ Jane E. Markey
/s/ Stephen L. Borrello