# STATE OF MICHIGAN

# COURT OF APPEALS

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| LINDA HANOVER-BREWSTER,<br><br>Plaintiff-Appellant, | UNPUBLISHED<br>April 13, 2010 |
| v | No. 288753<br>Macomb Circuit Court |
| STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,<br><br>Defendant-Appellee. | LC No. 2006-003868-NF |

Before: WHITBECK, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

In this action to recover no-fault personal injury protection (PIP) benefits, plaintiff Linda Hanover Brewster appeals as of right from a judgment of no cause of action entered after a jury trial. We affirm. We have decided this appeal without oral argument.[1]

## I. BASIC FACTS AND PROCEDURAL HISTORY

This action arises from a June 30, 2005 automobile accident. Brewster alleged that she sustained several injuries as a result of the accident, including a closed-head injury, vision problems, and aggravation of preexisting neck and back injuries. State Farm's theory at trial was that Brewster's alleged injuries were a continuation of preexisting conditions and were not causally related to the June 2005 accident.

## II. DIRECTED VERDICT AND JNOV

### A. STANDARD OF REVIEW

Brewster argues that the trial court erred in denying her motions for a directed verdict and judgment notwithstanding the verdict (JNOV) with respect to whether she sustained neck and back strain as a result of the accident. This Court reviews de novo a trial court's decision on a

[1] MCR 7.214(E).

motion for a directed verdict or JNOV.[2] This Court must view the evidence and any reasonable inferences arising from the evidence in a light most favorable to the nonmoving party to determine whether a question of fact existed. If reasonable jurors could honestly have reached different conclusions, this Court may not substitute its judgment for that of the jury.[3]

B. ANALYSIS

Brewster's argument relies on the testimony of Todd Lipsey, State Farm's claims representative, and Dr. Brian Kirschner, State Farm's expert physician. In a letter dated July 11, 2006, Lipsey discussed Brewster's alleged injuries and stated that the only injury that could be attributed to the motor vehicle accident was her neck and back strain. Similarly, Dr. Kirschner agreed that within a reasonable degree of medical certainty, Brewster suffered from neck and back sprain after the accident. However, those statements were based on a review of medical records in which Brewster related her subjective complaints of pain. Brewster testified at trial regarding her complaints of neck and back pain after the accident and the credibility of her testimony was for the jury to resolve.[4]

Furthermore, Dr. Kirschner testified that Brewster had complaints of pain in her neck and back before the accident and there was nothing to suggest that the accident changed the natural course of these complaints in any significant way. He explained that he was not saying that Brewster did not have complaints of neck and back pain, but rather that there was no reason to believe that any ongoing complaints were causally related to the accident. In light of this testimony, there was a question of fact whether any neck or back injury Brewster may have had was causally related to the accident.

Contrary to Brewster's argument, neither Lipsey nor Dr. Kirschner made a binding "judicial admission" concerning the existence of a neck or back injury caused by the accident. A "judicial admission" is a formal concession or stipulation that has the effect of withdrawing a fact from issue and dispensing the need for proof of the fact.[5] The import of a judicial admission is that it is conclusive in the case and is not subject to contradiction or explanation.[6] Conversely, a statement made by a party opponent under MRE 801(d)(2) is an "evidentiary" admission.[7] A party remains free to attempt to explain or disprove an evidentiary admission.[8]

Here, State Farm did not make any formal concession that Brewster was not required to present proofs regarding her neck and back injuries. Rather, the statements and testimony of

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[2] *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 131; 666 NW2d 186 (2003).

[3] *Diamond v Witherspoon*, 265 Mich App 673, 681-682; 696 NW2d 770 (2005).

[4] *Moore v Detroit Entertainment, LLC*, 279 Mich App 195, 202; 755 NW2d 686 (2008).

[5] *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 420; 551 NW2d 698 (1996).

[6] *Id.* at 420-421

[7] *Id.*

[8] *Id.* at 421.

Lipsey and Dr. Kirschner on which Brewster relies were, at most, evidentiary admissions. Thus, they were subject to explanation and qualification, and were not conclusive regarding the existence of an injury caused by the accident.

For these reasons, the trial court did not err in denying Brewster's motion for a directed verdict and JNOV.

## III. JURY VERDICT FORM

### A. STANDARD OF REVIEW

Brewster argues that the trial court erred in denying her request to modify the jury verdict form and in denying her motion for a new trial on this issue. We review a trial court's decision regarding a request for supplemental jury instructions for an abuse of discretion, and we will not reverse its decision unless failure to vacate the jury's verdict would be inconsistent with substantial justice.[9] There is no error requiring reversal if, on balance, the parties' theories and the applicable law were adequately and fairly presented to the jury. We review a trial court's decision on a motion for a new trial for an abuse of discretion.[10] An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes.[11]

### B. THE JURY FORM

Question one of the verdict form asked, "Did [Brewster's] injuries arise out of the operation or use of a motor vehicle as a motor vehicle on June 30, 2005?" Brewster argues that the verdict form was confusing because she had alleged a multitude of injuries and the question did not indicate how many injuries the jury needed to find in order to answer the question "yes." She contends that the trial court should have modified the verdict form to individually list each of her alleged injuries.

### C. ANALYSIS

When the standard instructions do not adequately cover an area, the trial court is obligated to give additional instructions when requested if the supplemental instructions properly convey the applicable law and are supported by the evidence.[12] Here, neither the verdict form nor the trial court's instructions indicated that the jury was required to find that each injury alleged was causally related to the automobile accident in order for Brewster to recover. Further, in her closing argument, Brewster explained that the jury could consider allowable expenses for any injury it found she proved. State Farm stated in its closing argument that even if the jury found that Brewster had neck and back strain, it still had to determine whether she incurred

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[9] *Guerrero v Smith*, 280 Mich App 647, 660; 761 NW2d 723 (2008).

[10] *Kelly v Builders Square, Inc*, 465 Mich 29, 34; 632 NW2d 912 (2001).

[11] *Barnett v Hildago*, 478 Mich 151, 158; 732 NW2d 472 (2007).

[12] *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 451; 750 NW2d 615 (2008).

allowable expenses because of the strains. Thus, the parties' closing arguments made it clear that that recovery could be based on an individual injury. Considered as a whole, the record indicates that the parties' theories and the applicable law were adequately and fairly presented to the jury. Accordingly, the trial court did not abuse its discretion by denying Brewster's request to modify the verdict form or in denying her motion for a new trial with respect to this issue.

Affirmed.

/s/ William C. Whitbeck
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood