

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ELDEC INDUCTION U.S.A., INC.,

Plaintiff-Appellee,

v

KNOPF INTERNATIONAL, INC.,

Defendant-Appellant.

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UNPUBLISHED

June 21, 2012

No. 300234

Monroe Circuit Court

LC No. 08-025303-CZ

Before: MURRAY, P.J., AND WHITBECK AND RIORDAN, JJ.

PER CURIAM.

Defendant, Knopf International, Inc., (Knopf), appeals by delayed leave granted the trial court's order granting plaintiff, Eldec Induction U.S.A., Inc., (Eldec's), motion for a new trial in this negligence and breach of contract action. We reverse in part, affirm in part, and remand.

Wolfgang and Evelyn Schwenk hired Knopf to ship by way of an ocean freighter their personal property, including a 1959 Jaguar and a 1961 Mercedes-Benz, from Michigan to Germany. Before shipment, the cars were stored at the Eldec facility, which Wolfgang owned. Knopf sent a letter to the Schwenks, referencing a phone call from the Schwenks, stating that the total cost of shipment was \$16,878, and informing the Schwenks that transportation insurance was available to purchase at 2.8 percent. The Schwenks purchased such insurance on the cars through Signal Insurance.

Richard Warren, Knopf's operations manager, and an Eldec representative inspected the cars before shipment, noting only minor damage. Because Knopf had the responsibility for putting the Schwenk's cars into the transport container, to complete the task, Warren purchased four straps for each car and strapped them to the container. The straps were intended to prevent the cars from moving up and down. Because Warren had used the same type of straps for 10 to 15 years without problem when transporting cars in containers, he did not inspect the straps before purchasing them, and he did not know the recommended load weight for the straps. He also purchased wood planks and nailed them to the transport container surrounding the cars in order to prevent the cars from moving side-to-side, forward, and backward. While he knew that the Jaguar and Mercedes were older, heavier cars he did not vary from the method of shipment he had been using for 30 years. Warren had shipped over 100 cars, including older cars, and never had a problem. Other than Warren's testimony, plaintiff Eldec presented no evidence regarding what it contended was the appropriate standard of care.

By the time the Jaguar and Mercedes arrived in Germany, they were significantly damaged. Alexander Niegel, who assisted in unloading the Jaguar and Mercedes, did not observe damage to the outside of the transport container but noticed the straps inside the container were partially torn, the inside of the container was scratched, and two or three of the wood planks were loose. Niegel testified that he believed the wood was too weak to keep the cars in place. Alexander Volmer, an expert about the straps used in this case, testified that the straps were unable to bear the weight of the cars and that the damage was caused by the cars hitting each other and the container walls. It was later determined that each of the straps was not recommended to use for a load weighing more than 433 pounds.

Eldec, on behalf of the Schwenks, filed a complaint against Knopf and alleged breach of contract and negligence. On the third day of trial, Knopf moved for a directed verdict, claiming that Eldec failed to present evidence of a breach of the standard of care. The trial court denied Knopf's motion. The jury found that Knopf was not negligent and did not a breach the contract.<sup>1</sup> Eldec then filed a motion for judgment notwithstanding the verdict or motion for a new trial, arguing that the evidence did not support the jury's verdict. The trial court denied Eldec's motion for judgment notwithstanding the verdict because reasonable jurors could honestly have reached a different conclusion.

However, the trial court granted Eldec's motion for a new trial based on MCR 2.611(1)(e), stating that the verdict was against the great weight of the evidence or contrary to law. The trial court stated that the jury was not permitted to rely on sympathy for Warren based on what the trial court perceived were his nervous tendencies, it was "preposterous" that Warren failed to inspect the straps, and uninterested parties observed that the containers were not damaged, the straps were torn, and the wood planks were loose. The trial court stated that the jury committed a miscarriage of justice and a reasonable jury would have concluded that Warren's failure to inspect the straps was negligent and constituted a breach of contract. Knopf now appeals.

"We review for an abuse of discretion a trial court's decision concerning a motion for a new trial." *Campbell v Dep't of Human Servs*, 286 Mich App 230, 243; 780 NW2d 586 (2009). "An abuse of discretion occurs when the court's decision falls outside the range of reasonable and principled outcomes." *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 273; 761 NW2d 761 (2008).

A new trial may be granted if the jury's verdict is "against the great weight of the evidence or contrary to law," MCR 2.611(A)(1)(e), meaning the verdict "was manifestly against the clear weight of the evidence." *Ellsworth v Hotel Corp of Am*, 236 Mich App 185, 194; 600 NW2d 129 (1999) (citations and internal quotations omitted). While a trial court's function "is to determine whether the overwhelming weight of the evidence favors the losing party[.]" this Court's function is "to determine whether the trial court abused its discretion in making such a

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<sup>1</sup> In regard to the negligence claim, the jury did not reach the question of whether Knopf's behavior was the proximate cause of the damages because the jury found Knopf's behavior was not negligent.

finding.” *Arrington v Detroit Osteopathic Hosp Corp (On Remand)*, 196 Mich App 544, 564; 493 NW2d 492 (1992); see also *Kelly v Builders Square, Inc*, 465 Mich 29, 48; 632 NW2d 912 (2001). This Court does not review the trial court’s decision de novo but does “engage in an in-depth analysis of the record on appeal.” *Arrington*, 196 Mich App at 560, 564 (citations and internal quotations omitted). Though a “trial court’s determination that a verdict is not against the great weight of the evidence will be given substantial deference[.]” a “trial court’s determination that a verdict is against the great weight of the evidence will be given somewhat less deference to [e]nsure that the trial court has not invaded the province of the jury.” *Id.* at 560. A trial court is not permitted to substitute its judgment for that of the jury’s and a “jury’s verdict should not be set aside if there is competent evidence to support it.” *Ellsworth*, 236 Mich App at 194.

In order to establish negligence, Eldec was required to prove: “(1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages.” *Sherry v E Suburban Football League*, 292 Mich App 23, 29; 807 NW2d 859 (2011). Generally, a defendant must act with ordinary or reasonable care, which is “the care that a reasonably careful person would use under the circumstances.” *Case v Consumers Power Co*, 463 Mich 1, 6-7; 615 NW2d 17 (2000). “Ordinarily, it is for the jury to determine whether a defendant’s conduct fell below the general standard of care.” *Id.* at 7. In regard to the breach of contract claim, Eldec was required to establish by a preponderance of the evidence: “(1) that there was a contract, (2) that the other party breached the contract and, (3) that the party asserting breach of contract suffered damages as a result of the breach.” *Miller-Davis Co v Ahrens Constr, Inc (On Remand)*, \_\_\_ Mich App \_\_; \_\_\_ NW2d \_\_ (Docket No. 284037, issued March 22, 2012) (slip op at 8). While the existence of a contract generally involves a question of law for the court to decide, if the contract is subject to two reasonable interpretations, the interpretation of the contract is question of fact for the factfinder. *Holmes v Holmes*, 281 Mich App 575, 587, 593-594; 760 NW2d 300 (2008).

While the trial court focused on evidence that conflicted with the jury’s verdict, the court failed to consider whether there was competent evidence to support the jury’s verdict. The evidence presented at trial was susceptible to different interpretations. Such evidence was subject to “an interpretation . . . that provides a logical explanation for the findings of the jury.” *Allard v State Farm Ins Co*, 271 Mich App 394, 407; 722 NW2d 268 (2006) (citations and internal quotations omitted). While Warren failed to check the straps or the weight of the cars, Warren used the same straps for 10 to 15 years and secured the cars in the same manner for 30 years, without incident. Although Warren knew the cars were heavier because they were older, he had shipped older cars in the past using the same safety precautions. The straps also were not intended to fully support the cars, as the wood provided additional support. Eldec’s expert, Volmer, testified that the straps were not sufficient, but he did not testify regarding the wood boards. Although Niegel, who assisted with the unloading, testified that the wood was not strong enough to hold the cars, he was not an expert, merely a lay witness offering his experience. Moreover, while Eldec claims that Knopf was contractually obligated for safe delivery, Knopf’s letter specifically mentions that the Schwenks could purchase transportation insurance, which suggests that the parties had not agreed that Knopf would be liable under the agreement for damage to the cars.

This reasonable interpretation of the evidence supports the jury's verdict, especially considering "[i]t is the jury's responsibility to determine the credibility and weight of the trial testimony[.]" and this Court must defer to such decisions. *Guerrero v Smith*, 280 Mich App 647, 669; 761 NW2d 723 (2008). To hold otherwise would invade the province of the jury. See *Arrington*, 196 Mich App at 560, 564. Since the trial court substituted its judgment for that of the jury and failed to consider whether competent evidence supported the jury's verdict, *Ellsworth*, 236 Mich App at 194, the trial court's decision in granting the motion for a new trial was outside the range of reasonable and principled outcomes, *Arrington*, 196 Mich App at 564.

Defendant Knopf also argues that the trial court erred in denying its motion for a directed verdict. While "[t]his Court reviews de novo a trial court's decision with regard to a motion for a directed verdict[.]" *Taylor v Kent Radiology*, 286 Mich App 490, 515; 780 NW2d 900 (2009), "[a] trial court properly grants a directed verdict only when no factual question exists upon which reasonable minds could differ." *Heaton v Benton Constr Co*, 286 Mich App 528, 532; 780 NW2d 618 (2009). As discussed above, there was evidence that Knopf acted negligently and breached the contract, since Warren failed to inspect the straps, the straps were partially torn, and the wood planks loose when the cars arrived in Germany. Therefore, while the jury ultimately found that Knopf was not negligent and did not breach the contract, there was still a question of fact regarding Eldec's claims, especially when viewing the evidence in a light most favorable to the nonmoving party. See *Heaton*, 286 Mich at 532.

We affirm the trial court's denial of Knopf's motion for a directed verdict, reverse the trial court's order granting Eldec's motion for a new trial, and remand for consideration of defendant's motion for the taxation of costs, which the trial court found was moot. We do not retain jurisdiction.

/s/ Christopher M. Murray  
/s/ William C. Whitbeck  
/s/ Michael J. Riordan