STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1760

Alexander Dewitt Tackett, et al.,
Appellants,

vs.

Bridgestone Americas Tire Operations LLC, Defendant,

Pete & Sons, Inc.,
Respondent.

Filed July 6, 2020
Affirmed
Bryan, Judge

Carlton County District Court
File No. 09-CV-17-233

Kyle W. Farrar, Kaster, Lynch, Farrar & Ball, LLP, Houston, Texas; and

Paul E. Godlewski, Matthew J. Barber, Schwebel, Goetz & Sieben, P.A., Minneapolis, Minnesota (for appellants)

Jerome D. Feriancek, Paige V. Orcutt, Trial Group North, PLLP, Duluth, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Florey, Judge; and Smith, John P., Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

BRYAN, Judge

Appellants challenge a judgment following a jury trial on their negligence claims. Appellants argue that the district court abused its discretion when it provided a jury instruction informing the jury of a settlement between appellants and the manufacturer of the tire. Because any error in the jury instruction was harmless, we affirm.

FACTS

In August 2014, A.T. was driving his car with two passengers, when the rear, driver's-side tire failed, causing A.T. to lose control of the vehicle. The vehicle left the road and overturned multiple times before coming to a stop and landing on its roof. All of the vehicle's occupants were injured, including A.T.'s brother, who suffered significant and permanent injuries.

Appellants Jennifer Tondryk, individually and as guardian of A.T. and one of the two passengers, and Jessie Fredrick, individually and as guardian the second passenger, brought suit against defendant Bridgestone Americas Tire Operations LLC (Bridgestone), and respondent Pete & Sons Inc. (respondent). Appellants alleged that Bridgestone designed and manufactured a defective tire, and that respondent acted negligently by selling and installing the defective tire, which they knew or should have known posed a danger to the family.

Prior to trial, appellants and Bridgestone entered into a settlement and a *Pierringer* release.[1] Appellants subsequently moved to prohibit any reference to the Bridgestone

[1] In a *Pierringer* release, a plaintiff settles a claim with one or more defendants; the settling defendants are dismissed, and any cross-claims involving those defendants are also

settlement at trial. The district court denied the motion, concluding that fairness required some explanation why Bridgestone was not present during the trial:

> Given the nature of the case and the concern that the jury may speculate about absent parties, fairness requires allowance of evidence of the fact of settlement with Bridgestone. . . . [T]he Court will allow brief inquiry into the fact of a settlement and any cross-examination consistent with Rule 408 of the Minnesota Rules of Evidence. As an alternative or as a cautionary instruction, the Court will read the first two paragraphs of CIVJIG 15.35 at the commencement of the trial, or paragraphs one and two, upon request, at the time the testimony is elicited.

Before trial began, the parties contested whether respondent could reference the settlement with Bridgestone during respondent's opening statement and when the district court would read the instruction indicated in its previous order. Initially, the district court ruled that it would prohibit the parties from mentioning the settlement during openings and only permit references to the settlement on cross-examination, at which point, the district court would give the instruction. Then, the district court changed course and decided to provide the instruction at the outset of the trial:

> We are introducing a Bridgestone tire into evidence, my understanding. Um, so even if that is all that comes in, my concern, both at the time of my order and today, is that the jury is going to concern themselves with the absence of Bridgestone. . . .
>
> I'm not going to allow it to be mentioned in the opening statement. What I'm going to do is when the jury comes in, I'm going to read the first two paragraphs of 15.35.

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dismissed. *Frey v. Snelgrove*, 269 N.W.2d 918, 922 (Minn. 1978) (citing *Pierringer v. Hoger*, 124 N.W.2d 106 (Wis. 1963)).

The district court read the following jury instruction[2] prior to opening statements: "Bridgestone is no longer a party in this case because Bridgestone and [appellants] have resolved their differences. The effect of their settlement should not concern you or the decisions you will be asked to make." Based on the district court's ruling, neither party mentioned the settlement in opening statement.

The parties proceeded to present evidence. Two primary witnesses testified for appellants regarding the purchase of the faulty tire. The details of their testimony differed, and appellants' witnesses may have misidentified who sold them the used tire. These witnesses testified that they purchased the used tire for $50 from a man wearing a blue uniform. They both also stated that the seller gave them a warranty. One of the two witnesses provided a specific physical description of the person who sold her the used tire: a stocky man with sandy-brown hair. The other admitted at trial that he had confused respondent with a different auto parts business in his deposition, one that had a junkyard

[2] The model jury instruction referenced by the district court reads as follows:

> (Settling defendant) is no longer a party in this case, because (settling defendant) and (plaintiff) have resolved their differences.
>
> The effect of their settlement should not concern you or the decisions you will be asked to make.
>
> Even though (settling defendant) is no longer a party in the case, you will be asked to decide whether and the degree to which (settling defendant) was (at fault)(negligent).

4 *Minnesota Practice*, CIVJIG15.35 (2014).

outside and displayed a variety of car radios. Appellants did not offer any receipts into evidence demonstrating that these two witnesses purchased the tire from respondent.

Respondent is owned and operated by two brothers, both of whom testified at trial and denied selling the faulty tire. Neither man matches the physical description provided by appellants' witness and neither wears a blue uniform at work. The jury heard how respondent has never sold radios, does not have a junkyard outside, never offers a warranty on a used tire, and never sold a used tire for as high a price as $50. In addition, the jury heard testimony from the owner of a different auto parts business nearby that sells used tires, displays a variety of car radios in the store, has a junkyard outside, and who resembled the description provided by appellants' witness. Much of the closing arguments concerned whether respondent or the other business sold the faulty tire.

After the parties rested, the district court again instructed the jury on the Bridgestone settlement, telling the jury for the second time that the settlement should not concern their decisions:

> Bridgestone . . . is no longer a party in this case because that company and [appellants] have resolved their differences. The effect of their settlement should not concern you or the decisions you will be asked to make. Even though Bridgestone is no longer a party in the case, you will be asked to decide whether, and the degree to which, Bridgestone . . . was negligent.

Aside from the district court's instructions, the Bridgestone settlement was not mentioned to the jury. The jury then returned a verdict, finding over $18,000,000 in damages, but no liability on the part of either respondent or Bridgestone.

Appellants moved for a new trial based on the disclosure of the Bridgestone settlement in the jury instructions. The district court determined that "[w]ith all the information regarding Bridgestone in front of the jury, the best way to prevent speculation from the jury was to provide the instruction that they were not to consider Bridgestone's absence and settlement when making their determinations." Thus, the district court denied the motion, concluding that providing the jury instruction "was the proper means to ensure all parties received a fair trial." This appeal follows.

D E C I S I O N

Appellants challenge the district court's decision to give the jury instruction regarding the settlement with Bridgestone. "The district court has broad discretion in determining jury instructions and [an appellate court] will not reverse in the absence of abuse of discretion." *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002). But a new trial is required only if the jury instruction was erroneous *and* such error was prejudicial to the objecting party or if the instruction was erroneous and its effect cannot be determined. *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018); *Lewis v. Equitable Life Assur. Soc. of the U.S.*, 389 N.W.2d 876, 885 (Minn. 1986). "An error is prejudicial if there is a reasonable likelihood that the giving of the instruction in question would have had a significant effect on the verdict of the jury." *Ouradnik v. Ouradnik*, 897 N.W.2d 300, 309 (Minn. App. 2017) (citation omitted), *aff'd*, 912 N.W.2d 674 (Minn. 2018). In this case, we need not address whether the district court abused its discretion in

instructing the jury regarding the settlement because we conclude that any error the district court may have committed was harmless.

To determine the effect of the disclosure of settlement information on a jury, we look to the evidence presented, the arguments of counsel, and the other jury instructions provided. *E.g.*, *Daly v. McFarland*, 812 N.W.2d 113, 124 (Minn. 2012) (concluding that settlement disclosure was harmless error based on consideration of the evidence presented and arguments of counsel); *Sorenson v. Kruse*, 293 N.W.2d 56, 62 (Minn. 1980) (concluding that settlement disclosure was harmless error in light of the evidence in the record); *see also, e.g.*, *Morlock v. St. Paul Guardian Ins. Co.*, 650 N.W.2d 154, 161-62 (Minn. 2002) (concluding that erroneous jury instruction was harmless error in light of the evidence presented and arguments of counsel); *In re Silicone Implant Ins. Coverage Litig.*, 652 N.W.2d 46, 78 (Minn. App. 2002) (concluding that erroneous jury instruction was harmless error based on the evidence in the record), *aff'd in part, rev'd in part*, 667 N.W.2d 405 (Minn. Aug. 21, 2003).

Appellants argue that the erroneous jury instruction was prejudicial because the jury could have assumed that Bridgestone admitted liability, that appellants had been fairly compensated for their injuries by Bridgestone, and that appellants were attempting a double recovery. We disagree and conclude that any error was harmless because of the other instructions that the district court provided and in light of the evidence presented at trial.

First, the district court specifically and repeatedly instructed the jury to answer liability and damage questions without regard to Bridgestone's settlement: "The effect of their settlement should not concern you or the decisions you will be asked to make." In

addition, the jury was also instructed that "[t]he fact that an accident has happened does not by itself mean that someone is negligent." We assume that the jury followed the district court's instructions. *See State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009). The jury responded by finding no negligence on the part of Bridgestone, respondent, or the driver of the vehicle that crashed.

Second, we consider the evidence presented. The issue of respondent's liability concerned whether respondent sold the faulty tire to appellants' witnesses. Two witnesses offered conflicting testimony and may have misidentified who sold the used tire. The jury heard evidence that a stocky man, with sandy brown hair, and wearing a blue uniform sold the faulty tire for $50 and provided a warranty on the used tire. Respondent's witnesses offered contrary testimony. Neither man matches the physical description provided by appellants' witness and neither wears a blue uniform at work. Respondent's witnesses denied ever having sold a used tire for as much as $50, and denied offering warranties on used tires. In addition, one of appellants' witnesses admitted at trial that he had mistaken respondent for a nearby auto parts business when he previously described the seller as having a junkyard and displaying radios. Importantly, the jury also heard the testimony of the owner of that nearby business. This man sells used tires, displays a variety of car radios in the store, has a junkyard outside, and resembles the physical description provided. In light of this evidence, we conclude that the instructions regarding the existence of the settlement did not reasonably have a significant effect on the verdict.

Because the district court specifically instructed the jury not to consider the existence of a settlement, and because of the substantial evidence supporting the jury's

decision, we conclude any error that the district court may have committed in disclosing the settlement was harmless.

Affirmed.