

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE FARM MUTUAL	§	
AUTOMOBILE INSURANCE	§	
COMPANY, a foreign corporation,	§	No. 144, 2010
	§	
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
JOANNE ENRIQUE,	§	C.A. No. 08C-07-026
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: July 12, 2010

Decided: September 3, 2010

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 3rd day of September 2010, it appears to the Court that:

(1) This appeal involves a claim for uninsured motorist benefits arising out of an automobile accident. Defendant-below State Farm Mutual Automobile Insurance Co. appeals from the Superior Court's decision admitting three photographs of the damaged automobiles into evidence. State Farm makes two arguments on appeal. First, State Farm contends that the Superior Court abused its discretion by admitting the photographs because they were irrelevant to the determination of damages and unduly prejudicial to State Farm. Second, State Farm contends that the limiting jury instruction given by the trial judge was

insufficient to overcome the improper admission of the photographs. Because the photographs were relevant and the trial judge gave a proper limiting instruction, we find no merit to State Farm's arguments. Accordingly, we affirm.

(2) On September 26, 2005, Plaintiff-below Joanne Enrique was injured in an accident with an uninsured motorist, Bridgett Roy ("Roy"). Enrique filed suit against State Farm, her insurance provider, seeking payment of the \$100,000 limit of uninsured motorist coverage provided by her policy. State Farm conceded that Roy was the tortfeasor and that it was liable, but contested the amount of damages Enrique claimed. State Farm advanced \$25,000 to Enrique, leaving \$75,000 of the policy limit in dispute.

(3) In the parties' pre-trial stipulation, Enrique stated that she would seek admission of photographs of the vehicles involved in the accident. Before trial, State Farm filed a motion *in limine* to bar Enrique from admitting the photographs. State Farm contended that the photographs were irrelevant and unduly prejudicial and therefore inadmissible under D.R.E. 403 and this Court's decision in *Davis v. Maute*.¹ Specifically, State Farm contended that the photographs were irrelevant because the only issue for determination at trial was the amount of damages Enrique was owed, and it did not challenge Enrique's testimony that the accident caused her knee injuries. State Farm contended, therefore, that the prejudicial

¹ 770 A.2d 36 (Del. 2001).

effect of admitting the photographs would outweigh their probative value. Enrique contended that the photographs were relevant because they proved that there was an accident and that her knees struck the dashboard during the crash.

(4) After oral argument of State Farm's motion *in limine*, the Superior Court held that the photographs were admissible. The trial court found that "the fact that a point is undisputed does not restrict the party from offering all of his or her evidence on that point." The court found that the photographs were relevant to Enrique establishing her knee injuries because "[a]ny evidence which tends to show that it is more or less probable that her knees collided with the dashboard is relevant." The trial court found that their relevance was not outweighed by the danger of unfair prejudice to State Farm. In addition, the trial court stated that "[i]f the defense offers a limiting instruction for consideration, I will consider it."

(5) At the end of the trial, State Farm proposed, and the trial court issued, the following limiting instruction:

I have permitted the plaintiff to admit photographs of the plaintiff's vehicle and the vehicle of Bridgett Roy. These photographs were offered to corroborate and substantiate the plaintiff's testimony that her knee struck her vehicle's dashboard during the collision. However, you are not to consider these photographs as providing a connection between the damage to the vehicles and the severity of the plaintiff's alleged injuries. These photographs have been admitted only for the limited purpose stated.

After deliberation, the jury returned a \$260,000 verdict for Enrique. This appeal followed.

(6) State Farm contends that the Superior Court abused its discretion by admitting the photographs because they were irrelevant to the determination of damages and unduly prejudicial to State Farm. Enrique contends that the photographs are relevant because they corroborate Enrique's testimony that she suffered physical and emotional injuries.² We review the Superior Court's rulings regarding the admissibility of evidence for an abuse of discretion.³

(7) D.R.E. 401 and 403 provide, respectively:

"Relevant evidence" means 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.⁴

Although relevant, evidence 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.⁵

² Enrique also contends under *Robinson v. Meding*, 163 A.2d 272, 277-78 (Del. 1960), that because the extent of damages was the only issue before the jury State Farm's appeal actually challenges the amount of the jury award, not an evidentiary ruling. In *Robinson*, the appellant argued that the damages the trial judge awarded in a bench trial were excessive because they were not substantiated by the evidence. We held that the appellant's argument could not be raised on appeal because the appellant had not raised it before the trial court through a motion for a new trial or a motion to set aside the verdict. The facts of this case are distinguishable from *Robinson*. Here, State Farm objected to the admission of the photographs in the parties' pre-trial stipulation, in a motion *in limine*, at oral argument of the motion, and during the trial. State Farm therefore fairly presented the question of the admissibility of the photographs to the trial court and satisfied Supreme Court Rule 8.

³ *Miller v. State Farm Mut. Auto. Ins. Co.*, 993 A.2d 1049, 1052-53 (Del. 2010); *Saudi Basic Indus. Corp. v. Mobil Yanbu Petrochemcial Co., Inc.*, 866 A.2d 1, 19 (Del. 2005).

⁴ D.R.E. 401.

⁵ DEL. R. EVID. 403.

(8) In *Davis v. Maute*, this Court held that a party may not make, in the absence of expert testimony, a direct argument correlating the damage to a vehicle with a party's injuries.⁶ This Court held, however, that photographs are not *per se* inadmissible:

Of course, even where the sole issue at trial is damages, photographs of the plaintiff's car could conceivably serve some valid purpose other than supporting the minimal damage/minimal injury inference. As a consequence, photographs of the plaintiff's car are not *per se* inadmissible. Instead, the admissibility of the photographs must turn on whether the risk that the jury will draw an improper inference from the photographs "substantially outweighs" the probative value of the photographs under D.R.E. 403.⁷

(9) In *Eskin v. Carden*,⁸ this Court clarified the holding in *Davis*:

Davis does not hold that photographs of the vehicles involved in an accident may never be admitted without expert testimony about the significance of the damage to the vehicles shown in the accident and how that damage may relate to an issue in the case. *Davis* has been misinterpreted as a bar to the admission of photographs without expert testimony. It was only the disingenuous reference to a "fender bender"—after a trial judge's express ruling forbidding what that phrase implied—that prompted our holding. *Davis* should not be construed broadly to require expert testimony in every case in order for jurors to be permitted to view photographs of vehicles involved in an accident.

In short, *Davis* should be limited to its facts, recognizing that there may be many helpful purposes for admitting photographs of the

⁶ 770 A.2d 36, 40 (Del. 2001) ("As a general rule, a party in a personal injury case may not directly argue that the seriousness of personal injuries from a car accident correlates to the extent of the damage to the cars, unless the party can produce competent expert testimony on the issue. Absent such expert testimony, any inference by the jury that minimal damage to the plaintiff's car translates into minimal personal injuries to the plaintiff would necessarily amount to unguided speculation.").

⁷ *Id.* at 41.

⁸ 842 A.2d 1222 (Del. 2004).

vehicles involved in an accident where the case does not require supporting expert opinion.⁹

(10) Here, Enrique contends that the photographs are relevant to prove that there was an accident and that her knees struck the dashboard during the crash. State Farm contends that it did not challenge whether Enrique's knees hit the dashboard during the crash. It contends that the only issue is the severity of her damages, not whether her knees were injured or injured in this particular fashion. Regardless of whether State Farm contested that her knees hit the dashboard, it was Enrique's burden to establish a prima facie basis for recovery as to all elements of her claim.¹⁰ Accordingly, the Superior Court did not abuse its discretion in admitting the photographs.

(11) State Farm contends that the limiting jury instruction given by the trial judge was insufficient to protect against the prejudice of admitting the photographs. In order for a curative instruction to be deemed insufficient to cure the prejudice to the defendant, the prejudice must be egregious.¹¹ A curative jury instruction is normally sufficient, and jurors are presumed to follow the instruction.¹²

⁹ *Id.* at 1233.

¹⁰ *Farm Family Mut. Ins. Co. v. Perdue, Inc.*, 1992 WL 21141, at *2 (Del. Jan. 2, 1992); *Freedman v. Chrysler Corp.*, 564 A.2d 691, 695 (Del. 1989).

¹¹ *Ashley v. State*, 798 A.2d 1019, 1022 (Del. 2002) (citing *Bowe v. State*, 514 A.2d 408, 410 (Del. 1986)).

¹² *Michaels v. State*, 970 A.2d 223, 229 (Del. 2009).

(12) In *Davis*, this Court held that “the standard instruction that the jury’s ‘verdict must be based solely on the evidence in the case’” was an inadequate limiting instruction. This Court also held that when photographs are relevant to a disputed issue and are admissible under D.R.E. 403, the trial court must immediately give the jury an explicit limiting instruction that “there is no evidence of a correlation between the damage shown in the photographs and the severity of [the plaintiff’s] personal injuries.”¹³ State Farm did not request a contemporaneous limiting instruction when the pictures were introduced, nor does it contend on appeal that the trial court erred when it did not give such a limiting instruction *sua sponte*. The trial court stated that it would consider any proposed curative instruction provided by the parties. State Farm proposed a limiting instruction at the end of trial, which the trial court issued.

(13) The limiting instruction provided that the pictures were only to be considered as evidence that Enrique’s knees hit the dashboard in the accident, and not for a determination of the correlating severity of Enrique’s injuries. Accordingly, the trial court’s limiting instruction was sufficient to prevent the jury from considering the photographs for any improper purpose. The limiting

¹³ *Davis v. Maute*, 770 A.2d at 42.

instruction in this case complied with *Davis v. Maute*,¹⁴ and informed the jury of the limited purpose for the admission of the photographs.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

¹⁴ *Id.*