STATE OF MICHIGAN

COURT OF APPEALS

JACQUELINE DANISON,

Plaintiff–Appellant,

v

ELI VELAZQUEZ and CHARLENE VELAZQUEZ,

Defendants–Appellees.

UNPUBLISHED
November 15, 1996

No. 176420
LC No. 91-003730

Before: Marilyn Kelly, P.J., and MacKenzie and J.R. Ernst,* JJ.

PER CURIAM.

In this personal injury case, plaintiff appeals as of right from a judgment of no cause of action in favor of defendants. We affirm.

While at defendants' home, plaintiff was injured when defendants' dog injured her nose. Plaintiff, alleging that she had been bitten, brought suit under the Michigan Dog Bite Statute, MCL 287.351; MSA 12.544. However, defendants claimed that plaintiff's injuries were not the result of the dog's biting but rather a result of contact with part of the dog's face. The jury rendered a verdict in favor of defendants. Plaintiff moved for judgment notwithstanding the verdict or a new trial in the alternative, which the trial court denied.

On appeal, plaintiff first contends that the trial court improperly allowed defendants to present the "defense" that plaintiff's nose injury was not the result of an intentional attack, but was rather due to an "accidental bumping." Plaintiff argues that, since liability under the Michigan dog bite statute does not require "canine intent," the court erred in instructing the jury as to defendants' "defense" and by allowing defendants to argue it during closing. A trial court must instruct the jury on a party's theory of the case if so requested. *Pakideh v Franklin Commercial Mortgage Group*, 213 Mich App 636, 641; 540 NW2d 777 (1995). A dog owner is strictly liable for injuries inflicted by the dog except when it bites after being provoked, *Nicholes v Lorenz*, 396 Mich 53, 60; 237 NW2d 468 (1976); *Thelen v Thelen*, 174 Mich App 380, 385; 435 NW2d 495 (1989). However, MCL 287.351; MSA

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* Circuit judge, sitting on the Court of Appeals by assignment.

12.544 clearly provides that a "bite" is required. At trial, it was defendants' theory that no bite occurred and that plaintiff's injuries were the result of the dog's face or teeth coming into contract with her nose. The trial judge instructed the jury on this theory and defense counsel argued it in closing. We find no error since defendants were entitled to argue their theory of the case and have the jury instructed upon it.

Next, plaintiff argues that the trial court erred when granting defendants' motion in limine to exclude evidence that, immediately after plaintiff sustained injury, the dog attacked and bit its owner. As with all claims regarding the admission or exclusion of evidence, we review the trial court's decision for an abuse of discretion. *Haberkorn v Chrysler Corp*, 210 Mich App 354, 361; 533 NW2d 373 (1995). We find no abuse of discretion in excluding this evidence, since evidence of subsequent events to prove that a prior event was more likely to have occurred is inadmissible. MRE 407; *DaFoe v Michigan Brass & Electric Co*, 175 Mich App 565, 567; 438 NW2d 270 (1989).

Plaintiff also argues that defense counsel's comment during closing that the case was only "about money" requires reversal. This Court will reverse based upon such comments only when counsel's conduct indicates a deliberate course aimed at preventing a fair and impartial trial, or if the comments prevented the jury from focusing their attention on the issues of the case. *Hammack v Lutheran Social Services*, 211 Mich App 1, 10; 535 NW2d 215 (1995). In light of the isolated nature of this comment and the fact that the trial court instructed the jury that the statements of the lawyers were not evidence, we do not find this comment prevented a fair trial or distracted the jury from the relevant issues. *Isagholian v Transamerica Ins Corp*, 208 Mich App 9, 16; 527 NW2d 13 (1994).

In this same regard, plaintiff argues that defense counsel engaged in prejudicial argument during his closing by pointing to an exhibit of the dog bite statute and telling the jury to "forget that." However, the record does not reveal that counsel was pointing to the statute when he made this comment. Nevertheless, plaintiff did not object to this comment at trial, and we decline to address the issue. *Phillips v Mazda Motor Mfg Corp*, 204 Mich App 401, 413; 516 NW2d 502 (1994).

Finally, plaintiff argues that the trial court erred when denying her motion for judgment notwithstanding the verdict or for a new trial in the alternative. We disagree. A trial court's decision to grant or deny a motion for judgment notwithstanding the verdict will not be reversed absent a clear abuse of discretion. There is not an abuse of discretion if reasonable jurors could honestly have reached different conclusions. *Bordeaux v Celotex Corp*, 203 Mich App 158, 166; 511 NW2d 899 (1993). Regarding a motion for new trial, our function is to determine whether the great weight of the evidence favors the losing party. *Severn v Sperry Corp*, 212 Mich App 406, 412; 538 NW2d 50 (1995). Furthermore, we give substantial deference to the trial court's conclusion that the verdict was not against the great weight of the evidence. *Id*. at 412-413.

Our review of the record reveals that the only conclusive evidence presented by plaintiff to support her theory that her injuries were caused by an actual bite was her own testimony which the jury was free to accept or reject. See *People v Schmidt*, 196 Mich App 104, 108; 492 NW2d 509 (1992). We cannot find that the overwhelming weight of the evidence favored plaintiff since this was the

only evidence presented. Furthermore, we believe that reasonable jurors using their common sense and understanding could have found that plaintiff's injuries were caused by contact other than a bite. Accordingly, the trial court did not abuse its discretion in denying the motions.

Affirmed.

/s/ Marilyn Kelly
/s/ Barbara B. MacKenzie
/s/ J. Richard Ernst