

STATE OF MICHIGAN
COURT OF APPEALS

JOYCE LAKE,

Plaintiff-Appellee,

v

SUSAN BROSS and WHALEY FOUNDATION,

Defendants-Appellants.

UNPUBLISHED

April 21, 1998

No. 198801

Genesee Circuit Court

LC No. 94-026511 NI

Before: Doctoroff, P.J., and Reilly and Allen*, JJ.

PER CURIAM.

Defendants appeal as of right from the judgment entered in favor of plaintiff following a jury trial. Because defendants stipulated to their negligence, the sole issue at trial was the extent of plaintiff's damages resulting from an automobile accident. We affirm.

Defendants first argue that the trial court erred in disallowing them from introducing into evidence a surveillance videotape due to their failure to give prompt notice to plaintiff. We disagree.

This Court reviews a trial court's evidentiary rulings for an abuse of discretion. *Sackett v Atyeo*, 217 Mich App 676, 683; 552 NW2d 536 (1996). The ultimate objective of pretrial discovery is to make available to all parties, in advance of trial, all relevant facts which might be admitted into evidence at trial. *Grubor Enterprises v Kortidis*, 201 Mich App 625, 628; 506 NW2d 614 (1993). The videotape defendants sought to introduce purportedly shows plaintiff carrying a purse and holding a grocery bag, in contradiction to previous testimony from plaintiff and her daughter regarding plaintiff's ability to function with her left arm.

The trial court did not abuse its discretion by barring admission of the videotape. Under a previously entered discovery order, defendants were required to give plaintiff prompt notice of any new witnesses they intended to call. Defendants sought to introduce the videotape on the third day of trial. When questioned about his failure to disclose the videotape prior to trial, defense counsel indicated that while it was allegedly recorded approximately one month prior to trial, he was not aware of its existence

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

until the first day of trial. Defendants failed to give proper notice of their intention to introduce the videotape and the testimony of the person who made it, in direct contravention of the discovery order. In addition, because defendants did not give prompt notice of their intent to call the person who allegedly produced the tape as a witness, they were also unable to establish a proper foundation for the tape pursuant to MRE 901(a). Accordingly, the trial court did not abuse its discretion by refusing to admit the videotape. *Sackett, supra*.

Next, defendants argue that the court erred by admitting evidence that plaintiff continued to receive payments from her automobile insurer. We disagree.

MRE 411 states:

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, if controverted, *or bias or prejudice of a witness*.

There is a general canon that on cross examination the range of evidence that may be elicited for any purpose of discrediting is to be very liberal. *Wilson v Stilwill*, 411 Mich 587, 599; 309 NW2d 898 (1981). The jury, in the trial court's discretion, may hear and evaluate evidence affecting credibility. *Id.* at 601.

We find that the court did not abuse its discretion in admitting the evidence of continued insurance payments. Defendants used the video deposition of Dr. Eugene Nalepa, who examined plaintiff, on behalf of her no-fault automobile insurer. Dr. Nalepa testified that following an examination of plaintiff and a review of her records, he believed that plaintiff's physical condition did not coincide with her complaints. Plaintiff testified that despite Dr. Nalepa's findings, she continued to receive her no-fault insurance payments. Plaintiff's condition was the central issue at trial. Therefore, this evidence was relevant to the bias of Dr. Nalepa as an expert witness, and to his credibility regarding his evaluation of plaintiff. Accordingly, the trial court did not abuse its discretion in admitting the testimony.

Finally, defendants argue that the trial court erred in denying its motion for remittitur by failing to reduce future damages in the verdict to present cash value pursuant to MCL 600.6305; MSA 27A.6305. We agree that the trial court erred in failing to properly instruct the jury regarding the determination of damages. MCL 600.6305(1) and (2); MSA 27A.6305(1) and (2) requires any judgment rendered by a trier of fact in a personal injury action to include specific findings, on an annual basis, of future economic and noneconomic damages or losses. MCL 600.6306(1); MSA 27A.6306(1) requires the court to then reduce the award of future damages to present cash value. However, the trial court in this case instructed the jury apportion any award into economic and noneconomic damages, without requiring them to specifically determine the amount of future damages. The jury returned a verdict in favor of plaintiff in the amount of \$75,000 in economic damages and \$175,000 in noneconomic damages. There was no determination as to which amounts were future damages. The court erred by failing to give the proper jury instructions.

However, defendants did not place an objection on the record regarding the jury instructions or the “short” jury verdict form, which does not require a determination of future damages. In *Fellows v Superior Products Co.*, 201 Mich App 155, 165-166; 506 NW2d 534 (1993), this Court rejected the defendant’s argument that the verdict form failed to comply with the tort reform act, MCL 600.6301 *et seq.*; MSA 27A.6301 *et seq.*, where the parties stipulated to the verdict form. Error requiring reversal must be that of the trial court and not that to which the appellant contributed by plan or negligence. *Id.* This Court reversed the trial court on other grounds and held that on remand, the defendant was free to renew its objections to the jury form on that basis. *Id.* Although there was no clear stipulation as to the short jury verdict form, defendants were aware it was going to be used. Defendants did not clearly object to it on the record and did not propose their own verdict form. Accordingly, because defendants contributed to the trial court’s error, we believe that reversal is not warranted. *Fellows, supra.*

Affirmed.

/s/ Martin M. Doctoroff

/s/ Glenn S. Allen