

STATE OF MICHIGAN
COURT OF APPEALS

JOE NOFAR and SUPER KLEAN PRODUCTS,
INC.,

UNPUBLISHED
October 30, 1998

Plaintiffs-Appellants,

v

No. 197231
Wayne Circuit Court
LC No. 94-408564 NZ

JACK E. EIKENBERRY and EIKENBERRY &
ASSOCIATES,

Defendants-Appellees,

and

HASTINGS MUTUAL INSURANCE
CORPORATION,

Defendant.

Before: Young, Jr., P.J., and Wahls and Jansen, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the judgment entered after a jury trial, incorporating the directed verdict granted to defendants on plaintiffs' negligence count. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs filed a two count complaint alleging professional negligence and fraud on the part of defendants in securing insurance for property owned by plaintiffs. Plaintiffs claimed that defendant Eikenberry was negligent in failing to secure both property and premises liability insurance for the property when both coverages were indicated on plaintiffs' deposit check. Plaintiffs' fraud claim was based on their assertion that Eikenberry represented that he had obtained full coverage for plaintiffs. The trial court granted a directed verdict on the negligence claim, based on plaintiffs' failure to present proof on the breach of the standard of care. The jury returned a verdict in favor of plaintiffs on the fraud count.

In reviewing a trial court's decision on a motion for directed verdict, this Court views the evidence presented in the light most favorable to the nonmoving party, grants that party every reasonable inference, and resolves any conflict in the evidence in that party's favor to decide whether a question of fact existed. *Hatfield v St Mary's Medical Center*, 211 Mich App 321, 325; 535 NW2d 272 (1995). Where the evidence is such that reasonable jurors could honestly have reached different conclusions, the trial court may not substitute its judgment for that of the jury, and the motion must be denied. *Berryman v K Mart Corp*, 193 Mich App 88, 91; 483 NW2d 642 (1992).

The trial court granted defendants' motion based on the absence of evidence pertaining to the standard of care and the breach of that standard. Generally, expert testimony is required in a professional negligence case to establish the applicable standard of care and to demonstrate that the professional breached that standard. *Sullivan v Russell*, 417 Mich 398, 407; 338 NW2d 181 (1983); *Taylor v Wyeth Laboratories, Inc*, 139 Mich App 389, 399; 362 NW2d 293 (1984). Where the lack of professional care is so manifest that it would be within the common knowledge and experience of laypersons, expert testimony is not required. *Sullivan, supra*.

Plaintiffs failed to present any evidence as to the standard of care applicable to insurance professionals. The complaint alleged that although defendants first bound coverage on the building, they notified plaintiffs prior to the accident that they exceeded their authority, but would try to obtain alternative coverage. The complaint alleged that this conduct was negligent and below the standard of care for professional licensed insurance agents. Where plaintiffs failed to support this allegation with any evidence as to the proper standard of care, the trial court correctly granted a directed verdict as to the negligence count.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Myron H. Wahls

/s/ Kathleen Jansen