

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL FRANTZ,

Plaintiff-Appellant,

v

DRS. BLUM & SACK, P.C., d/b/a FAMILY CARE
PHYSICIANS, FAMILY CARE PHYSICIANS,
P.C., and DEL M. LAVIOLETTE,

Defendants-Appellees.

UNPUBLISHED

December 1, 1998

No. 203903

Oakland Circuit Court

LC No. 95-491990 NH

Before: Sawyer, P.J., and Wahls and Hoekstra, JJ.

MEMORANDUM.

Plaintiff Daniel Frantz appeals of right from a judgment of no cause of action entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Dr. Sack's medical assistant, Del Laviolette, administered a dorsal gluteal injection of terramycin to plaintiff. One or two days later plaintiff began experiencing pain and tingling radiating down his right leg. Sack opined that plaintiff was suffering from inflammation of the sciatic nerve, a condition possibly related to the injection. Eventually, plaintiff developed deep vein thrombosis, which was successfully treated.

Plaintiff filed suit. At trial, Laviolette testified that if a dorsal gluteal injection of terramycin is given in the proper manner, damage to the sciatic nerve should not occur. Various witnesses stated that even if the injection is given in the proper manner, damage to the sciatic nerve can occur if the terramycin infiltrates the nerve via soft tissue. Such infiltration does not indicate that an improper technique was used. Plaintiff's expert opined that the injection was given in an improper manner because injury, including damage from infiltration, is not expected if proper technique is used. Defendants' expert witness opined that if plaintiff did not feel immediate pain from the injection, proper technique was used, and the damage resulted from infiltration.

Plaintiff moved for a directed verdict on the issues of negligence and proximate cause. Plaintiff relied on Laviolette's testimony that if the injection was given properly, then damage to the sciatic nerve

should not occur. The trial court denied the motion, noting that there was testimony to the effect that the injection was given properly, and that damage could occur via infiltration under such circumstances.

On appeal, plaintiff argues that his motion for directed verdict and the verdict were against the great weight of the evidence. Because it was undisputed that the sciatic nerve had been damaged by terramycin, the only proper conclusion the jury could have reached was that the injection was given in an improper manner.

Plaintiff's claim that the verdict was against the great weight of the evidence is waived because he did not make a motion for new trial. *DeGroot v Barber*, 198 Mich App 48, 54; 497 NW2d 530 (1993). Plaintiff's challenge to the sufficiency of the evidence was preserved by the motion for directed verdict. *Napier v Jacobs*, 429 Mich 222, 229; 414 NW2d 862 (1987).

When the evidence presented could lead reasonable jurors to disagree, the trial court must not substitute its judgment for that of the jury, and should deny a motion for directed verdict. *Lamson v Martin (After Remand)*, 216 Mich App 452, 455; 549 NW2d 878 (1996). This Court reviews the grant or denial of a directed verdict de novo. *Meagher v Wayne State Univ*, 222 Mich App 700, 707-708; 565 NW2d 401 (1997).

We affirm the judgment entered upon the verdict. The trial court did not err by denying plaintiff's motion for a directed verdict. Contrary to plaintiff's assertion, the evidence did not support only one conclusion, i.e., that the injection was administered in an improper manner. Some witnesses opined that the injection had been given in the proper manner, that the damage to the sciatic nerve occurred because the terramycin infiltrated the sciatic nerve via soft tissue, and that such infiltration was not the result of the injection having been administered improperly. The jury's verdict was supported by sufficient evidence. Reasonable persons could disagree as to whether the injection was given in an improper manner. The question was properly left to the jury. *Mull v Equitable Life Assurance Society*, 196 Mich App 411, 421; 493 NW2d 447 (1992).

Affirmed.

/s/ David H. Sawyer

/s/ Myron H. Wahls

/s/ Joel P. Hoekstra