

STATE OF MICHIGAN
COURT OF APPEALS

RANDY RIDNER,

Plaintiff-Appellant,

v

WILLIAM HOWELL ROOT, JR., and
ROSE MOVING AND STORAGE,

Defendants-Appellees.

UNPUBLISHED

December 18, 1998

No. 200357

Monroe Circuit Court

LC No. 94-002998 NI

Before: Markey, P.J., and Sawyer and Whitbeck, JJ.

PER CURIAM.

In this automobile negligence action, plaintiff appeals by right a circuit court judgment of no cause of action in favor of defendants following a jury trial. We affirm.

Plaintiff was injured when a moving van operated by defendant William Howell Root, Jr., and owned by Root's employer, defendant Rose Moving and Storage, struck the vehicle in which plaintiff was a passenger. Root admitted that at the time of the accident he ran the stop sign and thus failed to yield the right of way to plaintiff. The court granted summary disposition in plaintiff's favor on the issue of negligence.

Before the presentation of proofs, plaintiff filed a motion in limine to exclude as irrelevant any reference to plaintiff's history of substance abuse and admission for substance abuse treatment, claiming he had been sober for approximately six years. The trial court ruled that defendants could elicit testimony and argue to the jury that before the accident plaintiff had alcohol and drug problems that had affected his ability to work and that the jury should take this information into account only when considering plaintiff's wage earning capacity and damages for loss of future wages. After a four day trial, the jury found that Root's negligence was not the proximate cause of plaintiff's neck and lower back injuries.

First, plaintiff argues that he was denied a fair trial because defendants exceeded the scope of the court's ruling in limine, and they failed to establish any connection between plaintiff's substance abuse several years before the accident and plaintiff's future wage earning capacity. The decision

whether to admit or exclude evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Williams v Coleman*, 194 Mich App 606, 620-621; 488 NW2d 464 (1992). See also *Chimielewski v Xermac, Inc*, 457 Mich 593, 611-612; 580 NW2d 817 (1998). An abuse of discretion is only found if an unprejudiced person considering the facts on which the trial court acted, would say that there was no justification for the ruling made. *Phillips v Deihm*, 213 Mich App 389, 394; 541 NW2d 566 (1995). Under this standard of review, we find no abuse of discretion in the trial court's ruling regarding the admissibility of the evidence.

Defendants established that plaintiff had a substance addiction disorder and that in the past, he had missed work and been disciplined by his employer for using drugs and alcohol. From the evidence, the jury could also infer that when faced with life's stress, plaintiff could easily relapse. In addition, the record reflects that defendants did limit their questions to various witnesses regarding plaintiff's prior substance abuse to comply with the court's order. Based on the foregoing, we find that the trial court did not abuse its discretion regarding the admissibility of the evidence and the latitude it gave defendants in their closing argument.

In addition, plaintiff argues that the trial court abused its discretion when it denied plaintiff's motion for mistrial that was brought on the second day of trial during plaintiff's cross-examination. During cross-examination, defense counsel showed plaintiff a copy of his driving record and asked him: "Does this not indicate, sir, that you have a conviction dated" Before counsel could complete his question, plaintiff's counsel objected and in his objection revealed to the jury that the conviction involved alcohol. The court then excused the jury at which time plaintiff's counsel argued, in general, the alleged prejudice cause by defendants' examination regarding alcohol abuse and, in specific, defendants' attempts to admit a drunk driving criminal conviction against plaintiff. Because the court concluded that the jury did not know what the conviction was for, it denied plaintiff's motion for mistrial.

Under the circumstances the trial court did not abuse its discretion in denying the motion for mistrial. A decision to grant or deny a motion for mistrial is within the sound discretion of the trial court. This Court will not reverse a trial court's decision absent an abuse of discretion that has resulted in a miscarriage of justice. *Anderson v Harry's Army Surplus, Inc*, 117 Mich App 601, 615; 324 NW2d 96 (1982). We find no abuse of discretion.

With respect to the conviction, the evidence did not come in. Any prejudice that might have resulted was created by plaintiff's counsel because it was plaintiff's counsel that revealed to the jury the alcohol-related nature of the conviction, not defendants. With respect to plaintiff's general argument, that a mistrial was warranted because the entire line of questioning regarding substance abuse deviated from the court's order, for the reasons set forth above, we disagree.

We affirm.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ William C. Whitbeck