STATE OF MICHIGAN

COURT OF APPEALS

AUTO OWNERS INSURANCE COMPANY,

Plaintiff-Appellee,

v

MICHAEL JAMES HARRIS, by his Next Friend, DEBRA LYNN HARRIS, and JAMES EDWARD HARRIS,

Defendant-Appellants,

and

JOANNE MEINEMA, AREND MEINEMA, and CHRISTOPHER MEINEMA,

Defendants.

UNPUBLISHED
October 8, 1999

No. 211249
Kalamazoo Circuit Court
LC No. 96 002413 CK

Before: McDonald, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

The Harris defendants appeal as of right from the order of the trial court granting declaratory judgment to plaintiff pursuant to MCR 2.506. We affirm.

The first issue is whether the trial court erred when it accepted into evidence, under MRE 404(b)(1), statements Christopher Meinema made to his counselors several years after he sexually assaulted the victim. We review evidentiary issues for abuse of discretion. *Chmielewski v Xermac, Inc*, 457 Mich 593, 613-614; 580 NW2d 817 (1998). Generally, all relevant evidence is admissible. MRE 402. Evidence is relevant if it has any tendency to make the existence of a fact which is of consequence to the action more or less probable than it would be without the evidence. MRE 401. Defendants acknowledge that the pivotal issue at trial was Christopher's state of mind at the time he

sexually assaulted the victim. They maintain that Christopher's statements to his counselors were irrelevant to his state of mind, and therefore inadmissible under MRE 404(b)(1), because

> the relevant testimony and evidence to determine this issue is that evidence and testimony that was taken and preserved at the time of the incidents both in [c]ourt, police interviews, and by statements of Christopher himself.

We conclude that defendants' argument fails for two reasons. First, although it purports to address the relevance of Christopher's statements, it essentially addresses the weight and value of these statements, which factors are entirely immaterial to whether the trial court properly admitted the statements into evidence. *Cole v Eckstein*, 202 Mich App 111, 113-114; 507 NW2d 792 (1993). Moreover, MRE 404(b)(1) states that

> [*e*]*vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person* in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, *intent*, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident *when the same is material*, whether such other crimes, wrongs, or acts, are contemporaneous with, or prior or *subsequent to the conduct at issue in the case*. [Emphasis added.]

Second, although defendants quote the rule in its entirety, nowhere do they argue that the trial court erred when it admitted into evidence statements Christopher made to his counselors, *insofar as they disclose that Christopher sexually assaulted children other than the victim in this case*. Accordingly, this issue is not properly before this Court. *Dresden v Detroit Macomb Hospital Corp*, 218 Mich App 292, 300; 553 NW2d 387 (1996).

The second issue is whether the trial court erred when it concluded that Christopher subjectively expected or intended to injure the victim. We review findings of fact for clear error. *Featherstone v Steinhoff*, 226 Mich App 584, 588; 575 NW2d 6 (1997). A finding of fact is clearly erroneous when we are left with a definite and firm conviction that the trial court made a mistake. *Id*. Whether an injury is expected or intended is determined from the perspective of the insured. *Frankenmuth Mut Ins Co v Masters*, 460 Mich 105, 114; 595 NW2d 832 (1999). Defendant argues that

> [o]bviously if the statements regarding intent during the relevant time period are taken into account, Christopher did not intend the physical injury that was inflicted upon . . . [the victim]. . . .

To support their argument, defendants quote extensively from police reports, probate court transcripts, and Christopher's deposition testimony, statements indicating that Christopher did not use force, that Christopher did not appreciate the seriousness of his conduct, and that Christopher did not appreciate the wrongfulness of his conduct. Even if true, none of this has any bearing whatsoever on whether Christopher intended to injure the victim.

Moreover, Christopher made a number of disclosures to his counselors that indicated he expected or intended to injure the victim. Among the more salient was his disclosure that he knew he inflicted pain when he performed anal sex on the victim and that the pain he inflicted sexually aroused him. Although Christopher testified during his deposition that he did not injure the victim, that he did not expect or intend to injure the victim, and that he lied to his counselors when he told them he did intend to injure the victim, the trial court chose not to believe him. The credibility of a witness is for the trier of fact to determine and will not be redetermined on appeal. *People v McFall*, 224 Mich App 403, 412; 569 NW2d 828 (1997); *Cole Lakes, Inc v Linder*, 99 Mich App 496, 504; 297 NW2d 918 (1980).

Affirmed.

/s/ Gary R. McDonald
/s/ Janet T. Neff
/s/ Michael R. Smolenski