STATE OF MICHIGAN

COURT OF APPEALS

GIOVANNI STEFAN,

Plaintiff,

and

NICK JAMEL,

Plaintiff-Appellant/Cross Appellee,

v

GEORGE A. KOUSTAS,

Defendant,

and

LUIGI CUTRARO, 12 MILE 1989, INC., d/b/a METROPOLITAN MUSIC CAFÉ FARMINGTON HILLS and 12 MILE 1989, INC., d/b/a AMICI'S ITALIAN VILLAGE,

Defendants-Appellees,

and

U-HAUL COMPANY OF MICHIGAN and U-HAUL COMPANY OF ARIZONA,

Defendants-Appellees/Cross Appellants.

UNPUBLISHED
December 3, 1999

No. 207536
Oakland Circuit Court
LC No. 96-521817 NI

GIOVANNI STEFAN and NICK JAMEL,

Plaintiffs,

v

No. 209808
Oakland Circuit Court
LC No. 96-521817 NI

GEORGE A. KOUSTAS,

Defendant,

and

LUIGI CUTRARO, 12 MILE 1989, INC., d/b/a METROPOLITAN MUSIC CAFÉ FARMINGTON HILLS and 12 MILE 1989, INC., d/b/a AMICI'S ITALIAN VILLAGE,

Defendants-Appellants/
Cross Appellees,

and

U-HAUL COMPANY OF MICHIGAN and U-HAUL COMPANY OF ARIZONA,

Defendants-Appellees/
Cross Appellants.

Before: Cavanagh, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

This is a consolidated case. In Docket No. 207536, plaintiff Nick Jamel appeals as of right from a jury verdict of no cause of action in favor of defendants, and defendants U-Haul Company of Michigan and U-Haul Company of Arizona (hereafter referred to collectively as "U-Haul") cross appeal. In Docket No. 209808, defendants Luigi Cutraro and 12 Mile 1989, Inc., (hereafter referred to collectively as "Cutraro") appeal by leave granted, and U-Haul cross appeals. We affirm.

Plaintiff first contends that the trial court erred by not granting his motion for judgment notwithstanding the verdict (JNOV) or a new trial because the verdict was against the great weight of the evidence. A trial court's decision to deny a motion for a new trial is reviewed for an abuse of discretion. *McPeak v McPeak (On Remand)*, 233 Mich App 483, 490; 593 NW2d 180 (1999). This Court will give substantial deference to a trial court's determination that the verdict is not against the great weight of the evidence and should not substitute its judgment for that of the jury unless the record reveals a miscarriage of justice. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999). A motion for JNOV should be granted only when there was insufficient evidence presented to create an issue for the jury. The trial court, when reviewing such a motion, must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party and determine whether facts presented preclude judgment for the nonmoving party as a matter of law. If reasonable minds could differ regarding the evidence, the question is for the jury and JNOV is improper. *McPeak*, *supra*.

Plaintiff asserts that he was entitled to JNOV or a new trial because reasonable minds could not disagree that George Koustas' negligence was established. Plaintiff argues that Koustas' failure to exercise due care constitutes common-law negligence. Furthermore, plaintiff maintains that Koustas' conduct in allowing the truck to roll back constitutes a violation of MCL 257.612(1)(a); MSA 9.2312(1)(a),[1] and Koustas was therefore guilty of negligence per se.

The violation of a safety or penal statute creates a rebuttable presumption of negligence where (1) the statute is intended to protect against the result of the violation; (2) the plaintiff is within the class intended to be protected by the statute; and (3) the evidence will support a finding that the violation was a proximate contributing cause of the occurrence. *Klinke v Mitsubishi Motors Corp*, 458 Mich 582, 592; 581 NW2d 272 (1998). Plaintiff contends that Koustas violated MCL 257.612(1)(a); MSA 9.2312(1)(a) because his vehicle traveled backwards in response to the green light. However, as the trial court pointed out, there is a significant difference between backing up a vehicle and allowing a vehicle with a manual transmission to roll backwards slightly when proceeding after a traffic light turns green.

Whether Koustas' conduct was negligent was a question for the jury to decide. See *Hammack v Lutheran Social Services of Michigan*, 211 Mich App 1, 5; 535 NW2d 215 (1995). Considering the evidence presented at trial, including the contradictory statements made by both plaintiff and Giovanni Stefan, reasonable jurors could have believed Koustas' testimony that the truck rolled backward no more than a foot to a foot and a half. In addition, reasonable jurors could have concluded that Koustas did not violate MCL 257.612(1)(a); MSA 9.2312(1)(a) and was not negligent. Accordingly, the trial court did not abuse its discretion in denying plaintiff's motion for a new trial or err in denying his motion for JNOV.

Plaintiff next raises two claims of instructional error. Plaintiff claims that the trial court erred (1) by providing an instruction on comparative negligence, and (2) in instructing the jury that it could find that Stefan violated MCL 257.643(1); MSA 9.2343(1).[2]

This Court reviews jury instructions in their entirety. The trial court does not commit error requiring reversal if, on balance, the parties' theories and the applicable law were presented to the jury adequately and fairly. *Stoddard v Manufacturers Nat'l Bank of Grand Rapids*, 234 Mich App 140, 163; 593 NW2d 630 (1999). This Court will not reverse on the basis of instructional error unless the failure to do so would be inconsistent with substantial justice. *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 101; 593 NW2d 595 (1999).

The jury determined that Koustas had not acted negligently and therefore never reached the issue of whether Stefan had been negligent. Consequently, neither of the instructions of which plaintiff complains could have played a role in the jury's decision. Under the circumstances, even if the trial court erred in giving the instructions challenged by plaintiff, the error did not lead to injustice, and reversal is therefore not warranted. See *id*.

On cross appeal, U-Haul raises a claim of evidentiary error. However, because we affirm the verdict in favor of defendants, resolution of this issue is unnecessary.

Docket No. 207536

In light of our resolution of Docket No. 207536, we do not address Cutraro's appeal or U-Haul's cross appeal, beyond noting that this Court has recently held that MCL 257.401(3); MSA 9.2101(1) is not applicable to cases arising and filed before the effective date of 1995 PA 98 § 1. See *Ryder Truck Rental, Inc v Auto-Owners Ins Co, Inc*, 235 Mich App 411, 414; 597 NW2d 560 (1999).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell

[1] MCL 257.612; MSA 9.2312 provides in pertinent part:

> (1) When traffic is controlled by traffic control signals, not less than 1 signal shall be located over the traveled portion of the roadway so as to give drivers a clear indication of the right of way assignment from their normal positions approaching the intersection. The vehicle signals shall exhibit different colored lights successively, 1 at a time, or with arrows. Red arrow and yellow arrow indications have the same meaning as the corresponding circular indications, except that they apply only to drivers of vehicles intending to make the movement indicated by the arrow. The following colors shall be used and the terms and lights shall indicate and shall apply to drivers of vehicles as follows:
>
> (a) If the signal exhibits a green indication, vehicular traffic facing the signal, except when prohibited under section 664, may proceed straight through or turn right or

> left unless a sign at that place prohibits either turn. Vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited. [Footnote omitted.]

[2] MCL 257.643(1); MSA 9.2343(1) provides: "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon, and the condition of, the highway."