

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN LYNN MACLEOD,

Plaintiff-Appellant,

v

THOMAS WYMAN KEITH,

Defendant-Appellee.

UNPUBLISHED

April 28, 2000

No. 216922

Barry Circuit Court

LC No. 97-000407-NI

Before: Owens, P.J., and Murphy and White, JJ.

PER CURIAM.

Plaintiff sued defendant, a friend of her family, seeking damages arising from an alleged sexual assault. She now appeals as of right from an order dismissing her complaint with prejudice following a jury trial which resulted in a verdict of “no cause of action.” We affirm.

Plaintiff first argues that she is entitled to a new trial because defendant was allowed to introduce evidence concerning plaintiff’s prior conviction for assaulting a police officer. Plaintiff did not object to the introduction of this evidence. Generally, we need not review unpreserved issues involving the admissibility of evidence, unless we find “plain error” which adversely affected plaintiff’s rights. MRE 103(d); *Kubisz v Cadillac Gage Textron, Inc*, 236 Mich App 629, 637; 601 NW2d 160 (1999). Moreover, there can be no abuse of discretion in the admission of a party’s prior conviction where the trial court’s discretion was not invoked in the first place. *People v Rice*, 235 Mich App 429, 438-439; 597 NW2d 843 (1999). We conclude that this issue does not present plain error. Plaintiff’s own testimony, on direct examination, placed her prior conviction in issue.

Plaintiff next argues that she is entitled to a new trial because hearsay testimony was improperly admitted and used to bolster defendant’s testimony. Again, plaintiff did not object to the introduction of the now contested testimony. Plaintiff has failed to establish that her substantial rights were affected by the admission of this testimony.

Finally, plaintiff alleges error in comments made during defense counsel’s closing argument. Contrary to plaintiff’s argument, the challenged comments did not improperly reflect expressions of the personal opinion of defense counsel. Rather, the statements challenged the credibility of plaintiff and her

witnesses and were based on the evidence and inferences reasonably drawn therefrom. The comments were not deliberately aimed at preventing a fair and impartial trial by attempting to deflect the jury's attention away from the issues, and thus do not present error mandating reversal. *Hunt v Freeman*, 217 Mich App 92, 95; 550 NW2d 817 (1996). Neither does defense counsel's casual reference to his prior employment with the prosecutor's office present error.

Affirmed.

/s/ Donald S. Owens

/s/ William B. Murphy

/s/ Helene N. White