

STATE OF MICHIGAN
COURT OF APPEALS

CURTIS HINES,

Plaintiff-Appellant,

v

JOE NATHAN LITTLE,

Defendant-Appellee.

UNPUBLISHED

June 13, 2000

No. 210545

Wayne Circuit Court

LC No. 97-706117-NI

Before: Kelly, P.J., and Holbrook, Jr. and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from a jury verdict in favor of defendant in this automobile negligence action. We affirm.

Plaintiff first contends that the trial court abused its discretion in denying his motion for a default judgment due to defendant's failure to comply with discovery orders. We review this issue for an abuse of discretion. *Dean v Tucker*, 182 Mich App 27, 32; 451 NW2d 571 (1990). Defendant was admittedly late in responding to interrogatories and requests for documents. However, he did respond to them a month before trial and they provided little information plaintiff had not already obtained several months earlier from defendant's deposition. Given that defendant did not have a history of ignoring discovery requests or orders, that the delay in responding was not intentional and did not prejudice plaintiff's ability to prove his claim at trial, and that the inconvenience to plaintiff was adequately remedied by an award of costs, we find that the trial court did not abuse its discretion in denying plaintiff's motion. *Frankenmuth Mut Ins Co v ACO, Inc*, 193 Mich App 389, 396-397; 484 NW2d 718 (1992).

Plaintiff next contends that the trial court abused its discretion in allowing defendant to withdraw an admission of negligence before trial. We review this issue for an abuse of discretion. *Medbury v Walsh*, 190 Mich App 554, 556; 476 NW2d 470 (1991). Defendant admitted negligence by failing to respond to a request for admissions. MCR 2.312(B) and (D)(1). Given that defendant's failure to respond was inadvertent, that denial of the motion would have precluded defendant from proving his primary defense to plaintiff's claim, and that plaintiff was not prejudiced by the court's action because he had known the substance of defendant's testimony months before trial, we find that the trial court did

not abuse its discretion. *Janczyk v Davis*, 125 Mich App 683, 692-693; 337 NW2d 272 (1983). Furthermore, the court decided the motion in tandem with a motion by plaintiff to amend his complaint, which contained an inadvertent admission that would have barred his claim for noneconomic damages. Plaintiff's counsel agreed that the court should either grant both motions or deny both motions. Plaintiff cannot therefore claim that such action constituted reversible error. *Phinney v Perlmutter*, 222 Mich App 513, 558; 564 NW2d 532 (1997); *Living Alternatives for the Developmentally Disabled, Inc v Dep't of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994).

Plaintiff lastly contends that the trial court abused its discretion in allowing defendant to testify because he was not named on defendant's witness list. We review this issue for an abuse of discretion. *Stepp v Dep't of Natural Resources*, 157 Mich App 774, 779; 404 NW2d 665 (1987). Although defendant's name was not on his witness list, plaintiff had notice of his potentiality as a witness because he was named on plaintiff's witness list which was incorporated by reference in defendant's witness list. Defendant was therefore a listed witness and the trial court did not abuse its discretion in permitting him to testify. *Ray v Dep't of Social Services*, 156 Mich App 55, 64-65; 401 NW2d 307 (1986).

Affirmed.

/s/ Michael J. Kelly
/s/ Donald E. Holbrook, Jr.
/s/ Richard Allen Griffin