STATE OF MICHIGAN

COURT OF APPEALS

DONNA M. NARDONE,

Plaintiff-Appellant,

v

GENE EARLE FRANKLYN, CARL SWANSON, d/b/a SWANSON THE FLORIST, and SUTTON LEASING, INC.,

Defendants-Appellees.

UNPUBLISHED
January 29, 2002

No. 225708
Macomb Circuit Court
LC No. 96-003158-NI

Before: Talbot, P.J., and Smolenski and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right a jury's verdict of no cause of action in this automobile negligence case. We affirm.

Defendant Gene Franklyn, while making deliveries for his employer, defendant Swanson the Florist, collided with plaintiff's car in the center turn lane of Twelve Mile Road when plaintiff attempted to make a left turn out of a car wash onto Twelve Mile Road.

Plaintiff first argues that the trial court erred in denying her motion for mistrial based on allegedly improper remarks by defense counsel during his opening statement. We disagree.

The decision on a motion for mistrial is within the trial court's discretion. *Persichini v William Beaumont Hosp*, 238 Mich App 626, 635; 607 NW2d 100 (1999). This Court should not disturb that decision "absent an abuse of discretion resulting in a miscarriage of justice." *Id*. In reviewing a claim of improper attorney conduct, this Court should first decide whether the claimed error was in fact error. *Reetz v Kinsman Marine Transit Co*, 416 Mich 97, 102-103; 330 NW2d 638 (1982). If there was error, the Court must determine whether it was harmless. *Id*. Comments made by an attorney will not usually be grounds for reversal unless those comments indicate a deliberate course of conduct that is intended to prevent a fair and impartial trial. *Hunt v Freeman*, 217 Mich App 92, 95; 550 NW2d 817 (1996). "Reversal is required only where the prejudicial statements of an attorney reflect a studied purpose to inflame or prejudice a jury or deflect the jury's attention from the issues involved." *Id*.

In his opening statement, defense counsel told the jury that he would show that plaintiff caused the accident and that plaintiff was directed by her doctor not to drive. During opening

statements, the attorneys are permitted to make a full and fair statement of the client's case and the facts the party intends to prove. MCR 2.507(A). Our review of Dr. Charles Gordon's deposition testimony reveals that there was a question of fact regarding whether, before this accident, he instructed plaintiff to avoid driving. We disagree with plaintiff's argument that Gordon's testimony clearly establishes that defense counsel's assertions to the jury that plaintiff had been instructed to avoid driving were false. The trial court's curative instruction to the jury was proper. Moreover, the trial court instructed the jury that statements of counsel are not evidence. Such an instruction is generally sufficient to cure any prejudice arising from improper remarks by counsel. *Tobin v Providence Hosp*, 244 Mich App 626, 641; 624 NW2d 548 (2001). We find no error requiring reversal.

Next, plaintiff argues that the trial court erred in denying her motions for new trial or judgment notwithstanding the verdict (JNOV). We disagree.

The trial court's decision on a motion for JNOV is reviewed de novo. *Bouverette v Westinghouse Corp*, 245 Mich App 391, 395; 628 NW2d 86 (2001). In reviewing a decision on a motion for JNOV, we must review the evidence and all legitimate inferences in a light most favorable to the nonmoving party. If the evidence viewed in this light does not establish a claim as a matter of law then the motion should be granted. *Wilkinson v Lee*, 463 Mich 388, 391; 617 NW2d 305 (2000). We review the court's decision on a motion for new trial for an abuse of discretion. *Kelly v Builders Square, Inc*, 465 Mich 29, 34; 632 NW2d 912 (2001). MCR 2.611(A) sets forth the grounds for new trial. Plaintiff fails to state upon which of these grounds she relies.

Plaintiff argues that the evidence demonstrates that Franklyn violated several statutes and, therefore, the court should have found Franklyn negligent as a matter of law. Although the violation of a penal or safety statute creates a rebuttable presumption of negligence, *Klanseck v Anderson Sales & Service, Inc*, 426 Mich 78, 81, 86; 393 NW2d 356 (1986); *Zeni v Anderson*, 397 Mich 117, 128-129; 243 NW2d 270 (1976), plaintiff has not shown that Franklyn violated any of the statutes cited. The evidence, when viewed in a light most favorable to Franklyn as the nonmoving party, would support a finding that Franklyn did not violate any of the statutes. Therefore, we conclude that the trial court did not err in denying plaintiff's motions for JNOV or new trial.

Plaintiff argues that the trial court erred in denying her motions for JNOV and new trial without making findings of fact and conclusions of law regarding the sufficiency of her arguments. The trial court's decision was not erroneous.

When ruling on a motion for JNOV, the trial court is required by MCR 2.610(B)(3) to provide "a concise statement of the reasons for the ruling, either in a signed order or opinion filed in the action, or on the record." Formal findings of fact and conclusions of law are not required. *Badalamenti v William Beaumont Hosp*, 237 Mich App 278, 283; 602 NW2d 854 (1999). If, when reviewing the evidence and all legitimate inferences in a light most favorable to the nonmoving party, reasonable jurors honestly could have reached different conclusions, the jury verdict must stand. *Barrett v Kirtland Community College*, 245 Mich App 306, 312; 628 NW2d 63 (2001).

The court stated its reasons for denying plaintiff's motion. It found that the evidence supported the jury's decision. Considering the evidence in a light most favorable to Franklyn as the nonmoving party, we find that plaintiff did not establish her claim as a matter of law and the trial court properly denied her motion for JNOV. We also find that plaintiff has not demonstrated that she was entitled to a new trial under any of the grounds enumerated in MCR 2.611(A).

We reject plaintiff's argument that the trial court erroneously instructed the jury. Claims of instructional error are reviewed de novo. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). After realizing that it had not read the jury the full instructions, the trial court read the full instructions to the jury before the jury began deliberating, and the trial court explained to the jury that it had left out some of the instructions. The instructions as finally read to the jury included all elements of plaintiff's claims and did not omit material issues, defenses or theories and were therefore proper. *Id*. We find no error.

Finally, plaintiff argues that the trial court erroneously allowed defense counsel to cross-examine plaintiff regarding whether she could easily have made a right turn out of the car wash onto Twelve Mile Road. We find no error requiring reversal.

The admission of evidence is within the trial court's discretion, and its decision to admit evidence is reviewed for an abuse of discretion. *Dep't of Transportation v VanElslander*, 460 Mich 127, 129; 594 NW2d 841 (1999). Evidence must be relevant to be admissible. MRE 402. Relevant evidence is evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401.

We conclude that the question regarding whether plaintiff could easily have turned right onto Twelve Mile Road was irrelevant. However, an erroneous evidentiary ruling will generally not require reversal unless the failure to do so would be inconsistent with substantial justice. MRE 2.613(A); MRE 103(a); *Krohn v Sedgwick James, Inc*, 244 Mich App 289, 295; 624 NW2d 212 (2001). The error in allowing the testimony was harmless. It is unlikely that the jury used this testimony to conclude that plaintiff should have turned right to avoid traffic instead of turning left as she desired. The failure to reverse the jury's verdict on the basis of this evidentiary ruling would not be inconsistent with substantial justice.

Affirmed.

/s/ Michael J. Talbot
/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder