

STATE OF MICHIGAN
COURT OF APPEALS

NICOLE ELIZABETH WASSON,

Plaintiff-Appellant,

V

JAMES DOUGLAS WESTWOOD, JAMES
DOUGLAS WESTWOOD II and LINDA
WESTWOOD,

Defendants-Appellees.

UNPUBLISHED
February 26, 2002

No. 224441
Eaton Circuit Court
LC No. 92-000752-NI

Before: Bandstra, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's denial of her motion in limine to exclude evidence of a prior lawsuit, asserting that the denial of her motion produced the jury's verdict of no cause of action in her personal injury suit against defendant.¹ We affirm.

Plaintiff contends that the trial court erred in denying her motion to preclude reference to previous litigation because the evidence was irrelevant and unfairly prejudicial and pertained to collateral matters. We review the trial court's evidentiary rulings for an abuse of discretion. *Chmielewski v Xermac, Inc*, 457 Mich 593, 614; 580 NW2d 817 (1998). An abuse of discretion exists only when a neutral person would say no justification or excuse supported the court's ruling, *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188; 600 NW2d 129 (1999), or when the result palpably and grossly violates fact and logic. *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001).

Relevant evidence is "evidence having 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. Relevant evidence is admissible and irrelevant evidence is not. MRE 402. A key issue in the present suit was causation: did defendant proximately cause plaintiff's injuries? Evidence concerning causation thus was relevant under

¹ James Douglas Westwood and Linda B. Westwood are named defendants because they were the registered owners of the vehicle driven by James Douglas Westwood II at the time of his collision with plaintiff. All further references to "defendant" refer to James Douglas Westwood II.

MRE 401. The existence of plaintiff's prior automobile accident tended to make her assertion that her closed-head injuries were caused by defendant, rather than her prior accident, less probable. Accordingly, we conclude that the evidence of plaintiff's prior lawsuit was relevant to the contested issue of causation in the present negligence action.²

Plaintiff next argues that, even if evidence of her prior suit was relevant, the trial court nonetheless abused its discretion in admitting the evidence because it was highly prejudicial. The balancing test within MRE 403 requires the exclusion of relevant evidence only when its probative value is substantially outweighed by the risk of unfair prejudice. *Roulston v Tendercare (Michigan), Inc.*, 239 Mich App 270, 282-283; 608 NW2d 525 (2000). Unfair prejudice refers to the tendency that the jury will give the evidence undue or preemptive weight. *Franzel v Kerr Mfg Co.*, 234 Mich App 600, 618; 600 NW2d 66 (1999).

The evidence regarding plaintiff's claims of injury in her prior suit was highly probative, both for impeachment purposes, tending to call into question plaintiff's credibility, and for its strong tendency to show that plaintiff's prior accident may have proximately caused her current injuries. The evidence certainly tended to prejudice plaintiff's instant negligence claim against defendant, but we detect no risk of *unfair prejudice* that would substantially outweigh the evidence's high probative value. *Id.*

Plaintiff further asserts that defendant's use of her prior testimony and references to her previous suit improperly addressed issues collateral to the issues involved in the current trial. A party may use inconsistent prior statements to impeach a witness so long as the witness is not impeached on a purely collateral matter. *Shannon v Twp of Jamestown*, 251 Mich 597, 599; 232 NW 371 (1930). Whether an issue qualifies as collateral depends on whether the issue has relevance to a material question in the suit at hand and would not unduly lengthen the trial or cause undue prejudice, confusion or surprise. *Cook v Rontal*, 109 Mich App 220, 229-230; 311 NW2d 333 (1981).

In this case, the central inquiry was whether defendant's negligence proximately caused plaintiff's injuries. Plaintiff's deposition testimony from the prior suit minimizing the injuries from the second accident, which involved defendant, directly pertained to the central issue of defendant's responsibility for her injuries. Furthermore, as we have stated already, no significant unfair prejudice arose from defendant's introduction of plaintiff's prior testimony. Accordingly,

² Plaintiff includes in her brief on appeal several examples of defense counsel's allegedly improper references to her previous lawsuit. With respect to the questions defense counsel asked during his cross examination of plaintiff, which related to deposition and interrogatory answers by plaintiff concerning her prior suit, we note that the questions and answers constituted party admissions, MRE 801(d)(2), and therefore were admissible both to impeach plaintiff's testimony and as substantive evidence. Regarding defendant's inquiry into plaintiff's motive in giving her original deposition testimony, we agree that this question was not relevant, MRE 401, and consequently inadmissible. MRE 402. We conclude, however, that any resulting error qualifies as harmless because the question and answer did not render the instant trial "inconsistent with substantial justice." MCR 2.613(A).

defense counsel's questioning regarding plaintiff's prior suit did not involve a collateral issue. *Id.*

We cannot conclude that the trial court abused its discretion in admitting evidence of plaintiff's prior suit, which had significant probative value with respect to the contested causation issue. *Chmielewski, supra.*

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage