STATE OF MICHIGAN

COURT OF APPEALS

TONY PIFER and KELLEY J. PIFER,

Plaintiffs-Appellees/Cross-Appellants,

v

DAIMLERCHRYSLER CORPORATION, ADRIAN DODGE CHRYSLER PLYMOUTH JEEP, INC., and CHRYSLER FINANCIAL COMPANY,

Defendants-Appellants/Cross-Appellees.

UNPUBLISHED
December 2, 2003

No. 239638
Oakland Circuit Court
LC No. 00-027311-NZ

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

Defendants DaimlerChrysler Corporation, Adrian Dodge Chrysler Plymouth Jeep, Inc., and Chrysler Financial Company (defendants) appeal as of right from the judgment entered in favor of plaintiffs Tony and Kelley Pifer, and plaintiffs cross-appeal. We affirm.

I. Facts

This case arises from the following circumstances. In May 2000, plaintiffs leased a new 2000 Dodge Durango from defendant Adrian Dodge (the dealer). Shortly thereafter, while plaintiffs were on vacation out-of-state and were towing a travel trailer, the truck overheated. A dealership in Tennessee replaced the truck's engine. However, according to plaintiffs, the truck again overheated on their way back to Michigan and they continued to encounter mechanical problems with the truck. On multiple occasions, plaintiffs brought the truck to the dealer for service for various alleged problems, some which were fixed, and others which could not be identified or replicated. Eventually, on November 8, 2000, plaintiffs filed the instant eight-count complaint alleging, among other things, claims under the Uniform Commercial Code (UCC), the Magnuson-Moss Warranty Act, Michigan's Lemon Law, the Motor Vehicle Service and Repair Act, and the Michigan Consumer Protection Act.

After a nine-day trial, the jury returned its verdict, finding in favor of plaintiffs on some claims and defendants on others. Thereafter, defendants sought, and the trial court granted, remittitur with respect to the jury's award of damages related to revocation of acceptance.

In its January 30, 2002 judgment, the trial court awarded judgment against the dealer in the amount of $750, plus statutory interest; awarded attorney fees and costs against all defendants, jointly and severally, in the amount of $50,000; ordered defendant Chrysler Financial Company to immediately terminate the subject lease contract, along with other related actions; and denied defendant DaimlerChrysler's motion for mediation[1] sanctions. This appeal ensued.

II. Defendants' Appeal

A. Motion for Mistrial

Defendants first argue that the trial court abused its discretion in denying defendants' motion for mistrial because during deliberations a juror revealed inflammatory and prejudicial information concerning the Durango. Specifically, defendants assert that Juror Bussa neglected to reveal during voir dire her husband's comments about Durangos in general and neglected to inform the trial court that her husband worked in the automobile industry. According to defendants, "Juror Bussa's 'insider' information undoubtedly would have led to her exclusion at voir dire." Defendants essentially claim that the fact of Juror Bussa's knowledge of her husband's opinion about the Durango coupled with her "vocal" participation in the jury deliberations tainted the jury, and thus the trial court abused its discretion in denying their request for a mistrial. We disagree.

The decision to grant or deny a mistrial is within the trial court's discretion and this Court will not reverse absent an abuse of discretion resulting in a miscarriage of justice. *In re Flury Estate*, 249 Mich App 222, 228-229; 641 NW2d 863 (2002); *Persichini v William Beaumont Hosp*, 238 Mich App 626, 635; 607 NW2d 100 (1999). "A mistrial should be granted only when the error prejudices one of the parties to the extent that the fundamental goals of accuracy and fairness are threatened." *Flury*, *supra* at 229. A new trial may be granted on the basis of jury misconduct if a party's substantial rights are materially affected. MCR 2.611(A)(1)(b).

In the present case, the jury, through notes, informed the trial court that a juror had stated to the other jurors something to the effect that her husband had mentioned that the Durango was "a shitty truck" or "was shit." Having conferred with counsel about the situation, the trial court called in and spoke with each juror individually. The juror who had made the comments about the Durango, Juror Bussa, stated that she did not discuss the case with her husband or tell him what type of vehicle was involved, but had indicated only that it was a "Lemon Law" matter. Her note indicated that the comments her husband had made about the Durango were in the past two years.

Although one other juror felt that Juror Bussa was of some influence, he stated that "they [the other jurors] say this morning that she didn't." When queried by the trial court, none of the other jurors thought that there was any influence made on the remaining jurors. In fact, one of the notes that was sent out to the judge indicated that "[t]he remaining 6 of 8 jurors do not feel

---

[1] Mediation is now referred to as case evaluation.

influenced by the comments made by said juror after our verdict was reached." Consistent with this note, the jurors stated during their individual interviews that the comments at issue were made after they had made their decision, stating for example that the comments were made "after we all agreed on the verdict" or "afterwards" or after they had "come to a decision," but before they had finished filling in the verdict form. According to the jurors, the only task remaining at the time of the comments was to fill in a portion of the verdict form for which they had questions and as a result of which they had sent to the court notes with their questions.

After the individual questioning of each juror, the parties' counsel made brief arguments to the court. Defendants argued, in essence, that the vocal participation during deliberations of the juror who had made the comments tainted the deliberations because she had information, i.e., that the Durango is a shitty vehicle, that "didn't come from the evidence in the courtroom." However, the trial court concluded that "she did not influence the jury in any way whatsoever" and, when defendants moved for a mistrial, the court denied that motion.

Jurors are presumed to be impartial and competent. *Bishop v Interlake, Inc*, 121 Mich App 397, 401; 328 NW2d 643 (1982). In *Bynum v The ESAB Group, Inc*, 467 Mich 280, 283-284; 651 NW2d 383 (2002), our Supreme Court explained:

> Jurors are presumed to be qualified. The burden of proving the existence of a disqualification is on the party alleging it. Voir dire is the process by which litigants may question prospective jurors so that challenges to the prospective jurors can be intelligently exercised. Prospective jurors are subject to challenge for cause under MCR 2.511(D).… It was the duty of counsel to ferret out potential bases for excusing jurors. [Citations omitted.]

The *Bynum* Court further explained that

> absent proof of actual prejudicial effect on the verdict or proof that a challenge for cause would have been successful, it [is] an abuse of discretion to grant a new trial. As we have recently stated, a grant of a new trial is governed by MCR 2.611(A)(1). The rule clearly requires that a party seeking a new trial establish that substantial rights were materially affected. [*Id.* at 286 (citations omitted).]

Here, defendants' counsel did not engage in anything more than general questioning of Juror Bussa during voir dire.[2] The record reveals that counsel and the trial court knew, or at least should have known, that Juror Bussa's husband had a muffler shop,[3] as the court put it down as

---

[2] In their reply brief, defendants state that Juror Bussa "failed to disclose that her husband serviced Chrysler automobiles, including Durango's, despite the fact that the first question that the trial court asked during voir dire was whether any members of the jury pool worked with Chrysler or was related to anybody who worked with Chrysler." In fact, the trial court asked whether the jury pool members knew anybody involved in the case or "anybody who works *for* Chrysler …."

[3] According to Juror Bussa, he owns three muffler shops.

his occupation and it was apparently in the jury questionnaires. Further, Juror Bussa brought out during the jury voir dire that she had worked at a Chrysler dealership, for a two year period four years ago, as a secretary. But other than asking Juror Bussa what type of vehicle she drove (1996 Grand Cherokee) and confirming that she had had no problems dealing with dealerships, defendants asked no other specific questions of her. Defendants' counsel failed to explore whether she had had or knew of problems with the Durango. When questioned individually by the court after the situation came to light, Juror Bussa denied that her husband's opinion about the Durango influenced her. Defendants have not shown that she should not be believed. As plaintiffs point out, Juror Bussa's "commitment to a fair and impartial process" was shown during trial when she recognized a witness from her work at the dealership and she brought this to the trial court's attention. Also, the complained of situation does not involve any false statements by Juror Bussa, but rather her exposure to opinions in everyday life—opinions that were expressed to her long before trial. The trial court investigated what had happened, when it had happened, and whether the jurors were influenced by Juror Bussa's comments, and handled the situation in an appropriate manner. Further, in light of Juror Bussa's statements that she was not influenced by the information, and where all the jurors agreed that they were not influenced and had come to a decision on the case before she made the comments, but that a portion of the verdict form was not completed because they did not understand how to fill in the blanks, the trial court did not err in determining that Juror Bussa's expression of her husband's opinion did not taint the jury. Defendants have not shown actual prejudice, or that Juror Bussa would have been excused for cause, or that their substantial rights were materially affected. *Bynum, supra* at 287. Thus, we conclude that the trial court did not abuse its discretion in denying defendants' motion for mistrial on the basis of juror misconduct.

To the extent that defendants also argue that the trial court repeatedly, and impermissibly, suggested to the jurors during the individual questioning that their deliberations on the issue of defendants' liability essentially had ended, and that they had already reached a final, unchangeable verdict as to liability although deliberations were still ongoing, defendants have not shown,[4] nor does the record support, their contention.

B. Discovery sanctions

Defendants next argue that the trial court abused its discretion in imposing discovery sanctions against defendants. According to defendants, they were not bound by the trial court's oral order that they supplement their discovery responses, and, regardless, they maintain that they complied with the oral order and intended to add to their supplementation of responses after completing their own investigation concerning misuse and abuse of the vehicle.

[4] Defendants cite no specific incidents, but refer to "the general tenor of its questions." It is not this Court's responsibility to find examples in the record to support defendants' argument. *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379, 424; 576 NW2d 667 (1998) ("A party may not leave it to this Court to search for a factual basis to sustain or reject its position.").

A trial court's imposition of discovery sanctions is reviewed for an abuse of discretion. *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999); *Traxler v Ford Motor Co*, 227 Mich App 276, 286; 576 NW2d 398 (1998). "An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

To the extent that defendants rely on the fact that the trial court's oral order concerning supplementation of the interrogatories was not reduced to writing,[5] thus claiming that "the trial court had no authority to impose sanctions," their argument is unpersuasive. While it is true that a court speaks through its written orders, *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977) ("The rule is well established that courts speak through their judgments and decrees, not their oral statements or written opinions."); *Bellman Oil Co, Inc v Knoll*, __ Mich App __; __ NW2d __ [Docket # 238017] (2003) ("A court speaks through its written orders and judgments, not through its oral pronouncements."), a discovery order is not a prerequisite to sanctions. See, e.g., MCR 2.302(E)(1)(c) and (2); *Traxler, supra*; *Bellok v Koths*, 163 Mich App 780, 782; 415 NW2d 18 (1987). Notwithstanding the oral nature of the trial court's order, making MCR 2.313(B) facially inapplicable, the trial court was within its authority to impose sanctions on defendants. See generally *Brenner v Kolk*, 226 Mich App 149, 158-160; 573 NW2d 65 (1997); *Cummings v Wayne Co*, 210 Mich App 249, 252; 533 NW2d 13 (1995); see also *Bellok v Koths*, 163 Mich App 780, 782-783; 415 NW2d 18 (1987). Hence, the absence of a written order is not dispositive of the trial court's power to order discovery sanctions.

Here, defendants claim that they complied with the trial court's order and responded "truthfully" in their supplemental answer to the "misuse and abuse" interrogatory. But despite the trial court's oral order that defendants "more completely answer plaintiff's [sic] interrogatories," defendants' supplemental answer clearly was not "more complete." Defendants' initial answer to the misuse and abuse interrogatory was that "DaimlerChrysler Corporation's investigation and discovery are ongoing and incomplete, and, therefore, cannot [sic] respond to this interrogatory. Defendants' supplemental answer stated that "DaimlerChrysler Corporation's investigation and discovery is ongoing and incomplete." Thus, we find no merit in defendants' argument that they complied with the oral order of the trial court to supplement their answer to the discovery questions regarding misuse and abuse of the vehicle. In our view, the authority of the court was challenged by defendant's supplemental answer and unquestionably it was within the trial court's discretion to impose a sanction. *Brenner, supra*; *Cummings, supra*.

Moreover, defendants supplementation of its responses is required pursuant to MCR 2.302(E)(1)(c), which states "[a] duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time before trial through new requests for

---

[5] The lower court record contains a proposed "order granting cross-motions to compel discovery and extending discovery" concerning the trial court's oral orders at the June 13, 2001 hearing, but apparently the trial court never signed this proposed order.

supplementation of prior responses." See *Richardson v Ryder Truck Rental, Inc*, 213 Mich App 447, 451; 540 NW2d 696 (1995). In addition, MCR 2.302(E)(2) provides:

> If the court finds, by way of motion or otherwise, that a party has not seasonably supplemented responses as required by this subrule the court may enter an order as is just, including an order providing the sanctions stated in MCR 2.313(B), and, in particular, MCR 2. 313(B)(2)(b).

Not only did the trial court have authority to impose sanctions, it did not abuse its discretion in doing so. The trial court did not impose the drastic sanction of default, which plaintiffs requested in light of the trial court's statement at the June 13, 2001 hearing that

> [*d*]*efendants are ordered to more completely answer plaintiff's interrogatories* and to produce or make available for inspection the requested documents such as the technical service bulletins and information regarding similar lawsuits involving the same vehicle make and mode, within 14 day, *or plaintiff may submit an order for default*. [Emphasis supplied.]

The record reveals that the trial court considered the proper factors and determined that the sanction of default was not warranted, but constructed what it felt to be an appropriate sanction in light of the circumstances. *Bass, supra*. In sum, the trial court had authority to impose sanctions and, given the circumstances here, did not abuse its discretion in imposing discovery sanctions on defendants.

C. Jury Instructions

Next, defendants argue that reversal is necessary because the trial court improperly instructed the jury with respect to plaintiffs' revocation of acceptance claim under Uniform Commercial Code (UCC) § 2-608, MCL 440.2608.[6] Specifically, defendants argue that the trial court's instructions on rejection of nonconforming goods and on "shaken faith" were erroneous. According to defendants, the correct legal standard for rejection of nonconforming goods under the UCC embodies both objective and subjective components,[7] but the trial court instructed the jury that the standard is solely subjective, and, "[i]n effect, this instruction completely absolved plaintiffs of their burden to prove a factual basis for their 'shaken faith.'" Defendants further argue that revocation is available only against the manufacturer, thus the "trial court's instructions were erroneous because they allowed the jury to find a factual basis for revocation against the seller, Adrian Dodge, where the evidence showed only that plaintiffs contacted the manufacturer and 'revoked' acceptance of their Durango."

---

[6] Although the parties rely on MCL 440.2608 (Article 2. Sales) with respect to plaintiffs' revocation of acceptance claim, it is actually MCL 440.2967 (Article 2A. Leases), as plaintiffs note on appeal, that addresses leases. Because these two sections are essentially identical, and because the parties continue to refer to MCL 440.2608 on appeal, we do so also, simply to avoid further confusion.

[7] In the lower court, defendants objected to the jury instructions on this basis.

Generally, claims of instructional error are reviewed de novo. *Cox v Flint Bd of Hosp Managers*, 467 Mich 1, 8; 651 NW2d 356 (2002). However, "[w]hen the standard jury instructions do not adequately cover an area, the trial court is obligated to give additional instructions when requested, if the supplemental instructions properly inform the jury of the applicable law and are supported by the evidence," *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 401-402; 628 NW2d 86 (2001), and "[t]he determination whether the supplemental instructions are applicable and accurate is within the trial court's discretion," *Stoddard v Manufacturers Nat'l Bank of Grand Rapids*, 234 Mich App 140, 162; 593 NW2d 630 (1999); see also *Chastain v General Motors Corp (On Remand)*, 254 Mich App 576, 590; 657 NW2d 804 (2002).

This Court reviews jury instructions in their entirety, avoiding a piecemeal extraction to establish error in isolated portions. *Bachman v Swan Harbour Assoc*, 252 Mich App 400, 424; 653 NW2d 415 (2002). "Jury instructions should include 'all the elements of the plaintiff's claims and should not omit material issues, defenses, or theories if the evidence supports them.'" *Cox, supra*, quoting *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). "Even if somewhat imperfect, instructions do not create error requiring reversal if, on balance, the theories of the parties and the applicable law are adequately and fairly presented to the jury." *Case, supra*. Reversal is warranted where instructional error resulted in such unfair prejudice to the complaining party that the failure to vacate the jury verdict would be inconsistent with substantial justice. *Cox, supra*; *Case, supra*; *Cacevic v Simplematic Engineering Co*, 241 Mich App 717, 721; 617 NW2d 386 (2000), vac'd in part on other grds 463 Mich 997; 625 NW2d 784 (2001); *Grow v W A Thomas Co*, 236 Mich App 696, 702; 601 NW2d 426 (1999); MCR 2.613(A).

Having reviewed the jury instructions, we conclude that the trial court's instructions to the jury concerning the test for substantial impairment in value justifying revocation of acceptance were adequate. Contrary to defendants' argument, the trial court's instructions contained both subjective and objective components and satisfactorily conveyed the standard found in *Colonial Dodge, Inc v Miller*, 420 Mich 452, 458; 362 NW2d 704 (1984), and *Kelynack v Yamaha Motor Corp, USA*, 152 Mich App 105, 113; 394 NW2d 17 (1986).[8] To the extent that defendants complain that the trial court neglected to qualify the jury instructions concerning "shaken faith" with language about plaintiffs' burden of showing an objective basis, defendants have failed to show that the trial court, having adequately instructed on the test for substantial impairment in value justifying revocation of acceptance, was required to do so in the context of "shaken faith."

---

[8] In *Colonial Dodge, supra* at 458, our Supreme Court stated "[i]n order to give effect to the statute [MCL 440.2608(1)], a buyer must show that the nonconformity has a special devaluing effect on him and that the buyer's assessment of it is factually correct." In *Kelynack, supra*, this Court explained that "UCC § 2-608, MCL 440.2608 … provides that the buyer may revoke his acceptance of the goods whose nonconformity substantially impairs its value to him. In order to meet this test, the buyer must show that the nonconformity has a devaluing effect on him and that the buyer's assessment is factually correct. *Id*. at 113, citing *Colonial Dodge*.

Defendants also argue that the trial court's instructions were improper because they blended the identities of the dealer and manufacturer and allowed the jury to find revocation on the basis of plaintiffs' alleged communications with the manufacturer, not the dealership that sold them the Durango. In support of their argument, defendants rely on *Henderson v Chrysler Corp*, 191 Mich App 337; 477 NW2d 505 (1991). In *Henderson, supra*, where a buyer brought an action against the dealer and the manufacturer for rescission of a truck sale, this Court explained:

> Revocation of acceptance under UCC § 2-608, MCL 440.2608 … is typically utilized against an immediate seller. This section allows a buyer to revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him. There is nothing to indicate that the Legislature intended the revocation of acceptance of a contract to apply to parties not in privity of contract. Acceptance under the UCC concerns the relationship between a buyer and a seller, MCL 440.2606 …. Thus, revocation is inextricably connected to the contractual relationship between a buyer and a seller. This rationale includes that concept of contractual privity between the parties. On the basis of this statute's language and clear implication, we follow the opinions of a majority of other courts that have held that the remedy of revocation of acceptance is not available against a manufacturer. [*Id.* at 341-342 (string cites omitted).]

The *Henderson* Court held that "the remedy of revocation of acceptance is not available against a manufacturer that is not in privity of contract with the purchaser," *id.* at 339, and, stated another way, "that the privity requirement precludes seeking the UCC remedy of revocation of acceptance against a distant manufacturer," *id.* at 343.

In the present case, although at times when instructing the jury regarding the UCC the trial court referred to both the dealer and the manufacturer, defendants failed to properly preserve this issue for appellate review. To preserve an instructional issue for appeal, a party must request the instruction before instructions are given and must object on the record before the jury retires to deliberate. MCR 2.516(C); *Hunt v Deming*, 375 Mich 581, 584-585; 134 NW2d 662 (1965); *Leavitt v Monaco Coach Corp*, 241 Mich App 288, 300; 616 NW2d 175 (2000). The objection must specifically state the objectionable matter and the ground for the objection. MCR 2.516(C); *Hammack v Lutheran Social Services of Michigan*, 211 Mich App 1, 10; 535 NW2d 215 (1995). We are not aware of, nor did defendants cite to, a place in the record where defendants objected to the jury instructions on the basis of the dealer/manufacturer language.

Thus, this Court must determine if reversal is warranted on the basis of the instructional error. Reversal is warranted where instructional error resulted in such unfair prejudice to the complaining party that the failure to vacate the jury verdict would be inconsistent with substantial justice. *Cox, supra*. Here, defendants failed to focus below on this aspect of the jury instructions and a jury could have determined from the evidence presented that plaintiff notified the dealer in a timely fashion by either notifying the dealer through his interactions with the dealership or filing this complaint within four months of the engine overheating problems. As such, we are not persuaded that failure to vacate the jury verdict would be inconsistent with substantial justice.

D. Attorney Fees and Case Evaluation Sanctions

Defendants also argue that the trial court erred in refusing to find that DaimlerChrysler was the prevailing party and in failing to award DaimlerChrysler costs and attorney fees under MCR 2.403(O) (case evaluation sanctions) and MCR 2.625 (taxation of costs). Defendants also argue that the trial court abused its discretion in awarding plaintiffs $50,000 in attorney fees where plaintiffs' lawsuit recovered less than $1,000 in monetary damages.

We review for an abuse of discretion a trial court's decision to award attorney fees. *Farmers Ins Exchange v Kurzmann*, 257 Mich App 412, 422; 668 NW2d 199 (2003). Findings of fact underlying an award of attorney fees are reviewed for clear error. *Solution Source, Inc v LPR Associates Ltd Partnership*, 252 Mich App 368, 381; 652 NW2d 474 (2002). The determination of the reasonableness of the fees is within the trial court's discretion and is reviewed for abuse of discretion. *Bolt v Lansing (On Remand)*, 238 Mich App 37, 61; 604 NW2d 745 (1999). We review de novo the trial court's decision whether to grant case evaluation sanctions. *Great Lakes Gas Transmission Ltd Partnership v Markel*, 226 Mich App 127, 129; 573 NW2d 61 (1997).

Defendants claim that "the trial court found that DaimlerChrysler was not a 'prevailing party' because it and Adrian Dodge were jointly responsible for attorney fees apparently based on the prevailing, erroneous view at trial that plaintiffs succeeded on their revocation claim against both entities," and defendants rely on *Henderson, supra*, in support of their argument. However, operating from the premise that defendants are entitled to no relief concerning the jury instructions, their claim under the instant issue that DaimlerChrysler prevailed on all counts is inaccurate. Under the revocation of acceptance portion of the verdict form, the jury found against DaimlerChrysler and, as a result, plaintiffs were able to return the truck and cancel the lease; plaintiffs' achieved their goal of returning the Durango and not having to continue lease payments. Thus, we conclude that the trial court did not abuse its discretion in determining that plaintiffs were the prevailing parties. Accordingly, defendants were not entitled to relief under MCR 2.625 or, considering both monetary and equitable relief, under MCR 2.403(O).[9]

To the extent that defendants argue that the trial court abused its discretion in assessing $50,000 in attorney fees to recover $750 in damages, we disagree. First, the judgment indicates that the $50,000 awarded is not only for attorney fees, but also for costs, and plaintiffs claimed almost $10,000 in costs. Second, $750 was not plaintiffs' only recovery—they also were released from their lease payments on the Durango and defendants took back the truck, which is the relief that plaintiffs had sought from the beginning. In light of these circumstances, and where the trial court presided over many of the motions and the trial and was familiar with the work of counsel, we cannot say that the trial court abused in discretion with respect to the amount awarded.

---

[9] See *Great Lakes, supra* at 130 (a narrow circumstance under which the court is not required to grant sanctions is in cases involving equitable relief, in which case the court may decline to award costs if, considering both the equitable and monetary relief, the verdict is more favorable to the rejecting party than the mediation evaluation).

III. Plaintiffs' Cross-Appeal

A. Remittitur

On cross-appeal, plaintiffs argue that the trial court erred in granting defendants' motion for remittitur. Specifically, plaintiffs contend that the error in the verdict amount was caused by defendants' own strategy and, in the alternative, that in granting remittitur the trial court failed to award the highest amount of damages supported by the evidence. We review for an abuse of discretion a trial court's decision regarding a motion for remittitur. *Grace v Grace*, 253 Mich App 357, 367; 655 NW2d 595 (2002); *Craig v Oakwood Hosp*, 249 Mich App 534, 539; 643 NW2d 580 (2002).

Plaintiffs first contend that the trial court erred in granting defendants' motion for remittitur because "a defendant may not harbor error and then seek judicial relief from the consequences of its own plan or negligence." Plaintiffs complain that defendants "refused any form of relief" when the jury sought clarification of the phrase "lease price" on the damages portion of the verdict form. In essence, plaintiffs argue that the trial court erred in considering defendants' motion for remittitur because, after discussions with plaintiffs' counsel and the trial court, defendants refused to stipulate to a clarifying instruction concerning how to fill in the blanks on a portion of the verdict form. Although in support of their argument plaintiffs cite cases concerning a party not being allowed to harbor error as an appellate parachute, they cite no law concerning how a trial court must proceed when a jury seeks clarification,[10] and cite no law that if a party refuses to stipulate to a jury instruction it is entitled to no post-verdict relief.

Plaintiffs now seek to avoid the trial court's proper application of the law after the jury obviously found the "lease price" to be something other than what the parties meant in using that phrase. Pertinent statutory law provides that when acceptance of the goods is justifiably revoked, the lessee may cancel the lease contract and recover paid rent and security. MCL 440.2958(a) and (b). Here, it is undisputed that plaintiffs paid $5,010.94 under the lease contract, and this appears to be the amount that the parties were expecting the jury to fill in as "lease price," but is not what the jury found to be the lease price, rather the jury found the lease price to be $20,287.74--an amount that plaintiffs refer to in their appellate brief as the total contract price. In granting remittitur, the trial court applied the law and reduced plaintiffs' damages to the applicable amount on the basis of the law and the jury's other findings. Plaintiffs have failed to show that the fact that defendants left the clarifying instructions to the trial court, rather than agree to a stipulated response, equates to harboring error that negates their right to request remittitur. Plaintiffs, having failed to present a persuasive and legally supported argument concerning defendants harboring error and then seeking relief from its own strategy, are entitled to no relief.

---

[10] Generally, it is the trial court's duty to properly instruct the jury on the applicable law. *Gottesman v Fay-Bea Const Co*, 355 Mich 6, 8; 94 NW2d 81 (1959) (the court has a duty to instruct the jury correctly concerning the law of the case). Plaintiffs' alleged error does not address how the jury was originally instructed concerning the applicable law.

Plaintiffs also argue that the trial court failed to grant remittitur in the highest amount possible. Plaintiffs claim, in essence, that because the trial court engaged in reducing the verdict, they were entitled to the highest amount possible, which results when the offset amount used is not that determined by the jury as reflected on the verdict form, but is taken from a stipulated instruction to the jury "that a reasonable offset would be 10 cents per mile at the time of the first complaint, i.e., the engine repair." According to plaintiffs, the offset should have been limited to $201.30 because the engine repair occurred at 2,013 miles.

"A motion for remittitur may be granted if the jury's verdict is 'excessive,' that is, greater than the highest amount supportable by the evidence. MCR 2.611(E)(1)." *Grace, supra*; see also *Jenkins v Patel*, 256 Mich App 112, 129-130; 662 NW2d 453 (2003). "The trial court, having witnessed all the testimony and evidence as well as having had the unique opportunity to evaluate the jury's reaction to the proofs and to the individual witnesses, is in the best position to make an informed decision regarding the excessiveness of the verdict." *Palenkas v Beaumont Hosp*, 432 Mich 527, 531; 443 NW2d 354 (1989). "This Court considers the evidence in the light most favorable to the plaintiff when reviewing the trial court's exercise of discretion regarding remittitur." *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 499; 668 NW2d 402 (2003).

Here, with respect to the offset for plaintiffs' use of the truck, the trial court instructed the jury:

> If you determine that [p]laintiffs are entitled to revoke acceptance of the vehicle, you may deduct or offset from [p]laintiffs' damages the amount you feel represent[s] the reasonable value of [p]laintiffs' use of the vehicle. The parties have agreed that you may use an offset of ten percent – ten cents per mile at the time a defect or condition was first reported to an authorized DaimlerChrysler dealership.

Because plaintiffs have not shown that the jury made a mistake in determining the reasonable value of plaintiffs' use of the vehicle and because the jury instructions indicate that the offset amount is the amount that the *jury feels* represents the reasonable value of plaintiffs' use of the vehicle, plaintiffs have no basis from which to complain. Although plaintiffs argue that the trial court should have used 10 cents per mile, as allowed by the stipulated jury instruction, instead of the larger total amount found by the jury as the reasonable value of plaintiffs' use of the vehicle, the jury instruction stated that the jury *may use* an offset of that amount, it did not indicate that the jury must do so. Plaintiffs cite no law stating that when granting remittitur, the trial court should completely disregard the jury's award of damages and make it own determination. Moreover, the amount awarded on remittitur must be the highest possible amount the evidence will support, MCR 2.611(E)(1); *Jenkins, supra*, and here the trial court noted that the jury's offset amount was what plaintiffs had paid in this matter, i.e., their lease payments. While the jury's offset is supported by the evidence, plaintiffs' proposed offset is not based on the evidence, but on a stipulated jury instruction that informed the jury how it *may* compute an amount, but not how it had to. Under these circumstances, we conclude that the trial court did not abuse its discretion in granting remittitur.

Plaintiffs also assert, in a one sentence argument, that the trial court erred in failing to permit them to elect between accepting the remittitur amount within 14 days or having a new

trial on damages only. However, "[a]n appellant may not merely announce its position or assert an error and leave it to this Court to discover and rationalize the basis for its claims, unravel or elaborate its argument, or search for authority for its position." *Wiley*, *supra*. Accordingly, we decline to address this issue.

B. Costs and Attorney Fees

Plaintiffs also argue that the trial court erred in awarding plaintiffs less than half of their costs and attorney fees under a remedial statute without an evidentiary hearing and without articulating on the record the reasons for its reduction. We conclude that plaintiffs are entitled to no relief concerning the amount of costs and attorney fees awarded to them.

Plaintiffs have abandoned this issue on appeal because they cite no law concerning a requirement that an evidentiary hearing be held or that a court must articulate on the record the reasons for its reduction of the amounts requested. *Wiley*, *supra*; *Flint City Council v Michigan*, 253 Mich App 378, 393 n 2; 655 NW2d 604 (2002) ("this Court will not search for authority to support a party's position, and the failure to cite authority in support of an issue results in its being deemed abandoned on appeal."). Regardless, plaintiffs' analysis fails to demonstrate that the trial court abused its discretion in awarding plaintiffs' costs and attorney fees. *Farmers, supra* at 422.

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello