# STATE OF MICHIGAN

# COURT OF APPEALS

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DAN SKORICH, Conservator of the Estate of ASHLEY BROOKE WILLIAMS, a Minor,

Plaintiff-Appellant,

v

MELVIN STANFORD DARROW, JR. and DARROW & SONS,

Defendants-Appellees.

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UNPUBLISHED
December 20, 2005

No. 256686
Eaton Circuit Court
LC No. 02-000749-NI

Before: Hoekstra, P.J., and Neff and Davis, JJ.

PER CURIAM.

Challenging the trial court's order denying his motion for judgment notwithstanding the verdict or for a new trial, plaintiff appeals as of right from a judgment of no cause of action entered in favor of defendants following a jury trial. We affirm.

This case arises from an accident that occurred when defendant Melvin Darrow, Jr., while operating a tractor-trailer, attempted to make a right-hand turn and came into contact with five-year-old Ashley Williams as she attempted to cross the street on her bicycle. The evidence at trial showed that Darrow and Williams were both traveling northbound on Cochran Avenue in the city of Charlotte when they came upon the Upland Avenue intersection, at which both stopped in accordance with the traffic control signals. On appeal, plaintiff asserts that the trial court erred in denying his motion for judgment notwithstanding the verdict because Darrow admitted during his testimony at trial that he failed to ascertain Williams' whereabouts throughout his attempt to turn despite knowing that the child was present at the intersection. Specifically, plaintiff argues that Darrow's admissions in these regards established that he breached the applicable standard of care and was, therefore, negligent. Consequently, plaintiff argues, judgment notwithstanding the jury's verdict of no cause of action is proper. We disagree.

We review de novo a trial court's decision on a motion for judgment notwithstanding the verdict. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003). In conducting such review, we examine the evidence and any legitimate inferences arising therefrom in the light most favorable to the nonmoving party. *Id*. "If reasonable jurors could honestly have reached different conclusions, the jury verdict must stand." *Zantel Marketing Agency v Whitesell Corp*, 265 Mich App 559, 568; 696 NW2d 735 (2005) (citation and internal quotation marks omitted).

In *Case v Consumers Power Co*, 463 Mich 1, 10; 615 NW2d 17 (2000), our Supreme Court recognized that

> "[t]here is no fixed standard in the law by which a court is enabled to arbitrarily say in every case what conduct shall be considered reasonable and prudent, and what shall constitute ordinary care, under any and all circumstances. The terms 'ordinary care,' 'reasonable prudence,' and such like terms, as applied to the conduct and affairs of men, have a relative significance, and cannot be arbitrarily defined. What may be deemed ordinary care in one case may, under different surroundings and circumstances, be gross negligence. The policy of the law has relegated the determination of such questions to the jury, under proper instructions from the court. It is their province to note the special circumstances and surroundings of each particular case, and then say whether the conduct of the parties in that case was such as would be expected of reasonable, prudent men, under a similar state of affairs." [quoting *Grand Trunk R Co of Canada v Ives*, 144 US 408, 417; 12 S Ct 679; 36 L Ed 485 (1892).]

Consistent with this rationale, whether Darrow acted with the requisite level of care under the circumstances was a question properly submitted to and determined by the jury. Darrow's failure to look for Williams before attempting to complete his turn, to wait for the girl to cross before turning the corner, or to advise her to wait before crossing the street until he had completed his turn, were facts that the jury could consider in evaluating his conduct. These failures, however, did not per se render Darrow's conduct negligent. Moreover, testimony was presented that Darrow began turning the corner before Williams moved from the sidewalk and that the tractor of Darrow's rig was well across the crosswalk by the time Williams entered the intersection and came into contact with the truck. In addition, there was evidence that Darrow asked his passenger to look for Williams when he could no longer see her in his mirrors. Considering the foregoing, we conclude that reasonable jurors could honestly have reached different conclusions regarding whether Darrow acted with the requisite care under the circumstances presented. See *Zantel, supra*.

Plaintiff asserts in the alternative that the trial court erred in denying his request for a new trial on the ground that the verdict here was against the great weight of the evidence. Again, we disagree.

"In deciding whether to grant or deny a motion for a new trial, the trial court's function is to determine whether the overwhelming weight of the evidence favors the losing party." *Campbell v Sullins*, 257 Mich App 179, 193; 667 NW2d 887 (2003); MCR 2.611(A)(1)(e). This Court's function is to determine whether the trial court abused its discretion in making such a finding. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 261; 617 NW2d 777 (2000). However, "unless the record reveals that the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand," neither this Court nor the trial court should substitute its judgment for that of the jury. *Campbell, supra*.

Plaintiff asserts that the jury's verdict was against the great weight of the evidence because Darrow admitted that he did not look for Williams before continuing to turn after waiting for traffic on Upland Avenue to back up so that he could complete the turn. However, as discussed above, the question whether Darrow was required to look for Williams before

attempting to complete the turn was relevant to the question whether he satisfied the requisite standard of care, which was properly submitted to and decided by the jury under a set of unchallenged instructions. Further, as explained above, there was competent evidence to support the jury's finding that defendant was not negligent, and we conclude that the contrary evidence does not manifestly preponderate in the other direction. *Id*. Accordingly, the trial court did not abuse its discretion in denying plaintiff's motion for a new trial.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Janet T. Neff
/s/ Alton T. Davis