STATE OF MICHIGAN

COURT OF APPEALS

ROSEMARY KNOWLES,

Plaintiff-Appellant,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY and MARK KIEBLER,

Defendants,

and

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

UNPUBLISHED
June 17, 2010

No. 291430
Monroe Circuit Court
LC No. 07-023588-NF

Before: ZAHRA, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's judgment in favor of plaintiff following a jury trial. We affirm.

Plaintiff argues that the trial court erred in granting defendant Progressive Michigan Insurance's motion in limine to preclude defendant-appellee Farmers Insurance Exchange's claims adjuster from testifying at trial. It contends that the trial court's ruling deprived plaintiff of the right of cross-examination. We review this evidentiary ruling for an abuse of discretion. *Chmielewski v Xermac, Inc*, 457 Mich 593, 614; 580 NW2d 817 (1998).

Progressive filed a motion in limine arguing that that the trial court should preclude the deposition testimony of Progressive's claims adjuster, Kevin Ference, from being read into evidence by plaintiff. Farmers filed a concurrence with Progressive's motion, arguing that the testimony of its claims adjustor, Wanda Tremble, was irrelevant, and any testimony from Tremble regarding medical causation would not have a proper foundation. The trial court verbally granted Progressive's motion at the hearing, finding that the testimony of Tremble and

Ference was not relevant to the issue of causation at trial and that plaintiff improperly relied upon MCL 600.2161 in support of its motion. [1]

Evidence that tends to make the existence of a fact at issue more probable or less probable is relevant and, therefore, admissible. MRE 401;[2] MRE 402;[3] *Lanigan v Huron Valley Hosp, Inc*, 282 Mich App 558, 564 n 6; 766 NW2d 896 (2009). Also, "[i]t must be material, that is, related to a fact of consequence to the action, and have probative force, that is, have a tendency to make the existence of a fact of consequence to the action more probable or less probable than it would be without the evidence." *Id*.

The trial court found that the testimony of both insurance adjusters would not be relevant to the issue at trial -- causation. Neither Tremble nor Ference made admissions in their depositions regarding the cause of plaintiff's injuries. Neither claims adjuster disputes that plaintiff has a lower back injury. Rather, each adjustor denies that the automobile accident their company insured against is the cause of plaintiff's injuries. Testimony from either Tremble or Ference detailing how or why plaintiff was denied PIP benefits would not have been relevant because it would not have tended to make the material fact at issue during trial (causation) more or less probable. Thus, the trial court did not err by granting Farmer' motion in limine on the ground that the evidence was not relevant and, therefore, not admissible.

Plaintiff's argument suggesting her right to cross-examine pursuant to MCL 600.2161 and MRE 611(d)(3) was violated is misplaced. The purpose of MCL 600.2161 and MRE 611(d)(3) is "to permit calling the opposite party, or his agent or employee, as a witness with the same privileges of cross-examination and contradiction as if the opposite party had called that witness." *Linsell v Applied Handling, Inc*, 266 Mich App 1, 26; 697 NW2d 913 (2005). This purpose allows "truth to be brought out with great regularity." *Jackovich v Gen Adjustment Bureau, Inc*, 119 Mich App 221, 232-233; 326 NW2d 458 (1982). Thus, when there is an issue in dispute, a party has a right to call the opposite party in order to seek out the truth of the matter. However, the trial court properly ruled that the testimony of Tremble and Ference was not relevant to the causation issue and, therefore, the trial court did not violate plaintiff's right to

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[1] The trial court's written order references only the testimony of Ference. It is well settled that a court speaks only through its written orders. Since the written order did not reference whether Tremble could testify at trial, this issue is technically unpreserved for appellate review. However, since the trial court's ruling is clear from the record, we will review this issue as though it is preserved.

[2] MRE 401 provides, "'[r]elevant evidence' means 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."

[3] MRE 402 provides, [a]ll relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Michigan, these rules, or other rules adopted by the Supreme Court. Evidence which is not relevant is not admissible."

cross-examination pursuant to MCL 600.2161 or MRE 611(d)(3) by granting the motion in limine.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald