STATE OF MICHIGAN

COURT OF APPEALS

TRAVIS TURNER, III, Plaintiff-Appellant,	UNPUBLISHED July 21, 2011
v	No. 298095 Kent Circuit Court
GAIL A. PELLOT, a/k/a WANDA PELLOT, Defendant-Appellee.	LC No. 07-013320-CZ

Before: MURRAY, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action entered on a jury verdict. After twice amending his complaint, plaintiff brought this suit for "civil stalking and negligent parental supervision" against defendant, seeking $35,000 in damages for emotional distress caused by defendant's sons harassing conduct. We affirm.

This case is grounded in plaintiff's allegation that defendant and members of her family were harassing, intimidating, and threatening himself and his wife and children. Plaintiff had taken out several personal protection orders (PPOs) against defendant and two of her sons, and at least one remained intact at the time of trial. Plaintiff's amended complaint alleged unspecified "criminal" conduct by defendant and that she acted in violation of the stalking statutes, MCL 750.411h and 750.411i, as well as alleging that she negligently supervised her minor son, Joey, who also allegedly engaged in stalking plaintiff. At trial, plaintiff's case for stalking focused on defendant allegedly telling him her son would come after plaintiff when the son got out of prison. He also testified about intimidation (including threats) by Joey and Joey's friends and that defendant knew about Joey's conduct but did nothing to stop it.

At the end of the two-day trial, the trial court instructed the jury on the elements of negligent parental supervision, and plaintiff agreed to those instructions. As noted, the jury rendered a verdict that defendant had not acted negligently. The verdict form asked only that question, and further directed the jury to determine the amount of damages only if it concluded that defendant had acted negligently.

On appeal, plaintiff argues that the trial court erred in not instructing the jury regarding MCL 600.2954, MCL 750.411h, and MCL 750.411i, and that this error requires reversal. However, plaintiff did not request an instruction on these statutes, and did not object on the record to the instructions given. Indeed, plaintiff was asked by the court three times if he was

satisfied with the instructions, and each time he expressed his satisfaction. Plaintiff cannot now complain that the instructions were incorrect, for error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence. *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997). Because plaintiff expressly indicated satisfaction with the jury instructions, any objection is deemed waived. *Chastain v Gen Motors Corp*, 254 Mich App 576, 591-592; 657 NW2d 804 (2002); see also *Phinney*, 222 Mich App at 537-538. This issue is therefore not properly preserved for appeal. MCR 2.516(C); *Hunt v Deming*, 375 Mich 581, 584-585; 134 NW2d 662 (1965); *Heaton v Benton Constr Co*, 286 Mich App 528, 537; 780 NW2d 618 (2009).

Because plaintiff failed to timely and specifically object to the instructions, and indeed agreed to them, we will not reverse absent manifest injustice. *Heaton*, 286 Mich App at 537. Manifest injustice results if the defect is of such a magnitude as to constitute plain error requiring a new trial or if it pertains to a basic and controlling issue. *Shinholster v Annapolis Hosp*, 255 Mich App 339, 350; 660 NW2d 361, aff'd in part, rev'd in part on other grounds 471 Mich 540; 685 NW2d 275 (2004).

We conclude the trial court's alleged error did not result in manifest injustice. Plaintiff made it clear at trial that his main theory was negligent parental supervision. Under this tort:

> Parents may be held liable for failing to exercise the control necessary to prevent their children from intentionally harming others if they know or have reason to know of the necessity and opportunity for doing so. Liability for negligent supervision will not lie where supervision would not have made the parents aware of their child's tortious propensities. [*Zapalski v Benton*, 178 Mich App 398, 403; 444 NW2d 171 (1989) (citations omitted).]

The trial court's instructions to the jury explained the elements of the tort. Therefore, to the extent plaintiff argues that the trial court misinstructed the jury on his claim of negligent parental supervision, the record shows the jury was adequately instructed.

Nor did any manifest injustice arise from the trial court's failure to instruct the jury regarding stalking, even despite plaintiff's waiver. MCL 600.2954, on which plaintiff relies in his appeal, states in relevant part:

> (1) A victim may maintain a civil action against an individual who engages in [stalking or aggravated stalking], being sections 750.411h and 750.411i of the Michigan Compiled Laws, for damages incurred by the victim as a result of that conduct. A victim may also seek and be awarded exemplary damages, costs of the action, and reasonable attorney fees in an action brought under this section.
>
> (2) A civil action may be maintained under subsection (1) whether or not the individual who is alleged to have engaged in [stalking or aggravated stalking] has been charged or convicted under [MCL 750.411h or 750.411i] for the alleged violation.

MCL 750.411h and 750.411i provide the definitions of stalking and aggravated stalking, describing the kind of conduct and the effects on the victim that constitute the offenses:

"'Stalking' means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested."

In his closing argument plaintiff recited the substance of the above-cited stalking statutes to the jury, and pointed out the evidence supporting both allegations. The jurors heard this evidence and evidence to the contrary, and decided against plaintiff after weighing all the evidence and the credibility of the witnesses.

Plaintiff presented no evidence regarding the amount of damages caused by defendant's conduct, the extent of fear or intimidation he felt (indeed, the only evidence regarding whether he felt any fear at all is the inference arising from his testimony that his life was threatened), or whether a reasonable person would feel terrorized or intimidated as a result of the conduct. Lacking proof of all the required elements, plaintiff's case would have failed as a matter of law, regardless of the jury instructions.

Affirmed.

/s/ Christopher M. Murray
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause