STATE OF MICHIGAN

COURT OF APPEALS

JERRI L. LIDDELL, by her Guardian DARLENE ELLIS, Plaintiff-Appellee,	UNPUBLISHED June 28, 2011
v	No. 294656 Chippewa Circuit Court
RODNEY L. LIDDELL, Defendant-Appellant.	LC No. 08-009951-DO

Before: RONAYNE KRAUSE, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

In this divorce action involving a division of the parties' marital property and an order of spousal support, defendant Rodney Liddell appeals as of right from the judgment of divorce. We affirm.

Plaintiff Jerri Liddell and defendant married in March 2004. In May 2005, while riding on a motorcycle with defendant, plaintiff suffered serious injuries after a collision with another vehicle. Plaintiff sustained a closed-head injury, and at trial the parties stipulated that plaintiff "is disabled from a closed head injury." On the basis of plaintiff's brain injury, her daughter, Darlene Ellis, became her guardian and conservator. Defendant cared for plaintiff for some time after the accident, but in July 2007 the parties separated. Ellis filed a complaint for divorce on plaintiff's behalf in June 2008.

At trial, Ellis was the sole witness for plaintiff. After plaintiff rested her case, defendant expressed his desire to call plaintiff as a witness, but the trial court precluded him from doing so, as reflected in the following colloquy:

> *Defense counsel*: Your Honor, I need to ask several questions [of plaintiff]. Obviously, nothing complex, fine. There are several issues I need to ask regarding this.
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> *The Court*: Obviously, she is disabled. What kind of questions do you have to ask?

Defense counsel: Just a few questions regarding a few things.

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Regarding Remax Realty.

The Court: We don't care.

Defense counsel: Actually [defendant] didn't get income from Remax Reality [sic]. These questions matter. Basically the guardian testified about how her mother was feeling.

The Court: I assume we are saying she can't work, Miss Ellis says she can't work?

Ellis: Yes.

The Court: And she is not going to be able to work?

Ellis: Correct.

* * *

Defense counsel: She feels the fact she has a traumatic brain injury—she hasn't been found incompetent to testify. But I will not interfere with the Court's ruling. . . .

Defendant challenges the trial court's refusal to allow testimony by plaintiff on the grounds that (1) MCL 600.2161 entitled him to call the opposing party as a witness at trial, and (2) the trial court shirked its obligation under MRE 601 to question plaintiff to ascertain whether she was incompetent. "The mode and order of interrogation of witnesses [rest]s within the trial court's discretion." *Linsell v Applied Handling, Inc*, 266 Mich App 1, 22; 697 NW2d 913 (2005). An abuse of discretion exists when a court selects an outcome falling outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). To the extent that this issue demands that we construe a Michigan Rule of Evidence or a statute, we consider de novo these legal questions. *Waknin v Chamberlain*, 467 Mich 329, 332; 653 NW2d 176 (2002).

"The purpose of MCL 600.2161[1] 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

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[1] The language comprising MCL 600.2161 reads:

> In any suit or proceeding in any court in this state, either party, if he shall call as a witness in his behalf, the opposite party, employee or agent of said opposite party, or any person who at the time of the happening of the transaction

opposite party had called that witness." *Linsell*, 266 Mich App at 26. MRE 601 cautions, "Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules." Pursuant to MRE 611:

> (a) The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

We initially observe that although the basis for the trial court's refusal to permit testimony by plaintiff seems not entirely clear, it does not appear that the court necessarily deemed plaintiff incompetent to testify as contemplated in MRE 601. In light of the parties' stipulation near the beginning of the bench trial that plaintiff's traumatic brain injury had rendered her disabled, a reasonable inference arises that the trial court exercised the authority and discretion invested in it by MRE 611(a) to prevent plaintiff from experiencing "harassment or undue embarrassment." MRE 611(a)(3). Given (1) the parties' stipulation concerning plaintiff's brain injury, and (2) the testimony of plaintiff's guardian-daughter, immediately before the court precluded plaintiff from testifying, about plaintiff's ongoing medical difficulties, we simply cannot conclude that the trial court made a decision beyond the range of reasonable and principled decisions when it denied defendant's request to elicit testimony by plaintiff. *Maldonado*, 476 Mich at 388; *Linsell*, 266 Mich App at 22-26.

Even assuming that the trial court incorrectly refused defendant's calling of plaintiff as a witness, we discern no substantial prejudice to defendant arising from this evidentiary ruling. MRE 103(a); MCR 2.613(A). Defendant complains on appeal that the ruling prevented him from asking plaintiff about "division of assets, location of assets, the care and help offered by . . . Defendant . . . after the accident, issues regarding the ability to work and the receiving of commissions from the parties' place of employment, and the payment of joint taxes on behalf of the parties." But our review of the record confirms that the parties introduced testimony by Ellis, defendant and two other defense witnesses, as well as documentary evidence, that touched on all the topics about which defendant now purports that he wanted to question plaintiff. Because of the cumulative nature of the testimony that defendant hoped to elicit from plaintiff, we detect no

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> out of which such suit or proceeding grew, was an employee or agent of the opposite party, shall have the right to cross-examine such witness the same as if he were called by the opposite party; and the answers of such witness shall not interfere with the right of such party to introduce evidence upon any issue involved in such suit or proceeding, and the party so calling and examining such witness shall not be bound to accept such answers as true.

measurable prejudice to defendant stemming from the trial court's ruling to forbid plaintiff's testimony. *Badiee v Brighton Area Schools*, 265 Mich App 343, 357; 695 NW2d 521 (2005) (observing that "[a]ny error resulting from the exclusion of cumulative evidence is harmless").

Affirmed.

/s/ Amy Ronayne Krause
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher