STATE OF MICHIGAN

COURT OF APPEALS

NICOLE MOTYKA,

Plaintiff-Appellee,

v

TITAN INSURANCE COMPANY,

Defendant,

and

FAWZEA BASSAM ABUSALAH and AHMED SHAFIK KHALIL,

Defendants-Appellants.

UNPUBLISHED
October 18, 2011

No. 298408
Wayne Circuit Court
LC No. 08-111190-NI

Before: WILDER, P.J., and CAVANAGH and DONOFRIO, JJ.

PER CURIAM.

In this action to recover noneconomic damages arising from an automobile accident, defendants Fawzea Bassam Abusalah and Ahmed Shafik Khalil appeal as of right from a judgment for plaintiff, following a jury trial.[1] Because the admission of defendant's district court plea of responsibility was not plain error, and the trial court did not abuse its discretion in limiting defendants' cross-examination or in denying defendants' motion for judgment notwithstanding the verdict (JNOV) and/or a new trial, we affirm.

This action arises from an automobile accident in which plaintiff's vehicle collided with a vehicle driven by defendant Fawzea Abusalah that was registered to her former husband,

[1] Plaintiff's challenge to this Court's jurisdiction is without merit in light of this Court's order granting defendants' motion to amend the claim of appeal to also include the May 21, 2010, order denying defendants' post-trial motion. *Motyka v Titan Ins Co*, unpublished order of the Court of Appeals, entered May 18, 2011 (Docket No. 298408).

defendant Ahmed Shafik Khalil (hereinafter "Khalil").[2] Plaintiff alleged that she suffered injuries to her neck that also caused problems with her hand, wrist, shoulder, and back, and that she had not been able to work since the accident. She sought to recover noneconomic damages for a serious impairment of body function.[3] A jury awarded plaintiff past damages of $59,500 and future damages of $135,000, but also found that plaintiff was 25 percent at fault for causing the collision. The trial court reduced the jury's awards to account for plaintiff's percentage of fault, but also awarded plaintiff costs and attorney fees, resulting in a total final judgment of $183,216.16.[4] The trial court denied defendants' post-trial motion for JNOV and/or a new trial. This appeal followed.

I. DEFENDANT'S PLEA

Defendants argue that the trial court erred when it allowed plaintiff to elicit from defendant Abusalah, on cross-examination, that she entered a plea of responsibility in district court in connection with the accident. Although defendants now argue on appeal that the plea of responsibility was inadmissible under MRE 801(d)(2)(A), they did not object on that basis at trial. Instead, they objected below only on the basis of MRE 410.[5] An objection on one ground is insufficient to preserve an appellate attack on a different ground. *City of Westland v Okopski*, 208 Mich App 66, 72; 527 NW2d 780 (1994). Accordingly, we review this unpreserved issue for plain error affecting defendants' substantial rights. MRE 103(d); *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). Preliminary question of law regarding the admissibility of evidence are reviewed de novo. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003).

Defendants assert that defendant Abusalah's district court plea of responsibility is inadmissible hearsay. MRE 802 provides that hearsay evidence is not admissible except as provided by the Rules of Evidence. MRE 801(d) describes certain statements that are not hearsay. Although we agree with defendants that the trial court erred in concluding that defendant Abusalah's plea of responsibility did not qualify as a nonhearsay statement under MRE 801(d)(2)(A), the admission of the plea was not plain error because the plea qualified as a nonhearsay statement under MRE 801(d)(1)(A).

MRE 801(d) provides, in relevant part:

> (d) Statements Which Are Not Hearsay. A statement is not hearsay if–
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> (1) *Prior Statement of Witness*. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the

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[2] For ease of reference, the singular term "defendant" is used to refer to defendant Fawzea Abusalah only.

[3] No issue is raised concerning the noneconomic damage threshold.

[4] Fees and costs are not contested.

[5] On appeal, the parties do not dispute that MRE 410 does not apply.

> statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, ...
>
> (2) *Admission by Party-Opponent*. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, except statements made in connection with a guilty plea to a misdemeanor motor vehicle violation or an admission of responsibility for a civil infraction under laws pertaining to motor vehicles, ...

MRE 801(d)(2)(A) generally provides that an admission by a party opponent is not hearsay when offered against the party, but the rule specifically excepts statements made in connection with an admission of responsibility for a civil infraction under the motor vehicle laws. Defendant's plea of responsibility falls within this exception. Thus, it does not qualify as a nonhearsay statement under MRE 801(d)(2)(A). However, because defendant testified at trial in a manner inconsistent with her plea of responsibility and she was subject to cross-examination, the plea qualifies as a nonhearsay statement under MRE 801(d)(1)(A).

There is no merit to defendants' argument that because defendant Abusalah was a party, she was not a "witness" and, therefore, MRE 801(d)(1)(A) does not apply. The term "witness" is only meant to convey the requirement that the declarant be required to testify and be available for cross-examination concerning the prior statement. Where a party testifies, that party becomes a witness for purposes of MRE 801(d)(1)(A).

For these reasons, defendants have not shown that it was plain error to allow plaintiff to elicit defendant Abusalah's plea of responsibility on cross-examination.

II. PLAINTIFF'S CROSS-EXAMINATION

Next, defendants argue that the trial court improperly prevented them from cross-examining plaintiff regarding her separate claim to recover medical expenses from her no-fault insurer. The scope and duration of cross-examination is within the trial court's discretion. This Court will not reverse absent a clear showing of an abuse of that discretion. *Wischmeyer v Schanz*, 449 Mich 469, 474-475; 536 NW2d 760 (1995).

At trial, plaintiff testified on direct examination that she discontinued treatment with her physician because she was not able to afford the cost of further treatment. On cross-examination, defendants were allowed to establish that plaintiff's no-fault insurer was responsible for paying the cost of medical expenses associated with the accident, but prevented defendants from further exploring plaintiff's efforts to recover her medical care expenses from the insurer. The court concluded that further questioning on this subject was not relevant.

Although a party may elicit a broad range of evidence on cross-examination, *Wischmeyer*, 449 Mich at 474, to be admissible, evidence must also be relevant under MRE 401. It was not impermissible for plaintiff to explain why she discontinued treatment with her physician, because the necessity of continued treatment, and plaintiff's reasons for discontinuing treatment, were relevant to the issue whether plaintiff's injuries constituted a serious impairment of a body function. Plaintiff's testimony was limited to explaining why she discontinued

treatment. Contrary to defendants' assertion, the trial court did not prevent them from exploring this issue on cross-examination. Rather, the trial court permitted defendants to elicit that plaintiff had also sued her no-fault insurer, which was liable for medical care expenses associated with the accident. The trial court merely prevented defendants from further questioning plaintiff about her independent action against her no-fault insurer. We are not persuaded that further questioning on that subject was relevant. Further, we conclude that there is no basis in the record for concluding that the jury was somehow misled into believing that it could award plaintiff medical expenses as part of an award of noneconomic damages. For these reasons, the trial court's decision to preclude further cross-examination on the subject of plaintiff's separate action against her no-fault insurer was not an abuse of discretion.

III. MOTION FOR A NEW TRIAL AND/OR JNOV

Finally, defendants argue that the trial court erred in denying their motion for a new trial or judgment notwithstanding the verdict (JNOV). A trial court's decision whether to grant a new trial is reviewed for an abuse of discretion. *Barnett v Hidalgo,* 478 Mich 151, 158; 732 NW2d 472 (2007). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Id*. We review de novo a trial court's decision on a motion for JNOV. *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 131; 666 NW2d 186 (2003). While defendants argue in this issue that they were entitled to a new trial or JNOV, they have not provided any argument that would support either a new trial or JNOV. Instead, they merely reassert error with regard to the trial court's evidentiary rulings and then argue that those alleged evidentiary errors require a new trial or JNOV. But we have already concluded that there is no merit to defendants' claims of evidentiary error. Having rejected defendants' claims of evidentiary error, we likewise conclude that the trial court did not abuse its discretion in denying defendants' motion for JNOV and/or a new trial on those same grounds.

Affirmed. As the prevailing party, plaintiff may tax costs pursuant to MCR 7.219.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio