STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL BEYDOUN,

Plaintiff-Appellee,

V

CHARLES BENJAMIN WILLS, JR.,

Defendant,

and

CITY OF DETROIT,

Defendant-Appellant.

UNPUBLISHED
May 21, 2013

No. 304729
Wayne Circuit Court
LC No. 09-026647-NI

Before: BECKERING, P.J., and JANSEN and M. J. KELLY, JJ.

PER CURIAM.

This case arises out of a traffic accident. Plaintiff, Michael Beydoun, alleged that police officer Charles Wills Jr.[1] injured him by running a red light at an intersection and hitting his car while on duty for defendant, city of Detroit. After a three-day jury trial, the jury returned a verdict for plaintiff. Defendant appeals as of right from the trial court's orders granting judgment in favor of plaintiff and costs and attorney fees. We affirm.

[1] The trial court dismissed Officer Wills from the lawsuit on a motion for directed verdict because it did not find evidence to support a finding that the officer's conduct was grossly negligent.

Defendant first argues that the trial court erred by denying its motions for directed verdict and a judgment notwithstanding the verdict (JNOV) because Officer Wills did not negligently operate his police vehicle.[2] We disagree.

"This Court reviews de novo a trial court's decision with regard to both a motion for a directed verdict and a motion for JNOV." *Taylor v Kent Radiology, PC*, 286 Mich App 490, 499; 780 NW2d 900 (2009), citing *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 131; 666 NW2d 186 (2003). An appellate court "review[s] the evidence and all legitimate inferences in the light most favorable to the nonmoving party." *Id.* "A motion for directed verdict or JNOV should be granted only if the evidence viewed in this light fails to establish a claim as a matter of law." *Sniecinski*, 469 Mich at 131. "A trial court properly grants a directed verdict only when no factual question exists upon which reasonable minds could differ. Similarly a motion for JNOV should be granted only when there is insufficient evidence presented to create an issue of fact for the jury." *Heaton v Benton Constr Co*, 286 Mich App 528, 532; 780 NW2d 618 (2009) (internal citations omitted).

Under MCL 691.1407(1), "[a] governmental agency is generally immune from tort liability arising out of the exercise or discharge of its governmental functions." *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 53; 760 NW2d 811 (2008). However, the "broad immunity afforded by the statute is limited by several narrowly drawn [statutory] exceptions." *Id.* One of these exceptions is the motor-vehicle exception, which provides that "[g]overnmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer . . . of a governmental agency, of a motor vehicle of which the governmental agency is owner . . . ." MCL 691.1405. "The elements of a negligence claim are duty, breach, causation, and damages." *Hannay v Dep't of Transp*, 299 Mich App 261, ___; ___NW2d___ (Docket No. 307616, issued January 17, 2013), slip op at 3.

Defendant relies on MCL 257.603 in support of its argument that it was entitled to a directed verdict or JNOV. MCL 257.603 provides, in relevant part:

> (3) The driver of an authorized emergency vehicle may do any of the following:
>
> * * *
>
> (b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.

[2] Defendant also argues that the trial court erred by awarding plaintiff costs and attorney fees. However, defendant's argument is completely based upon its assertion that the trial court erred by failing to grant defendant a judgment as a matter of law. We disagree with defendant's assertion. Therefore, we need not address defendant's argument on this topic.

* * *

> (4) The exemptions granted in this section to an authorized emergency vehicle apply only when the driver of the vehicle while in motion sounds an audible signal by bell, siren, air horn, or exhaust whistle as may be reasonably necessary, . . . and when the vehicle is equipped with at least 1 lighted lamp displaying a flashing, oscillating, or rotating red or blue light visible under normal atmospheric conditions from a distance of 500 feet in a 360 degree arc unless it is not advisable to equip a police vehicle operating as an authorized emergency vehicle with a flashing, oscillating or rotating light visible in a 360 degree arc. In those cases, a police vehicle shall display a flashing, oscillating, or rotating red or blue light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle.

Defendant argues that the trial court erred by not granting its motions for directed verdict or JNOV because evidence admitted at trial supports a finding that plaintiff "jumped the light" and that Officer Wills complied with MCL 257.603. Defendant had the burden, however, of establishing that no factual question existed upon which reasonable minds could differ regarding Officer Wills's negligence and that there was insufficient evidence of Officer Wills's negligence to create an issue of fact for the jury. Review of the record reveals that plaintiff offered sufficient evidence to establish that Officer Wills acted negligently. Eyewitness testimony and a digital video of the accident captured by a camera mounted to the windshield of Officer Wills's vehicle supported a finding that Officer Wills ran the red light and that the light was red for a period of time before Officer Wills entered the intersection. Therefore, it is reasonable to conclude that plaintiff did not jump the green light as defendant alleges. It is also a reasonable inference that Officer Wills did not properly activate either his siren or his emergency lights as required by MCL 257.603(4) before proceeding through the red light. MCL 257.603(4) requires that the driver of the emergency vehicle use an audible signal "as may be reasonably necessary." Although Officer Wills testified that he chirped his siren, both plaintiff and another victim of the accident, Kyishin Shiah, testified that they did not hear a siren or see emergency lights.[3] Therefore, the trial court properly denied defendant's motions for a directed verdict and a JNOV.

Next, defendant argues that the trial court erred by allowing plaintiff to introduce his tax records. We disagree.

"[T]his Court will not disturb the [decision to admit evidence] on appeal in the absence of an abuse of discretion." *Taylor v Mobley*, 279 Mich App 309, 315; 760 NW2d 234 (2008). "A trial court abuses its discretion in admitting or excluding evidence if its determination falls

[3] In addition to eyewitness testimony and the video of the accident, the trial court admitted into evidence an "Official Remand" of Officer Wills issued by the Detroit Police Department. The Detroit Police Department investigated the accident and determined that Officer Wills disobeyed the red light. Further, it classified the accident as "preventable" and officially reprimanded Officer Wills.

beyond the principled range of outcomes." *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 269; 730 NW2d 523 (2006).

MRE 401 defines relevant evidence as "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." MRE 402 provides, in relevant part, "All 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." Generally, a trial court has the responsibility to "control the proceedings during trial." MCR 2.513(B). "Evidentiary errors are not a basis for vacating, modifying, or otherwise disturbing a judgment unless declining to take such action would be inconsistent with substantial justice. See MCR 2.613(A)." *Miller v Hensley*, 244 Mich App 528, 531; 624 NW2d 582 (2001).

The trial court's admission of the tax records was consistent with substantial justice. First, defense counsel repeatedly, in front of the jury, used the absence of the tax records against plaintiff to suggest that plaintiff did not have proof of lost income. In fact, defense counsel challenged plaintiff to produce documentation of his lost income, stating that "the jury would like to see something to verify what you're saying because so far you have presented nothing." The trial court properly allowed plaintiff to respond to defense counsel's claim by presenting the tax records. Second, defendant cannot claim that he was surprised by the introduction of the tax records. Defense counsel knew that the tax records likely existed and that there was a chance that plaintiff would introduce them once he repeatedly questioned plaintiff regarding their absence.[4]

Finally, defendant argues the trial court should have granted defendant a new trial on the basis of MCR 2.611(A)(1)(c), (d), (e), and (g) or, alternatively, remittitur pursuant to MCR 2.611(E)(1). We disagree.

We review for an abuse of discretion a trial court's decisions to grant or deny motions for a new trial and remittitur under MCR 2.116. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 761; 685 NW2d 391 (2004); *Taylor*, 286 Mich App at 522. "If the award falls reasonably within the range of the evidence and within the limits of what reasonable minds would deem just compensation, it should not be disturbed." *Taylor*, 286 Mich App at 522 (citation omitted).

MCR 2.611(A) provides in pertinent part as follows regarding grounds for a new trial:

> (1) A new trial may be granted to all or some of the parties, on all or some of the issues, whenever their substantial rights are materially affected, for any of the following reasons:

[4] Assuming defense counsel had not previously reviewed plaintiff's tax returns during discovery, he could have requested a brief adjournment in order to do so, especially if he suspected that they did not actually support plaintiff's economic damage claims. He did not do so.

* * *

> (c) Excessive or inadequate damages appearing to have been influenced by passion or prejudice.
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> (d) A verdict clearly or grossly inadequate or excessive.
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> (e) A verdict or decision against the great weight of the evidence or contrary to law.
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> * * *
>
> (g) Error of law occurring in the proceedings, or mistake of fact by the court.

"[A] jury's verdict should not be set aside if there is competent evidence to support it." *Dawe v Bar-Levav & Assoc, PC (On Remand)*, 289 Mich App 380, 401; 808 NW2d 240 (2010). "Determining whether a verdict is against the great weight of the evidence requires review of the whole body of proofs. The issue usually involves matters of credibility or circumstantial evidence, but if there is conflicting evidence, the question of credibility ordinarily should be left for the fact-finder." *Id.*

With respect to motions for remittitur, MCR 2.611(E)(1) provides as follows:

> If the court finds that the only error in the trial is the inadequacy or excessiveness of the verdict, it may deny a motion for new trial on condition that within 14 days the nonmoving party consent in writing to the entry of judgment in an amount found by the court to be the lowest (if the verdict was inadequate) or highest (if the verdict was excessive) amount the evidence will support.

A trial court should only grant remittitur when the evidence does not support the jury award. *Shaw v Ecorse*, 283 Mich App 1, 17; 770 NW2d 31 (2009). The trial court should evaluate the "objective criteria relating to the actual conduct of the trial or to the evidence presented" to determine "whether the award was influenced by bias or prejudice or whether the award was comparable to those in similar cases." *Id.*

We conclude that the trial court did not abuse its discretion by denying defendant's motion for a new trial on the basis that the verdict was against the great weight of the evidence. There was competent evidence showing that Officer Wills was negligent. The video of the accident and testimony from Officer Wills, plaintiff, and Shiah confirm that Officer Wills ran the red light. There was also competent evidence that Officer Wills did not properly activate his siren or lights: both plaintiff and Shiah testified that they did not hear or see Officer Wills's siren or emergency lights. Therefore, the verdict was not against the great weight of the evidence.

We also conclude that the jury's award of damages was supported by plaintiff's evidence and, therefore, was not excessive. The jury awarded plaintiff $250,000 in past and future noneconomic damages. Plaintiff's attorney presented testimony from plaintiff and his doctor regarding plaintiff's continuing chronic pain, his inability to sleep, and his inability to drive or

practice martial arts. Therefore, plaintiff's evidence substantiated the noneconomic-damage amount.

The jury also awarded plaintiff past economic damages of $542,405. Plaintiff, who designs and builds in the field of construction, testified that he lost more than $540,000 in jobs that he had begun but could not complete after the accident. Although the trial court never officially admitted the first of plaintiff's business-records exhibits, plaintiff discussed the contents of the proposed exhibit at length. On the second day of trial, plaintiff submitted a second business-records exhibit that also supported his lost income. Plaintiff's exhibits included both a list of projects that he was unable to either complete or complete on time after the accident and supporting documentation. This evidence substantiated the past economic-damages award.

Finally, the jury awarded plaintiff future economic damages of $1,493,250. Plaintiff's properly admitted tax records indicated that he earned about $200,000 to $300,000 a year in the three years before the accident. After the accident, plaintiff's tax records indicate that he lost about $115,000 a year. Given these numbers, the damage award for plaintiff's future income was supported by the evidence and reasonable. Plaintiff was 50 years old during trial, and it is a reasonable assumption that he had another 10 or 15 years of work before he retired. The jury awarded plaintiff approximately $100,000 to $150,000 a year in lost income. This yearly income loss accounts for the downturn of the economy and plaintiff's continued, but limited, ability to work. Plaintiff's damage award was neither excessive nor obviously influenced by passion or prejudice.

Accordingly, the trial court did not abuse its discretion by denying defendant's motion for a new trial or remittitur on this basis.

Affirmed. Plaintiff, as the prevailing party, may tax costs. MCR 7.219.

/s/ Jane M. Beckering
/s/ Kathleen Jansen
/s/ Michael J. Kelly