IN THE UTAH COURT OF APPEALS

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Ken Claypoole, Plaintiff and Appellant, v. Winward Electric, Inc.; Michael Wood; and Neil G. Skougard, Defendants and Appellees.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20090390-CA F I L E D (April 8, 2010) 2010 UT App 77

Second District, Farmington Department, 040700622
The Honorable Rodney S. Page

Attorneys: David Bert Havas, Ogden, for Appellant
Joseph E. Minnock, Salt Lake City, for Appellees

Before Judges Orme, Thorne, and Voros.

ORME, Judge:

Plaintiff claims the trial court erred in conducting voir dire when it refused to use his jury questionnaire, did not ask all the questions he requested, asked only broad tort reform questions, and did not allow the attorneys to conduct voir dire. With the exception of the court's refusal to use Plaintiff's jury questionnaire, we agree with Defendants that the other issues were not preserved for appeal.[1] See Boyle v. Christensen, 2009 UT App 241, ¶ 7, 219 P.3d 58 (determining that "alleged deficiencies in voir dire must be brought to the district court's attention in order to be preserved for appeal"), cert. granted, 221 P.3d 837 (Utah 2009). Therefore, as concerns voir dire, we limit our discussion to the only issue properly preserved and before this court, i.e., the trial court's refusal to use a jury questionnaire.

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[1]During voir dire, Plaintiff participated by questioning the prospective jurors, passing the jury for cause, exercising his peremptory challenges, and allowing the jury to be seated, all without objection.

We agree with Plaintiff that there is much to recommend using a jury questionnaire in appropriate cases. As has been noted, questionnaires may be useful in obtaining a great deal of information about prospective jurors, including sources of possible bias, with only a small investment of the trial court's time. See Robert B. Sykes & Francis J. Carney, Attorney Voir Dire and Jury Questionnaire: Time for a Change, Utah B.J., Aug. 1997, at 63. However, as useful as a jury questionnaire can be, Utah law does not support Plaintiff's ultimate contention that the trial court abused its discretion in not allowing a jury questionnaire in this case. See State v. Mead, 2001 UT 58, ¶¶ 30-31, 27 P.3d 1115 (stating that "it may be advisable for a trial court to use a jury questionnaire in certain situations," but determining that the trial court did not abuse its discretion by "electing not to use the proposed jury questionnaire, [because] the court . . . asked several questions during voir dire relating to" the source of concern for alleged bias). See also Utah R. Civ. P. 47(a); Taylor v. State, 2007 UT 12, ¶ 70, 156 P.3d 739 ("The scope and conduct of voir dire examination is within the discretion of the trial judge. . . . [T]rial judges are not compelled to permit every question that . . . might disclose some basis for counsel to favor or disfavor seating of a particular juror. Nor do we think a defendant is entitled to ask questions in a particular manner.") (second omission in original) (citations and internal quotation marks omitted).

Plaintiff also claims that a settlement letter related to a previous civil case was improperly referred to and quoted from for impeachment purposes. However, Plaintiff's argument fails because even if the trial court abused its discretion by permitting reference to the letter, that error has not been shown to be prejudicial. See generally Covey v. Covey, 2003 UT App 380, ¶ 21, 80 P.3d 553 (defining prejudicial error as an error posing a "reasonable likelihood" of affecting "the outcome of the proceedings") (citation and internal quotation marks omitted), cert. denied, 90 P.3d 1041 (Utah 2004). Plaintiff provided the settlement letter to his expert and does not argue that the letter was improperly referred to during the expert's testimony. Plaintiff has not shown how additional reference to the letter would be prejudicial when the letter was otherwise properly before the jury.[2]

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[2]Plaintiff's choice to not provide this court with the entire transcript also greatly hinders his ability to prove prejudice. See Gorostieta v. Parkinson, 2000 UT 99, ¶ 16, 17 P.3d 1110 ("As an appellate court, our power of review is strictly limited to the record presented on appeal. Parties claiming error below and seeking appellate review have the duty
(continued...)

Plaintiff's final argument, that the trial court erred by presenting the jury with a confusing special verdict form, is also without merit. Even if we determined that this issue was properly preserved for appeal,[3] see generally 438 Main St. v. Easy Heat, Inc., 2004 UT 72, ¶ 51, 99 P.3d 801, we do not agree that the jury instruction in this case, when "considered in the context of the instructions as a whole," was substantially confusing and prejudicial. Ostler v. Albina Transfer Co., 781 P.2d 445, 451 (Utah Ct. App. 1989) (citations omitted), cert. denied, 795 P.2d 1138 (Utah 1990). Although the special verdict form used the terms "preponderance of the evidence" and "preponderates," these terms were adequately explained in the jury instructions, this explanation was read twice, and a copy of the instructions was given to each juror. See generally Taylor, 2007 UT 12, ¶ 64 ("When all of the instructions are considered

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[2](...continued)
and responsibility to support their allegations with an adequate record. The record in this case contains only partial transcripts. As such, where we are without an adequate record, we must assume the regularity of the proceedings below.") (citations and internal quotation marks omitted); Mule-Hide Prods. Co. v. White, 2002 UT App 1, ¶ 12, 40 P.3d 1155 ("[E]ven where error is found, reversal is appropriate only in those cases where, after review of all the evidence presented at trial, it appears that absent the error, there is a reasonable likelihood that a different result would have been reached.") (alteration in original) (emphasis added) (citation and internal quotation marks omitted).

[3]We note that no actual objection was made or legal authority presented in discussing the verdict form, but, instead, a law clerk assisting counsel observed that his spouse would not understand the instruction. As we conclude that the jury instruction was not substantially confusing, we need not decide whether a law clerk's commentary is adequate for preservation. The law clerk was also referred to in the briefs as an attorney "not licensed to practice law in Utah." It would be difficult to conclude that such an individual could make a legally valid objection so as to preserve an issue for appeal, without thereby concluding he was practicing law without a license.

As for Plaintiff's argument that the trial court erred "in failing to follow the Utah Supreme Court's guideline regarding plain English jury instructions," any such guideline in no way relieves a party's obligation to make a specific objection to the jury instruction if he or she believes that the instruction is unclear. See 438 Main St. v. Easy Heat, Inc., 2004 UT 72, ¶ 51, 99 P.3d 801 (discussing requirements for preserving an issue for appeal).

together, it is clear that the jury was 'fairly and accurately instructed' on Utah law."). Additionally, Plaintiff has presented no evidence that this jury was confused by the word "preponderance" or "that any alleged confusion was substantial and prejudicial." Ostler, 781 P.2d at 451.

Affirmed.

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Gregory K. Orme, Judge

WE CONCUR:

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William A. Thorne Jr., Judge

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J. Frederic Voros Jr., Judge