

STATE OF MICHIGAN
COURT OF APPEALS

MELODY VARGAS,

Plaintiff-Appellant,

v

DAVID BRANDT and PHYLLIS BRANDT,

Defendants-Appellees.

UNPUBLISHED

May 31, 1996

No. 179428

LC No. 93-003453-NO

Before: Doctoroff, C.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's judgment of no cause of action in favor of defendants, entered pursuant to a jury verdict, adjudicating her suit for damages allegedly sustained when the car in which she was riding braked suddenly to avoid defendants' dog. We affirm.

Plaintiff first contends that the trial court erred by denying her request to have the dog present during voir dire of the jury panel. The scope of voir dire is within the court's discretion and will not be set aside absent an abuse of discretion. *People v Daniels*, 192 Mich App 658, 666; 482 NW2d 176 (1991). The court did not abuse its discretion by ruling that the animal's presence was unnecessary at voir dire.

Plaintiff next argues that the court improperly barred evidence at trial that the dog was not licensed at the time of the accident on the ground that this was irrelevant. The decision whether to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Price v Long Realty, Inc*, 199 Mich App 461, 466; 502 NW2d 337 (1993). We agree with the court that no causal connection existed between the absence of a license and the fact that the dog was allowed to run loose. There was no error.

Plaintiff further maintains that the trial court erred by refusing to admit into evidence an aerial photograph of the accident scene. Defendants concede that plaintiff should have been allowed to establish a foundation for the photograph's admission. Although the court's refusal to let plaintiff

proceed constituted an abuse of discretion, *Price, supra*, at 466, reversal is unwarranted because the error did not affect the jury's conclusion that defendants were not negligent. MCR 2.613(A).

We next consider plaintiff's contention that error occurred when the court admitted at trial the deposition testimony of Dr. Roderick Baltzer and Karen Henry. Baltzer was named as a witness on defendants' witness list, and his testimony was properly admitted. Although Henry's testimony was improperly admitted because she was not a named defense witness, because her testimony related to damages, the error was harmless. MCR 2.613(A).

Plaintiff lastly argues that the trial court erred by giving an approximation of SJI2d 3.06, to the effect that the existence of insurance had no bearing on any issue before the jury. Even assuming, as plaintiff contends, that the instruction was unnecessary because the issue of insurance had not been injected into the record, no error necessitating reversal occurred. MCR 2.613(A).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald