

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TEDDY RAY ROBINSON

Plaintiff-Appellant,

v

CITY OF DETROIT, DETROIT POLICE  
DEPARTMENT, WILLIAM L. HART,  
FRANCIS FITZPATRICK, TIMOTHY  
BROUGHTON, RONALD WILLSEY, DENNIS  
MOORE, MICHAEL FOLEY, NICK KYRIACOU,

Defendants-Appellees.

UNPUBLISHED  
September 6, 1996

No. 173002  
LC No. 91-115127 NZ

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Before: O'Connell, P.J., and Reilly and D.E. Shelton,\* JJ.

PER CURIAM.

Plaintiff appeals as of right from a jury verdict of no cause of action and from the order denying his motion for judgment notwithstanding the verdict or for a new trial. We affirm.

Plaintiff first contends he is entitled to a new trial because of the alleged misconduct of defense counsel at trial. An attorney's comments usually will not be cause for reversal unless they indicate a deliberate course of conduct aimed at preventing a fair and impartial trial. *Wilson v General Motors Corp*, 183 Mich App 21, 26; 454 NW2d 405 (1991). Further, even where an attorney may have attempted to deliberately inject improper argument into a case, reversal is unwarranted unless the comments had the effect of diverting the jury's attention from the issue or otherwise control the verdict. *Knight v Gulf & Western Properties, Inc*, 196 Mich App 119, 132-133; 196 NW2d 119 (1992).

We have reviewed the alleged misconduct upon which plaintiff relies. While defense counsel's antics approached buffoonery, we do not find that they were sufficient to divert the jury's attention from the issues before it. For example, we are hard-pressed to explain defense counsel's harangue concerning the odor of blacks, whites, and homosexuals (whether black or white), which he determined to be identical. However, *so afar afield* were defense counsel's periodic digressions, we fail to see how

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\* Circuit judge, sitting on the Court of Appeals by assignment.

the jury's perception of the issues could have been clouded. Additionally, we do not find that defense counsel's conduct controlled the verdict. Any influence that could be attributed to defense counsel's conduct could only have worked in plaintiff's favor. Therefore, we conclude that plaintiff is not entitled to a new trial.

Plaintiff next brings five allegations of evidentiary error. However, by failing to cite case law or any other authority in support of his arguments, he has abandoned the issues. *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995).

Plaintiff also contends that "the evidence at trial was insufficient to support the judgment of the jury" in favor of defendants. Plaintiff misapprehends the burden of proof. A verdict of no cause of action indicates that the *plaintiff* failed to carry its burden of proof; a defendant is not required to present any evidence. Contrary to plaintiff's assumption, the evidence is never insufficient to support a verdict of no cause of action.

Finally, plaintiff argues that the alleged "improper disqualification of a juror materially affected the plaintiff's right to a fair trial." We review a court's decision to replace a juror under the abuse of discretion standard. *People v Dry Land Marina, Inc.*, 175 Mich App 322, 325; 437 NW2d 391 (1990). An abuse of discretion will not be found where the decision to replace a juror is "a proper exercise of judicial discretion supported by fact and logic." *Id.*, p 326. Here, five jurors, during the presentation of plaintiff's case, complained to the court that a particular juror had slept during the proceedings, had discussed the case with an outside party, and had already made up his mind as to the outcome. After hearing argument, the court found that the allegations were substantiated, and excused the juror. We find no abuse of discretion.

Affirmed.

/s/ Peter D. O'Connell