STATE OF MICHIGAN

COURT OF APPEALS

CLARENCE E. DOSTER,

Plaintiff-Appellant,

v

WILLIAM C. DAVIS and
BUTTON'S RENT-IT,

Defendants-Appellees.

UNPUBLISHED
October 1, 1996

No. 186994
LC No. 87-340866-NI

Before: Markman, P.J., and McDonald and M. J. Matuzak,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment granting plaintiff $7,500, plus interest in the amount of $6,908.11 in this personal injury action brought against defendants, William Davis and Button's Rent-It. We reverse and remand.

We initially note that this case is before this Court for a second time. In *Doster v Davis*, unpublished amended opinion per curiam of the Court of Appeals, issued March 14, 1994 (Docket No. 144516), we reversed and remanded to the trial court for a new trial, after finding that the trial court abused its discretion in denying plaintiff's motion for a new trial because the verdict was contrary to the great weight of the evidence regarding causation. Subsequently a new trial was held and the jury returned a verdict of $7,500, plus interest in the amount of $6,908 in favor of plaintiff for past pain and suffering. The jury, however, refused to award plaintiff any damages for future pain and suffering, and the trial court later denied plaintiff's motion for judgment notwithstanding the verdict, a new trial or, in the alternative, additur.

Plaintiff first contends that the trial court erred when it allowed defendants to cross-examine plaintiff on statements contained in two police reports relating to successive accidents in which he was involved and then refused to admit the reports in their entirety.[1] We agree.

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

We review a trial court's decision whether to admit evidence for an abuse of discretion. *Price v Long Realty, Inc*, 199 Mich App 461, 466; 502 NW2d 337 (1993). The use of a police report at trial constitutes hearsay. *Moncrief v Detroit*, 398 Mich 181, 189; 247 NW2d 783 (1976). The proponent of a police report is required to lay a foundation that shows that the report comes within an exception to the hearsay rule "before [it] [can] be admitted into evidence, read into the record, or read to the fact finder by a witness in the course of testimony. *Id*. The admission of a police report into evidence in a civil trial is "subject to the limitation of MCL 257.624; MSA 9.2324." MRE 803(8). That statute provides in relevant part:

> (1) A report required by this chapter shall not be available for use in a court action, but a report shall be for the purposes of furnishing statistical information regarding the number and cause of accidents. [MCL 257.624; MSA 9.2324.]

The only two exceptions to MCL 257.624; MSA 9.2324 recognized by the courts are where the officer merely testifies to "physical facts [he] observed at the scene of the accident and admissions made to [him] by the drivers." *Webster v Central Paving Co*, 51 Mich App 62, 64-65; 214 NW2d 707 (1974). Neither of these exceptions are pertinent to the instant case.

Here, the actual police reports were not admitted into evidence. However, statements from the reports – specifically, the severity and impact codes given by the police to the March 1987, accident and the July 1987, accident, respectively -- were read into the record, and defendants cross-examined plaintiff on those statements. Those statements were hearsay and did not fall within the business records exception because defendant did not present a "custodian or other qualified witness" to testify concerning the reports. MRE 803(6). Furthermore, the statements did not come within the judicially-carved exceptions to the public records exception because neither of the transcribing officers testified at trial. MCL 257.624; MSA 9.2324; *Webster*, *supra*, 56 Mich App 64-65. Not only was the admission of those statements improper, but the error was compounded by the trial court's subsequent denial of plaintiff's request to admit the police reports in their entirety. MRE 106.

Although, we find that the trial court erred with regard to the police reports, we conclude that the error was harmless because the court cured any unfair prejudice with an appropriate instruction to the jury and the jury returned a verdict that found that defendants' negligent conduct from the March 1987 accident was the proximate cause of plaintiff's injuries. *Gregory v Cincinnati, Inc*, 202 Mich App 474, 484; 509 NW2d 809 (1993). Furthermore, plaintiff failed to timely object to defendants' use of the police reports. *Temple v Kelel Distributing Co, Inc*, 183 Mich App 326, 329; 454 NW2d 610 (1990).

Plaintiff next contends that the trial court's instruction exacerbated, not cured, the unfair prejudice caused by defendants' use of the two police reports. We disagree.

We review a trial court's jury instructions in their entirety, and will not extract them piecemeal. *Wiegerink v Mitts & Merril*, 182 Mich App 546, 548; 452 NW2d 872 (1990). A careful review of

the record reveals that the trial court's instructions were appropriate. *Rice v ISI Manufacturing, Inc*, 207 Mich App 634, 637-638; 525 NW2d 533 (1994). The court cautioned the jurors that because of the subjective nature of vehicle impact and severity determinations on the part of the two officers who wrote the reports, the fact that the two reports indicated the same codes may mean nothing at all. Additionally, the instructions repeatedly reminded the jurors that they alone were responsible for determining the facts in the case. Furthermore, the fact that the jury returned a verdict indicating its finding that defendants were the proximate cause of plaintiff's injuries suggests the jury was not persuaded that the July 1987, accident caused plaintiff's injuries.

Finally, plaintiff argues that the trial court erred when it denied his motion for judgment notwithstanding the verdict, a new trial or, in the alternative, additur. Plaintiff contends the court erred because the jury's verdict was against the great weight of the evidence. We agree.

Where it is alleged that a verdict was against the great weight of the evidence, this Court reviews a trial court's decision to grant or deny a party's motion for a new trial under an abuse of discretion standard. *Miller v Ochampaugh*, 191 Mich App 48, 60-61; 477 NW2d 105 (1991). This Court also reviews a trial court's decision whether to grant or deny additur for an abuse of discretion. *McMillan v Auto Club Ins Ass'n*, 195 Mich App 463, 467; 491 NW2d 593 (1992). However, when reviewing a trial court's decision on a motion for judgment notwithstanding the verdict, this Court examines the testimony and all legitimate inferences that may drawn from that testimony in a light most favorable to the nonmoving party. *Michigan Microtech, Inc v Federated Publications, Inc*, 187 Mich App 178, 186-187; 466 NW2d 717 (1991); *Lester N Turner, PC v Eyde*, 182 Mich App 396, 398; 451 NW2d 644 (1990). "A judgment notwithstanding the verdict is proper where insufficient evidence is presented to create an issue for the jury [and] [i]t is improper where reasonable minds could differ on issues of fact." *Michigan Microtech*, *supra*, at 186.

A review of the record indicates, in our judgment, that the jury verdict of $7500 was indeed against the great weight of the evidence. *Bosak v Hutchinson*, 422 Mich 712, 732; 375 NW2d 333 (1985); *McMillan*, *supra*, at 467; *Miller*, *supra*, at 60-61; *Heshelman v Lombardi*, 183 Mich App 72, 76; 454 NW2d 603 (1990). The jury's finding that plaintiff suffered a serious impairment of a bodily function was supported by testimony from both plaintiff's expert and defendants' expert. Additionally, both experts testified that defendants' negligence from the March 1987, accident was a proximate cause of plaintiff's injuries. Further, there was expert testimony that plaintiff had been experiencing extensive pain in his back (as well as in his jaw) since the March 1987 accident and that his back problem had progressed beyond the point where surgery could correct it. Finally, there was uncontroverted testimony that plaintiff would probably suffer back pain the rest of his life and would also suffer from temporomandibular joint (TMJ) syndrome, involving serious facial pains.[2]

When a jury ignores uncontroverted damages, the verdict is inadequate. *Bosak*, supra at 732. Specifically, the jury awarded plaintiff nothing for future pain and suffering. Because there was no evidence that plaintiff's injuries had fully healed by the time of trial, and there was sufficient evidence that

plaintiff was likely to continue to experience pain and suffering as a result of the accident, the trial court's denial of plaintiff's motion was an abuse of discretion. Because the jury's verdict of no damages for plaintiff's future pain and suffering was inadequate, the trial court abused its discretion when it denied the plaintiff's motion for a new trial or, in the alternative, additur.

Reversed and remanded for a determination of additur by the trial court or, in the alternative, a new trial on the issue of damages only.

/s/ Stephen J. Markman
/s/ Gary R. McDonald
/s/ Michael J. Matuzak

[1] Plaintiff was involved in an automobile accident, which is the subject of the instant appeal, in March of 1987 and later in another automobile accident in September of 1987.

[2] However, there was evidence offered that the TMJ syndrome might not have been related to the automobile accident since plaintiff apparently suffered the loss of at least eight teeth prior to the accident.