STATE OF MICHIGAN

COURT OF APPEALS

DOUGLAS A. ADAMS,

Plaintiff-Appellant,

v

ARLEN BELL, OWEN ARLEN BELL, and LOVADA BELL,

Defendants-Appellees.

UNPUBLISHED
October 4, 1996

No. 181396
LC No. 92-9940 NI

Before: Michael J. Kelly, P.J., and O'Connell and K.W. Schmidt,* JJ.

PER CURIAM.

In this negligence action, plaintiff appeals as of right the judgment on jury verdict finding no cause of action. We affirm.

On February 1, 1992, plaintiff began consuming alcohol at approximately noon. At approximately 8:30 p.m., he drove his snowmobile into a pickup truck, seriously injuring himself. Plaintiff's blood alcohol level was later determined to be over twice the legal limit (.26 percent). Plaintiff brought suit against the driver of the truck, defendant Owen Arlen Bell, under a negligence theory. Testimony at trial suggested that plaintiff's judgment was impaired at the time of the accident, and that had he not reacted inappropriately in the moments immediately preceding the accident, no accident would have occurred. The jury returned a verdict of no cause of action.

On appeal, plaintiff raises four allegations of error. First, plaintiff contends that the trial court committed error warranting reversal by refusing to allow plaintiff to present the videotaped deposition testimony of defendant Owen Arlen Bell. Assuming *arguendo* that error occurred, we do not find the error to warrant reversal. An error in the admission or exclusion of evidence is not ground for reversal "unless refusal to take this action appears to the court inconsistent with substantial justice." MCR 2.613. Here, plaintiff alleges only that the videotaped deposition of defendant Owen Arlen Bell would have revealed the "smug demeanor" of defendant, and would have shown him to have been an "immature student driver." However, given that plaintiff's counsel called defendant Owen Arlen Bell to testify at trial and thoroughly examined him, we fail to see how the exclusion of the videotape prejudiced

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

plaintiff's case.[1] Therefore, if any error occurred, it was not inconsistent with substantial justice, and does not warrant reversal.

Second, plaintiff argues that reversal is required because defendants injected plaintiff's past convictions into evidence in contravention of the court's prior ruling on plaintiff's motion in limine to exclude such evidence. Plaintiff's assertion is not supported by the record. Plaintiff brought a motion in limine to exclude all references to a 1982 motor vehicle accident in which, it appears, plaintiff had been drinking, as well. The court denied the motion. Therefore, defense counsel did not violate any court order when it asked questions that arguably were designed to elicit testimony pertaining to the 1982 incident.

Third, plaintiff submits that an inadequate foundation was laid to allow the admission of blood-alcohol test results. Following the accident, blood was drawn twice from plaintiff – once for medical treatment and once for possible criminal prosecution. At trial, the court ruled that the results of the "civil blood draw" would be admissible, but that the results of the "criminal blood draw" would not be. Plaintiff now contends that, because police officers were present during both draws, both draws implicate the implied consent statute, MCL 257.625a; MSA 9.2325(1), and that both were, in effect, for purposes of criminal prosecution. Because the court barred test results based on blood drawn for purposes of criminal prosecution, plaintiff claims the admission of any test results was in error.

We are not persuaded by plaintiff's argument for two reasons. First, defendants failed to raise this argument below, meaning the issue is not preserved for appeal. *Samuel D Begola Services, Inc v Wild Brothers*, 210 Mich App 636, 642; 534 NW2d 217 (1995). Second, blood alcohol test results based on blood drawn pursuant to a search warrant are admissible in civil cases. *Manko v Root*, 190 Mich App 702, 705-706; 476 NW2d 776 (1991). This Court has gone so far as to find an abuse of discretion where a trial court refused to admit such results in a civil case. *Manko, supra*, p 706. Here, the "criminal blood draw" was conducted pursuant to a search warrant. Therefore, the court likely abused its discretion by excluding the results of this test. We would decline to find error warranting reversal in the instant case where, at worst, two blood samples were drawn largely contemporaneously and the court admitted the wrong one.

Finally, plaintiff claims that the court abused its discretion in allowing a police officer to testify as an expert witness. Our review of the record indicates that the court, over plaintiff's objection, allowed a police officer to testify concerning safe speeds for snowmobiling in the area in which the accident occurred. Contrary to plaintiff's argument, this was not expert testimony, but lay testimony. See MRE 701; *Mitchell v Steward Oldford & Sons, Inc*, 163 Mich App 622, 630; 415 NW2d 224 (1987). We find no abuse of discretion. *Price v Long Realty, Inc*, 199 Mich App 461, 466; 502 NW2d 337 (1993).

Affirmed.

/s/ Michael J. Kelly
/s/ Peter D. O'Connell
/s/ Kenneth W. Schmidt

[1] We note that the trial court did state that the videotape could be used for impeachment purposes.