

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

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RUBY SHERRELL, Personal Representative,  
of the Estate of WILLIAM SHERRELL, Deceased,

UNPUBLISHED  
October 11, 1996

Plaintiff-Appellant,

v

No. 168339  
LC No. 90-56275-NO

LULA GAMMAGE,

Defendant-Appellee.

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

PER CURIAM.

Plaintiff appeals a reduction of her judgment pursuant to a jury's finding of comparative negligence. On appeal, plaintiff claims there was no evidence to support a finding of comparative negligence as to plaintiff's deceased and the court erred when it denied her motion for judgment notwithstanding the verdict.

A motion for JNOV should be granted only when insufficient evidence was presented to create an issue for the jury. *Wilson v GMC*, 183 Mich App 21; 454 NW2d 405 (1991). When deciding a motion for JNOV, the trial court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party, and determine whether the facts presented preclude judgment for the nonmoving party as a matter of law. If the evidence is such that reasonable minds could differ, the question is for the jury, and JNOV should not be granted. *McLemore v Detroit Receiving Hospital*, 196 Mich App 391; 493 NW2d 441 (1992). The decision to grant or deny a motion for JNOV is within the discretion of the trial court. *Michigan Microtech, Inc v Federated Publications, Inc*, 187 Mich App 178; 466 NW2d 717 (1991).

Plaintiff's claim is without merit. The jury's conclusion that decedent was negligent was not based on conjecture. The jury was presented evidence that decedent drank on weekends. Reese testified that on the evening the fire occurred he saw decedent lying on a sofa in Willis' apartment. Decedent's eyes were closed. A container of liquor and filled glasses were present in the room.

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

Plaintiff testified that decedent was a light sleeper, and would wake upon hearing the slightest sound. Robert Andrews, plaintiff's witness, testified that fire made noise. He also testified that decedent would not have had far to travel to escape through the door. A finding that decedent was intoxicated, and thus unable to wake up easily and respond to the fire in a manner which would ensure his safety, would be supported by this evidence. The fact that Willis, who was also described as intoxicated, escaped the fire would not negate a finding that decedent was negligent. The jury did not have to rely on evidence of past behavior or on conjecture to make a finding of comparative negligence. Plaintiff was not entitled to JNOV as a matter of law on the issue of decedent's comparative negligence. The court did not abuse its discretion. *Id.*

Affirmed. Costs to defendant.

/s/ Stephen J. Markman

/s/ Gary R. McDonald

/s/ Michael J. Matuzak