STATE OF MICHIGAN

COURT OF APPEALS

MARY WINGERT,

Plaintiff-Appellant,

v

AETNA CASUALTY & SURETY COMPANY, A/K/A AETNA INSURANCE COMPANY, a Connecticut corporation,

Defendant-Appellee.

UNPUBLISHED
October 11. 1996

No. 185007
LC No. 93-002954-NI

Before: Taylor, P.J., and Markey and N.O. Holowka,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action following a two-day jury trial. Plaintiff claims that as a result of an automobile accident on October 10, 1991, in which the vehicle she was driving struck a deer, she suffers from reflex sympathetic dystrophy syndrome (RSDS), and aggravated a preexisting dental condition, temporomandibular joint syndrome (TMJ). Defendant paid plaintiff's no-fault benefits but denied further coverage asserting that plaintiff had recovered from the accident and any continuing need for benefits was the result of plaintiff's December 1992 auto accident. We affirm.

I.

First, plaintiff claims that the trial court erred in denying her motion for a new trial because the verdict was against the great weight of the evidence. We disagree. While a trial court ruling on a motion for new trial must determine whether the overwhelming weight of the evidence favors the losing party, we determine whether the trial court abused its discretion in making such a finding. *Scott v Illinois Tool Works, Inc*, 217 Mich App 35, 40-41; 550 NW2d 809 (1996). The trial court's determination that a verdict is not against the great weight of the evidence will be given substantial deference on appeal. *Arrington v DOH (On Remand*), 196 Mich App 544, 566; 493 NW2d 492 (1992).

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

We are unable to conclude that no justification existed for the trial court's denial of plaintiff's new trial motion because witness credibility was the determinative factor in this case. *Cleary v The Turning Point*, 203 Mich App 208, 210; 512 NW2d 9 (1994). Plaintiff and her experts testified that plaintiff suffered RSDS and aggravated her preexisting TMJ condition as a result of the October 1991 accident. Defendant's experts testified that plaintiff did not suffer from RSDS, that plaintiff's injuries were subjective, not objectively physical, and that plaintiff's TMJ condition was not aggravated by the accident. It is for the jury to decide what weight it should accord the expert testimony presented at trial. *In re Robinson*, 180 Mich App 454, 464; 447 NW2d 765 (1989). Accordingly, we will not invade the province of the jury. See, e.g., *Scott*, *supra* at 41.

II.

Next, plaintiff claims that the trial court made several improper remarks aimed at plaintiff and her case that denied her a fair trial. Plaintiff failed to object to any of the allegedly improper remarks, however. Nevertheless, we review such claims to determine whether the comments were erroneous and whether the error requires reversal, i.e., they indicate a deliberate course of conduct aimed at preventing a fair and impartial trial. *Hunt v Freeman*, 217 Mich App 92, 95-96; 550 NW2d 817 (1996). Reversal is required only if counsel's prejudicial statements reflect a studied purpose to inflame or prejudice a jury or deflect the jury's attention for the issues at hand. *Id.* at 95.

Several of the remarks were made outside the presence of the jury, therefore, they could not have had an effect on the jury's decision-making process. See *Van Driel v Stevens*, 200 Mich 291, 298-299; 166 NW 974 (1918); *In re Forfeiture of $1,159,420*, 194 Mich App 134, 153; 486 NW2d 326 (1992). Our review of the challenged comments, when read in context, shows that they concerned either the trial court's attempts to control the trial or innocent remarks. We do not believe that these comments were prompted by personal antagonism, exhibited a bias on the part of the trial court, or unduly influenced the jury. *Mahlen Land Corp v Kurtz*, 355 Mich 340, 350-351; 94 NW2d 888 (1959); *Paquette*, *supra* at 340-341. We therefore find no error requiring reversal. *Hunt*, *supra*. Nonetheless, we are concerned by the trial court's comments made to counsel for both parties that evidenced the court's lack of patience with counsel. Comments from the bench must be temperate and we are confident that the experienced trial judge will take to heart this constructive admonition.

III.

Next, plaintiff claims that the trial court erred by improperly limiting the scope of plaintiff's cross-examination of defendant's claims adjuster. We disagree.

The trial court controls the examination of witnesses. MRE 611. In this case, the parties and the court, after a sidebar, were in apparent agreement as to the scope of plaintiff's cross-examination of the claims adjuster. Indeed, plaintiff did not object or make an offer of proof when the trial court ruled that plaintiff had exceeded the scope of the cross-examination by inquiring into events that occurred after defendant had denied coverage The issue at trial was the reasonableness of defendant's initial denial of benefits, not whether defendant unreasonably refused to reinstate benefits. Because plaintiff

was merely attempting to question the claims adjuster about post-denial facts that were irrelevant to the issue before the jury, we find that, under these facts, the trial court's action was not inconsistent with substantial justice. Therefore, we will not vacate the judgment. MCR 2.613.

IV.

Last, plaintiff claims that the trial court erred by awarding defendant excessive mediations sanctions without taking any proofs on the reasonableness of the attorney fees awarded pursuant to MCR 2.403(O)(1). We disagree.

An award of attorney fees will be upheld on appeal absent an abuse of discretion. *Cleary, supra* at 211. Contrary to plaintiff's assertion, the trial court need not conduct an evidentiary hearing so long as its analysis is reasonable and it considers the proper factors. *Haberkorn v Chrysler Corp*, 210 Mich App 354, 379-380; 533 NW2d 373 (1995). Such is the case in this matter. First, plaintiff never specifically requested a hearing. Second, plaintiff rejected a $21,000 mediation award in her favor, proceeded to trial, and received a "no cause of action" verdict from the jury. Plaintiff also failed to provide evidence or arguments that any significant portion of defendant's itemized bills covered unreasonable expenditures. Further, the trial court accepted $85 as an apparently reasonable hourly rate for services necessitated by the rejection of the mediation evaluation. MCR 2.403(O)(6). In light of the complexity of this case, including the multiple accidents and injuries, preexisting conditions and complicated medical testimony, the trial court's decision was not an abuse of discretion. See *Jernigan v General Motors Corp*, 180 Mich App 575, 587; 447 NW2d 822 (1989).

Affirmed.

/s/ Clifford W. Taylor
/s/ Jane E. Markey
/s/ Nick O. Holowka