STATE OF MICHIGAN

COURT OF APPEALS

KEITH STOUDT, as personal representative of the ESTATE OF PATRICIA ARLINE STOUDT,

Plaintiff-Appellant,

v

NEWARK MORNING LEDGER CO., a foreign corporation for profit, doing business in the State of Michigan, d/b/a KALAMAZOO GAZETTE, and WILLIAM RUSSELL TEMPLETON, jointly and individually,

Defendants-Appellees.

UNPUBLISHED
October 11. 1996

No. 186583
LC No. 92-3388-NI

Before: Doctoroff, C.J., and Hood and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right, following a jury trial, the circuit court's judgment awarding him $632,000 in this negligence action. We affirm.

On November 25, 1991, plaintiff's decedent was killed in a two-car accident. Plaintiff's decedent was the driver of one vehicle and defendant William Templeton (defendant) was the driver of the second vehicle. Plaintiff filed a negligence suit against defendant and defendant's employer, the Kalamazoo Gazette. Following trial, the jury returned a verdict finding that plaintiff's decedent was 95% comparatively negligent. The jury awarded plaintiff $632,000 in damages. Plaintiff then moved for additur or a new trial, which the trial court denied.

Plaintiff first argues that he was prejudiced by the testimony of defendant's expert, Dr. Lee, regarding the hazardous action codes on the UD-10[1]. We disagree. The decision to allow expert testimony on a given issue is left to the trial court's discretion and will not be reversed on appeal absent a clear abuse of discretion. *Independence Twp v Skibowski*, 136 Mich App 178, 186; 355 NW2d 903 (1984).

Dr. Lee testified as to the purpose and the information contained in the UD-10. He had served on a committee in the development of the UD-10. In formulating his opinions concerning fault in this case, he relied on the UD-10. Defense counsel asked Dr. Lee whether the UD-10 pertaining to this case indicated any hazardous action codes. Plaintiff objected, and the trial court sustained the objection. Therefore, because Dr. Lee never testified as to whether there was such a place on the UD-10 for hazardous action codes, or what codes were assessed to defendant and plaintiff's decedent, there was no abuse of discretion.

Furthermore, because Dr. Lee served on the committee that developed the UD-10, his testimony as to the purpose and the information contained in the standard UD-10 was appropriate. MRE 702. The testimony was also admissible to show the facts or data underlying the opinion because Dr. Lee stated that his opinions were based, in part, on consideration of the UD-10 in this case. MRE 703.

Next, plaintiff argues that the trial court erred when it read the sudden emergency instruction. We review jury instructions as a whole to determine whether the instructions as given adequately informed the jury of the applicable law, given the evidentiary claims of the case. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 101; 485 NW2d 676 (1992).

The sudden-emergency instruction should be given whenever there is evidence that would allow the jury to conclude that an emergency existed within the meaning of the sudden-emergency doctrine. *Vsetula v Whitmyer*, 187 Mich App 675, 681; 468 NW2d 53 (1991). For the concept of sudden emergency to be applicable, the circumstances giving rise to the accident must not be of the defendant's making and must be unusual or unsuspected. *Vander Laan v Miedema*, 385 Mich 226, 231-232; 188 NW2d 564 (1971). To be unusual, the situation must be other than the everyday routine traffic pattern. *Id.*, 232. To be unsuspected, the peril may be one of everyday potential, but it must not have been in clear view for any significant time and must be totally unexpected. *Id.*

Construing the facts of the present case in a light most favorable to defendants, we find that there was ample evidence supporting the reading of the sudden emergency instruction. Defendant testified that he was traveling below the posted speed limit with the right-of-way. "All of a sudden" the vehicle of plaintiff's decedent "just appeared" in the road only ten to twenty feet ahead of him. Only a second-and-a-half passed between the time he first observed her and the impact and he had no time to sound his horn, swerve, or hit his brakes. The accident occurred at 10:07 p.m., after dark, and it was snowing. According to most witnesses, road conditions were very slippery. Moreover, even if there was an error, it was harmless. Given the wording of the sudden emergency instruction,[2] had the jury found that defendant was confronted with a sudden emergency, it would have found him not negligent.

Plaintiff also contends that defendants' request for the sudden emergency doctrine was untimely. However, trial courts have discretion to grant requests for additional instructions even though, according to the pretrial order, those instructions would be considered late. *Johnson v Corbet*, 423 Mich 304, 315; 377 NW2d 713 (1985). Furthermore, plaintiff's contention that the trial court improperly

suggested the instruction on its own motion is not supported by the record. In any event, "[a]t any time during the trial, the court may, with or without request, instruct the jury on a point of law if the instruction will materially aid the jury to understand the proceedings and arrive at a just verdict." MCR 2.516(B)(2). Lastly, because plaintiff failed to argue below that the timing of the instruction confused the jury, this issue is waived.

Plaintiff also argues that the trial court erred when it precluded evidence of defendant's driving record. We disagree. This Court reviews a trial court's decision to admit evidence for an abuse of discretion. *Price v Long Realty, Inc*, 199 Mich App 461, 466; 502 NW2d 337 (1993).

We find that the trial court did not abuse its discretion in precluding evidence of defendant's driving record on the basis of MRE 403. The trial court found that the probative value of this evidence was substantially outweighed by the danger for unfair prejudice. The court also properly excluded this evidence on the basis of MRE 406. Even assuming that several traffic tickets establish a habit, defendant did not receive a ticket nor was he assessed a hazardous action code with regard to the accident in question.

Next, plaintiff argues that the trial court erred in precluding evidence of defendant's driving record for impeachment purposes. Again, this Court reviews a trial court's decision to admit evidence for an abuse of discretion. *Price, supra*.

Here, the trial court specifically banned defendant's deposition testimony that he was a safe driver. Therefore, it was unnecessary to impeach defendant regarding that deposition testimony. We therefore conclude that the trial court did not abuse its discretion in precluding plaintiff from introducing evidence of defendant's driving record.

Plaintiff also argues that the trial court erred in refusing to read SJI2d 10.08, which concerns the presumption that plaintiff's decedent exercised ordinary care. We review jury instructions as a whole to determine whether the instructions as given adequately informed the jury of the applicable law, given the evidentiary claims of the case. *Riddle, supra*.

SJI2d 10.08 is properly excluded where there is clear, positive, and credible evidence opposing the presumption. *Potts v Shepard Marine*, 151 Mich App 19, 27; 391 NW2d 357 (1986). Clear, positive, and credible evidence is evidence which leads to the inevitable conclusion that the decedent was negligent. *Id.*, 27-28.

In this case, evidence was presented that plaintiff's decedent either stopped for the stop sign and then proceeded when it was not safe to do so, or she slid, did not stop, and then unsuccessfully tried to accelerate through the intersection. As the trial court noted, even if one accepts the testimony of plaintiff's expert that plaintiff's decedent did stop, one is still forced to the conclusion that she proceeded when it was not safe to do so. The testimony from all witnesses confirmed that defendant had the right-of-way and that plaintiff's decedent did not. Even plaintiff's expert conceded that plaintiff's decedent had a duty to yield the right-of-way. We therefore conclude that, because there was

clear, positive, and credible evidence that plaintiff's decedent was negligent, the trial court properly refused to read SJI2d 10:08.

Finally, plaintiff argues that the trial court erred in precluding his expert from testifying on the issue of whether defendant forfeited his right-of-way by speeding. We disagree. The decision to allow expert testimony on a given issue is left to the trial court's discretion and will not be reversed on appeal absent a clear abuse of discretion. *Independence Twp, supra*.

We find that the trial court properly, although for the wrong reason, barred plaintiff's expert from testifying regarding whether defendant forfeited his right-of-way by speeding. The trial court refused to allow plaintiff's expert to testify on this issue because the jury instructions would not cover that issue. However, subsequently the court did instruct on this point. Nevertheless, where a trial court reaches a correct result, but for the wrong reason, that decision will be upheld. *In re Powers*, 208 Mich App 582, 591; 528 NW2d 799 (1995).

To be admissible, an expert's testimony must relate to issues which require expert analysis. *Cirner v Tru-Valu Credit Union*, 171 Mich App 163, 169; 429 NW2d 820 (1988). Even though expert testimony was necessary to assist in the determination of the speed of the vehicles, the jurors did not need assistance analyzing the opinion evidence as to speed and the posted speed limits. The jury was also capable of applying the law to reach a determination regarding whether defendant forfeited his right-of-way. As the trial court correctly instructed the jury, "It is your duty to determine the facts from the evidence received in open court. You [not the experts] are to apply the law to the facts and in this way decide the case." SJI2d 3.02. We therefore conclude that, because the proposed testimony would have usurped the function of the jury, the trial court did not abuse its discretion in precluding the evidence.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Harold Hood
/s/ Richard A. Bandstra

[1] UD-10 is a police officer's form report for reporting accidents.

[2] I instruct you that if you find that [defendant] was confronted with a sudden emergency not of his own making and that he acted as would a reasonably prudent person under the same or similar circumstances, then you must find that [defendant] [was] not negligent in causing the accident.