

STATE OF MICHIGAN
COURT OF APPEALS

VELMA J. BASSLER,

Plaintiff-Appellant,

v

NELLIE L. WILSON,

Defendant-Appellee.

UNPUBLISHED

November 12, 1996

No. 185646

LC No. 93-000329-NI

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

PER CURIAM.

Plaintiff appeals as of right the entry of a judgment of no cause of action following a jury trial. Plaintiff was injured when she was struck by a vehicle driven by defendant. Plaintiff was in the process of getting into her vehicle, which was parked on the street near defendant's driveway, when she was struck by defendant's vehicle as defendant was backing out of her driveway. Plaintiff brought suit alleging that defendant was negligent. The jury found no negligence on the part of defendant. We affirm.

I

First, plaintiff claims that the trial court improperly denied her motion for a new trial or judgment notwithstanding the verdict (JNOV). Plaintiff argues that the undisputed evidence shows that defendant backed her vehicle into and injured plaintiff, and that a reasonably careful person does not do such things; therefore, the jury was incorrect in finding no negligence on defendant's part, and the trial court should have granted plaintiff's motion for either a new trial or JNOV.

JNOV should be granted only when there is insufficient evidence presented to create an issue for the jury. *Wilson v Gen'l Motors Corp*, 183 Mich App 21, 36; 454 NW2d 405 (1990). If the evidence is such that reasonable minds could differ, the question is for the jury and JNOV is improper. *McLemore v Detroit Receiving Hospital and Univ Medical Center*, 196 Mich App 391, 395; 493 NW2d 441 (1992). A new trial may be granted if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e); *King v Taylor Chrysler-Plymouth, Inc*, 184 Mich App 204, 210; 457 NW2d 42 (1990). Because the trial court cannot substitute its judgment for that of the factfinder, the jury's verdict should not be set aside if there is competent evidence to support it. *King, supra*. The trial

court's decision on a motion for a new trial is reviewed for an abuse of discretion. *People v Herbert*, 444 Mich 466, 477; 511 NW2d 654 (1993).

Negligence is conduct that fails to measure up to a standard of care observed by a reasonably careful person under the same circumstances. *Massey v Scripser*, 401 Mich 385, 390; 258 NW2d 44 (1977). Whether a defendant's conduct failed to measure up to that standard under the circumstances is a question for the jury. *Baker v Alt*, 374 Mich 492, 495; 132 NW2d 614 (1965).

Very often men differ on how a reasonable man would act in determining such issues as negligence, proximate cause and foreseeability. This is one of those cases. The jury is the most appropriate institution known in our legal system to answer the difficult and essentially factual question of how a reasonable man would act under the circumstances. The jury in this case reached its unanimous verdict based upon competent evidence. That verdict should [be] permitted to stand. [*Wamser v N J Westra & Sons, Inc*, 9 Mich App 89, 96; 155 NW2d 871 (1967)].

In this case, defendant testified that she looked behind her and to both sides of her as she backed out of her driveway, and did not see plaintiff. The jury found that, under the circumstances of this case, this was all that was required of a reasonably prudent person. We decline to invade the province of the jury. Because reasonable minds could have differed as to whether defendant's conduct conformed to the required standard of care, and the verdict was supported by competent evidence, the trial court properly denied plaintiff's motion for a new trial or JNOV.

II

Next, plaintiff claims that the trial court erred by granting defendant's motion for mediation sanctions. Plaintiff argues that because she planned to appeal the jury's verdict, it was premature for the trial court to grant defendant's motion for mediation sanctions. However, because plaintiff has failed to cite any authority for this position, plaintiff has abandoned this issue. *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995). We will not search for authority to sustain or reject a party's position. *Hover v Chrysler Corp*, 209 Mich App 314, 319; 530 NW2d 96 (1995).

Plaintiff also argues that the trial court erred by failing to hold an evidentiary hearing on the reasonableness of the mediation costs sought by defendant. However, review of this issue is unnecessary because it was not properly raised in plaintiff's statement of the questions presented. *Hammack v Lutheran Social Services*, 211 Mich App 1, 7; 535 NW2d 215 (1995). Also, because plaintiff did not object to the reasonableness of the award or request an evidentiary hearing, and first raises this issue on appeal, this issue is waived. *Id.*

We affirm.

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