S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

JANICE WILLOUGHBY and STEPHEN WILLOUGHBY, Plaintiffs-Appellants,	UNPUBLISHED November 22, 1996
v	No. 188229 LC No. 95-501355 NO
JOSEPH BUGEIA, Defendant-Appellee.	

Before: Hoekstra, P.J., and Sawyer and Corrigan, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a judgment of no cause of action entered in favor of defendant. On appeal, plaintiffs argue on several different grounds that the trial court erroneously admitted into evidence, pursuant to MRE 406, the testimony of defendant's postal carrier regarding defendant's habitual ice and snow removal from his residential property. We affirm.

We review a trial court's decision to admit evidence for an abuse of discretion. An abuse of discretion will be found only if an unprejudiced person, considering all facts and circumstances relied upon by the trial court, would conclude that there was no justification for the ruling made. *Gore v Raines & Block,* 189 Mich App 729, 737; 473 NW2d 813 (1991).

Plaintiffs first argue that evidence regarding a landowner's timely removal of accumulated ice and snow from his property is not admissible pursuant to MRE 406 because this behavior is not sufficiently non-volitional so as to be construed as a habit. We decline to review this argument. Absent a showing of manifest injustice, objection to the admission of evidence may not be made for the first time on appeal. MRE 103(a)(1); *Froede v Holland Ladder & Mfg Co,* 207 Mich App 127, 137; 523 NW2d 849 (1994). Issues regarding the admission of evidence are preserved by a timely objection on the record, stating the specific grounds for the objection. MRE 103(a)(1). However, an objection to evidence based upon one ground at trial is insufficient to preserve appellate review of a claim based upon a different ground. *Wischmeyer v Schanz,* 449 Mich 469, 483; 536 NW2d 760 (1995). Plaintiffs failed to object on this basis before the trial court and, therefore, plaintiffs' argument is

not properly preserved for appeal. Further, no manifest injustice will result from our failure to consider this argument.

Plaintiffs next argue that the witness did not possess demonstrable knowledge of the conduct at issue to establish habit pursuant to MRE 406. We disagree. The foundation laid by defendant for the postal carrier's testimony was her personal knowledge of the daily condition of defendant's property over a number of years. The postal carrier possessed demonstrable knowledge of defendant's customary removal of ice and snow from his property. *Laszko v Cooper Laboratories, Inc*, 114 Mich App 253, 255-256; 318 NW2d 639 (1982).

Plaintiffs also argue that evidence was not presented showing the postal carrier's personal knowledge of how snow and ice was removed from defendant's property. This, however, was not required. The admission of habit evidence required merely that: "[T]he witness must have *some knowledge* of the practice and must demonstrate this knowledge prior to giving testimony concerning a routine practice." *Id*. (emphasis added).]

This standard does not require that the witness personally observe the performance of a behavior to testify to its habitual nature. Moreover, the text of MRE 406 expressly does not require the presence of eyewitnesses to establish habit.

Plaintiffs next argue that this testimony was inadmissible because Michigan courts prohibit the use of the absence of problematic conditions to establish negligence. See *Kurczewski v Michigan Highway Comm*, 112 Mich App 544, 550; 316 NW2d 484 (1982). However, the testimony at issue was clearly elicited to establish defendant's habitual removal of ice and snow from his property, and not the absence of injury or occurrence. Therefore, there was no reliance on negative evidence or evidence showing merely the absence of a condition to establish negligence in this case.

Considering all the facts and circumstances relied upon by the trial court, we believe there was justification for the admission of this testimony as evidence of habit and, accordingly, there was no abuse of discretion by the trial court in the admission of this evidence.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Maura D. Corrigan