# STATE OF MICHIGAN

# COURT OF APPEALS

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JAMES D. GREER,

Plaintiff–Appellee,

v

LEWIS DEAN PERUSSE,

Defendant,

and

STEVEN RAY HARRIS,

Defendant-Appellee,

and

JUDITH M. REISER and KEYBOARD ENTERPRISES, INC., d/b/a REISER'S KEYBOARD LOUNGE,

Defendants-Appellants.

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UNPUBLISHED
December 6, 1996

No. 178676
LC No. 93-308924-NO

Before: Reilly, P.J., and White, and P.D. Schaefer,* JJ.

PER CURIAM.

Following a jury trial, defendants Judith M. Reiser and Keyboard Enterprises, Inc. (defendants), appeal as of right from the $63,448.41 judgment entered against them and in favor of plaintiff in this negligence action. The jury rendered a no cause of action verdict in favor of codefendant, Steven Ray Harris, found plaintiff ten percent at fault, and Judith Reiser, ninety percent at fault. We affirm.

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

Plaintiff filed a cause of action arising out of injuries he sustained when he came to the aid of William Reiser, the owner of Keyboard Enterprises, Inc., and attempted to break up a fight between William Reiser, Steven Harris and Lewis Perusse. Plaintiff alleged that Harris and Perusse[1] were negligent in engaging in the altercation and that Judith Reiser was negligent by becoming involved in the fight and hitting plaintiff in the leg with a metal pipe.

On appeal, defendants first contend that the trial court abused its discretion by precluding defendants from introducing evidence of bias or prejudice, and of Harris' motivation to testify against defendants at trial. We disagree. The decision whether to admit or exclude evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *Hoffman v Auto Club Insurance*, 211 Mich App 55, 99; 535 NW2d 529 (1995). It is generally permissible to cross-examine an adverse witness as to any facts which tend to show the witness' relation, feelings toward, or bias or prejudice for either party. *Hayes v Coleman*, 338 Mich 371, 380-381; 61 NW2d 634 (1953).

Defendants wanted to introduce evidence that William Reiser pressed criminal charges against Harris to show that Harris had a bias against the Reisers. In ruling on the motion in limine, the court concluded that the evidence was "very prejudicial, much more prejudicial than probative . . . ." MRE 403. The court expressed a willingness to reconsider the ruling in the event that Harris' testimony was inconsistent with his testimony at the criminal trial. We agree with the trial court that the potential that this evidence would be considered for the wrong reasons and the potential for confusion by the jury would be great. Therefore, we conclude that the trial court did not abuse its discretion by excluding the evidence. *Haberkorn v Chrysler Corp*, 210 Mich App 354, 362; 533 NW2d 373 (1995).

Defendants also argue that the great weight of the evidence establishes that Harris assaulted William Reiser and "put in motion the chain of events which resulted in Plaintiff's injury." Thus, according to defendants, "[e]ven if HARRIS did not directly commit some act which broke Plaintiff's leg, he is liable as a matter of law under the theory of alternative liability or under the theory of 'concert of action.'" Accordingly, defendants contend they were entitled to a new trial as to all parties under MCR 2.611(A)(1)(e).

This Court reviews the trial court's grant or denial of a motion for new trial for an abuse of discretion, and the court's decision will not be disturbed on appeal unless a clear abuse is shown. *People v Herbert*, 444 Mich 466, 477; 511 NW2d 654 (1993). Initially, we note that the alternative liability and concert of action theories[2] were not presented to the jury as a basis for finding any of the defendants liable. Accordingly, the court did not abuse its discretion by refusing to grant a new trial so that defendants could attempt to establish codefendant Harris' liability under these theories. Furthermore, the jury was instructed that "if Judith Reiser's act was an intervening cause of plaintiff's injuries, such act constitutes a superseding cause which relieves co-defendant Steven Ray Harris of any liability." Thus, the jury could have believed that Harris "put in motion the chain of events" and still have concluded that he was not liable to plaintiff. We are not persuaded by defendants' arguments that the trial court abused its discretion.

Finally, defendants contend that the trial court should have granted Judith Reiser summary disposition or a directed verdict because her actions were not willful or wanton, and thus under the "volunteer doctrine"[3], plaintiff could not recover. We disagree. Defendants argued, and the trial court agreed that the volunteer doctrine precluded Judith Reiser's liability unless her actions were willful and wanton. That aspect of the court's ruling is not challenged by plaintiff or defendants or Harris on appeal, and we express no opinion on the matter. The court also ruled that whether Judith Reiser's actions were willful or wanton was a question of fact. On appeal, defendants contend that the issue should not have been submitted to the jury because Judith Reiser's actions did not rise to the level of willfulness or wantonness. We agree with the trial court that reasonable minds could differ regarding whether the conduct was willful and wanton. Therefore, the defendants' motions for summary disposition and directed verdict were properly denied.

Affirmed.

/s/ Helene N. White
/s/ Maureen Pulte Reilly
/s/ Philip D. Schaefer

[1] Perusse was named as a defendant in plaintiff's compliant but plaintiff was unable to affect service of process upon him.
[2] See *Holliday v McKeiver*, 156 Mich App 214; NW2d (1986).

[3] Plaintiff cited as authority for this doctrine, *Pace v Gibson*, 357 Mich 315, 319-320; 98 NW2d 654 (1959), rev'd on other grounds 375 Mich 23 (1965).