STATE OF MICHIGAN

COURT OF APPEALS

AONIE GILCREAST,

Plaintiff-Appellee,

v

WILBERT JARRETT and SUNTEX AUTO SYSTEMS, INC., f/k/a VEHICLE CITY TOWING, INC.,

Defendant-Appellants,

and

DAN KING and CYNTHIA MORGAN,

Defendants.

UNPUBLISHED
January 28, 1997

No. 178645
Genesee Circuit Court
LC No. 91-005841

Before: MacKenzie, P.J., and Jansen and T.R. Thomas*, JJ.

PER CURIAM.

Defendants appeal as of right from a $130,500 judgment in favor of plaintiff that was entered following a jury trial. We affirm.

In 1984, plaintiff and defendant Wilbert Jarrett formed a towing corporation and entered into a contract with the city of Flint to tow vehicles. Two years later, the corporation filed suit against the city for breach of the towing contract. Plaintiff and Jarrett ultimately decided to shut down the towing business. The dispute between the parties centers on the 1987 dissolution of the towing corporation and two documents entitled "Certificate of Selling of Stock" and "Special Meeting of the Shareholders." These documents provided that plaintiff was transferring his fifty percent interest in the towing corporation to Jarrett in exchange for one-half interest in the corporation's real estate.

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

According to plaintiff, he did not know that the documents transferred his interest in the corporation to Jarrett. Instead, based on his conversations with Jarrett, plaintiff thought the documents merely shifted the assets of the towing corporation to a new corporation called Gilco Industries. Plaintiff stated that he did not read the documents because he trusted Jarrett based on their long-standing business relationship. He also told Jarrett that he was not going to read the documents when he was handed them.

The lawsuit against the city eventually settled for $640,000. After Jarrett refused to pay plaintiff any of the proceeds, plaintiff filed suit alleging that he was entitled to a portion of the settlement because he was a shareholder in the towing corporation, and because he was fraudulently induced by Jarrett's misrepresentations into signing both the "Certificate of Selling Stock" and the document regarding the special meeting of the shareholders. The jury returned a verdict for plaintiff, awarding him damages of $130,500. Defendants subsequently unsuccessfully moved for judgment notwithstanding the verdict or a new trial.

On appeal, defendants first claim that the trial court erred in failing to give a requested supplemental instruction to the jury. This Court reviews the trial court's jury instructions in their entirety to determine whether they adequately informed the jury of the applicable law reflected by the evidentiary claims of the case. *Walker v Flint*, 213 Mich App 18, 20; 539 NW2d 535 (1995). A trial court has discretion to give supplemental instructions as long as those instructions are understandable and accurately state the law. *Bordeaux v Celotex Corp*, 203 Mich App 158, 169; 511 NW2d 899 (1993).

Defendants argue that the trial court erred in failing to instruct the jury that in an action for fraud, the element of reliance requires proof of reasonable or "justifiable reliance." However, this Court has expressly approved the use of the word "reliance," unmodified by the adjectives reasonable or justifiable, in articulating the elements required to prove fraud. *Clement-Rowe v Michigan Health Care Corp*, 212 Mich App 503, 507; 538 NW2d 20 (1995); *Price v Long Realty, Inc*, 199 Mich App 461, 470; 502 NW2d 337 (1993); *Brownwell v Garber*, 199 Mich App 519, 533; 503 NW2d 81 (1993); *Scott v Harper Recreation, Inc*, 192 Mich App 137, 144; 480 NW2d 270 (1991), rev'd on other grounds 444 Mich 441; 506 NW2d 857 (1993); *McMullen v Joldersma*, 174 Mich App 207, 213; 435 NW2d 428 (1988). Because the instruction regarding fraud was accurate without the modification, the trial court did not abuse its discretion in refusing to give the supplemental instruction.

Next, defendants contend the court's instruction, that negligence is not a defense to fraud, was erroneous. After reviewing the record, however, we are satisfied that the trial court correctly noted that plaintiff's negligence in signing the documents was not an absolute defense to his fraudulent inducement claim. *Rood v Midwest Matrix*, 350 Mich 559, 569-570; 87 NW2d 186 (1957); *Otto Baedaker & Associates, Inc v Hamtramck State Bank*, 257 Mich 435, 441; 241 NW 249 (1932).

Next, defendants argue that the jury's verdict should be set aside because plaintiff failed to prove that he was fraudulently induced into signing the documents. Reversal of an otherwise valid jury verdict is inappropriate unless the evidence, viewed in a light most favorable to plaintiff, could not have

amounted to clear and convincing proof of fraud. *Jim-Bob Inc v Mehling*, 178 Mich App 71, 90; 443 NW2d 451 (1989). Neither this Court nor the trial court should substitute judgment for that of the jury's when assessing the credibility of witnesses. See *Jenkins v Raleigh Trucking Services, Inc*, 187 Mich App 424, 427; 468 NW2d 64 (1991).

Here, the evidence amounted to a credibility contest which is within the jury's exclusive province. *Temborius v Slatkin*, 157 Mich App 587, 601; 403 NW2d 821 (1986). If the jury chose to believe plaintiff's testimony, they could have rationally inferred that Jarrett fraudulently misrepresented the contents of the documents when he knew that plaintiff thought that the papers represented the transfer of assets of one corporation to another, not the transfer of his ownership to Jarrett. The jury also could have properly found that plaintiff relied on Jarrett's statements to his detriment. It is entirely appropriate for the jury to have drawn these inferences which support a finding of fraud in light of the evidence that plaintiff and Jarrett were friends and that, based upon their previous business relationship, plaintiff had no reason to suspect that Jarrett would deceive him. *In re Swantek Estate*, 172 Mich App 509, 515; 432 NW2d 307 (1988). Accordingly, we do not find that the evidence was insufficient or that the verdict was against the great weight of the evidence.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Kathleen Jansen
/s/ Terrence R. Thomas