

STATE OF MICHIGAN
COURT OF APPEALS

BRYANT JOHNSON and CHARLOTTE
JOHNSON,

UNPUBLISHED
February 25, 1997

Plaintiffs-Appellants,

v
MICHIGAN BASIC PROPERTY INSURANCE
ASSOCIATION,

No. 191339
Muskegon Circuit Court
LC No. 94-032059-CK

Defendant-Appellant.

Before: Sawyer, P.J., and Neff and A. L. Garbrecht,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order of the circuit court giving effect to a jury verdict finding no cause of action in favor of defendant and against plaintiffs. We affirm.

I

Plaintiffs first argue that the circuit court erred in admitting evidence of plaintiffs' financial condition for the purpose of establishing motive for the arson of plaintiff's home. We disagree.

We review a circuit court's decision whether to admit evidence for abuse of discretion. *Price v Long Realty, Inc*, 199 Mich App 461, 466; 502 NW2d 337 (1993). An abuse of discretion will be found only in extreme cases in which the result is so palpably violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992).

As a general rule, evidence of poor financial condition is inadmissible to show motive for an act or offense. *People v Henderson*, 408 Mich 56, 66; 289 NW2d 376 (1980). As our Supreme Court has explained, "[t]he probative value of such evidence is diminished because it applies to too large a segment of the total population, [while] [i]ts prejudicial impact . . . is high." *Id.* The resultant risk is that evidence of a person's distressed financial condition will cause jurors to view the person as a worthless individual. *Id.*

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

However, not all evidence regarding a person's poor financial condition is necessarily inadmissible:

There is a difference between evidence of poverty and unemployment--evidence that a person is chronically short of funds--and evidence . . . showing that a person is experiencing a shortage of funds that appears to be novel or contrary to what one would expect is typically felt by such a person. [*Id.*]

Therefore, evidence of temporary or unusual financial conditions which might lead a person to engage in an economic crime may be admissible, in the circumstances of a particular case. *Smith v Michigan Basic Property Ins Ass'n*, 441 Mich 181, 193-195; 490 NW2d 864 (1992).

Our review of the record leads us to conclude that the challenged evidence revealed a sufficient deterioration of plaintiffs' financial circumstances to justify its admission. Accordingly, the circuit court did not abuse its discretion in admitting the evidence of plaintiffs' financial condition.

Plaintiffs also argue that the trial court should have conducted an evidentiary hearing before admitting the challenged evidence. The court admitted the evidence on defendant's express assurance that the evidence would establish a sufficient change in plaintiff's financial condition to justify its admissibility. As noted above, defendant produced the appropriate evidentiary foundation. We find no error in the procedure used by the trial court.

II

Plaintiffs next argue that the circuit court erred in admitting evidence of the circumstances surrounding the purchase of plaintiffs' home because the parties stipulated, before trial, to the amount of damages to be awarded in the event that plaintiffs prevailed, thereby rendering the challenged evidence immaterial. We disagree.

Although the stipulation rendered the evidence irrelevant for the purpose of establishing damages, the evidence was admissible regarding plaintiffs' motive and intent for the alleged arson. Specifically, defendant was entitled to demonstrate the large difference between the amount of money plaintiffs had invested in the house and the amount of money they expected to receive in insurance proceeds if the house were destroyed by fire. See *Johnson v Auto-Owners Ins*, 202 Mich App 525, 527; 509 NW2d 538 (1993) (motive and opportunity are two factors properly considered when an insurer raises an arson defense).

Although the court admitted the evidence for the purpose of establishing damages, the misidentification of the ground for admission of evidence does not necessarily require reversal. *People v Vandelinder*, 192 Mich App 447, 454; 481 NW2d 787 (1992). In the present case, the evidence was admissible for the proper purpose of establishing plaintiffs' motive for committing arson. We thus conclude that reversal is not warranted here.

Affirmed.

/s/ David H. Sawyer
/s/ Janet T. Neff
/s/ Allen L. Garbrecht