STATE OF MICHIGAN

COURT OF APPEALS

MARTINA CLARKE,

Plaintiff-Appellant,

v

HORACE ABBOTT,

Defendant-Appellee.

UNPUBLISHED
April 29, 1997

No. 191053
Leelanau Circuit Court
LC No. 94-003430-NI

Before: Neff, P.J., and Smolenski and D. A. Roberson*, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment of no cause of action entered in favor of defendant. We affirm.

Plaintiff and defendant were traveling northbound and southbound, respectively, on a paved, two-lane road in Leelanau County. Although it was not snowing at that time, previously fallen snow covered the pavement and center line of the road. Plaintiff testified that just before the collision she observed that the plowing action of a southbound snowplow was creating a substantial "white-out" to either side of the plow. Plaintiff testified that she had already slowed to a near stop in her own lane as the snowplow passed when she was suddenly hit by defendant's vehicle, which had been following closely behind the plow. Defendant testified that just before the collision he had come up behind the snowplow and slowed down, that the plow was indeed "sending snow everywhere," and that it would have been "ridiculous" to try to pass the snowplow because he could not see anything. Defendant testified that he was following approximately two car lengths behind the snowplow when plaintiff's vehicle came out of the snow cloud and struck his vehicle in his lane of travel. The only other eyewitness to the collision was traveling southbound behind defendant's vehicle at the time of the incident, and her testimony confirmed that the snowplow was creating a "humongous" white-out, and that defendant was braking behind the plow at the time of the collision. The jury found that defendant was not negligent.

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* Recorder's Court judge, sitting on the Court of Appeals by assignment.

Plaintiff raises an issue concerning the jury instructions. In giving SJI2d 12.01 (violation of statute—inference of negligence) below, the court incorporated only the portion of MCL 257.627(1); MSA 9.2327(1) (speed restrictions) that requires a driver to drive at a "careful and prudent speed." Plaintiff timely objected to the trial court's refusal to give the portion of that same subsection that requires a driver be able to stop within the "assured, clear distance ahead." In refusing to give the latter instruction, the court stated that

> I think the assured-clear-distance-ahead issue isn't under any of the theories that have been advanced as to how this accident happened. I don't think under any of the theories the Defendant's failure to stop in the assured clear distance ahead caused the accident.

In addition, the court also noted that it did not remember hearing any testimony supporting plaintiff's theory that "if [defendant] was too close and had to veer off left or right in order to avoid the snowplow, that would have caused an accident with another vehicle." On appeal, plaintiff contends that the trial court abused its discretion when it refused to incorporate the "assured, clear distance ahead" requirement into the jury instructions given pursuant to SJI2d 12.01.

The determination whether an instruction is accurate and applicable to a case is in the sound discretion of the trial court. *Luidens v 63rd Dist Ct*, 219 Mich App 24, 27; 555 NW2d 709 (1996). There is no error requiring reversal if, on balance, the theories and the applicable law were fairly and adequately presented to the jury. *Id*.

In this case, we find no abuse of discretion in the court's determination that the requested instruction was inapplicable in the context of the case. The record reveals that there was no evidence to support the inference that defendant's following distance vis-à-vis the snowplow was at all relevant to plaintiff's theory of the case. We note plaintiff's contention on appeal that a theory of negligence based on defendant's following distance vis-à-vis the snowplow was still viable at the close of trial. In support, plaintiff points out that such a theory was alleged in the complaint, as well as incorporated into plaintiff's opening statement. However, plaintiff points to no *evidentiary* support for such a theory, i.e., plaintiff offered no evidence whatsoever to show a causal connection between such alleged negligence and the crash. As such, the trial court did not abuse its discretion when it refused to include the portion of the speed restriction statute regarding "assured, clear distance ahead" when it gave SJI2d 12.01. *Klanseck v Anderson Sales & Service, Inc*, 426 Mich 78, 87; 393 NW2d 356 (1986). We also note that no different result is compelled by the opinion in *Odell v Powers*, 284 Mich 201; 278 NW2d 819 (1938), a case involving circumstances similar to this case. In that case, our Supreme Court rejected the defendant's contention that the plaintiff's alleged violation of a statute constituted contributory negligence as a matter of law, and held, instead, that the issues whether the plaintiff was negligent and whether such negligence contributed to the accident were questions for the jury. However, nothing in that opinion implies that the issue of a statutory violation will be submitted to the jury if, as here, there was no evidence to support it. We further note that the doctrine of *in pari materia* is irrelevant to this issue, as only "the applicable part of the statute" in question should be incorporated into SJI2d 12.01. See SJI2d 12.01. Finally, reversal is not required because we conclude that the instructions given in this

case adequately and fairly apprised the jury of the parties' theories and the applicable law. *Luidens, supra*.

We dispose of plaintiff's remaining issues summarily. Viewing the testimony and all legitimate inferences arising therefrom in a light most favorable to defendant, we conclude that the trial court did not err in denying plaintiff's motion for judgment notwithstanding the verdict. *Terzano v Wayne Co*, 216 Mich App 522, 525-526; 549 NW2d 606 (1996). Moreover, the trial court did not abuse its discretion in denying plaintiff's motion for a new trial. *Klinke v Mitsubishi Motors Corp*, 219 Mich App 500, 511; 556 NW2d 528 (1996).

Affirmed.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Dalton A. Roberson