

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH M. MILLS,

Plaintiff-Appellant,

v

WHITE CASTLE SYSTEMS, INC.,

Defendant-Appellee.

UNPUBLISHED

July 22, 1997

No. 185527

Macomb Circuit Court

LC No. 86-1299-NO

Before: Gribbs, P.J., and Holbrook, Jr., and J.L. Martlew,* JJ.

PER CURIAM.

This is the third time this case has come before us. In 1985, plaintiff was injured when she and her friends were attacked by a group of unruly patrons in defendant's parking lot. Plaintiff filed suit, alleging that defendant failed to maintain its premises in a reasonably safe condition and that defendant failed to call the police or allow plaintiff to call the police after defendant knew plaintiff had been injured. After this Court reversed the trial court's decision granting summary disposition for defendant, *Mills v White Castle Systems, Inc.*, 167 Mich App 202; 421 NW2d 631 (1988), the matter went to trial and the jury returned a verdict of no cause of action in favor of defendant. Plaintiff appealed and this Court remanded for a new trial on grounds of instructional error. *Mills v White Castle Systems, Inc.*, 199 Mich App 588; 502 NW2d 331 (1993). On retrial, the jury again returned a verdict of no cause of action in favor of defendant. Plaintiff again appeals as of right to this Court and we affirm.

Plaintiff first argues that the trial court erred in excluding evidence of damages that occurred between the time of the first and second trials in this matter.¹ Even assuming that the court abused its discretion in excluding the evidence at trial, we are compelled to conclude that any error was harmless given that the jury returned a verdict of no cause of action and never reached the issue of damages. See *Beadle v Allis*, 165 Mich App 516, 525; 418 NW2d 906 (1987); *Cornforth v Borman's, Inc.*, 148 Mich App 469, 478; 385 NW2d 645 (1986).

Furthermore, we find no merit to plaintiff's claim that the trial court abused its discretion in allowing defendant to cross-examine her with the same evidence that it excluded above. Our review of

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

the transcript reveals that the evidence was properly admitted for impeachment purposes under MRE 608(b).

Next, plaintiff argues that the trial court erred when it failed to instruct the jury regarding defendant's duty to warn or inspect its premises. We find no error. The trial court read those portions of SJ12d 19.03 to the jury that explained the duty of a possessor of a place of business to maintain the place in a reasonably safe condition and to exercise ordinary care to protect invitees from unreasonable risks of injury, but the court did not read those portions that explained the duty to warn invitees of dangers and to inspect for possible dangerous conditions. Because plaintiff failed to plead or attempt to prove a theory of liability based on defendant's failure to warn or inspect its premises, we conclude that the trial court properly read those portions of SJ12d 19.03 that were sustained by the evidence, and declined to read those portions that were not. MCR 2.516(D)(2). See *Strach v St John Hosp Corp*, 160 Mich App 251, 282; 408 NW2d 441 (1987). Accordingly, we find no error.

Finally, plaintiff argues that she is entitled to a new trial because the jurors impermissibly consulted a juror handbook during their deliberations. We again find no error requiring reversal. The decision whether to grant a motion for new trial based on juror misconduct is within the sound discretion of the trial court and will be reviewed on appeal for an abuse of that discretion. *Froede v Holland Ladder & Mfg Co*, 207 Mich App 127, 130; 523 NW2d 849 (1994).

Although no appellate court in this state has addressed this precise issue, we find the following analysis from *Aiken v Dunn*, 1 Misc 2d 215, 216-217; 147 NYS2d 450 (1955)—where jurors referred to a juror handbook during deliberations—to be on point and persuasive:

A careful reading of "How to Serve on a Jury" indicates that there is nothing contained therein which bears on any question of law or fact involved in the within lawsuit. In fact, its complete text is confined to indoctrinating prospective jurors with a better understanding of their functions and duties as jurors. Courtroom procedure and general decorum and conduct of jurors are explained to such an extent that this court feels a juror who has read this volume, can better serve in that capacity, than one who has not. That the general content of this book is not prejudicial is borne out by the fact that a very similar booklet has recently been issued by the Board of Justices of the Supreme Court for the First Judicial District, which is entitled, "Handbook for Trial Jurors". This latter booklet is presented to all jurors who sit in the counties of New York and Bronx. It, too, contains general instructions of conduct and decorum and is similar, although shorter, in the content of text than "How to Serve on a Jury".

Under these circumstances, the court finds that there was nothing prejudicial contained in this book which the jury had with it during the course of its deliberations and therefore finds there was no misconduct which would warrant disturbing the verdict in this action.

In this case, the jury sent a note to the trial court asking for a clarification of a portion of the “Sixteenth Judicial Circuit Handbook for Jurors” that dealt with the distinction between the burdens of proof in civil and criminal trials. The court reread the standard jury instructions regarding burden of proof to the jury. The jury later sent a note to the trial court requesting those instructions in writing. Defendant objected on the grounds that it would place undue emphasis on those instructions. The trial court agreed and denied the request, instructing the jurors to use their collective minds to consider all of the court’s instructions as a whole. Accordingly, because the contents of the handbook were neutral and consistent with the instructions given the jury by the court, plaintiff’s right to a fair trial was not prejudiced. See *Kwaiser v Peters*, 381 Mich. 73, 76; 158 NW2d 877 (1968); *People v Young*, 146 Mich App 337, 340-341; 379 NW2d 491 (1985). Thus, the court did not abuse its discretion in denying plaintiff’s motion for a new trial.

Affirmed.

/s/ Roman S. Gribbs

/s/ Donald E. Holbrook, Jr.

/s/ Jeffrey L. Martlew

¹ Between the time of the first trial of this matter in 1990 and the second trial in 1995, plaintiff was charged with and tried on multiple felony charges, including felony murder, assault with intent to commit murder, and robbery armed. After plaintiff was acquitted on all counts, she suffered a nervous breakdown and began receiving Social Security disability benefits. Defendant successfully brought a motion in limine to exclude this evidence pursuant to MCR 2.302(E) since plaintiff failed to supplement her discovery responses regarding these additional damages.