STATE OF MICHIGAN

COURT OF APPEALS

JACK L. TAYLOR,

Plaintiff-Appellee,

v

FORD MOTOR COMPANY,

Defendant-Appellant,

and

JANET LEE EASTEP and KENNETH T. EASTEP,

Defendants.

UNPUBLISHED
August 26, 1997

No. 187002
Wayne Circuit Court
LC No. 92-230690 NI

Before: Markman, P.J., and Holbrook, Jr. and O'Connell, JJ.

PER CURIAM.

In this products liability action, defendant Ford Motor Company appeals as of right a jury verdict in favor of plaintiff. We affirm.

In 1991, plaintiff was involved in an automobile accident while driving his Lincoln Continental. Plaintiff was wearing his seat belt and shoulder harness. He suffered a shoulder injury likely caused by the stress of his body against the harness. Although the automobile was equipped with a driver's side supplemental restraint system (air bag), it did not deploy.

Plaintiff filed suit in 1992, alleging, in effect, that the air bag should have deployed and that its failure to deploy was the cause of his injury. He contended that the air bag had not deployed because of a design or manufacturing defect.

At trial, plaintiff was able to produce no direct evidence either that the air bag had been designed improperly or that it had malfunctioned. Instead, expert witness David Trombley testified that the collision was sufficient to have triggered the air bag had it been functional, or, if not, that in his

opinion the air bag should have been designed to deploy in collisions such as the present one. This testimony was designed to encompass both of plaintiff's theories of recovery, design defect and manufacturing defect. The jury rejected plaintiff's contention that the supplemental restraint system had been defectively designed, but found that defendant had committed a breach of implied warranty where the air bag did not deploy in a situation in which it should have deployed.

On appeal, defendant presents three arguments. First, defendant submits that witness Trombley was not qualified to testify as an expert witness concerning supplemental restraint systems. Second, defendant argues that the trial court erred in denying its motion for judgment notwithstanding the verdict where the plaintiff presented no evidence that a breach of warranty had occurred. Finally, defendant claims that its motion for judgment not withstanding the verdict should have been granted because plaintiff presented no evidence that he would not have suffered the same injuries had the air bag deployed.

With respect to defendant's first contention, we find no error in the trial court's decision to allow witness Trombley to offer expert testimony. As set forth in MRE 702, "[i]f the court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." The determination whether a witness is qualified to offer expert testimony is within the discretion of the trial court. *Mulholland v DEC Int'l Corp*, 432 Mich 395, 402; 443 NW2d 340 (1989). An abuse of discretion exists only where an unprejudiced person, weighing the facts available to the trial court, would say that there was no justification or excuse for the ruling made. *Berryman v K Mart Corp*, 193 Mich App 88, 98; 483 NW2d 642 (1992).

Witness Trombley testified that he was a licensed mechanical engineer and a member of the Society of Automotive Engineers (SAE). He averred that the theory of air bag operation and related equipment was the subject of articles in the SAE journals and other technical papers, and that he had read sufficient materials to satisfy himself that he understood how an air bag system functions. Trombley had been employed by both defendant Ford Motor Company and General Motors Truck and Coach, though not in a capacity pertaining to air bags. Further, Trombley had been consulted as an accident reconstructionist in the past, and had been so qualified in various courts previously.

Given the education and experience of witness Trombley, the court did not abuse its discretion in allowing him to offer expert testimony. *Mulholland*, *supra*. While Trombley lacked extensive experience pertaining directly to supplemental restraint systems, the breadth of his scientific and engineering background, coupled with his independent research in the field of supplemental restraint systems, justified the admission of his testimony. MRE 702. With regard to Trombley's lack of specialization in the field of supplemental restraint systems, we believe the Supreme Court's statement in *Mulholland*, *supra*, p 406, quoting *Evans v People*, 12 Mich 27, 37-38 (1863), to be applicable:

> There are as many grades of knowledge and ignorance in the professions as out of them. The only safe rule in any of these cases is to ascertain the extent of the

> witness's qualifications, and, within their range, to permit him to speak. Cross-examination, and the testimony of others, will here, as in all other cases, furnish the best means of testing his value.

Here, the trial court tacitly recognized as much, ruling that defendant's objection "goes to the weight to be given to [Trombley's] testimony," not to its admissibility. We find no abuse of discretion.

Defendant also argues that the trial court should have granted its motion for judgment notwithstanding the verdict where plaintiff allegedly failed to produce any evidence that a manufacturing defect existed. Following entry of judgment, a party may move the court to set aside that judgment and enter a judgment notwithstanding the verdict in the moving party's favor. MCR 2.610(A)(1). As explained in *Matras v Amoco Oil Co*, 424 Mich 675, 681-682; 385 NW2d 586 (1986),

> In reviewing a trial court's failure to grant a defendant's motion for a directed verdict or a judgment notwithstanding the verdict, we examine the testimony and all legitimate inferences that may be drawn in the light most favorable to the plaintiff. If reasonable jurors could honestly have reached different conclusions, the motion should have been denied. If reasonable jurors could disagree, neither the trial court nor this Court has the authority to substitute its judgment for that of the jury. [Footnotes omitted.]

In the present case, in light of the relevant standard of review in which witness testimony and all legitimate inferences arising therefrom must be construed in the light most favorable to plaintiff, *id*., we are constrained to affirm the court's decision to deny defendant's motion for judgment notwithstanding the verdict.

As mentioned above, at trial plaintiff was unable to produce any affirmative evidence indicating that the supplemental restraint system in place was defective. Rather, witness Trombley testified that from his reconstruction of the accident, it was his "opinion that this crash happened at a speed . . . which should have been sufficient to open the air bag the way it was designed . . . ." Considered in context, especially with reference to the fact that the speed and angle at which the vehicles struck each other were hotly contested issues below, it appears that a reasonable juror could infer from this and other testimony that a manufacturing defect resulted in the failure of the air bag to deploy.

Defendant, relying on *Skinner v Square D Co*, 445 Mich 153; 516 NW2d 475 (1994), argues that because there was no direct evidence of any failure on the part of the supplemental restraint system, plaintiff's theory of the case amounts to little more than speculation. Defendant asserts that "*Skinner* held that if the trier of fact can do no better than guess about causation, the products liability fails as a matter of law." We believe defendant misapprehends the ramifications of *Skinner*.

For example, assume that in the present case at issue was not an air bag designed to deploy automatically under given conditions, but, rather, a parachute designed to open automatically at a certain altitude. We believe that the estate of the parachutist whose parachute did not open would not have to prove *why* the parachute did not open, but, rather, only that the parachute was subjected to conditions

in which it should have opened and that it did not. A defect would exist regardless of its specific nature. Similarly, it appears that the instant plaintiff needed to prove only the existence of conditions in which the air bag should have deployed, and was not required to take the extra step of proving why it did not. As we have concluded that Trombley's testimony, when viewed in the light most favorable to plaintiff, was sufficient for this purpose, we must conclude that the court did not err in denying defendant's motion for judgment notwithstanding the verdict.

Finally, defendant also argues that plaintiff presented no evidence that had the air bag deployed, he would not have suffered the injury that he suffered. Relying on the fact that plaintiff's injuries were caused by the shoulder harness, defendant contends that there is no evidence that the failure of the air bag to deploy proximately caused plaintiff's injury, and, accordingly, that the court erred in denying defendant's motion for judgment notwithstanding the verdict on this ground.

However, witness Trombley testified that plaintiff's injury "is the sort of an injury that an air bag is supposed to prevent." While this testimony is not overwhelming, viewing it in the light most favorable to plaintiff, it is sufficient to allow a reasonable juror to conclude that the failure of the airbag to deploy was the proximate cause of plaintiff's injuries. *Matras*, *supra*.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O'Connell