

STATE OF MICHIGAN
COURT OF APPEALS

NEIL BEGIN and LYNN BEGIN,

Plaintiffs-Appellants,

UNPUBLISHED
February 10, 1998

v

FORD MOTOR COMPANY,

Defendant-Appellee.

No. 182480
Wayne Circuit Court
LC No. 91-127175 NP

Before: Michael J. Kelly, P.J., and Cavanagh and Lambros*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a jury verdict of no cause of action in favor of defendant. Plaintiffs sued defendant for injuries sustained by plaintiff Neil Begin when the F-250 Ford pickup truck he was driving rolled over after it was hit by another vehicle. Plaintiffs alleged that both design and manufacturing defects led to the rollover and injuries. The jury found defendant not liable on any of the claims asserted by plaintiffs. We affirm.

I

Plaintiffs first argue that the trial court erred by refusing to allow seatbelt unlatching expert Steve Syson to testify at trial. A court's decision on whether to allow an unlisted witness to testify is reviewed for an abuse of discretion. *Grubor Enterprises, Inc v Kortidis*, 201 Mich App 625, 629; 506 NW2d 614 (1993).

We find no error requiring reversal. Mr. Syson was not listed on plaintiffs' witness list. Plaintiffs did not show good cause to add Syson as an expert one month before trial, as required by Wayne Circuit LCR 2.301. As the trial court pointed out, plaintiffs should have obtained an expert at the time they discovered and alleged their seatbelt unlatch claim. Accordingly, the trial court did not abuse its discretion by refusing to allow Syson to testify.

II

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

Plaintiffs assert that the trial court erred by allowing a defense expert, Richard Keefer, to present a new opinion at trial regarding the amount of force exerted in the collision. The trial court's decision whether to impose sanctions for failure to provide discovery is reviewed for an abuse of discretion. *Richardson v Ryder Truck Rental, Inc*, 213 Mich App 447, 450; 540 NW2d 696 (1995).

Despite the obvious importance of this issue, plaintiffs' counsel never directly asked Keefer or the other experts to quantify the amount of force exerted against the rivets in the collision. Because plaintiffs' counsel never directly requested defendant's experts' opinions regarding the amount of force, defendant was under no obligation to provide this information. Defendant's failure to amend Keefer's response was not "in substance a knowing concealment" of Keefer's opinion under MCR 2.302(E)(1)(b)(ii). The trial court did not abuse its discretion by declining to exclude this testimony.

III

Plaintiffs next contend that the trial court erred by allowing a defense expert, Terry Thomas, to refer to a study done by the National Highway Traffic Safety Administration (NHTSA) regarding the seatbelt inertial unlatch phenomenon as a basis for that expert's opinion. A trial court's decision whether to allow an expert witness to testify regarding hearsay evidence which formed the basis for his opinion is reviewed for an abuse of discretion. See *People v Pickens*, 446 Mich 298, 334-336; 521 NW2d 797 (1994).

The trial court did not abuse its discretion by allowing Mr. Thomas to testify regarding the NHTSA report as one of the bases for his opinion testimony. The NHTSA report was properly admitted under MRE 703. See *People v Dobben*, 440 Mich 679, 695-697; 488 NW2d 726 (1992). Thomas' reference to the report was not unfairly prejudicial under MRE 403. See *Pickens, supra*; *Bradbury v Ford Motor Co*, 123 Mich App 179, 184-185; 333 NW2d 214 (1983), modified 419 Mich 550; 358 NW2d 550 (1984).

IV

Finally, plaintiffs maintain that they were denied a fair trial because the trial court failed to compel discovery of certain crash tests and by defendant's failure to provide discovery of certain crash tests and cases. We disagree. The trial court did not abuse its discretion by limiting plaintiffs' discovery request to crash tests and accidents involving similar vehicles and similar collisions. See *In re Hammond Estate*, 215 Mich App 379, 386; 547 NW2d 36 (1996). Nor can we conclude that the trial court abused its discretion by declining to sanction defendant for failing to provide discovery. See *Richardson, supra* at 450. The failure to timely provide the crash tests or the cases did not result in any real prejudice to plaintiffs' case. Plaintiffs obtained all of the requested crash test results in time for their experts to prepare for trial, and plaintiffs' trial counsel used the similar cases in his cross-examination of defense expert Richard Keefer.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Nicholas J. Lambros