

STATE OF MICHIGAN
COURT OF APPEALS

CAROLINE PERKINS,

Plaintiff-Appellant,

v

SPENCER THEODORE SCOTT and KATHERINE
E. SCOTT,

Defendants-Appellees.

UNPUBLISHED
September 24, 1999

No. 209875
Kent Circuit Court
LC No. 96 00 3495

Before: McDonald, P.J., and Kelly and Cavanagh, JJ.

PER CURIAM.

Plaintiff filed a third-party no-fault action alleging in her complaint that defendant Spencer Scott¹ (“defendant”) had operated his automobile negligently causing an accident. As a proximate cause of that negligence she incurred noneconomic damages. Following trial, the jury returned a verdict finding that defendants were not negligent. Plaintiff filed a motion for a judgment notwithstanding the verdict or, in the alternative, a new trial, which was denied. Plaintiff appeals as of right.

The accident in question occurred on January 30, 1996 between 7:00 a.m. and 7:30 a.m., at the intersection of 54th Street and Haughey Avenue in the city of Wyoming. The investigating police officer, Officer Poppema, described the intersection as follows:

Haughey is a north-south street that’s two lanes, has a stop sign for it as you come up to 54th Street going northbound. 54th is a five-lane street going east and west, has two through lanes in each direction, two east, two west, and a center lane is a left turn lane. Stop sign on Haughey before you enter 54th Street, and 54th has no stop sign as you approach Haughey from either direction.

According to Poppema, the lighting condition at the accident scene was dark, with light provided by street lights.

Testimony at trial revealed the following: There was a Blazer that had a snowplow mounted on the front of the vehicle that was traveling eastbound on 54th Street, driven by David Stevens. There

were two cars traveling westbound on 54th Street, the one in the inner lane driven by plaintiff, and the vehicle in the curb-side lane was driven by an unidentified driver. The fourth car was driven by defendant and was in the process of turning left from Haughey Avenue onto 54th Street when it collided with the vehicle driven by Stevens. The force of the collision pushed Stevens' vehicle into the lanes of westbound traffic, where an unidentified third party and plaintiff both broadsided his vehicle.

At trial, Poppema testified that, while he investigated the accident, he did not recall anyone mentioning that Stevens was driving without his headlights illuminated or that speed played a factor in the accident. However, defendant testified that he told him at the scene of the accident that Stevens' vehicle did not have its lights illuminated.

Stevens testified that he had lights on because he turns them on while he plows snow and leaves them on until noon when he goes to lunch. Stevens admitted that he did not have the headlights on, but stated that he had his "plow lights" and a "bubble light"² that were both illuminated.

Defendant testified that he pulled up to the stop sign at Haughey and 54th Street and stopped. He then looked to the left, to the right and then to the left again before making the turn onto 54th Street. Defendant testified that he did not see any headlights, and had no idea that Stevens vehicle "even existed."

Plaintiff stated that the car coming at her in her lane of traffic [the Stevens vehicle] was "large and dark." When plaintiff was asked at trial if she saw headlights on the Stevens vehicle as it came at her, she stated that she did not. Additionally, plaintiff was questioned about a response she made to an earlier interrogatory question in which she had stated that "I had also had the impression that Mr. Stevens was traveling at an excessive rate of speed and do not believe he had his lights on." At trial she stated that she did not recall stating that answer, but she also testified that she signed the interrogatory under oath which stated that the answers were true to the best of her knowledge.

The jury was instructed that proximate cause meant that the "negligent conduct must have been a cause of Plaintiff's injury, and second, that the Plaintiff's injury must have been a natural and probable result of the negligent conduct." The jury was also instructed that it was "not a defense that the conduct of some other person who is not a party to this suit also may have been a cause of the occurrence. However, if you decide that the only proximate cause of the occurrence was the conduct of some other person, then – who is not part of this suit, then your verdict should be for the Defendant."

On appeal, plaintiff contends that the trial court erred in failing to grant the JNOV because no reasonable person could conclude that Stevens' conduct was the only cause of the occurrence. We disagree.

In reviewing a motion for a JNOV, we must view the testimony and all legitimate inferences from it in the light most favorable to the nonmoving party and determine whether the facts presented preclude judgment for the nonmoving party as a matter of law. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998). If the evidence is such that reasonable people could differ, the question is for

the jury and JNOV is improper. *Pontiac School Dist v Miller, Canfield, Paddock & Stone*, 221 Mich App 602, 612; 563 NW2d 693 (1997).

In viewing the evidence in the light most favorable to defendants, we find that there was sufficient evidence submitted that would not preclude judgment for defendants as a matter of law. There was sufficient evidence for the jury to have concluded that Stevens was driving on a dark road before sunrise without his lights on and that it was reasonable under the circumstances for defendant to have not seen him when pulling out onto 54th Street. However, there was also testimony which tended to show that Stevens was driving with his lights illuminated and defendant failed to properly yield. The evidence was such that reasonable people could differ, thus the question was for the jury and JNOV is improper. The lower court did not err when it failed to grant plaintiff's motion.

Plaintiff also contends that the court erred because following their discharge, two of the seven jurors told plaintiff's counsel that they thought that both defendant and Stevens were negligent, as did other members of the jury. If true, the decision of the jury would then directly contradict the instructions given because a finding of negligence on the part of a third party does not relieve the defendant from liability, except if the third party is the only proximate cause.

Recently, a panel of this Court reaffirmed the principle that "once a jury has been polled and discharged, its members may not challenge mistakes or misconduct inherent in the verdict." *Put v FKI Industries, Inc*, 222 Mich App 565, 569; 564 NW2d 184 (1997) quoting *Hoffman v Spartan Stores Inc*, 197 Mich App 289, 293-295; 494 NW2d 811 (1992). After the jury has been discharged, testimony and affidavits by the jury members may only be used to challenge the verdict with regard to extraneous matters, like undue influence, or to correct clerical errors. This Court continued "that errors due to the jury's misunderstanding of the instructions, the verdict form, or faulty reasoning are inherent in the verdict and not susceptible to postdischarge challenge." *Id.* The record before this Court does not contain any affidavits or testimony from these jurors documenting plaintiff's allegations. Because the record does not contain evidence of a clerical error or extraneous juror influence, we will not invade the province of the jury and disrupt the finality of the judgment.³

Next, plaintiff contends that the trial court erred when it failed to grant a new trial because the jury's verdict was against the great weight of the evidence. We disagree.

On appeal, we review the trial court's grant or denial of a motion for a new trial for an abuse of discretion. *People v Herbert*, 444 Mich 466, 477; 511 NW2d 654 (1993), overruled in part on other grounds in *People v Lemmon*, 456 Mich 625; 576 NW2d 129 (1998). An abuse of discretion exists when a trial court's denial of the motion was manifestly against the clear weight of the evidence. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998).

The trial court's determination that a verdict is not against the great weight of the evidence is given substantial deference. Additionally, the jury's verdict should not be set aside if there is competent evidence to support it. *Ellsworth v Hotel Corp of America*, ___ Mich App ___; ___ NW2d ___ (1999). We find that in this case, there was competent evidence that Stevens was driving on a dark

road before sunrise without his lights illuminated. Therefore, we find that the trial court did not err in failing to set aside the jury verdict.

Affirmed.

/s/ Gary R. McDonald

/s/ Michael J. Kelly

/s/ Mark J. Cavanagh

¹ Defendant Spencer Scott was the driver of the automobile. Defendant Katherine Scott was an owner of the vehicle, and plaintiff claimed judgment against her in accordance with MCL 257.401; MSA 9.2101.

² According to Stevens' testimony, a bubble light is an amber colored strobe light that is magnetically attached to the roof of the vehicle.

³ Plaintiff has asked this panel to adopt the dissenting opinion in *Hoffman* as our own. We decline to do so because of the long standing precedent that once a jury is discharged, its members may not challenge mistakes or misconduct inherent in the verdict. *Hoffman, supra* at 291.