

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ALEXIS M. ERVIN,

Plaintiff-Appellant,

v

JAMES NORMAN BOMER,

Defendant-Appellee.

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UNPUBLISHED

May 30, 1997

No. 185884

Kalamazoo Circuit Court

LC No. 92-002126-NZ

Before: Griffin, P.J., and Doctoroff, and Markman, JJ.

PER CURIAM.

Plaintiff appeals as of right from a jury verdict of no cause of action in her suit for damages resulting from injuries sustained when the automobile in which she was riding collided with a vehicle driven by defendant. We affirm.

Plaintiff first argues that prejudicial error occurred when the trial court granted defendant an additional peremptory challenge and permitted him to use it to remove a juror whom the court refused to excuse for cause. However, we hold that the error, if any, does not necessitate reversal because plaintiff has failed to demonstrate any resulting prejudice. See *Poet v Traverse City Osteopathic Hosp*, 433 Mich 228, 258-259; 445 NW2d 115 (1989); *Patton v Avis Rent-A-Car Systems, Inc*, 44 Mich App 556, 558-559; 205 NW2d 615 (1973); Anno: *Effect of allowing excessive number of peremptory challenges*, 95 ALR2d 957, 963.<sup>1</sup>

Plaintiff further contends that the trial court improperly excluded evidence of defendant's preliminary breath test results where the parties had stipulated that the results would not be admissible, but where plaintiff later wished to use this evidence for impeachment purposes. We disagree. Plaintiff's counsel did not argue below that this evidence was intended for impeachment purposes. Nor did plaintiff's counsel advise the trial court that the evidence, if admitted, would be restricted to impeachment. Instead, plaintiff's counsel's comments to the trial court indicated that he sought to utilize the preliminary breath test results to "balance" defendant's possible evidence regarding other field sobriety tests. Accordingly, our review of the record convinces us that the court correctly denied

plaintiff's request because plaintiff desired to use the evidence substantively, contrary to both the parties' stipulation and MCL 257.625a(3); MSA 9.2325(1)(3).

Next, plaintiff's claim that the trial court abused its discretion by ruling that a statement made at the accident scene by the driver of the car in which plaintiff was riding did not qualify as an excited utterance pursuant to MRE 803(2). However, after a thorough review, we are not convinced that the driver's statement denying fault, if admitted at trial, would have affected the unanimous jury verdict for defendant. MCR 2.613(A). Thus, we hold that the error, if any, is harmless. MCR 2.613(A); *Sackett v Atyeno*, 217 Mich App 676, 683-685; 552 NW2d 536 (1996).

Plaintiff's contention that the trial court erred by refusing to recognize the investigating police officer as an expert witness in the area of accident reconstruction is unconvincing. The evidence regarding the witnesses' qualifications supports the court's ruling. MRE 702; *People v Peterson*, 450 Mich 349, 361-362; 537 NW2d 857 (1995); *People v Peebles*, 216 Mich App 661, 667-668; 550 NW2d 589 (1996).

Plaintiff also argues that the trial court improperly excluded all evidence relating to her wage loss. At the time of the accident, plaintiff was a full-time college student and was not gainfully employed. She produced no evidence of any employment commitment from a prospective employer. Plaintiff therefore failed to state a claim for wages that she would, rather than could, have earned but for her injuries. *Gerardi v Buckeye Union Ins Co*, 89 Mich App 90, 94-95; 279 NW2d 588 (1979). The trial court ruled correctly.

We have reviewed plaintiff's remaining allegations of error and find them to be without merit. See *Shavers v Attorney General*, 402 Mich 554; 267 NW2d 72 (1978).

Affirmed.

/s/ Richard Allen Griffin

/s/ Martin M. Doctoroff

<sup>1</sup> The "weight of authority in civil cases supports the rule that a judgment will not be reversed for error in allowing one or more peremptory challenges in excess of that provided by statute, unless the complaining party shows that he has exhausted his peremptory challenges and has suffered material injury from the action of the court, and that as a result thereof one or more objectionable jurors sat on the case, or for some other equally cogent reason." (95 ALR2d at 963.)