

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL JON MCAULIFFE,

Plaintiff-Appellant,

v

RALPH DUANE HARRIS,

Defendant-Appellee.

UNPUBLISHED

November 18, 2003

No. 240963

Genesee Circuit Court

LC No. 00-067523-NI

Before: Gage, P.J., and White and Cooper, JJ.

PER CURIAM.

Plaintiff Daniel McAuliffe filed suit, under MCL 287.351, for injuries he sustained after being bitten by a dog belonging to defendant Ralph Harris. A jury found in defendant's favor and a judgment of no cause of action was entered. In a motion for a new trial or judgment notwithstanding the verdict, plaintiff alleged that the trial court's deviation from the standard jury instructions was improper and confusing to the jury. The trial court denied this motion and plaintiff now appeals as of right. We affirm.

Plaintiff argues that the trial court abused its discretion by instructing the jury on the definitions of licensee and trespasser, as stated in SJ12d 19.01, in this strict liability dog bite action. We disagree. "Jury instructions should include 'all the elements of the plaintiff's claims and should not omit material issues, defenses, or theories if the evidence supports them.'"¹ As a general rule, we review claims of instructional error de novo.² But the applicability of a jury instruction to a given situation is within the sound discretion of the trial court.³ We review a trial court's decision in this regard for an abuse of discretion.⁴ No error requiring reversal will be

¹ *Cox v Flint Bd of Hosp Managers*, 467 Mich 1, 8; 651 NW2d 356 (2002), quoting *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

² *Jackson v Nelson*, 252 Mich App 643, 647; 654 NW2d 604 (2002).

³ *Id.*

⁴ *Id.*

found where the trial court adequately and fairly presents the theories and applicable law to the jury.⁵

In a civil case, a trial court must give a requested standard jury instruction if it is applicable and accurately states the law.⁶ The trial court is further not precluded from defining terms for a jury. Rather, “[w]hen the standard jury instructions do not adequately cover an area, the trial court is obligated to give additional instructions when requested, if the supplemental instructions properly inform the jury of the applicable law and are supported by the evidence.”⁷ To the extent possible, additional instructions must be patterned in the style of the model instructions in a concise, unslanted, and nonargumentative manner.⁸

Here, contrary to plaintiff’s claims, a review of the relevant statute⁹ and standard jury instructions¹⁰ reveal undefined terms that might be confusing to a layperson. Specifically, neither of the standard instructions explains the phrase “lawfully on,” despite the fact that the statute indicates that this phrase refers to individuals on a dog owner’s property as invitees or licensees.¹¹ Because plaintiff’s legal status upon entering the property was a contested issue in this case, the trial court did not abuse its discretion in giving the jury the information it needed to make a determination on the issue. We conclude that the definition of trespasser adequately conveyed the concept to the jury, and that any prejudice from the assertedly improper argument based on otherwise proper instructions could have been cured by a timely objection and curative instruction.

To the extent plaintiff claims error because the trial court repeated the contested instruction upon the jury’s request, we disagree. A trial court may repeat instructions upon the request of the jury.¹² In this instance, the trial court was careful to clarify the request of the jury

⁵ *Stevens v Veenstra*, 226 Mich App 441, 443; 573 NW2d 341 (1997).

⁶ MCR 2.516(D)(2).

⁷ *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 401-402; 628 NW2d 86 (2001); see also MCR 2.516(D)(3)-(4).

⁸ MCR 2.516(D)(4).

⁹ MCL 287.351.

¹⁰ SJI2d 80.01 and SJI2d 80.02.

¹¹ See MCL 287.351(2).

¹² MCR 2.516(B)(4); *VanBelkum v Ford*, 183 Mich App 272, 274; 454 NW2d 119 (1989).

and repeated verbatim only the instructions requested. The trial court did not abuse its discretion in providing the jury with instructions from SJI2d 19.01.

Affirmed.

/s/ Hilda R. Gage
/s/ Helene N. White
/s/ Jessica R. Cooper