STATE OF MICHIGAN

COURT OF APPEALS

DANIEL BREWER,

Plaintiff-Appellant,

v

FEDERAL KEMPER INSURANCE CO,

Defendant-Appellee.

No. 106438

Before: Sullivan, P.J., and Wahls and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals by right the judgment of no cause of action entered in accordance with the jury verdict rendered in favor of defendant and the subsequent orders entered denying plaintiff's motion for judgment notwithstanding the verdict (JNOV) or, in the alternative, a new trial. We affirm.

This case arose out of an automobile accident which occurred in August 1984 in which plaintiff Daniel Brewer was involved as a passenger of the automobile. Naomi Carpenter, plaintiff's legal guardian, was the named insured on a no-fault insurance policy issued by defendant Federal Kemper Insurance Company. As a result of the accident, plaintiff claimed and later collected from defendant first party medical, nursing and replacement benefits. Plaintiff's claims were based on an alleged seizure disorder. Defendant paid about $130,000 in benefits for plaintiff's care until October 1985 when it finally stopped paying benefits because it discovered that plaintiff had a history of a mental disorder, including seizures, which predated the 1984 automobile accident.

Plaintiff then instituted the present action to recover benefits which defendant refused to pay. Following the presentation of the evidence, the jury responded "No" to the first question on the verdict form: "Did the Plaintiff's

injuries or condition at issue in this case arise out of the use or operation of a motor vehicle?" The court thereafter entered a judgment of no cause of action in favor of defendant.

On appeal, plaintiff argues that the trial court erred by denying both his motion for JNOV and a new trial. We disagree. After reviewing the evidence in the light most favorable to defendant, as we must when reviewing a denial of plaintiff's motion for JNOV, we conclude that reasonable minds could have honestly reached different conclusions. Matras v Amoco Oil Co, 424 Mich 675, 681-682; 385 NW2d 586 (1986). Moreover, we conclude that the verdict is not manifestly against the clear weight of the evidence. Murchie v Standard Oil Co, 355 Mich 550, 558; 94 NW2d 799 (1959).

We have also reviewed defense counsel's allegedly improper and prejudicial remarks and conclude that they do not warrant a new trial in this case. MCR 2.611(A)(1)(a) and (b). Plaintiff failed to object at trial to most of the remarks with which he now takes issue on appeal. Although some of the remarks were in fact improper, they were harmless error. Moreover, we do not believe that defense counsel engaged in a course of conduct deliberately calculated to prejudice the jury and deny plaintiff a fair trial. Reetz v Kinsman Marine Transit Co, 416 Mich 97, 102-103, 111-112; 330 NW2d 638 (1982).

Affirmed.

/s/ Joseph B. Sullivan
/s/ Myron H. Wahls
/s/ Mark J. Cavanagh