STATE OF MICHIGAN

COURT OF APPEALS

LARRY KNIGHT,

Plaintiff-Appellant,
Cross-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee,
Cross-Appellant.

December 14, 1993

No. 142220
LC No. 87 003180

Before: Fitzgerald, P.J., and Reilly and Joslyn, JJ.

PER CURIAM.

Plaintiff appeals as of right from a denial of his motion for a new trial following a jury verdict of no cause of action in favor of the defendant. The jury rejected the plaintiff's claim that he was entitled to work-loss benefits in addition to those already paid by defendant. Defendant cross-appeals. We affirm.

Plaintiff argues that the trial court abused its discretion in admitting defendant's Exhibit J at trial because the exhibit contained hearsay statements that were included in a medical evaluation to determine plaintiff's eligibility for social security disability benefits. We note that page two of the three page exhibit, a handwritten summary of information provided by plaintiff's treating physician, was already presented to the jury in plaintiff's Exhibit 6. Exhibit 6 also contains documents indicating that plaintiff sought a determination regarding his eligibility for disability benefits and that he had a history of heart problems. It also included a medical release form relating to the determination signed a few months before the evaluations in defendant's Exhibit J. Although plaintiff criticizes the trial court's rationale for admitting defendant's Exhibit J, plaintiff relied on the same rationale in arguing that his Exhibit 5, a letter from an examining physician, was admissible. Under the circumstances presented here, we find no abuse of discretion or reversible error.

We also reject plaintiff's assertion that the trial court took "judicial notice" of the Medical Consultant's Case Analysis provided in defendant's Exhibit J, and thereby implied that the analysis was sanctioned by federal regulations. The trial court merely read to the jury the wording of a federal regulation referenced in the case analysis so that the jurors could evaluate the comments in context. We find no improper use of the federal regulation.

Next, we agree with defendant that any error in permitting witness Sue Laws to testify regarding a telephone conversation with a doctor who had examined plaintiff was harmless where the same facts were shown by other competent evidence. Duke v American Olean Tile Co, 155 Mich App 555, 572; 400 NW2d 677 (1986).

Plaintiff has waived any claim of error with regard to the admission of evidence relating to the payment to him of social security disability benefits and private insurance disability benefits. When plaintiff's counsel objected to the presentation of this evidence in a motion in limine, the trial court reserved its ruling. However, plaintiff's counsel did not renew his objection or ask for a ruling on his motion when defense counsel cross-examined plaintiff about receiving social security disability benefits. In the same manner,

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

plaintiff also abandoned his original objection to the evidence regarding private disability payments. Furthermore, plaintiff's counsel opened the door to the cross-examination by questioning plaintiff regarding his application for social security benefits and by presenting, in his Exhibit 6, numerous forms regarding private disability insurance.

Further, there is no merit to plaintiff's claim that the trial court abused its discretion in permitting evidence of plaintiff's potential layoff to reach the jury. The parties stipulated at trial to the admission of the evidence in relation to the issue of plaintiff's motive to claim disability. Moreover, plaintiff's counsel raised the issue of a potential layoff during direct examination of plaintiff.

Lastly, we reject plaintiff's argument that the trial court failed to properly instruct the jury.

With regard to the issues raised in defendant's cross-appeal, we conclude that the trial court did not abuse its discretion in granting plaintiff's request for additur. McMillan v Auto Club Ins Assoc, 195 Mich App 463, 467; 491 NW2d 593 (1992). There was evidence, including plaintiff's testimony as well as exhibits presented by plaintiff, that plaintiff received a cost of living allowance in addition to his hourly wage. Likewise, the award of interest on the amount of additur was not an abuse of discretion.

Both parties raise objections with regard to the award of costs and attorney fees. At the hearing on plaintiff's motion for JNOV and defendant's motion for costs, the trial court, without reference to statute or court rule, awarded defendant $500 in costs. However, the order from which both parties appeal makes no provision for the imposition of costs.[1] A court speaks through its written orders. Law Offices of Lawrence J Stockler, P C v Rose, 174 Mich App 14, 55; 436 NW2d 70 (1989). We are not convinced by the arguments presented that the trial court abused its discretion regarding the issues of costs and fees.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Maureen Pulte Reilly
/s/ Patrick R. Joslyn

[1] The June 10, 1991 order entitled "ORDER DENYING MOTION FOR NEW TRIAL, ATTORNEY FEES; ORDER GRANTING PARTIAL MOTION FOR JUDGMENT N.O.V. AND DENYING TAXABLE COSTS" provides, in pertinent part:

> IT IS HEREBY ORDERED that Defendant's Motion for Imposition of Costs and Attorney Fees Under MCR 2.405 and under MCL 500.3148(2) be and the same is hereby denied.
>
> IT IS FURTHER ORDERED that Defendant's claim for attorney fees on the basis of a frivolous claim under MCR 2.625 be and the same is hereby denied.
>
> IT IS FURTHER ORDERED that neither party having prevailed in full, the requests of each party for an award of taxable costs are denied.