

STATE OF MICHIGAN  
COURT OF APPEALS

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WILLIAM LOY,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant-Appellee.

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UNPUBLISHED  
January 25, 1995

No. 161063  
LC No. 90022573 CK

Before: Marilyn Kelly, P.J., and Shepherd and L.P. Borrello,\* JJ.

PER CURIAM.

This is a no-fault insurance case. Plaintiff, William Loy, appeals as of right from entry of an order of no cause of action for defendant, State Farm Mutual Automobile Insurance Company, following a jury trial. Plaintiff claims the trial judge should have granted his motion for judgment notwithstanding the verdict (JNOV) or, alternatively, for a new trial. We affirm.

I

Plaintiff injured his back on December 30, 1989. He had brought three 80-pound bags of salt to his church. After carrying one to the church basement, he spent about thirty minutes without difficulty broadcasting the other salt outdoors. As he got into his car to leave, he experienced severe, incapacitating back pain. Medical tests revealed a herniated disk. He was unable to return to his job as a Sears appliance repairman. Plaintiff had also injured his back on the job on December 1, 1989. However, the injury was not permanent.

Plaintiff sought no-fault auto insurance benefits. He claimed that the injury occurred as he seated himself in his auto. The insurance company denied the claim, concluding that the injury did not occur as a result of an accident involving a motor vehicle as defined under the no fault statute. Defendant also disputed whether the injury occurred as plaintiff was entering the car or at another time, for example, when he carried the salt into the church basement.

At trial, both parties moved for a directed verdict. Plaintiff argued that the disc herniated when he got into the car. Defendant argued that the circumstances could not satisfy the parked vehicle exclusion to the no-fault act. The judge denied defendant's motion, concluding that if the injury occurred when plaintiff entered the car, it was a bodily injury compensable under the no-fault act. The judge also found there to be a question of fact regarding when plaintiff's injury occurred and denied plaintiff's motion as well. After the jury verdict, the judge denied plaintiff's motions for JNOV or a new trial. She concluded that sufficient evidence supported the jury's verdict.

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

## II

We review the denial of a motion for a directed verdict by examining the evidence in the light most favorable to the nonmoving party. We give that party the benefit of every reasonable inference that may be drawn from the evidence. If sufficient evidence has been presented to create an issue for the jury, a motion for a directed verdict should be denied. Cleary v Turning Point, 203 Mich App 208, 210; 512 NW2d 9 (1994).

In reviewing a refusal to grant a JNOV, we examine the testimony and all legitimate inferences to be drawn from it in the light most favorable to the nonmoving party. If reasonable jurors could honestly have reached different conclusions, neither the trial court nor this Court may substitute its judgment for that of the jury. Thorin v Bloomfield Hills Board of Education, 203 Mich App 692, 696; 513 NW2d 230 (1994). In both instances, the trial court's decision will not be overturned absent an abuse of discretion. Cleary, p 211.

Here, the trial judge did not abuse his discretion in denying plaintiff's motions. First, the testimony of the insurance claims adjustor did not amount to a stipulation that the injury occurred when plaintiff entered the car. See Ortega v Lenderink, 382 Mich 218, 222-223; 169 NW2d 470 (1969). In addition, the opening statements by defendant's attorney were not an admission that plaintiff injured himself when entering the car. Finally, defense counsel provided testimony which could have led reasonable jurors to conclude that plaintiff injured himself lifting or carrying the bag of salt or while distributing it.

We find no genuine support for plaintiff's contention that the testimony of defendant's experts was merely speculative, inadmissible and therefore inadequate to rebut plaintiff's claims. Based on the history plaintiff provided and on the circumstances surrounding the injury, each medical expert gave an opinion as to when the injury actually occurred. Experts are permitted to give opinions on ultimate issues. MRE 704. Moreover, the testimony arose from reasonable inferences and deductions based on the physicians' work with similar injuries.

We find no abuse of discretion in the trial judge's decision to permit the experts of both parties to offer an opinion as to when the injury occurred. Phillips v Mazda Motor Manufacturing Corp, 204 Mich App 401, 413; 516 NW2d 502 (1994). See also Kostamo v Marquette Iron Mining Co, 405 Mich 105, 136-137; 474 NW2d 411 (1979). Consequently, we find no error in the trial court's decision to permit the jury to decide when the injury occurred rather than direct a verdict.

## III]

The trial court appears to have applied an erroneous standard in ruling on plaintiff's motion for a new trial. The court considered whether there was sufficient evidence to permit the case to go to the jury, rather than whether the verdict was against the great weight of the evidence. MCR 2.611; Arrington v DOH (On Remand), 196 Mich App 544; 493 NW2d 492 (1992). Our court has said:

The trial court's function on a motion for a new trial is to determine whether the overwhelming weight of the evidence favors the losing party. [Arrington, p 564.]

We review the trial court's decision regarding a motion for a new trial for an abuse of discretion. Arrington, p 550.

Here, it is unclear whether the trial judge misstated the correct standard or applied an incorrect standard in considering plaintiff's motion for a new trial. However, a trial court's ruling which reaches

the right result for the wrong reason will be affirmed on appeal. Glazer v Lamkin, 201 Mich App 432, 437; 506 NW2d 570 (1993). Here, competent evidence supported the jury's determination that plaintiff injured his back at some time other than when he entered the car. The verdict was not against the great weight of the evidence. The trial court did not abuse its discretion in denying plaintiff's motion for a new trial.

Affirmed.

/s/ Marilyn Kelly  
/s/ Leopold P. Borrello

Shepherd, J., did not participate.