

STATE OF MICHIGAN
COURT OF APPEALS

KATHRYN MOTT,

Plaintiff-Appellee,

v

ELLAMAE McDONALD,

Defendant-Appellant.

UNPUBLISHED

March 3, 1998

No. 190969

Mason Circuit Court

LC No. 94-010321-NI

Before: Griffin, P.J., and Holbrook, Jr., and Neff, JJ.

PER CURIAM.

Following a jury verdict in favor of plaintiff in this action brought pursuant to the no-fault act, MCL 500.3101 *et seq.*; MSA 24.13101 *et seq.*, judgment was granted in favor of plaintiff in the amount of \$35,196.76. Defendant now appeals as of right. We affirm.

I

Defendant first argues that the trial court erred in failing to direct a verdict in favor of defendant regarding plaintiff's claim for damages for excess economic loss. A trial court's granting of a directed verdict is reviewed de novo. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). When evaluating a motion for a directed verdict, a court must consider the evidence in the light most favorable to the nonmoving party, making all reasonable inferences in favor of the nonmoving party. The grant of a directed verdict is appropriate only when no factual question exists upon which reasonable minds could differ. *Id.* This Court has recognized the unique opportunity of the jury and the trial judge to observe witnesses and the fact finder's responsibility to determine the credibility and weight of the testimony. *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996). If reasonable jurors could honestly have reached different conclusions, this Court may not substitute its judgment for that of the jury. *Hunt v Freeman*, 217 Mich App 92, 99; 550 NW2d 817 (1996).

Claims for excess economic loss under the no-fault act are controlled by MCL 500.3135(3)(c); MSA 24.13135(3)(c), which provides as follows:

(3) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3101 was in effect is abolished except as to:

* * *

(c) Damages for allowable expenses, work loss, and survivor's loss as defined in sections 3107 to 3110 in excess of the daily, monthly, and 3-year limitations contained in those sections. The party liable for damages is entitled to an exemption reducing his or her liability by the amount of taxes that would have been payable on account of income the injured person would have received if he or she had not been injured.

Work loss benefits are defined in MCL 500.3107(1)(b); MSA 24.13107(1)(b) as follows:

(1) Except as provided in subsection (2), personal protection insurance benefits are payable for the following:

* * *

(b) Work loss consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured.

Defendant argues that plaintiff was required to present evidence that her job would still have been available to her throughout the time period of her disability. We disagree. Work-loss benefits compensate an injured person for income she would have received had her automobile accident not occurred. *MacDonald v State Farm Mutual Ins Co*, 419 Mich 146, 152; 350 NW2d 233 (1984). The statute requires no more than proof that the work was lost as a direct consequence of the injury. *Nawrocki v Hawkeye Security Ins Co*, 83 Mich App 135, 144; 268 NW2d 317 (1978). In the present case, the evidence showed that plaintiff was employed at the time of the collision. Plaintiff testified that she had been planning to work until age seventy-five, that she liked meeting the public, liked her regular customers, and thought that she was a good waitress. In light of this evidence, it was reasonable for the jury to find that, but for the accident, plaintiff would have worked at her job for five more years. See *Marquis v Hartford Indemnity*, 444 Mich 638, 649-650; 513 NW2d 799 (1994). Accordingly, the trial court did not err in denying defendant's motion for a directed verdict.

II

Defendant next argues that the trial court erred in refusing to admit into evidence the report of Earl Rhind, M.D., who performed an independent medical evaluation of plaintiff at the request of defense counsel. The decision whether to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Sackett v Atyeo*, 217 Mich App 676, 683; 552 NW2d 536 (1996).

MRE 803(6) provides that the following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

A distinction is made between reports that are made in the regular course of treatment and relied upon during treatment, and those that are prepared with respect to a particular person for purposes of litigation. *Beach v State Farm Mutual Automobile Ins Co*, 216 Mich App 612, 620-621; 550 NW2d 580 (1996); *Solomon v Shuell*, 435 Mich 104, 120; 457 NW2d 669 (1990), discussing *Palmer v Hoffman*, 318 US 109; 63 S Ct 477; 87 L Ed 645 (1943); *Attorney General v John A Biewer Co*, 140 Mich App 1, 17-18; 363 NW2d 712 (1985). Because of the inherent lack of trustworthiness of a report that was prepared in anticipation of litigation, we find no abuse of discretion in the trial court's exclusion of the report pursuant to MRE 803(6).

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Janet T. Neff