

STATE OF MICHIGAN
COURT OF APPEALS

RACHEL ROEBUCK,

Plaintiff-Appellant/Cross-Appellee,

v

DWAYNE DYE,

Defendant-Appellee/ Cross-
Appellant.

UNPUBLISHED

March 12, 2002

No. 223056

Wayne Circuit Court

LC No. 95-532259-NI

Before: Jansen, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying her motion for judgment notwithstanding the verdict (JNOV) or a new trial following judgment entered in favor of defendant pursuant to a jury verdict. We affirm.

This case arises out of an automobile accident that occurred on October 10, 1994. The accident occurred when defendant ran a red light and collided with plaintiff's automobile. Plaintiff brought a claim in negligence under the no-fault act, MCL 500.3135, which allows recovery in tort for non-economic loss resulting from an automobile accident where the injured person suffered death, serious impairment of a body function, or permanent serious disfigurement. Specifically, plaintiff alleged that the automobile accident caused a tear in her right rotator cuff.

During the trial, plaintiff moved for a directed verdict regarding the issues of negligence and proximate cause. The trial court found that defendant was negligent and that plaintiff suffered from a serious impairment of a body function as a matter of law, leaving the jury with the issue of proximate causation. The jury found that defendant's negligence was not the proximate cause of plaintiff's injury. Following the entry of judgment in favor of defendant, plaintiff moved for JNOV pursuant to MCR 2.610(A), or, in the alternative, a new trial pursuant to MCR 2.611(B), which the trial court denied.

Plaintiff first argues that the trial court erred in denying her motion for JNOV.¹ We review de novo a trial court's denial of a motion for JNOV. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998). When reviewing a motion for JNOV, we must view the evidence and all legitimate inferences in the light most favorable to the nonmoving party to determine whether the facts presented preclude judgment for the nonmoving party as a matter of law. *Wilkinson v Lee*, 463 Mich 388, 391; 617 NW2d 305 (2000).

Viewing the evidence in the light most favorable to defendant, we find the jury could have legitimately concluded that plaintiff failed to establish by a preponderance of the evidence that defendant's negligence was the cause in fact of plaintiff's shoulder injury. At trial, plaintiff conceded that she had been involved in an automobile accident in May of 1992, and that plaintiff developed pain in her neck, both shoulders, and back as a result of the 1992 accident. About six months after the 1992 accident, plaintiff sought medical treatment from Dr. Dubin, who testified that plaintiff complained of severe pain in both shoulders, with persistent pain in her right shoulder. Dr. Dubin ultimately recommended that plaintiff undergo therapy. In June of 1993, plaintiff instituted a lawsuit arising out of the 1992 automobile accident and alleged in her pleadings that her injuries were permanent, that she suffered a severe loss of mobility, and that she was no longer able to engage in activities performed before the 1992 accident.

In December 1994, plaintiff underwent an MRI, which revealed a complete tear and migration of the tendon around the shoulder and swelling in the shoulder joint. Dr. Beale, who examined plaintiff six months after the 1994 accident, testified that the condition of her shoulder was consistent with an injury of greater than six months, which arguably predated the 1994 accident; however, plaintiff did not inform Dr. Beale of the 1992 accident. In April 1995, Dr. Beale performed surgery on plaintiff's right shoulder to repair the torn rotator cuff.

Dr. Reilly, who completed an independent evaluation of plaintiff for the defense, testified that plaintiff told him that she had experienced problems with her shoulder since 1992. He also testified that plaintiff's symptoms in 1992 and Dr. Dubin's findings were consistent with damage to the rotator cuff, and if an MRI had been conducted in 1992, it more likely than not would have revealed injury to the rotator cuff. Moreover, Dr. Reilly testified that if plaintiff's rotator cuff had been torn in 1992, the injury would persist, and the pain could lessen or end as inflammation "quiet[ed] down." He further testified that most persons develop a chronic shoulder condition after a rotator cuff injury. Dr. Reilly's testimony also provided support for the conclusion that plaintiff's injury could have resulted from a degenerative condition. He testified that a degeneration of the rotator cuff commonly occurs in people over age fifty to sixty. The fact that plaintiff's 1992 and 1994 diagnoses indicated such degenerative changes in plaintiff's shoulder,

¹ Plaintiff also briefly argues that remand is required because the trial court failed to provide a concise statement of the reasons for denying the motion for JNOV as required by MCR 2.610(B)(3). However, our review is not impeded by the trial court's alleged failure to appropriately review the evidence because the evidence must be reviewed de novo to determine if plaintiff is entitled to judgment as a matter of law. *Badalamenti v Beaumont Hosp*, 237 Mich App 278, 283-284; 602 NW2d 854 (1999). Moreover, the trial court advised the parties that it would adopt the brief of whichever party prevailed and plaintiff's counsel responded that this would be satisfactory in response to the trial court's inquiry.

and that plaintiff was in her early sixties when the 1994 accident occurred, provided support for his testimony. Finally, Dr. Reilly ultimately opined that plaintiff probably damaged her rotator cuff in 1992.

Because the evidence adduced at trial, viewed in the light most favorable to defendant, supported the jury's verdict, plaintiff was not entitled to judgment as a matter of law. Even though evidence also existed supporting the conclusion that the 1994 accident caused plaintiff's injury,² reversal is not warranted. It is within the province of the jury to judge the weight and credibility of the testimony, to resolve conflicts, and to draw any reasonable inferences from the evidence. *Brisboy v Fibreboard Corp*, 429 Mich 540, 550; 418 NW2d 650 (1988); *Johnson v Corbet*, 423 Mich 304, 314; 377 NW2d 713 (1985); *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000). In this case, reasonable jurors could have legitimately reached different conclusions regarding the cause of plaintiff's injury. Consequently, the trial court did not err in denying plaintiff's motion for JNOV.

Plaintiff also argues that the trial court abused its discretion by denying her motion for a new trial because the jury verdict was against the great weight of the evidence.³ A new trial may be granted if a jury verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). In deciding whether to grant or deny a motion for a new trial, the trial court's function is to determine whether the overwhelming weight of the evidence favors the losing party. *Phinney v Perlmutter*, 222 Mich App 513, 525; 564 NW2d 532 (1997). We review the trial court's denial of a motion for a new trial for an abuse of discretion. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 196; 600 NW2d 129 (1999).

Because this case contained credibility issues and conflicting evidence regarding the issue of causation, we find that the jury verdict was not against the great weight of the evidence. Whether the 1994 accident caused plaintiff's injury was a factual question for the jury to decide. It cannot be said that the verdict is against the great weight of the evidence because, as we have stated, there was evidence adduced at trial to support the jury's verdict that the automobile accident was not a proximate cause of plaintiff's shoulder injury. As such, the trial court could not substitute its judgment for that of the jury in deciding the motion for new trial. *Id.*, p 194.

² Most notably, each of plaintiff's treating physicians testified that the 1994 accident caused plaintiff's injury.

³ Plaintiff again argues that remand is required because the trial court failed to provide a concise statement of the reasons for denying the motion for a new trial. Although the trial court was required by court rule to provide a concise statement of its reasons in ruling on a motion for a new trial (MCR 2.611(F)), "the absence of a court's reasons for denying a motion for a new trial does not necessarily require . . . a remand." *Tempo, Inc v Rapid Electric*, 132 Mich App 93, 98; 347 NW2d 728 (1984). We again note that the trial court stated that it would "adopt the brief and oral argument of the defendant as the basis of my decision." Moreover, plaintiff's counsel did not object to and affirmatively approved the trial court's approach. Consequently, there is no error requiring reversal.

Affording substantial deference to the trial court's unique opportunity to judge the weight and credibility of the testimony, it cannot be said that the evidence preponderates so heavily against the verdict that allowing the jury's verdict to stand would create a miscarriage of justice. *Id.* The trial court did not abuse its discretion by denying plaintiff's motion for a new trial.

Because we conclude that sufficient competent evidence existed to support the jury's verdict, we need not reach defendant's argument on cross appeal.

Affirmed.

/s/ Kathleen Jansen

/s/ Brian K. Zahra

/s/ Patrick M. Meter