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STATE OF MICHIGAN

COURT OF APPEALS

EDDIE SMITH,

Plaintiff-Appellant,

v

SCOTT GEISLER and GENERAL MOTORS, LLC,

Defendants,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 12, 2026
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No. 369481
Oakland Circuit Court
LC No. 2019-177997-NI

Before: WALLACE, P.J., and GARRETT and ACKERMAN, JJ.

PER CURIAM.

In this first-party no-fault insurance case, following a trial by jury, a judgment of no cause of action was entered in favor of defendant, State Farm Mutual Automobile Insurance Company (State Farm). Plaintiff argues that the trial court erred by: failing to grant plaintiff's motion for a special jury instruction; allowing arguments to be presented to the jury about insurance benefits plaintiff assigned to some of his medical providers; and failing to grant a partial directed verdict on the issue of whether he suffered accidental bodily injuries, despite the fact that it was undisputed at trial that plaintiff suffered accidental bodily injuries to his back and neck arising out of the accident. While we agree that the trial court erred by failing to grant the motion for partial directed verdict, we find that plaintiff has not provided a sufficient basis for granting a new trial in this matter. We also find that plaintiff failed to adequately brief the issue regarding the requested special jury instruction and that the court did not err by allowing argument regarding the assignment of benefits because the record reveals that plaintiff was the party that first introduced such evidence at trial. As a result, we affirm the trial court's judgment of no cause of action.

I. FACTUAL BACKGROUND

Plaintiff filed the complaint in this matter in November 2019, alleging claims against multiple parties, including a claim against State Farm seeking benefits under Michigan's no-fault insurance act (no-fault act), MCL 500.3101 *et seq*., arising out of a motor vehicle accident that occurred in February of that year, as well as for interest, costs, and attorney fees.

In its answer to plaintiff's complaint, State Farm alleged that it lacked knowledge or information sufficient to form a belief as to the truth of plaintiff's allegation that he was involved in the subject motor vehicle collision in which he sustained accidental bodily injuries. Subsequently, in its initial disclosures, State Farm conceded that plaintiff suffered injuries arising out of the accident but argued that those injuries had healed. Specifically, State Farm asserted that it hired an expert witness, Dr. Nathan Gross, who examined plaintiff following the accident. Dr. Gross opined that imaging studies showed degenerative changes in plaintiff's spine, and that he did not believe that plaintiff suffered from radiculopathy. That said, Dr. Gross acknowledged that the five months of physical therapy that plaintiff underwent following the accident was necessary. State Farm's initial disclosures further stated that Dr. Gross would testify about the extent of any injuries that plaintiff may have suffered as a result of the accident consistent with his attached report. Thus, State Farm's disclosures indicated that it contested plaintiff's claim that he continued to suffer from injuries arising out of the accident, but did not contest that plaintiff suffered accidental injuries arising out of the accident for which he underwent physical therapy, i.e., State Farm conceded that plaintiff suffered injuries, but argued that those injuries had healed.

As further described below, plaintiff filed a motion in limine prior to trial requesting a special jury instruction explaining the unique causation standard that applies to first-party cases under the no-fault act. The trial court dispensed with oral argument under MCR 2.119(E)(3) and entered an order denying the motion without prejudice and stating that the court would "rule on the issue at trial based on the proofs, if necessary."

At trial, State Farm's claims specialist testified that plaintiff suffered from an injury after the subject crash, that his spinal-related complaints had been compensable through September 26, 2019, but that State Farm was contesting bills for medical expenses incurred after that date. She also testified that State Farm was contesting all bills relating to treatment plaintiff received to his hip because it was not related to the accident. Toward the end of direct examination, the claims specialist was again asked about plaintiff's injuries and their relation to the accident:

Q. And so what injuries do you believe [plaintiff] sustained in this crash?

A. I believe he had neck and back strain, sprain.

Q. Okay. And what about his hip?

A. I do not believe that was related to the accident.

Following cross-examination, the court read the following question from one of the jurors: "Why isn't the neck and back pain still covered to the present time if he is paid for the catastrophic policy?" In response, State Farm's claims specialist testified:

> We pay for the neck and back strain until he's better. And we only pay until a certain point when he's making progress, and we're getting notes that he's making progress. We review the file. We have an independent medical exam that will help us because we're not doctors. So we need to know where is he in his status of medical treatment.
>
> So we don't know how long it takes to treat for neck and back. So we rely on them to help us figure out, is he getting better? Should he still be treating for this? So at that point, that's when we stopped paying for the neck and back as it relates to the MVA, the motor vehicle accident.

Multiple expert witnesses retained by State Farm testified at trial, including Dr. Gross and Dr. Steven Kalkanis. Dr. Gross testified that he reviewed records from the physician that treated plaintiff following the accident, which indicated that plaintiff suffered multiple contusions and post-traumatic sprains and strains to regions of the spine. When asked his opinion as to why plaintiff no longer needed treatment, he testified:

> [F]rom what could be measurable, I thought he did have the strain and irritable nerve. He had done well. I thought home stretching would be a reasonable thing. I didn't think more therapy was necessary. He had had a number of months of therapy which I thought was necessary and related.

Thus, Dr. Gross conceded that plaintiff suffered injuries arising out of the accident and that the treatment he received for those injuries was necessary, but also opined that he did not need further treatment.

Dr. Kalkanis, a neurosurgeon, opined that plaintiff likely suffered a whiplash injury to the neck as a result of the accident that would have healed within three months. He mentioned that he reviewed the records of Dr. Friedman, who treated plaintiff and diagnosed him with a whiplash injury, and agreed with Dr. Friedman's plan of treatment, including physical therapy, epidural steroid injections, and pain management. Although Dr. Kalkanis found that plaintiff definitely suffered an acute injury "in the form of this whiplash-type strain," he also opined that there was an absence of any structural trauma on the imaging studies, i.e., plaintiff had not suffered a permanent structural injury.

During trial, the court addressed plaintiff's request for a special jury instruction. Plaintiff argued that one of the standard jury instructions for first-party no-fault cases, M Civ JI 35.02, did not adequately instruct the jury on the applicable law. More specifically, that it did not encompass caselaw interpreting the "arising out of" element of MCL 500.3105(1), which statutory subsection provides: "Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter." State Farm objected to this instruction, arguing that the standard instruction was adequate. The trial court denied the motion, determining that plaintiff's proposed special jury instruction was "not neutral" and "slanted" in plaintiff's favor, the phrase "arising out of" is commonly understood, and the standard instruction adequately covers the law.

At the close of proofs, plaintiff moved for a directed verdict regarding the first question on the verdict form, which asked: "Did the plaintiff sustain an accidental bodily injury?"[1] In response to the motion, the trial court asked plaintiff's counsel whether he agreed to the verdict form. Plaintiff's counsel admitted that he agreed to the verdict form, but that he was now moving for a finding by the court that the answer to the first question is "Yes." State Farm responded by arguing that "the jury gets to determine if there's been an injury, regardless of what the testimony is. They can believe some of the testimony, all of it or none of it." The trial court stated that it was "a little confused, because the verdict form was agreed to." The court also said it agreed that the answer to question number one was going to most likely be a yes, but that it was going to submit the standard form to the jury, including question number one.

After deliberations began, the court received notes from the jury. Question one asked: "Are we answering to charges after State Farm cutoff of 9/26/19 payments?" The trial court answered: "Yes."

The jury then subsequently returned with a verdict. In response to the first question on the verdict form, asking whether plaintiff sustained an accidental bodily injury, the jury answered no.

A judgment of no cause of action was subsequently entered by the trial court and this appeal followed.

II. STANDARD OF REVIEW

"This Court reviews de novo a trial court's decision regarding a party's motion for a directed verdict." *Smith v Foerster-Bolser Const, Inc*, 269 Mich App 424, 427; 711 NW2d 421 (2006). "A directed verdict is appropriate only when no factual question exists on which reasonable jurors could differ." *Id*. at 427-428. We view the evidence that was presented to the trial court, up to the time of the directed verdict motion, "in the light most favorable to the nonmoving party, granting that party every reasonable inference, and resolving any conflict in the evidence in that party's favor to decide whether a question of fact existed." *Derbabian v S&C Snowplowing, Inc*, 249 Mich App 695, 701-702; 644 NW2d 779 (2002).

A trial court's order regarding a motion in limine is reviewed by this Court for an abuse of discretion. *Mack v Natural Way, Inc*, ___ Mich App ___; ___ NW3d ___ (2025) (Docket No. 367998); slip op at 6. "An abuse of discretion occurs when the trial court chooses an outcome outside the range of principled outcomes." *Elher v Misra*, 499 Mich 11, 21; 878 NW2d 790 (2016) (quotation marks and citation omitted).

We review de novo a trial court's decision on a request for a special jury instruction. *Hardrick v Auto Club Ins Ass'n*, 294 Mich App 651, 679; 819 NW2d 28 (2011). "An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order,

[1] Plaintiff also moved for a directed verdict on other questions posed in the jury verdict form, but on appeal, plaintiff only challenges the trial court's decision as it pertains to question one.

unless refusal to take this action appears to the court inconsistent with substantial justice." MCR 2.613(A). When a trial court makes an instructional error, reversal is not warranted unless that error affects the outcome of the trial. *Jimkoski v Shupe*, 282 Mich App 1, 9; 763 NW2d 1 (2008). See also *Hardrick*, 294 Mich App at 680.

III. ANALYSIS

A. SPECIAL JURY INSTRUCTION

Plaintiff argues that the trial court erred by denying his motion in limine for a special jury instruction on the causation element in this matter, which is contained in MCL 500.3105(1) and is sometimes referred to as the "arising out of" element. Unlike in a third-party automobile negligence case, in which a plaintiff must prove that the defendant breached a duty that proximately caused their injuries, MCL 500.3105(1) only requires the plaintiff in a first-party no-fault insurance case to prove that they suffered "accidental bodily injury *arising out of* the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter." *Id*. (emphasis added). See also *Shinabarger v Citizens Mut Ins Co*, 90 Mich App 307, 313-314; 282 NW2d 301 (1979).

While plaintiff argues on appeal that his special jury instruction is "generally accepted" and that caselaw "underpinning the proposed special jury instruction" warranted the instruction, his brief on appeal fails to cite any case law in support of his argument. Additionally, plaintiff fails to provide any argument as to why the standard jury instruction was inadequate in this case. In fact, plaintiff's brief does not even quote or otherwise describe the instruction that was given to the jury. Instead, plaintiff's brief simply cites to page 5 of his appendix, a page in his motion in limine in the trial court containing a long string cite of cases that plaintiff alleges supports his argument, without any analysis of any of those cases or how they allegedly apply to the present case. Also, while plaintiff cites to *Goodwin v Northwest Michigan Fair Ass'n*, 325 Mich App 129, 157; 923 NW2d 894 (2018), for the proposition that "[i]nstructional error warrants reversal if the error resulted in such unfair prejudice to the complaining party that the failure to vacate the jury verdict would be inconsistent with substantial justice," plaintiff provides no analysis as to why the alleged instructional error in this case resulted in unfair prejudice warranting vacating the jury verdict.

As a result, we deem plaintiff's first argument to be abandoned on appeal. "An appellant may not merely announce his or her position and leave it to this Court to discover and rationalize the basis for his or her claims." *Bill and Dena Brown Trust v Garcia*, 312 Mich App 684, 695; 880 NW2d 269 (2015) (quotation marks and citation omitted). See also *Johnson v Johnson*, 329 Mich App 110, 126; 940 NW2d 807 (2019).[2]

[2] We note that neither of the first two cases in the lengthy string cite on page 5 of plaintiff's appendix involved a special jury instruction. See *Scott v State Farm Mut Auto Ins Co*, 483 Mich 1032; 766 NW2d 273 (2009); *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626; 563 NW2d 683 (1997). While the issue in both *Scott* and *Putkamer* did pertain to the proper causation

B. ASSIGNMENT OF BENEFITS

Plaintiff next argues that the trial court erred by failing to make a pretrial ruling regarding whether arguments could be presented to the jury about assignment of benefits plaintiff made to some of his medical providers. However, as State Farm notes, it was plaintiff's counsel that first raised the assignment of benefits issue in front of the jury, before the trial court made any ruling as to admissibility.[3] Towards the end of plaintiff's direct examination, plaintiff's counsel asked: "I want to talk to you about assignments. Do you know what an assignment of benefits are?" The trial court essentially found that plaintiff had opened the door to the issue by raising it. We agree.

Because plaintiff invited the error in the trial court, he has waived that issue before this Court. See *People v Jones*, 468 Mich 345, 352 n 6; 662 NW2d 376 (2003) ("Appellate review is precluded because when a party invites the error, he waives his right to seek appellate review, and any error is extinguished."); *Blazer Foods, Inc v Restaurant Props, Inc*, 259 Mich App 241, 252; 673 NW2d 805 (2003) (stating that a party may not take a position in the trial court and later seek redress on appeal based on a position contrary to that earlier position).

C. REQUEST FOR PARTIAL DIRECTED VERDICT

Finally, plaintiff argues that the trial court erred by failing to grant his partial directed verdict motion on the issue of whether plaintiff sustained an accidental bodily injury because that issue was not actually in dispute in this case. While we agree that the trial court erred by failing to grant the partial directed verdict, plaintiff has failed to provide a sufficient basis for overturning the jury's verdict in this matter.

As previously noted, if no factual question existed on which reasonable jurors could differ on this issue, the trial court should have granted the partial directed verdict. *Foerster-Bolser Const*, 269 Mich App at 427-428.

There is no dispute that plaintiff introduced evidence at trial supporting his argument that he suffered an accidental injury arising out of the accident, including his own testimony, medical records, and expert witness testimony provided by his treating physicians. As a result, in order to create a question of fact on this issue, State Farm was required to introduce evidence rebutting the evidence admitted by plaintiff. However, State Farm did not introduce anything to rebut evidence that plaintiff suffered an accidental injury. In fact, it actually introduced additional evidence supporting plaintiff's position on this issue. As detailed above, among the expert witnesses that State Farm called at trial were Drs. Gross and Kalkanis, each of whom opined that plaintiff suffered injuries consisting of sprains or strains to the neck and back as a result of the accident. While it is true that State Farm also introduced evidence demonstrating that the injury to plaintiff's hip was not caused by the accident, as well as evidence that plaintiff would have healed from his neck and

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element in a no-fault insurance case, neither case addressed the standard jury instruction or potential special jury instructions in no-fault insurance cases.

[3] On appeal, plaintiff does not dispute the fact that his counsel first raised this issue before the jury.

back injuries within three months of the accident, none of that evidence rebutted the fact that plaintiff suffered injuries to his back and neck that arose out of the accident.

On appeal, State Farm does not dispute that plaintiff suffered accidental injuries to his back and neck arising out of the subject accident. Instead, it argues that it paid all benefits related to those injuries through September 26, 2019, and that the first question on the jury verdict form pertained to the period after September 26, 2019, i.e., the date after which State Farm stopped paying benefits to or on behalf of plaintiff. State Farm bases that argument, in part, on the above-referenced question the jury presented to the court during deliberations: "Are we answering to charges after State Farm cutoff of 09/26/19 payments?" Again, the trial court's one word response was "Yes."

We find this argument by State Farm unpersuasive. First, in deciding whether the trial court erred in denying a motion for directed verdict or partial directed verdict, this Court reviews the evidence presented up to the time of the motion. *Derbabian*, 249 Mich App at 701-702. Thus, a question raised by a jury during deliberations has no bearing on the issue of whether the court should have granted a motion for partial directed verdict brought before such deliberations. Second, the first question on the verdict form made no reference to September 26, 2019—it asked: "Did the plaintiff sustain an accidental bodily injury?" The second question on the form asked: "Did the plaintiff's accidental bodily injury arise out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle on February 15, 2019?" Thus, questions 1 and 2 of the jury verdict form track the language of MCL 500.3105(1) quoted earlier in this opinion.[4]

State Farm also argues that plaintiff agreed to the verdict form before he moved for directed verdict and, on appeal, plaintiff admits that he stipulated to it. However, in cases in which a trial court requires the parties to submit a verdict form prior to the close of proofs, a party is not foreclosed from moving for a directed verdict or partial directed verdict simply because they complied with this requirement. Such a holding would contradict MCR 2.516, which allows any party "to move for a directed verdict at the close of the evidence offered by an opponent."[5, 6]

However, despite the fact that the trial court erred by failing to grant plaintiff's motion for partial directed verdict, plaintiff fails to provide this Court with any cognizable basis for granting a new trial. This Court is "reluctant to overturn a jury's verdict where there is ample evidence to support the jury's decision, and will do so only where [this Court] is satisfied that allowing the

[4] The language of the jury verdict form used in this matter comes from M Civ JI 67.01, the verdict form for no-fault first-party benefit actions.

[5] Such a holding would also contradict MCR 2.610, which allows a party to move for a judgment notwithstanding the verdict (JNOV), i.e., a party is not foreclosed from filing a motion for JNOV merely because they agreed to a jury verdict form.

[6] Certainly, a party can be foreclosed from raising jury verdict form language as an issue on appeal when they failed to preserve the issue by objecting at trial; however, there is no dispute that plaintiff moved for a partial directed verdict as to the first question at the close of defendant's proofs.

verdict to stand would be inconsistent with substantial justice." *Clark v Kmart Corp (On Remand)*, 249 Mich App 141, 150; 640 NW2d 892 (2002) (quotation marks and citations omitted).

Under MCR 2.611(A)(1),

> A new trial may be granted to all or some of the parties, on all or some of the issues, whenever their substantial rights are materially affected, for any of the following reasons:
>
> (a) Irregularity in the proceedings of the court, jury, or prevailing party, or an order of the court or abuse of discretion which denied the moving party a fair trial.
>
> (b) Misconduct of the jury or of the prevailing party.
>
> (c) Excessive or inadequate damages appearing to have been influenced by passion or prejudice.
>
> (d) A verdict clearly or grossly inadequate or excessive.
>
> (e) A verdict or decision against the great weight of the evidence or contrary to law.
>
> (f) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at trial.
>
> (g) Error of law occurring in the proceedings, or mistake of fact by the court.
>
> (h) A ground listed in MCR 2.612 warranting a new trial.[7]

[7] MCL 2.612, pertains to clerical mistakes, certain defendants who did not have knowledge of the pendency of the action, and grounds for relief from judgment, including the following:

> (a) Mistake, inadvertence, surprise, or excusable neglect.
>
> (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
>
> (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
>
> (d) The judgment is void.
>
> (e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.

The grounds for granting a new trial are codified at MCR 2.611(A)(1). *Kelly v Builders Square, Inc*, 465 Mich 29, 38; 632 NW2d 912 (2001). "The court rule provides the only bases upon which a jury verdict may be set aside." *Id*.

Although plaintiff argues that the court erred by not granting the partial directed verdict, he fails to even cite MCR 2.611, makes no argument whatsoever as to why he is entitled to a new trial under any of the bases delineated in that court rule, and fails to argue that his substantial rights were materially affected. Again, a party may not simply announce their position and leave it to this Court "to discover and rationalize the basis for his or her claims." *Bill and Dena Brown Trust*, 312 Mich App at 695.

Although this could conclude our analysis of this issue, we nonetheless note that, while the above-referenced jury question is not properly considered on the issue of whether the trial court should have granted plaintiff's motion for partial directed verdict, it is relevant to determining whether overturning the jury's verdict would be inconsistent with substantial justice and whether plaintiff's substantial rights were materially affected. See *Clark*, 249 Mich App at 150 and MCR 2.611(A). Based on the arguments made by the parties at trial, it is clear that the issue presented to the jury was whether plaintiff continued to suffer from accidental bodily injury arising out of the subject accident after September 26, 2019. The first question submitted by the jury, along with the trial court's answer, confirms that the jury was aware it was deciding that issue. As State Farm notes, plaintiff did not object to the answer provided by the trial court. State Farm presented ample evidence at trial supporting its position that plaintiff was no longer suffering from accidental bodily injury after September 26, 2019, including the opinion testimony of multiple expert witnesses.

The jury verdict form certainly could have been better tailored to the facts of this case. Based on the record before us, the first question should have inquired whether plaintiff continued to suffer from an accidental bodily injury after September 26, 2019. But plaintiff's motion for partial directed verdict did not argue that the first question on the verdict form should be reworded; it argued that the trial court should have taken that question away from the jury and found as a matter of law that plaintiff sustained accidental bodily injury.

Also, based on the record before us, the trial court's denial of the motion for partial directed verdict does not appear to have materially affected the outcome of this case. The record as a whole strongly suggests that the jury, which heard State Farm argue throughout the trial that plaintiff suffered accidental bodily injuries that healed within a few months of the accident, interpreted the first question on the verdict form to ask whether plaintiff continued to suffer from accidental bodily injury after September 26, 2019, including: the question posed by the jury to State Farm's claims specialist and her answer conceding that State Farm only contested benefits after that date, and the jury's question about answering to charges incurred after that date.

As a result, even though the trial court erred by denying the partial directed verdict, we cannot find that plaintiff's substantial rights were materially affected under MCR 2.611. Thus,

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(f) Any other reason justifying relief from the operation of the judgment. [MCR 2.612(C)].

under the very unique facts of this case, we cannot hold that plaintiff satisfied the legal requirements for granting a new trial. See *Kelly*, 465 Mich at 38.

Affirmed.

/s/ Randy J. Wallace
/s/ Kristina Robinson Garrett
/s/ Matthew S. Ackerman