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STATE OF MICHIGAN

COURT OF APPEALS

LONETTA NICOLE SILAS,

Plaintiff-Appellant,

and

MENDELSON ORTHOPEDICS and SYNERGY SPINE AND ORTHOPEDIC SURGERY,

Plaintiffs,

v

TERRENCE VERNARD PLAIN,

Defendant-Appellee,

and

PROGRESSIVE MARATHON INSURANCE COMPANY and LIBERTY MUTUAL INSURANCE COMPANY,

Defendants.

UNPUBLISHED
November 17, 2026
10:45 AM

No. 376618
Oakland Circuit Court
LC No. 2022-197086-NF

Before: LIEVENSE, P.J., and SWARTZLE and MARIANI, JJ.

PER CURIAM.

Plaintiff and defendant were involved in a motor-vehicle accident, and plaintiff sued defendant to recover damages. A jury found defendant negligent, but the jury concluded that plaintiff did not suffer an injury or an aggravation of a preexisting condition. Plaintiff now appeals, claiming errors in relation to defendant's expert testimony and arguments pertaining to plaintiff's accident history. Because we find no reversible error, we affirm.

I. BACKGROUND

After the vehicle collision between plaintiff and defendant, plaintiff complained of neck and back pain, as well as headaches. Her medical provider diagnosed injuries to her head and spine and determined that plaintiff was disabled from work, housework, and caring for herself and her children. She received several lumbar fusions in an attempt to fix her back issues.

Plaintiff moved in limine to exclude evidence of her prior accident history, requesting that "any and all evidence of Plaintiff's prior car accidents" be excluded, as well as any references to these or other accidents. Plaintiff had three significant accidents prior to the one at issue: (1) a motor-vehicle accident that occurred ten years earlier and required treatment for brain, shoulder, and knee injuries; (2) a motor-vehicle accident that occurred five years earlier and resulted in shoulder, knee, and hand surgeries, as well as aggravation to her previous back and brain injuries; and (3) a slip-and-fall accident a week prior that involved her knee and ankle Plaintiff argued that introduction of her accident history "would unfairly suggest to the jury that Plaintiff is a 'career claimant' or someone who habitually seeks to profit from car accidents." The trial court denied the motion.

The parties scheduled a deposition shortly before trial with the defense's expert, Dr. Adeel Khalid, a brain-and-spine radiologist. Less than a week before the scheduled deposition, plaintiff requested "all of the records defense experts will be relying on during their respective deposition[s]." At the deposition, defense counsel asked Dr. Khalid to compare MRI imaging of plaintiff's spine five years before the accident at issue here versus a month-and-a-half after the accident; Dr. Khalid testified that he "found no objective change between pre-accident and post-accident imaging of the cervical spine." Plaintiff's counsel objected, arguing that the earlier images had not been disclosed to plaintiff. Defense counsel asserted that the records had been subpoenaed and were supplied earlier that day to defense counsel and then Dr. Khalid. Dr. Khalid also testified that in his earlier report, he came to the conclusion that there was no objective evidence of trauma to the cervical spine based only on the post-accident MRIs, and that the pre-accident MRIs only "confirmed" his original conclusion. Dr. Khalid also explained a teaching diagram of spondylolisthesis during his deposition, to which plaintiff's counsel objected.

The day after the deposition, plaintiff moved to strike Dr. Khalid's testimony, arguing that the undisclosed MRIs and diagram were "classic trial by ambush." At the final pretrial hearing held the same day as when the motion was filed, plaintiff expressed displeasure with Dr. Khalid's use of the comparative films and diagram, but because the trial court was unaware of the motion, it did not make a decision at that time. During this hearing, the trial court urged the parties to consider carefully before making an evidentiary objection.

Four days later, on the morning of trial, plaintiff reminded the trial court about the pending motion to exclude Dr. Khalid's testimony. The trial court denied the motion and offered instead for plaintiff to depose Dr. Khalid again; plaintiff declined the offer. The trial court warned counsel on both sides that due to their "difficulty in cooperatively" preparing the video depositions, every objection that the trial court rejected would lead to a $50 sanction.

During opening and closing arguments, as well as cross-examination of plaintiff, defense counsel highlighted plaintiff's medical and legal history, including multiple accidents, surgeries,

and lawsuits with the same counsel, and used visual materials to display their arguments. Plaintiff did not object to any of this except for defense counsel's practice of "leaving exhibits" in the jury's view. The trial court told plaintiff that if there was an objection to the materials, the trial court would ask defendant to move the display, and the trial court did so.

The jury found defendant negligent but did not find that plaintiff suffered an injury or an aggravation of a preexisting condition, and therefore did not reach the questions of whether defendant's negligence was the proximate cause of any injury or aggravation of a preexisting injury, or whether plaintiff suffered a serious impairment of a body function or permanent serious disfigurement. Plaintiff moved for judgment notwithstanding the verdict, mistrial, and a new trial based on surprise testimony, improper references to prior lawsuits, and objection sanctions. The trial court denied the motion, finding no errors.

Plaintiff now appeals.

II. ANALYSIS

A. EXPERT TESTIMONY

On appeal, plaintiff first argues that the trial court erred by allowing Dr. Khalid's testimony. We review for an abuse of discretion the trial court's decision on a discovery matter; the trial court abuses its discretion if its decision falls outside the range of reasonable outcomes. *In re Gregory Hall Trust*, 346 Mich App 75, 81; 11 NW3d 552 (2023).

A party must initially provide to the other party a copy of any document or other evidence that it possesses and may use as support during the lawsuit. MCR 2.302(A)(1). The disclosing party must timely correct or supplement an initial disclosure "if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing." MCR 2.302(E)(1)(a)(i). "If a party fails to provide information or identify a witness as required by MCR 2.302(A) or (E), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." MCR 2.313(C)(1). The trial court may impose other appropriate sanctions for such violation. MCR 2.313(C)(1)(c).

Plaintiff's claim is without merit. First, plaintiff has failed to show that defendant even violated MCR 2.302(E)(1)(a)(i) with respect to the comparison imaging. Defense counsel asserted that he received the comparison imaging the day of Dr. Khalid's testimony. The information was then made known to plaintiff on the same day, during Dr. Khalid's testimony, indicating that disclosure was timely. Second, the imaging was of plaintiff, and there is nothing in the record to explain why plaintiff's counsel did not have access to his client's imaging prior to the deposition. Third, even assuming for the sake of argument that disclosure of the imaging and/or teaching diagram was tardy, the trial court offered plaintiff a practical solution—an opportunity to re-depose Dr. Khalid. This subsequent deposition would have been conducted with plaintiff's full knowledge of Dr. Khalid's use of the comparative imaging and teaching diagram and would not have been tainted by any surprise or supposed harm. For whatever reason, plaintiff decided not to re-depose the expert witness. The trial court did not abuse its discretion by allowing Dr. Khalid to testify or offering plaintiff a practical solution to any unfair surprise.

B. EVIDENCE AND ARGUMENT ABOUT PRIOR-ACCIDENTS AND PRIOR-LAWSUITS

Plaintiff next argues that the trial court abused its discretion in allowing prior-accident and prior-lawsuit evidence to be used as proof of character rather than limiting such evidence to causation. Relatedly, plaintiff argues that she was denied a fair trial because defendant's arguments and displays of evidence at trial constituted misconduct by suggesting that plaintiff had a "pattern" of filing lawsuits.

Plaintiff concedes that her prior medical history may have been relevant but argues that "the defense was permitted to move beyond medical history and to use prior accidents and claims as a general reason to distrust Plaintiff's current claim." Plaintiff, however, never objected to defendant's actions at trial. Plaintiff's motion in limine requested a complete bar to the prior-accident evidence, regardless of the relevance and defendant's use of such evidence. The trial court denied the motion, but the denial did not give defendant free rein to use the evidence in an improper manner.

When defense counsel used the prior-accident and lawsuit evidence in a potentially improper manner at trial, plaintiff failed to object to such use. If a trial court properly admits evidence for a certain purpose, then the trial court, "*on timely request*, must restrict the evidence to its proper scope and instruct the jury accordingly." MRE 105 (emphasis added). There was no timely request from plaintiff to restrict the scope of the evidence. Thus, any prejudice from defendant's use of evidence outside the proper scope, including visual displays used during opening statements that were left for the jury to view during the trial, resulted from plaintiff's counsel's failure to object. In any event, by failing to object, plaintiff has waived the matter. See *In re Muskegon County Treasurer for Foreclosure*, 348 Mich App 678, 687; 20 NW3d 337 (2023).

C. CUMULATIVE EFFECT

Lastly, plaintiff argues that the cumulative effect of irregularities denied plaintiff a fair trial. For plaintiff's cumulative-effect argument, there must have been errors on the part of the defense or the trial court, and these errors must have caused harm to plaintiff. *Reetz v Kinsman Marine Transit Co*, 416 Mich 97, 102-103; 330 NW2d 638 (1982). As already discussed, the trial court's discovery remedy was not error, and any error in relation to the prior-accident evidence could have been cured by a timely objection by plaintiff.

In addition to the alleged irregularities addressed above, plaintiff also claims that the trial court threatened the parties that they "could be personally fined for rejected objections while evidentiary disputes were still unfolding." As plaintiff makes clear, she "does not rely on that warning as a stand-alone appellate issue" that would be worthy of relief in itself. And this "threat" did not appear to chill or hinder plaintiff's ability to object, as plaintiff continued to make other objections throughout trial and after the trial court's warning occurred. On review of the entire record, we find no discernible abuse of discretion by the trial court.

Affirmed.

/s/ Andrew J. Lievense
/s/ Brock A. Swartzle
/s/ Philip P. Mariani