STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH MARIE FRANCE,

Plaintiff-Appellee,

v

FRANKLIN LEE EDWARDS and BEATTIE FARMS, LLC,

Defendants-Appellants,

and

DONALD A. BEATTIE and RICHARD FRANCE,

Defendants.

UNPUBLISHED
April 30, 2020

No. 347343
Muskegon Circuit Court
LC No. 14-049833-NF

Before: MARKEY, P.J., and JANSEN and BOONSTRA, JJ.

PER CURIAM.

In this action to recover damages for injuries sustained in a collision between an SUV and a farm tractor, defendants, Franklin Lee Edwards and Beattie Farms, LLC, appeal by right the trial court's orders denying relief after a jury returned a verdict in favor of plaintiff, Deborah Marie France. We affirm.

I. BASIC FACTS

Edwards worked for Beattie Farms. On the morning of June 2, 2012, he prepared his 19,000-pound tractor by attaching two farm implements to it. He also needed to fuel the tractor, but the fuel station was on the other side of Skeels Road some distance west of his location. Edwards said that he drove the tractor up to Skeels Road and looked for traffic. There were two cars coming, but they were quite a distance away, so he pulled out into traffic. He said that he drove at about four miles per hour. He let the first car pass and then looked behind him and saw that the second car, an SUV, was still far enough back that he could turn left into the farm. He turned into the farm's driveway, and the SUV suddenly slammed into the side of the tractor. He immediately stopped the tractor.

Richard France testified that he was driving his SUV west on Skeels Road. His wife, Deborah France, was in the front passenger seat and his adult son was in the backseat behind Deborah. Richard said that he saw Edwards enter traffic and stated that he quickly closed up the distance to the slow-moving tractor, so he decided to pass the tractor on the left. Richard said that there were no other cars in front of him. Richard slowed, looked for oncoming traffic, and saw a Jeep driving eastbound. After the Jeep passed, Richard moved over into the eastbound lane, and began to accelerate around Edwards's tractor. He got up to about 15 miles per hour and was past the second farm implement attached to the tractor when Edwards suddenly turned left in front of him. He said that Edwards did not signal or look before turning. Richard drove into the tractor between its front and back wheels. The tractor then dragged the SUV partially into the farm's driveway before Edwards stopped.

Emergency responders had to remove the passenger door to extract Deborah from the SUV. Deborah suffered a broken ulna that required two surgeries and took approximately 10 months to heal. There was also evidence that she suffered from anxiety and panic attacks after the accident whenever encountering farm vehicles on the area roads, especially when encountering farm vehicles owned by Beattie Farms.

At trial, Edwards and Beattie maintained that the evidence showed that Richard was at fault for the accident. A witness, Brad Church, who was delivering supplies to the farm, testified that he saw the accident. He said that Richard drove off Skeels Road into a drainage ditch along the side of the road, and then slammed into the tractor, which was already in the farm's driveway. The owner of Beattie Farms, Donald Beattie, testified that he saw tire marks in the drainage ditch after he came out to see what had happened. Edwards and Beattie Farms argued that the evidence showed that Richard was driving too fast, and they suggested that he recklessly tried to pass the tractor at a high speed before it reached a no-passing zone.

Deborah's counsel, however, argued that the evidence showed that Edwards carelessly turned without signaling or looking behind him while Richard was carefully and legally passing Edwards on the left. The jury found in Deborah's favor and awarded her $225,000 in past damages and $25,000 in future damages. This appeal followed.

II. USE OF DEPOSITIONS

We first address the argument that the trial court allowed Deborah's trial counsel to improperly impeach witnesses with deposition testimony.

This Court reviews a trial court's evidentiary rulings for an abuse of discretion. *Mitchell v Kalamazoo Anesthesiology, PC*, 321 Mich App 144, 153; 908 NW2d 319 (2017). A trial court abuses its discretion when it selects an outcome that is outside the range of reasonable outcomes. *Id.* at 153-154. However, this Court reviews de novo whether the trial court properly interpreted and applied the rules of evidence. *Id.* at 154.

A deposition may not be admitted at trial except as provided in the rules of evidence. See MCR 2.308(A). A transcript of a deposition is normally hearsay that would be inadmissible at trial unless an exception applied. See MRE 801(c); MRE 802; *Shields v Reddo*, 432 Mich 761, 766-767; 443 NW2d 145 (1989). However, a transcript of testimony by a party opponent is by

definition not hearsay. See MRE 801(d)(2). Similarly, if a witness testifies at trial and is subject to cross-examination, an inconsistent statement made by the witness at a deposition is defined to not be hearsay. See MRE 801(d)(1)(A). Extrinsic evidence of a prior inconsistent statement, such as a deposition transcript, is normally not admissible unless the witness is afforded the opportunity to explain or deny the statement and the opposing party is afforded the opportunity to interrogate the witness. MRE 613(b). However, those limitations do not apply to admissions of a party opponent as defined under MRE 801(d)(2). See MRE 613(b). An answer to an interrogatory is admissible to the same extent as a deposition. See MCR 2.309(D)(3).

At trial, Deborah's counsel questioned Beattie about the distances from the staging area for the farm's equipment and the various fields where the workers used the equipment. Deborah's counsel indicated to Beattie that he had told him that the workers had to drive up to six miles to work the fields to the south and Beattie corrected him, stating that it was "[a]bout a mile south and a mile east." Deborah's counsel then asked Beattie to look at his deposition and stated that he would read it after Beattie had had an opportunity to find the lines.

Defense counsel objected to that proposed procedure on the ground that he had to present the deposition to refresh the witness's recollection and could not read it. At first, the trial court agreed, but Deborah's counsel noted that he was impeaching Beattie and so did not need to refresh his recollection first. Opposing counsel responded that he should then give Beattie the opportunity to read the answer first. After giving Beattie the opportunity to read the deposition transcript, Deborah's counsel read the question and the related answer into the record, and opposing counsel again objected, but the trial court allowed Deborah's counsel to proceed. After reading the question-and-answer, counsel asked whether he read the testimony correctly, and Beattie agreed. He then asked Beattie to state which answer was correct, and Beattie explained what he thought was the more accurate answer. Deborah's counsel repeated that procedure throughout Beattie's testimony.

Because Beattie was the owner of Beattie Farms and its agent, his statements were not hearsay. See MRE 801(d)(2)(D). Therefore, the statements that he made at the deposition were not barred by the hearsay rule, see MRE 802, and were not subject to the requirements of MRE 613(b). In any event, counsel complied with MRE 613(b) for each of the cited examples. Counsel gave Beattie the opportunity to read the deposition or interrogatory answer, allowed him to explain the differences between his statements, and Beattie Farms clearly had the opportunity to examine Beattie for further clarification. As such, the trial court did not abuse its discretion when it allowed Deborah's counsel to proceed in this fashion with regard to each of the cited examples. See *Mitchell*, 321 Mich App at 153-154.

Deborah's counsel utilized the same basic procedure with Church. He questioned Church about relevant events and when Church gave an answer that was arguably inconsistent with his deposition testimony, counsel gave Church the opportunity to read the deposition, and then read the question-and-answer into the record. After reading the deposition testimony, Deborah's counsel asked clarifying questions and gave Church the opportunity to explain the discrepancies. As for the final example involving Church, Deborah's counsel did not read the deposition testimony into the record—defense counsel read it into the record in an effort to rehabilitate Church by showing that his deposition testimony was consistent with his trial testimony.

Although Church was not a party opponent, see MRE 801(d)(2), his inconsistent statements were nevertheless not hearsay under MRE 801(d)(1)(A), and so were not barred under MRE 802. Moreover, for each instance involving Deborah's counsel, counsel complied with the requirements of MRE 613(b). Accordingly, the trial court did not abuse its discretion when it allowed Deborah's counsel to read Church's deposition into the record. See *Mitchell*, 321 Mich App at 153-154.

The same is true for Edwards, who was a party opponent under MRE 801(d)(2). In each cited example, Edwards gave testimony that was arguably inconsistent with his deposition testimony, and Deborah's counsel gave Edwards an opportunity to read the deposition before he himself read the questions and answers into the record. After reading the deposition, Deborah's counsel asked Edwards clarifying questions and defense counsel had the opportunity to examine him about his answers. The deposition testimony was substantively admissible, and, even though not required to follow the procedures stated under MRE 613(b), Deborah's counsel adequately complied with that rule nonetheless. The trial court did not abuse its discretion when it allowed that procedure. See *Mitchell*, 321 Mich App at 153-154.

On appeal, Edwards and Beattie Farms maintain that Deborah's counsel improperly used the depositions because he did not ask foundational questions of the witnesses, which would demonstrate that the depositions were admissible. Instead, they claim that Deborah's counsel merely read the deposition questions and answers into the record and let the answers stand as though proved. Edwards and Beattie Farms cite Justice BRENNAN'S dissent in *Hileman v Indreica*, 385 Mich 1; 187 NW2d 411 (1971), for the proposition that a party cannot read deposition testimony into the record in this way.

In *Hileman*, Justice BRENNAN took the position that the trial court properly excluded the use of the deposition testimony at issue in that case because the plaintiff in that case could not impeach her own witness under the rules then applicable and, even if used to impeach the witness, the plaintiff was attempting to admit the testimony as substantive evidence, which was improper. *Id.* at 28-29 (BRENNAN, J., dissenting). Setting aside the fact that the majority did not adopt Justice BRENNAN'S views on the proper use of deposition testimony, our Supreme Court has since the decision in *Hileman* adopted new court rules and rules of evidence, which govern the admission and use of deposition testimony as already described. Indeed, under modern practice, a party may attack the credibility of any witness, even his or her own witness. See MRE 607. Moreover, deposition testimony is admissible in modern practice as provided under the rules of evidence, see MCR 2.308(A); and, assuming that the deposition testimony is otherwise relevant and admissible, see MRE 401; MRE 402, the deposition testimony might not be barred by the hearsay rule, see, e.g., MRE 801(d)(2), and would be admissible as substantive evidence, see *Fassihi v St Mary Hosp of Livonia*, 121 Mich App 11, 14; 328 NW2d 132 (1982). Accordingly, Justice BRENNAN'S dissent is unpersuasive.

Edwards and Beattie Farms also cite the decision in *Socha v Passino*, 405 Mich 458, 469-470; 275 NW2d 243 (1979), mod on other grounds *Johnson v Corbet*, 423 Mich 304; 377 NW2d 713 (1985), for the proposition that the trial court should have required Deborah's counsel to read the deposition testimony into the record using a question by question approach. However, Deborah's counsel complied with that method by reading the questions and answers into the record.

Edwards and Beattie Farms have not identified any errors involving Deborah's counsel's use of deposition testimony.

III. ORDERS IN LIMINE

We next address Beattie Farms and Edwards's argument that the trial court did not properly enforce its orders in limine. This Court reviews a trial court's evidentiary rulings for an abuse of discretion. *Mitchell*, 321 Mich App at 153.

A. VALUE OF BUSINESS DEALINGS

Edwards and Beattie Farms first argue that the trial court erred when it allowed Deborah's counsel to elicit testimony about the dollar value of Beattie Farms's purchases from North Central Co-Op despite an order in limine specifically prohibiting Deborah's counsel from doing so.

One issue at trial was whether Church had a motive to conform his testimony to the version of events propounded by Beattie Farms. Church testified that he worked seasonally for North Central Co-Op. He also stated that he knew that Beattie was a significant customer of the co-op, and he acknowledged that he had been a longtime resident of the Fremont area and owned property nearby Beattie Farms's property. To the extent that Beattie Farms was an important customer of the co-op, Church might have felt pressure to testify in a way that helped Beattie Farms. As such, the business relationship between the co-op and Beattie Farms was relevant to determining Church's credibility. See *Lewis v LeGrow*, 258 Mich App 175, 211; 670 NW2d 675 (2003) (stating that evidence that shows bias or prejudice is always relevant).

Although evidence of bias is generally relevant, Edwards and Beattie Farms moved to preclude Deborah from presenting testimony about the value of the business that Beattie Farms had with Church's employer on the ground that it would be unfairly prejudicial. Deborah's counsel argued at the hearing on the motion that the value of the business relationship was important evidence that Church had a motive to distort the facts in favor of Beattie Farms. The trial court determined that the fairest course would be to allow Deborah to elicit testimony that Beattie Farms did a substantial amount of business with Church's employer, but that it was unnecessary to elicit testimony about the specific dollar amount or to admit the invoices. That is, the court apparently balanced the relevance of the evidence against the potential for unfair prejudice, see MRE 403, and limited the nature of the evidence. The court, however, warned that Beattie could open the door to the evidence of the dollar value if he denied that his farm did a substantial business with the co-op. The trial court incorporated its oral ruling into an order. The order provided that Deborah "shall not introduce or attempt to introduce into evidence statements, invoices or documents purporting to show the dollar value of business between Beattie Farms, LLC and North Central Co-Op" unless "Don Beattie denies that Beattie Farms, LLC conducts 'significant' business with North Central Co-Op."

At trial, Deborah's counsel asked Beattie about his business relationship with North Central Co-Op. Deborah's counsel asked Beattie to agree that Beattie Farms was the co-op's biggest customer, and Beattie replied that he was "far from their biggest customer." Counsel asked if he meant in the Fremont area, and Beattie clarified that there were "four mega farms within four miles" that "blow me out of the water." He refused to characterize the business that he did with

the co-op as involving a significant amount of money. After a sidebar, Deborah's counsel asked about the total dollar value of his business with the co-op:

> *Q.* Mr. Beattie, would you disagree in the years '11, '12 and '13 you spent over 1.3 million dollars with the Co-Op?
>
> *A.* In three years, that's possible.

The trial court specifically stated—both orally and in its written order—that Deborah would not be allowed to present evidence of the dollar value of Beattie Farms's business with the co-op *unless* Beattie opened the door to the evidence. The gist of both caveats was that Beattie had to admit that his business was significant enough that the continuation of that relationship would be important to the co-op. At trial, Beattie testified that his business with the co-op was insignificant by comparison with the "mega" farms in the same area. When Deborah's counsel tried to get Beattie to admit that his business with the co-op was enormous, Beattie vacillated about the meaning of the term and wondered whether the term enormous meant one million dollars or five thousand dollars. He offered instead that he was just a good customer. Finally, when Deborah's counsel asked him whether one or two million dollars would be "significant," Beattie testified that he did not spend that much and again stated that he did not know what counsel meant by "significant."

Beattie downplayed the importance of his business to the co-op, which effectively amounted to a denial that he had significant business dealings with it. Beattie's refusal to admit that he was a significant customer of the co-op triggered the caveat that the trial court placed in the order in limine and opened the door to Deborah's counsel's question concerning the dollar value of his business with the co-op. The trial court's decision to allow the question fell within the range of reasonable outcomes. See *Mitchell*, 321 Mich App at 153-154.

Edwards and Beattie Farms also complain that the question itself was vague and implied that Beattie Farms did over $1.3 million in business each year, which added to the unfair prejudice. The trial court properly allowed the question, because it was relevant and, given Beattie's denial that he did significant business with the co-op, the relevance was not substantially outweighed by the danger of unfair prejudice. See *Waknin v Chamberlain*, 467 Mich 329, 334; 653 NW2d 176 (2002) (recognizing that it is only when the probative value of the evidence is substantially outweighed by the danger of unfair prejudice that otherwise relevant evidence becomes inadmissible). Moreover, when read in context with Beattie's response, the testimony indicated that the amount was the total for all three years. Finally, defense counsel could have addressed any ambiguity through further examination, which he did not do. Accordingly, there was no error concerning the question-and-answer involving the dollar value of the business between Beattie Farms and the co-op.

B. IMPROPER PATTERN EVIDENCE

Edwards and Beattie Farms also argue that Deborah's counsel repeatedly elicited testimony that violated the order prohibiting Deborah from presenting improper pattern evidence. They claim that Richard, Deborah, and Deborah's son, Brian France, each improperly testified that Beattie Farms's employees drive unsafe vehicles.

Before trial, the trial court determined that Deborah would be allowed to present photos that showed that she frequently encounters farm vehicles on the roads as part of her proofs that she was likely to continue to encounter such vehicles and would suffer as a result of her anxiety. The court specifically stated that it did not want Deborah or her counsel to argue or state that the photos demonstrated Beattie Farms's pattern of behavior. The corresponding order reiterated that Deborah could not use the photos to establish a pattern of behavior by the farm's employees regarding the operation of the farm equipment.

Brian testified generally about his mother's anxiety and her extreme responses to seeing farm vehicles on the road. He further testified that he could distinguish Beattie Farms's vehicles from other farm vehicles and opined that 95% of the vehicles that they encounter on the roads are operated by Beattie Farms. He stated that it was an everyday occurrence during the summertime. After this testimony, Deborah's counsel asked Brian whether he had seen the operators of Beattie Farms's vehicles use turn signals, and he said that he had never seen them use turn signals. Defense counsel objected, and the trial court later held a sidebar after which it instructed the jury that "any testimony provided by this witness with regard to his observations of the operations of Beattie farm equipment while his mother is with him is limited only to the issue of whether or not she has sustained damages that relate to observation of equipment after she had this accident." Deborah's counsel asked Brian some additional questions related to that instruction and again inquired whether he had seen the employees use turn signals, which prompted an immediate objection, which the trial court sustained.

After the jury had been excused for the day, defense counsel moved for a mistrial on the ground that Deborah's counsel had violated the court's order in limine, which could not be rectified by an instruction. The trial court agreed that counsel went too far at one point in the examination, but it felt there was no prejudice. The court noted that it had already provided an instruction and would later instruct the jury that the attorney's questions were not evidence. Accordingly, it denied the motion.

The trial court did not abuse its discretion in its handling of Brian's testimony. See *Mitchell*, 321 Mich App at 153-154. The trial court limited Deborah's ability to present evidence that Beattie Farms continued to operate vehicles on the roads that do not have the ability to signal turns and from presenting evidence that the farm's employees do not signal turns even though such evidence was relevant to show why she was more likely to suffer an anxiety attack when driving in the same area as Beattie Farms's vehicles. See MRE 401; MRE 402. The court earlier explained that it did not want Deborah to present evidence that tended to show that the farm engaged in a pattern of behavior showing a lack of safety, but it still recognized that she had the right to present evidence to establish her future damages from anxiety. Although Deborah's counsel arguably exceeded the limits placed on Deborah's ability to present such evidence, the trial court instructed the jury that it could only consider Brian's testimony to the extent that it was indicative of Deborah's damages. That instruction cured whatever minimal prejudice might have accompanied the improper pattern evidence, and the subsequent instruction that questions are not evidence cured the prejudice from counsel's attempt again to elicit testimony about Beattie Farms's pattern of unsafely operating vehicles. See *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 302 Mich App 7, 25; 837 NW2d 686 (2013) (stating that courts presume that jurors follow their instructions and that instructions cure most errors). Because there was no prejudice, the trial court properly denied the motion for a mistrial. See *In re Estate of Flury*, 249 Mich App 222, 228-229; 641 NW2d 863

(2002) (stating that a trial court should only grant a mistrial when an error at trial was so prejudicial to one of the parties that the fundamental goals of accuracy and fairness were threatened). Consequently, the trial court did not err in its handling of this testimony.

Edwards and Beattie Farms also complain that the trial court improperly allowed similar pattern evidence when Deborah's counsel examined Richard. Counsel elicited testimony from Richard concerning Deborah's anxiety and her reactions to encounters with Beattie Farms's equipment when driving in the area. Richard testified that he could tell when the vehicle is owned by Beattie Farms because the farm uses John Deere and the other local farmers use Internationals. Deborah's counsel then asked whether, "when you see the John Deere, or the Beattie vehicles that you think they are, are still seeing problems in terms of not having either turn signals—", but opposing counsel interrupted the question with an objection. Unlike the case with Brian's testimony, the trial court overruled the objection. The court allowed the answer, but informed the jury that it could only use the testimony for the purposes of establishing Deborah's damages and not to show that Beattie Farms does not comply with safety requirements for its equipment. Thereafter, Richard testified that they frequently saw Beattie Farms's vehicles with no turn signals or brake lights and with broken mirrors. He further agreed that it was when encountering such vehicles that Deborah had panic attacks. Richard testified that Beattie Farms was still harming his wife through the panic attacks and he felt that Beattie Farms did not care.

On appeal, Edwards and Beattie Farms maintain that the trial court erred by allowing Richard to testify that he and Deborah frequently see Beattie Farms's vehicles without turn signals, brake lights, and mirrors because that testimony violated the court's order in limine. However, the trial court was not bound to enforce its order as originally formulated; it could modify the order to suit the facts developed at trial. See, e.g., *Zantop Int'l Airlines, Inc v Eastern Airlines*, 200 Mich App 344, 360; 503 NW2d 915 (1993); see also *People v Boyd*, 470 Mich 363, 369; 682 NW2d 459 (2004). And it is evident from the trial court's ruling with regard to Richard's testimony that it altered its earlier ruling to allow testimony about the condition of Beattie Farms's vehicles. Because the testimony was relevant to the jury's assessment of the triggers for Deborah's anxiety attacks and the likelihood of repetition, see MRE 401, it was admissible, see MRE 402. And there is no indication that the danger of unfair prejudice substantially outweighed the evidence's probative value. See MRE 403. Moreover, the trial court again instructed the jury that it could only use the testimony to determine whether and to what extent Deborah would suffer future damages arising from the accident, which instruction the jury presumably followed. See *Zaremba Equip*, 302 Mich App at 25. Thus, the trial court took adequate steps to limit any unfair prejudice that might arise from the testimony. See MRE 105. On the record before us, we conclude that the trial court did not abuse its discretion when it allowed this testimony. See *Mitchell*, 321 Mich App at 153-154.

Edwards and Beattie Farms argue that the improper pattern testimony continued with Deborah. Deborah agreed at trial that she had told her therapist that her situation had overall been getting better, but that she still had a problem when she encounters equipment owned by Beattie Farms. Her counsel asked her why she continued to have problems with equipment operated by Beattie Farms, as opposed to other farms. Deborah responded: "Because my—my feeling, and this is my opinion, that they haven't learned anything from this; that it didn't bother them that they almost killed me because they still don't use turning signals."

Defense counsel immediately asked for a sidebar, and the trial court struck the answer and ordered the jury to disregard it. The court then went on and explained its reasoning outside the presence of the jury. It stated that it had been allowing evidence that seeing Beattie Farms's vehicles triggers "flashbacks, panic attacks, [and] would be frightening for herself" because that evidence was relevant to her damages. However, whether she was "mad or disgusted" by Beattie Farms' failure to take steps to make its vehicles safer was not within its ruling. The court stated that Deborah should not be talking about what makes her angry or frustrated or concerned. Thereafter, when asked about what would be justice for her, Deborah informed the jury that she wanted Beattie Farms to "realize what their equipment does by not being fully up to standards." The trial court struck that statement after objection as well.

As the trial court recognized when discussing the same claims in the motion for a new trial, it was improper for Deborah to testify as to her belief about what would be just because her comments implicated punishment rather than compensation; however, any prejudice was alleviated when the court instructed the jury to disregard her answers. Jurors are presumed to follow their instructions and instructions are presumed to cure most errors. *Zaremba Equip*, 302 Mich App at 25. Accordingly, even to the extent that Deborah's testimony was improper, it did not prejudice the trial.

The trial court carefully balanced Deborah's right to present evidence that she had suffered, and would continue to suffer, panic attacks triggered by Beattie Farms's vehicles as a result of the mental harm caused by the accident against the danger of unfair prejudice accompanying that testimony. To the extent that Deborah's counsel elicited testimony that went beyond the trial court's ruling, the trial court immediately corrected the errors and properly instructed the jury. As such, the questioning did not cause Edwards or Beattie Farms any unfair prejudice.

IV. ATTORNEY MISCONDUCT

Next, Beattie Farms and Edwards argue that Deborah's counsel engaged in a pattern of conduct at trial designed to inflame the jury's passion and bias against Beattie Farms.

This Court reviews de novo as a question of law whether an attorney's remarks deprived the opposing party of a fair trial. See, e.g., *Reetz v Kinsman Marine Transit*, 416 Mich 97, 102-103; 330 NW2d 638 (1982). However, this Court reviews a trial court's decision on a motion for a new trial for an abuse of discretion. See *Zaremba Equip*, 302 Mich App at 21. For remarks that were not objected to at trial, the party claiming error "must prove that (1) the remarks were so prejudicial as to have denied the party a fair trial and that (2) any resulting prejudice could not have been cured by a curative instruction." *Badiee v Brighton Area Sch*, 265 Mich App 343, 373-374; 695 NW2d 521 (2005).

A. OPENING STATEMENT

Edwards and Beattie Farms maintain that Deborah's counsel began his campaign by attacking Beattie Farms in his opening statement. The opening statement is the time when the attorneys discuss the evidence to be adduced at trial; and attorneys have wide latitude in outlining to the jury that evidence. See *Taylor v Klahm*, 40 Mich App 255, 260-261; 198 NW2d 715 (1972). An attorney's remarks ordinarily will not constitute grounds for reversal. *Zaremba Equip*, 302

Mich App at 21. However, remarks may warrant reversal " 'where the prejudicial statements' reveal a deliberate attempt to inflame or otherwise prejudice the jury, or to 'deflect the jury's attention from the issues involved.' " *Id.*, quoting *Hunt v Freeman*, 217 Mich App 92, 95; 550 NW2d 817 (1996).

Our Supreme Court set out the procedure for evaluating whether an attorney's remarks warrant reversal:

> When reviewing an appeal asserting improper conduct of an attorney, the appellate court should first determine whether or not the claimed error was in fact error and, if so, whether it was harmless. If the claimed error was not harmless, the court must then ask if the error was properly preserved by objection and request for instruction or motion for mistrial. If the error is so preserved, then there is a right to appellate review; if not, the court must still make one further inquiry. It must decide whether a new trial should nevertheless be ordered because what occurred may have caused the result or played too large a part and may have denied a party a fair trial. If the court cannot say that the result was not affected, then a new trial may be granted. [*Reetz*, 416 Mich at 102-103.]

Edwards and Beattie Farms first argue that Deborah's counsel made improper comments in his opening statement that were designed to make the jury believe that Beattie Farms was an uncaring and careless business that deserved to be punished. They first cite a passage in which counsel indicated that the evidence would show that Deborah is "furious" at the "Beattie Corporation" because it keeps doing the same thing, which amounts to telling her "you don't matter. We almost killed you but we're going to keep doing business as usual." However, Edwards and Beattie Farms do not explain the context, and they omit the first and last sentences from the cited paragraph, which connect the comments to the broader context of the opening remarks.

Before the cited paragraph, Deborah's counsel summarized the evidence that Deborah had suffered posttraumatic stress from the accident and now suffered from anxiety and panic attacks. He then argued that the evidence would show that Deborah's panic attacks were triggered when passing "these vehicles." He stated that she suffers "anger and panic" because she "keeps seeing the same things that almost killed her." He related that Deborah was "furious at what the Beattie Corporation keeps doing and basically telling her you don't matter. We almost killed you but we're going to keep on doing business as usual." He characterized her continued exposure to the vehicles that trigger her anxiety as torture.

When viewed in context, the statements made by Deborah's counsel foreshadowed evidence that would be elicited concerning Deborah's experiences that trigger her panic attacks: her continued exposure to farm vehicles that lack safety features which cause her to become terrified that she might again become involved in an accident. Although counsel indicated that Deborah was "furious" at the farm because they "just don't get it and they're torturing her," he did not suggest that the jury should suspend its judgment, disregard the evidence, and punish Beattie Farms for being a bad neighbor. See *Hunt*, 217 Mich App at 95 (stating that the improper comments must demonstrate that counsel made them in a studied purpose to inflame or prejudice or deflect the jury from the actual issues involved). Rather, he connected the comments to the

evidence that he felt would show that Deborah would continue to suffer future damages as a result of seeing vehicles that lack safety features. Because Deborah and her family lived near Beattie Farms and it was a Beattie Farms's tractor that was involved in the accident allegedly giving rise to the posttraumatic stress, Deborah's counsel could properly argue that the evidence would show that Beattie Farms would be the primary trigger of Deborah's future emotional distress.

Counsel's use of the phrase "they don't get it" and the word "torturing" do suggest morally culpable behavior, but the overall context involved permissible commentary on the evidence that Deborah would suffer future damages from anxiety and that Beattie Farms would be the cause of the harm. To the extent that those comments were somewhat prejudicial, the prejudice could readily have been cured had defense counsel objected and requested an instruction. See *Badiee*, 265 Mich App at 373-374.

Beattie Farms and Edwards next complain that Deborah's counsel improperly informed the jury that Church would testify that Bettie Farms was a big player in the area, had a lot of land, and spent an enormous amount of money with the co-op. However, the context of the cited statement demonstrates that Deborah's counsel was not impermissibly asking the jury to punish Beattie Farms because it was a wealthy business; he asked the jury to examine Church's testimony carefully and to consider whether Church had an incentive to skew the facts to align with Beattie Farms's version of events. Specifically, counsel noted that Church would say that he was an eyewitness to the accident and that he saw Richard's SUV appear out of nowhere, fly across the ditch, and slam into the tractor, which was diametrically opposite of Richard's story, and also contrary to the physical evidence. He noted as well that Church's statement does not appear anywhere in the police reports even though he would say that he spoke to an officer. He suggested that Church was not being truthful because he had a desire to please Beattie Farms. Church's credibility was highly relevant to the issues at trial and, for that reason, Deborah's counsel could properly highlight the expected testimony that tended to show that Church had a motive to remember the facts in a way that benefited Beattie Farms, which included commenting on the evidence that Beattie Farms was well known in the community; owned a lot of land, including land neighboring Church's land; and did a lot of business with Church's employer. See *Reetz*, 416 Mich at 108-109 (stating that counsel may properly argue that a witness's version of events is not worthy of belief). The comment was not improper.

Beattie Farms and Edwards finally fault Deborah's counsel for closing his opening remarks with a summary of the reason that Deborah was seeking compensation for her anxiety attacks. Deborah's counsel introduced the theme by first describing Deborah's routine and how her son drives her to watch her other son's children. He noted that their route takes them past Beattie Farms, which triggers her panic attacks: "So folks she's here because it keeps getting triggered. . . . She's tired of getting this trigger, of seeing all these vehicles sitting out there and knowing they're just making a business decision either not to have drivers that understand what's going on and have turn signals on their vehicle, or not having it at all."

Again, the context shows that Deborah's counsel connected his comments to the evidence that would show that Deborah suffered from panic attacks that were triggered as a result of having to drive past Beattie Farms and encounter its vehicles. Counsel indicated that the evidence would further show that Beattie Farms chose not to put additional safeguards on its vehicles and that the lack of additional safeguards exacerbated Deborah's anxiety attacks. Although couched as

commentary on the potential for future damages, counsel's statement that Deborah was "tired of getting this trigger" and that she knew that Beattie Farms was simply making a "business decision" not to have these safety devices did suggest that the jury should send a message to Beattie Farms. However, the statement was not particularly egregious and occurred as part of a lengthy discussion about the evidence that showed that Beattie Farms had no intention of modifying its practices, which permitted an inference that Beattie Farms's practices would continue to cause Deborah's anxiety attacks. Given the context, a timely objection and instruction would have clarified the proper scope of the commentary and cured any prejudice that may have accompanied the comment. See *Badiee*, 265 Mich App at 373-374.

B. IMPROPER QUESTIONS

Beattie Farms and Edwards also argue that Deborah's counsel asked improper questions that similarly suggested that the jury should punish Beattie Farms. An attorney's questions may amount to misconduct when the record shows that the questions were not posed in good faith, but were made for the manifest purpose of creating prejudice and influencing the jury. See *In re Ellis Estate*, 143 Mich App 456, 462-463; 372 NW2d 592 (1985).

Edwards and Beattie Farms first argue that counsel tried to prejudice Beattie Farms by eliciting testimony that Beattie was the "Chief Executive Officer of the Beattie Farm LLC Corporation." Counsel misspoke when he suggested that Beattie was an officer of a corporation. Nevertheless, there was nothing improper about asking Beattie to inform the jury about his position in Beattie Farms because it was relevant to his ability to testify on behalf of Beattie Farms and to his credibility. "It is always permissible upon the cross-examination of an adverse witness to draw from him any fact or circumstance that may tend to show his relations with, feelings toward, bias or prejudice for or against, either party, or that may disclose a motive to injure the one party or to befriend or favor the other." *Hayes v Coleman*, 338 Mich 371, 381; 61 NW2d 634 (1953). Nothing about the question itself suggested that it was part of a deliberate attempt to mischaracterize Beattie Farms as a "mega-agribusiness." Referring to Beattie as the officer of an "LLC corporation" was confusing, but not prejudicial.

In any event, as shown by the subsequent record, defense counsel objected, the trial court instructed the jury to ignore the question, and Deborah's counsel clarified that the purpose of the questioning was to establish Beattie's authority to act on the farm's behalf; moreover, Beattie testified that he in fact had the final say in the farm's management. The trial court's instruction cured any harm occasioned by Deborah's counsel's misstatement. See *Zaremba Equip*, 302 Mich App at 25.

Beattie Farms and Edwards also argue that Deborah's counsel continued to inject prejudice into the trial by violating the court's order in limine by asking Beattie about his farm's failure to take reasonable steps to improve the safety of its equipment. At trial, Deborah's counsel reviewed pictures of Beattie Farms's equipment with Beattie and asked Beattie whether one picture depicted a broken and rusted mirror. Defense counsel objected on the ground of relevance and Deborah's counsel argued that it was relevant because Deborah continues to see such things and suffer as a result. The trial court overruled the objection.

Deborah's counsel then asked Beattie whether the condition of the equipment showed that his farm was concerned about safety:

> *Q.* And now we're seeing a mirror with a bunch of rust on it. All I'm asking is don't you agree this doesn't exactly say we're concerned about other people's safety?
>
> *A.* I'm concerned about other people's safety, believe me.
>
> *Q.* And finally Mr. Beattie, you would agree with me that from 2012 to today you're still operating equipment out there like the cultipacker or other things that have no turn signals and no brake lights?
>
> *A.* We have slow-moving vehicle signs and working flashing lights on the tractor. You don't have brake lights on equipment. You have flashing lights and most of the equipment don't have turn signals on it. Some of them do come with flashing lights now.
>
> *Q.* Well we saw the one cultipacker, if it was working would have flashing lights you said, correct?
>
> *A.* If the wires were working and the lights were put in you could hook it up for flash but it probably got broke. Hey it's planting season. You got to get the crop in. You ain't got time to keep fixin' every little light that breaks, but—
>
> *Q.* All right. Your business concerns come ahead of those kind of things.
>
> *A.* No they don't come ahead of them things but it takes time to get some repairs sometimes.

The questions posed by Deborah's counsel did not amount to an improper attempt to prejudice the jury against Beattie Farms. Counsel had the right to explore the condition of Beattie Farms's vehicles because their condition was relevant to whether Deborah would be likely to suffer panic attacks when encountering those vehicles. Moreover, the evidence suggested that there were additional safety features that Beattie Farms could utilize to make its vehicles safer and which might prevent the type of accident at issue in this case. Indeed, immediately after this line of questioning, Beattie acknowledged that he was aware of remote-controlled turn signals that could be magnetically affixed to equipment for safety. However, he rejected their use because they "probably fall off the first time in the field." Beattie's decision not to take steps to improve the safety of his vehicles was relevant to determining whether Beattie Farms negligently maintained its vehicles and thereby caused the accident, and was also relevant to Deborah's future damages from anxiety attacks occasioned by encounters with vehicles that obviously lack readily available safety features. There was nothing improper about the questions.

Edwards and Beattie Farms also maintain that it was improper to ask Edwards whether Richard and Deborah had opined when they met him that he would not be harmed by Deborah's lawsuit. Edwards at first did not understand what counsel was asking, so counsel rephrased the question:

Q. Well if we pursued a claim against the Beattie Corporation, you were driving, right?

A. Correct.

Q. So did you fear that if we did that you'd somehow be harmed in this claim process, that you'd be at risk somehow?

A. No, not really. It never crossed my mind at the time.

Although counsel again referred to Beattie Farms as a corporation rather than an LLC, the questions were not improper. Whether Edwards felt that he might be harmed by Deborah's lawsuit was relevant to establish whether he felt pressure to testify in a way that placed the blame for the accident on Richard. See *Hayes*, 338 Mich at 381. As such, the questions were not improper, and they do not suggest that Deborah's counsel was attempting to inflame the jury against Beattie Farms. See *In re Ellis Estate*, 143 Mich App at 462-463.

C. CLOSING AND REBUTTAL STATEMENTS

Next, Beattie Farms and Edwards identify comments that Deborah's counsel made in his closing and rebuttal statements that they believe unfairly prejudiced the trial. It was counsel's duty to use all legitimate means to persuade the jury that it would be just to find in favor of his client. See *Elliott v AJ Smith Contracting Co*, 358 Mich 398, 418; 100 NW2d 257 (1960). And, as our Supreme Court has recognized, the "line between a highly persuasive, but fair, argument and an improper appeal to passion is, admittedly, a difficult one to draw." *Id.* For that reason, courts must give counsel some leeway. *Id.*

Edward and Beattie Farms first complain that Deborah's counsel improperly stated that this case was "about a corporation that I think you guys saw very clearly through Mr. Beattie that wants to play by its own rules." Deborah's counsel made the remark in response to defense counsel's claim in his opening statement that this case was just a broken arm case. Deborah's counsel explained that this case was not just about the broken arm. He informed the jury that Deborah did not want a "dime for anything in the future for that arm." Rather, Deborah's counsel stated, there was the matter of Deborah's future damages from being forced to encounter Beattie Farms' unsafe vehicles, which would trigger her panic attacks; he suggested that she would suffer future panic attacks because the evidence showed that Beattie did not feel obligated to take steps to improve the safety of his equipment:

> But I'm going to put the glue together here. When I showed [Beattie] that picture that was taken in 2016 I said does that show a corporation that's worried about safety? And he laughed and said are you kidding me? You think we got time to do this? We got to get the crops in. You know what, I never begrudge a good corporate community partner making as much money as they can because they supply a lot of jobs and they do a lot of great things for the community. But I do demand that they play by the same rules that we do.

Counsel reiterated that Edwards had an obligation to signal his intent to turn and to take reasonable steps to ensure the safety of passing cars. He maintained, however, that the testimony and evidence showed that Beattie Farms had not taken reasonable steps to ensure the safety of the equipment at issue in the accident and failed to take reasonable steps to equip its tractors with reasonable safety measures after the accident. Instead, he felt that Beattie intended only to comply with the minimum mandates of the law, as Beattie saw it, and do nothing more. Counsel noted that the evidence showed that Beattie Farms spent "a million-three on fertilizer and not a dime on these portable turn signals." And he reminded the jury that Beattie told them that he had no obligation to use them. Counsel informed the jury that it was the final arbiter of what constituted reasonable conduct.

Deborah's counsel returned to that theme later in his closing. Deborah's counsel stated that "future damages means you have to make a prediction," and he opined that the best indicator of future conduct was past conduct. He then turned to the evidence that Beattie Farms had done nothing to implement reasonable safety measures since the accident:

> Here's 2016, you know, the other pictures are all up here with busted lights and all that kind of stuff. What does the history tell us? Well the history tells us and Mr. Beattie tells us, I don't have to do anything. Law says I don't have to do it. Oaky, that's Beattie's law. If you think that Beattie's law is going to keep on predominating throughout the next years then you should calculate something and it's going to be on a year-by-year basis. And it's above my pay grade to do this with you. I'm sorry. You know, the other one I felt comfortable with. I can deal with finite. But in terms of how much and how much per year and that, again like Debbie said we're just gonna totally leave it in your hands. If you think after today for some strange reason that Beattie says nope we're going to start getting those turn signals, we're going to start getting the remotes, we're going to start repairing our equipment, were going to start replacing those mirrors when they get broken, we're going to do the things that say we're a responsible corporate partner in our community that cares about everybody and Debbie and we acknowledge what we did to her; if you think that light switch is going to go on then the number is zero. Zero. Why? `Cause Debbie's not going—she's going to see functioning turn signals. She's going to see drivers that turn a little bit, wait. She's gonna see this corporate mentality change. And that's the road to recovery. That's what I want. I want zero. But I want that. Now put a gun to my head and say okay Bill bet on it. Then I look back at the history.

Finally, Deborah's counsel restated his position in his rebuttal comments. He argued that the evidence showed that Beattie Farms was negligent and that Richard was not negligent; he also maintained that he adequately proved Deborah's past damages. He earlier argued that she should receive approximately $85,000 to compensate her for the time that she was incapacitated by injury and panic attacks. He also argued that she deserved $30,000 for the pain and suffering associated with her surgeries and $10,000 for the pain and suffering over the years after the last surgery to present.

Turning to his request for future damages, Deborah's counsel related that he believed the evidence showed that Bettie Farms would continue to act in a way that triggered Deborah's anxiety

attacks: "Yes, 'cause I don't think they're going to change a thing. I think they're going to keep on exposing her to the same triggers day after day after day." Defense counsel objected that Deborah's counsel was "talking about punishing" Beattie Farms, which was not a proper argument. Deborah's counsel replied that that was not what he was arguing:

> Your honor, I think I was clear in saying that these are the triggers to her panic seeing these items of danger, broken mirrors, not having turn signals, those situations and I will say that to the jury myself. No, this is not what a court of law is about, punishing a defendant. It is strictly for the compensation.

The trial court told him to proceed and noted that it would instruct the jury accordingly. Deborah's counsel then completed his argument:

> So again, if you feel that their conduct is to keep on exposing her to these triggers and they're not going to change and start fixing these things so she's not exposed to those triggers then I'd say to you I believe past history would show that the future is going to have her continue to have these problems.

Examined in context, and while giving leeway to zealous advocacy, see *Elliott*, 358 Mich at 418, the comments were not improper and did not demonstrate an intent to inflame the jury. Whether Beattie Farms took appropriate steps to ensure that its equipment had reasonable safety features was relevant to determining whether Beattie Farms was at fault for the accident at issue. It was also relevant to proving whether Deborah had encountered unsafe vehicles after the accident and would continue to encounter unsafe vehicles in the future, which had triggered and would continue to trigger her panic attacks. The comment about Beattie's testimony was proper argument that the evidence showed that Beattie was unlikely to improve the safety features of his equipment. And the remarks were not structured as an attempt to invite the jury to punish Beattie Farms for its past conduct, but to address the peculiar circumstances involved in this case—namely, whether the posttraumatic stress caused by the accident would result in Deborah suffering future emotional harm as a result of exposure to vehicles operated by Beattie Farms that have similar safety concerns to the one involved in her accident. Even to the extent that counsel may have overstepped the bounds of propriety by arguing that Beattie and Beattie Farms just did not care about the safety of others, the prejudice was minimal and does not warrant reversal. See MCR 2.613(A).

Beattie Farms and Edwards similarly argue that Deborah's counsel made improper remarks when commenting about the evidence that the tractor involved in the accident did in fact have turn signals, even though Edwards did not use them. In remarking on this evidence, Deborah's counsel told the jury that for 2½ years Beattie Farms and Edwards asserted that the tractor did not have turn signals. He stated that it was only just before trial that Beattie Farms changed its mind and informed him that the tractor had turn signals and then, at trial, Beattie Farms just submitted a photo of lever and did not provide any video to show a working signal.

Returning to that topic sometime later, Deborah's counsel argued that Beattie Farms changed its position about the signals because it did not want to look irresponsible: "If we admit we don't have turn signals on these big tractors that's kind of making us look like an irresponsible, unsafe, don't-give-a-darn-about-your-safety corporation." He then noted that Beattie Farms was responsible for Edwards's negligence either way because of vicarious liability or owner's liability.

Deborah's counsel further intimated that Beattie Farms put Edwards in an awkward position in which he had to fall on his "sword" by providing him with no proof that his recollection that the tractor did not have a turn signal was in fact true. He then restated his belief that Beattie Farms put Edwards into that position to avoid looking irresponsible and then exhorted the jury that this had to stop:

> This has got to stop because every time she gets next to one of these things again and relives this knowing they don't care, they're not going to follow the law, my life, somebody else's life, I can see it, I can see it happening. And until, like she said yesterday, until you've been there and see these wheels about to come in and crush you to death don't talk to me Mr. Vander Ploeg about what you think. That's why we're here.

The comment that "[t]his has got to stop" improperly suggested that the jury should use its authority to punish Beattie Farms and prevent it from putting more dangerous vehicles on the road. Likewise, the comment suggesting that Beattie Farms improperly withheld evidence until the last minute because it did not want to appear as though it did not care about safety of others at trial tended to suggest that Beattie Farms was more than merely negligent, which implicated punitive damages. However, although these comments were improper, the comments were isolated and did not rise to the level of a concerted campaign to inject bias into the case and inflame the jury's passion. See *Hunt*, 217 Mich App at 95. Additionally, a timely objection and instruction could have cured any prejudice at the time of the statement. Finally, the trial court instructed the jury that damages may be "awarded solely for the purpose of compensating the plaintiff" and could not be "awarded for the purpose of punishing Beattie Farms LLC or Franklin Edwards." That instruction cured any prejudice. See *Zaremba Equip*, 302 Mich App at 25.

D. MAP AND PHOTOS

Beattie Farms and Edwards next argue that the trial court abused its discretion when it allowed Deborah to introduce a map that showed Beattie Farms' extensive land holdings and photos of dilapidated farm equipment that may or may not have been owned by Beattie Farms. However, on appeal Edwards and Beattie Farms do not discuss the trial court's actual rulings regarding this evidence. They also fail to discuss any relevant, applicable caselaw. As such, we conclude that Beattie Farms and Edwards have abandoned any claim that the trial court erred when it admitted this evidence. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959), where our Supreme Court articulated:

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow.

Edwards and Beattie Farms have therefore essentially abandoned this argument on appeal. See *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 626-627; 750 NW2d 228 (2008), where this Court concluded that "[a]n argument must be supported by citation to an appropriate authority or

policy" and failure to do so constitutes an abandonment of the issue. We decline to address abandoned claims. *Thompson v Thompson*, 261 Mich App 353, 356, 683 NW2d 250 (2004).

E. IMPROPER ATTACKS ON CREDIBILITY

Finally, Edwards and Beattie Farms argue that Deborah's counsel engaged in misconduct by attacking Church's credibility. In his closing remarks, Deborah's counsel argued that Church's purported eyewitness testimony did not match with the description by the other witnesses or the objective evidence. He suggested that perhaps Church had been coached about the record and came up with contrived answers for some of the more implausible aspects of his testimony. Deborah's counsel agreed that Church was likely there on the day at issue, but he also suggested that Church was not telling the truth:

> Now, do I think he was there? Could have been. Makes too much sense for me for him not to be there somewhere. But he wasn't where he said. And he wasn't watching what he said he was watching. And does it really stretch the imagination to think that this big player over here, okay, this poor me, all these mega farms just dust me, they, you know I'm nowheres [sic] near how big they are. I have a few properties. Remember folks on this map these properties look small. I'm showing you three counties. Let's go down on this. OK we're talking miles and the poor-me farmer then I got to ask how much do you spend on fertilizer? 1.3 million dollars. Now does it stretch the imagination that a player of that size and who they are to North Central Co-Op, that there might be a little, yeah, see if I can help them out. And I agree with you, that's a big stretch. It's a big stretch in the sense that really would he put himself on the stand in here? I don't think he ever in his wildest dreams ever saw him being on here.

Deborah's counsel maintained that Church was motivated to help Beattie Farms because his employer had a vested interest in maintaining a valuable customer. He stated that Church was forced to change his story about the ditch because Beattie had said that Richard must have driven down the ditch line. However, the photo of the SUV taken just days later showed no sign that the SUV drove through muck and three-foot tall grass. They were also forced to contrive a story that had Richard driving at an excessive speed because that would be the only way he could have caught up to Edwards if Edwards's testimony were accepted. But again, he stated, the photo evidence did not show that the SUV suffered much frontal damage; it just suffered a crushed passenger's side front end, which was consistent with Richard's version that the tractor turned suddenly and dragged the SUV into the driveway. Deborah's counsel characterized the story as a lie that had no support in the objective evidence.

Deborah's counsel told the jury that Church had to bring his story into line with Edwards's story because Edwards had already long ago committed to a particular version of the events. He restated his belief that Edwards was being put into the "corporate squeeze" because that was how the "big players play." He further stated that the version of events described by Church were no longer the "Church story by the time it gets to trial"; it was the "Church Beattie Edwards story" and, as a result, the defense needed to "find a way to integrate it that makes some kind of sense." After he completed discussing the problems with Church's testimony, Deborah's counsel stated

that that was "why what we say makes every sense in the world but the big players pick on the little players and they stick together."

Deborah's counsel could properly attack Church's credibility on the basis of the discrepancies between his version of the events and the other evidence. See *Reetz*, 416 Mich at 108-109. He could also properly suggest that Church might be motivated to fit his version of events with the version offered by Beattie Farms, which included presenting and discussing the evidence that Church might have been motivated to help Beatie Farms to preserve his employer's relationship with the farm. See *Hayes*, 338 Mich at 381. Nevertheless, Deborah's counsel did stray into comments suggesting that Beattie Farms was a wealthy enterprise and that it was somehow influencing Church to misstate the facts, which were improper. See *Reetz*, 416 Mich at 110-111. The majority of the comments, however, did focus on proper issues related to Church's credibility. As Deborah correctly notes on appeal, her counsel never actually used the term conspiracy. Rather, as his remarks make clear, he felt Church's version of events had to be "integrated" into the version stated by Edwards and Beattie by the time of trial. Because of the differences, the integration, in Deborah's counsel's view, was not worthy of belief. That argument was not improper. See *Reetz*, 416 Mich at 108-109. In any event, a timely objection and instruction would have cured any prejudice resulting from the remarks. See *Badiee*, 265 Mich App at 373-374. Edwards and Beattie Farms have failed to demonstrate that the remarks by Deborah's counsel about Church's credibility were so improper that they would warrant a new trial.

Beattie Farms and Edwards have failed to show that Deborah's counsel engaged in a systematic effort to inflame the jury or cause it to be biased against Beattie Farms. To the extent that some of the comments by Deborah's counsel were improper, those remarks were not egregious and any prejudice either was cured by the trial court's instructions, see *Zaremba Equip*, 302 Mich App at 25, or could have been cured with a contemporaneous objection, see *Badiee*, 265 Mich App at 373-374. Edwards and Beattie Farms have failed to demonstrate that Deborah's counsel engaged in misconduct that warrants a new trial.

V. BRIBERY EVIDENCE

We next address the claim that the trial court erred when it precluded Beattie Farms and Edwards from allowing Edwards to testify that Richard and Deborah offered him a share of their award if he testified favorably to them. This Court reviews de novo whether a trial court properly interpreted and applied the rules of evidence. *Mitchell*, 321 Mich App at 154. This Court reviews a trial court's evidentiary rulings for an abuse of discretion. *Id.* at 153.

The rules of evidence strictly limit the use of character evidence and evidence of other acts that implicate character. See *People v Roper*, 286 Mich App 77, 91; 777 NW2d 483 (2009). Other-acts evidence may be admissible, even though it implicates character, if offered to prove something other than a person's character. See MRE 404(b). Evidence that Richard and Deborah tried to bribe Edwards to lie at trial clearly implicated character. Nevertheless, before the trial court, Edwards and Beattie Farms argued that the evidence of a bribe was admissible to prove Deborah's motive, opportunity, intent, preparation, scheme, or plan in filing suit. However, Deborah's motive, opportunity, intent, preparation, scheme, or plan in filing her suit was not at issue at trial.

Rather, the issue at trial involved common-law negligence. And the testimony about the bribe was not relevant to any issue at trial other than the credibility of Richard and Deborah as witnesses.

The character of a witness may be attacked as provided under MRE 607, MRE 608, and MRE 609. See MRE 404(a)(4). Generally, evidence of character may only be proved by testimony as to reputation or in the form of an opinion. See MRE 405(a). Although a person may be cross-examined about specific instances of conduct on cross-examination, MRE 405(a), proof of specific instances of conduct may only be made when the person's character is an essential element of the charge, claim, or defense, MRE 405(b). Moreover, a party may not prove specific instances of conduct for the purpose of attacking a witness's character by extrinsic evidence; rather, if probative of the witness's character for truthfulness or untruthfulness, the party may inquire into the specific instances of conduct on cross-examination. See MRE 608(b). Therefore, with the exception of cases in which a criminal defendant has put his or her character at issue and denies specific instances on cross-examination, which is not relevant in this case, a party is stuck with the witness's answer to an inquiry about specific instances implicating character. See *Roper*, 286 Mich App at 104-105.

In this case, the trial court correctly applied the rules of evidence, concluding that Edwards and Beattie Farms could inquire on cross-examination of Richard and Deborah whether they offered a bribe to Edwards, but they were barred from presenting extrinsic evidence to contradict their answers under MRE 608(b). The trial court did not abuse its discretion. See *Mitchell*, 321 Mich App at 153-154.

VI. MOTION FOR A NEW TRIAL OR REMITTITUR

Finally, Beattie Farms and Edwards argue that the trial court should have granted their motion for a new trial premised on attorney misconduct and the cumulative effect of the errors at trial, or, in the alternative, should have granted their motion for remittitur. This Court reviews a trial court's decision whether to grant a new trial under MCR 2.611 for an abuse of discretion. See *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 761; 685 NW2d 391 (2004). This Court also reviews for an abuse of discretion a trial court's decision on a motion for remittitur. See *Taylor v Kent Radiology*, 286 Mich App 490, 522; 780 NW2d 900 (2009).

A trial court may grant a new trial whenever a party's substantial rights were affected by, in relevant part, an "[i]rregularity 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", attorney misconduct, where the verdict is excessive or contrary to the great weight of the evidence. See MCR 2.611(A)(1).

In this case, Edwards and Beattie Farms moved for a new trial on the ground that Deborah's counsel engaged in misconduct that deprived them of a fair trial and that the verdict was the result of bias or passion. Counsel's persistent and deliberate effort to incite passion and prejudice during his or her remarks can constitute grounds for a new trial under MCR 2.611(A)(1)(b). See *Gilbert*, 470 Mich at 776-779. However, a trial court may not grant a new trial "unless refusal to take this action appears to the court inconsistent with substantial justice," MCR 2.613(A), which means that a trial court cannot grant a new trial on the basis of a harmless error. See *Johnson*, 423 Mich at 326-327 (stating that, under MCR 2.613(A), an error is harmless and will not warrant relief unless

it caused such unfair prejudice to the complaining party that allowing the verdict to stand would be inconsistent with substantial justice).

As discussed, the majority of the inappropriate remarks identified by Edwards and Beattie Farms were either not inappropriate or were cured by a timely instruction. With regard to the remarks that were not appropriate and not subject to a contemporaneous curative instruction, the remarks either were cured by the general instructions or could have been readily cured with a timely objection and instruction. Although the cumulative effect of several small errors can warrant a new trial, only actual errors may be aggregated when considering the prejudicial effect. See *Lewis*, 258 Mich App at 200-201. Even aggregating the actual errors discussed, Edwards and Beattie Farms have not demonstrated that the trial court's refusal to take action was inconsistent with substantial justice; as such, they have not shown that they are entitled to a new trial. See MCR 2.613(A); *Johnson*, 423 Mich at 327. As the trial court aptly noted, the trial was not perfect, but it was fair.

The record also does not support the contention that the jury's verdict was the result of passion or bias, or otherwise contrary to the great weight of the evidence. See MCR 2.611(A)(1). The objective evidence strongly supported Deborah's version of events. The damage to Richard's SUV—as shown in the photos—was not consistent with the SUV having been driven along or over an overgrown drainage ditch followed by a highspeed impact. Rather, the damage appeared primarily to have been caused by the tractor's rear wheels crushing the front passenger's side of the SUV and pushing or dragging the SUV. The evidence that emergency responders had to remove the passenger door in order to free Deborah from the SUV also indicated that the damage was primarily to the side of the SUV and not the result of a highspeed impact. That evidence corroborated Richard's testimony that he had just begun to accelerate past the tractor when Edwards abruptly turned and caused an immediate collision. The police report similarly showed that the vehicles came to rest in a position consistent with Richard's testimony. Accordingly, it was not contrary to the weight of the evidence for the jury to find that Richard was not negligent and that the accident was Edwards's fault in combination with Beattie Farms' failure to train its operator or its failure to provide reasonable safety features on its equipment.

Because the evidence also supported the jury's award of damages, the trial court did not abuse its discretion when it denied the motion for remittitur. See *Taylor*, 286 Mich App at 522. Trial courts must exercise the power of remittitur with restraint. See *id.* The court must examine all the evidence in the light most favorable to the nonmoving party to determine whether there was evidence to support the jury's award. If the award was within the range of what reasonable minds would deem just compensation, then the trial court must not disturb the jury's award. *Id.*

On appeal, Edwards and Beattie Farms suggest that the jury's verdict was excessive because it was higher than comparable awards that they compiled. They suggested too that the award was excessive because there was no evidence that Deborah suffered a closed head injury or other traumatic brain injury and she was otherwise fully healed by May 2013.

Deborah presented testimony and evidence that showed that she suffered a nightstick fracture of her right ulna near her wrist. The evidence showed that her surgeon performed surgery to repair the fracture, but the bone did not heal. As a result, she had to have a second surgery with a bone graft. Deborah presented testimony that her injury significantly impaired her function for

the approximately one-year period of her recovery, even though she could still participate in many activities. She also presented evidence that she had suffered posttraumatic stress arising from the accident and that she was prone to panic attacks when driving or riding as a passenger along the roads in her community. Other witnesses described the strain that her anxiety placed on her family and marriage. Although there was evidence that Deborah had shown improvement by the time of trial, the evidence supported the conclusion that she suffered from anxiety and emotional distress for years after the accident.

Although a broken bone may in some cases heal quickly and without complications, the evidence in this case showed that the injury twice required surgical intervention and that Deborah was impaired for far longer than the normal recovery period for an ordinary broken bone. The evidence that she suffered from anxiety and was routinely forced to confront the source of that anxiety over a span of years with a toll on her emotional well-being also supported a larger award than would normally follow from a broken bone. It was also evident from the modest award of future damages that the jury found that Deborah's prospects had improved and that the vast majority of the harm occurred in the years leading up to trial, which itself suggested that the jury's compensation for past damages took into consideration her mental suffering. Examining the evidence in the light most favorable to Deborah, it cannot be said that the jury's award fell outside the range of compensation that reasonable minds would deem just. See *id.*

The trial court did not abuse its discretion when it denied the motion for a new trial or remittitur.

VII. CONCLUSION

Beattie Farms and Edwards have not identified any errors on appeal that warrant a new trial. They have also failed to show that the jury's verdict should be reduced.

Affirmed. As the prevailing party, Deborah may tax costs. See MCR 7.219(A).

/s/ Jane E. Markey
/s/ Kathleen Jansen
/s/ Mark T. Boonstra