

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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FIREHOUSE PROPERTIES, LLC, TALCOTT  
ENTERPRISES, LLC, and PENN-STAR  
INSURANCE COMPANY,

UNPUBLISHED  
July 17, 2014

Plaintiffs-Appellants,

v

LASKO PRODUCTS, INC.,

No. 310382  
Kalamazoo Circuit Court  
LC No. 2010-000004-NZ

Defendant-Appellee.

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Before: RONAYNE KRAUSE, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Plaintiffs, Firehouse Properties, LLC, Talcott Enterprises, LLC, and Penn-Star Insurance Company (collectively, Firehouse) appeal as of right the jury's March 12, 2012 judgment of no cause of action on their claims that defendant, Lasko Products, Inc (Lasko), negligently designed, produced, and failed to warn about the dangers of using a Lasko Model 3733 fan. We affirm.

I. FACTS

A. BACKGROUND FACTS

Corey Talcott, the owner and operator of Firehouse Properties and Talcott Enterprises, operated the Firehouse Bar and Grill. The property had several rooms, including a kitchen, bars, a poolroom, and a dance club. On Sunday, June 21, 2009, Talcott began refinishing the property's wood floors with Gary Wheeler's assistance.

Talcott testified that he had previously refinished the property's floors six or seven times. Talcott purchased a wood stain that included warning labels stating that the stain contained combustible vapor, should be used only with adequate ventilation, and that users should extinguish all pilot lights and unplug electrical machinery before use. Talcott testified that he did not extinguish the pilot lights on the kitchen cooking equipment and that he had never done so while refinishing the floors.

Talcott used several fans, including two Lasko fans, to provide ventilation. Talcott also turned on his restaurant's HVAC system, which exchanged air inside the building for fresh air

outside the building and shot the fresh air down in front of the cooking equipment. Wheeler testified that he had trouble putting the feet on one of the Lasko fans. Wheeler believed that he placed this fan, a Lasko Model 3733 fan, on the concrete partition near the kitchen entrance, about 16 feet from the pizza oven.

Talcott testified that he and Wheeler had finished the 50-foot-long main bar area near the kitchen and were refinishing a separate vodka bar area when he heard a pop and a crack. According to Talcott, he looked up and saw that the center of the Lasko fan was on fire. Nothing around the fan was on fire, and nothing in the kitchen was on fire. Wheeler also testified that he turned and saw that the center of the fan was on fire. Wheeler was certain that nothing in the kitchen was on fire. Talcott testified that the fire started rolling toward him, and he and Wheeler ran outside. James Williams, a fire marshal, testified that he investigated the fire. Williams concluded that the fire was a vapor flash fire, which occurred when the vapor from the wood stain ignited.

## B. PROCEDURAL HISTORY

Firehouse filed a complaint against Lasko that alleged several theories of product liability, including three theories of negligence: negligent production, negligent design, and failure to warn. At trial, the parties disputed the cause of the fire. Firehouse asserted that a defect in the fan's thermal cutoff unit (a unit containing material that is designed to melt and prevent the fan from operating when it gets too hot) caused a high-temperature electrical parting arc to ignite the vapors. Lasko asserted that a pilot light in the kitchen ignited the vapors, which then flashed back to the vapors' point of origin near the Lasko fan. Various experts supported each party's theory of causation.

Firehouse also sought to introduce testimony from Charles Fricke, a forensic electrical engineer, regarding fires in other Lasko fans. Lasko challenged the testimony, asserting that it was irrelevant because the previous fires were not substantially similar. During an offer of proof, Fricke testified that he had reviewed over 200 fires involving Lasko fans that had the same motor. The trial court excluded Fricke's testimony regarding the other Lasko fan fires, but allowed his testimony regarding the cause of the fire in this case. The trial court reasoned that the evidence was irrelevant because the circumstances of the previous fires were not similar to the circumstances of this case.

After extensive deliberations, the jury found that Lasko had not negligently produced, designed, or failed to warn about the product, and that any negligence was not a proximate cause of Firehouse's injuries. Firehouse moved for judgment notwithstanding the verdict. Firehouse asserted that the opinions of Lasko's experts were speculative and not grounded in the evidence. Firehouse moved for a new trial on the same grounds, asserting that the jury's verdict was against the great weight of the evidence.

The trial court denied Firehouse's motion. The trial court reasoned that the jury's extensive deliberations showed that reasonable minds "struggl[ed] mightily with the facts," and that its verdict showed that it was ultimately unconvinced by Firehouse's theory of the cause of the fire. The trial court opined that either the jury had accepted Lasko's cause of the fire, or it was not convinced by Firehouse's proposed cause. The trial court concluded that, viewing the

evidence in a light most favorable to Lasko, the jury's verdict was rational. It therefore declined to overturn the jury's verdict or grant Firehouse's motion for a new trial.

## II. EXCLUSION OF FRICKE'S TESTIMONY

### A. STANDARD OF REVIEW

This Court reviews for an abuse of discretion preserved challenges to the trial court's evidentiary rulings.<sup>1</sup> The trial court abuses its discretion when its decision falls outside the range of principled outcomes.<sup>2</sup> We review de novo the preliminary questions of law surrounding the admission of evidence.<sup>3</sup>

### B. LEGAL STANDARDS

The trial court may only admit relevant evidence.<sup>4</sup> Relevant evidence is evidence that has any tendency to make a fact of consequence more or less probable.<sup>5</sup> A fact is material if it has some consequence on the action.<sup>6</sup> A fact is not material if it does not help to prove a proposition that is at issue.<sup>7</sup>

### C. APPLYING THE STANDARDS

Firehouse contends that the trial court erred by barring Fricke's testimony about the other fires involving Lasko fans. Firehouse asserts that this evidence was relevant because the circumstances of the other fires were substantially similar to the facts in this case, since all the fires involved infiltrates and the same motor. We disagree.

Firehouse attempted to establish a foundation for Fricke's testimony during an offer of proof. Fricke testified that other fires were caused by "arcing within the motor windings . . . ." According to Fricke, the other fires were similar to this fire because unintended electrical arcing in the motors had started all the fires. Fricke testified in the other cases, "[t]here was damage to the windings . . . that caused the windings to fail" and that this case was not "[e]lectrically" different. But regarding the cause of the arcing itself, Fricke stated, "[t]here are differences."

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<sup>1</sup> *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010); *Dep't of Transp v Frankenlust Lutheran Congregation*, 269 Mich App 570, 575; 711 NW2d 453 (2006).

<sup>2</sup> *Edry*, 486 Mich at 639; *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

<sup>3</sup> *Dep't of Transp*, 269 Mich App at 575.

<sup>4</sup> MRE 402.

<sup>5</sup> MRE 401.

<sup>6</sup> *Morales v State Farm Mut Auto Ins Co*, 279 Mich App 720, 731; 761 NW2d 454 (2008).

<sup>7</sup> *Id.*

Other testimony at trial established that the thermal cutoff unit and the motor windings are different. Gary Beideman, one of Lasko's corporate product safety managers, testified that Lasko had recalled fans in 2005 because insulation on the motor windings could break down and cause electrical arcs. Beideman also testified about the then-current construction of Lasko's fan motors. Beideman testified that a thermal cutoff unit is attached to the windings. Beideman testified that the unit, which contains material designed to melt and disrupt the circuit if it gets too hot, is placed inside a ceramic body. The ceramic body is closed on either end with epoxy seals, through which power leads travel. The ceramic body is contained inside a fiberglass sleeve with bent ends. The unit is sealed inside a PVC tube and laced to the motor windings.

The trial court ruled that Lasko's objection regarding the other fires raised two questions: whether the combustibles were the same, and whether the ignition source was the same. The trial court opined that the combustibles were the same: that is, that flammable vapor is similar to other infiltrates (such as lint and hair) that an electrical arc can catch on fire. However, the trial court opined that the ignition sources were not the same because Firehouse was alleging that the fire was caused by a different part of the fan than the one that started the other fires. On this basis, the trial court excluded Fricke's proposed testimony.

We conclude that the trial court's decision was within the principled range of outcomes. Fricke's offer of proof demonstrated that, between this case and other cases involving fires in Lasko fans, the *manner* of ignition was the same, but the *mechanism* of ignition was different. In the other cases, the motor windings themselves caused electrical arcs. Here, Firehouse alleged that the thermal cutoff unit caused an electrical arc. The testimony established that a thermal cutoff unit is separate from, but attached to, the motor windings. It is not the same as the windings themselves.

We conclude that the trial court properly determined that the evidence was not relevant because the matter in controversy here was whether the thermal cutoff unit itself could spark and start a fire. Whether the winding could start a fire would not tend to prove that the thermal cutoff unit could start a fire. Thus, the trial court did not abuse its discretion when it excluded Fricke's testimony about the other fires involving Lasko fans.

### III. MOTIONS FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR NEW TRIAL

#### A. STANDARD OF REVIEW

This Court reviews for an abuse of discretion the trial court's decision on a motion for a new trial, and reviews de novo questions of law surrounding that decision.<sup>8</sup> When reviewing a motion for a new trial on the basis that the verdict was contrary to the great weight of the evidence, this Court reviews "the whole body of proofs."<sup>9</sup>

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<sup>8</sup> *Moore v Detroit Entertainment, LLC*, 279 Mich App 195, 223; 755 NW2d 686 (2008)

<sup>9</sup> *Dawe v Dr Reuven Bar-Levav & Assoc, PC (On Remand)*, 289 Mich App 380, 401; 808 NW2d 240 (2010).

This Court reviews de novo a trial court's decision on a motion for judgment notwithstanding the verdict.<sup>10</sup>

## B. LEGAL STANDARDS

The jury's verdict is against the great weight of the evidence under MRE 2.611(A)(1)(3) if it is "manifestly against the clear weight of the evidence."<sup>11</sup> However, courts will not set aside a jury's verdict "if there is competent evidence to support it."<sup>12</sup>

Judgment notwithstanding the verdict is appropriate if the evidence fails to establish a claim as a matter of law.<sup>13</sup> When considering whether to grant a judgment notwithstanding the verdict, courts view the testimony and inferences drawn from the testimony in the light most favorable to the nonmoving party.<sup>14</sup> Courts must uphold the verdict if reasonable jurors could honestly have reached different conclusions.<sup>15</sup>

## C. THE TESTIMONY OF LASKO'S EXPERTS

Firehouse contends that the trial court should have granted its motion for judgment notwithstanding the verdict, or granted it a new trial, because competent evidence did not support the jury's verdict. Firehouse contends that the jury could not properly consider the opinions of Lasko's experts because those experts ignored critical facts and based their opinions on facts not in evidence. We disagree.

Firehouse's argument on appeal is essentially that the jury could not rely on Lasko's experts because of their allegedly slipshod investigations and flawed methodologies. This was a proper argument for the jury to consider. But courts will not interfere with the jury's determination of the relative credibility of the witnesses.<sup>16</sup>

Firehouse's experts, including Williams, James Maxwell, and Dr. Elizabeth Buc, concluded that the fire started in the Lasko fan. Williams concluded that the fire started in the Lasko fan. Williams based his opinion on the burning on the floor and structure near the fan, the burn pattern on the wall above the fan, and the fact that flammable items in the kitchen were not

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<sup>10</sup> *Alpha Capital Mgt, Inc v Rentenbach*, 287 Mich App 589, 599; 792 NW2d 344 (2010).

<sup>11</sup> *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999) (quotation marks and citation omitted).

<sup>12</sup> *Id.*

<sup>13</sup> *Alpha Capital Mgt, Inc*, 287 Mich App at 599; *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 131; 666 NW2d 186 (2003).

<sup>14</sup> *Diamond v Witherspoon*, 265 Mich App 673, 682; 696 NW2d 770 (2005).

<sup>15</sup> *Id.*; *Dawe*, 289 Mich App at 401.

<sup>16</sup> *Allard v State Farm Ins Co*, 271 Mich App 394, 408; 722 NW2d 268 (2006).

burnt. Williams disagreed with the statement of § 6.3.7.11.2.1 of the National Fire Protection Association's Guide for Fire and Explosion Investigations 921, which states that the greatest area of destruction in a flash fire may not occur where the vapor ignites, but rather occurs where the flash fire encounters another fuel that is capable of being ignited by a momentary and intense heat. Williams testified that he believed that burn patterns were a reliable indicator of the source of the fire in this case because nothing restricted the flow of the vapors.

Maxwell opined that the fire started in the kitchen entryway because it was the area most heavily damaged by the fire. Maxwell believed that pilot lights in the kitchen did not start the fire because there was still a large amount of lint and grease on the kitchen equipment after the fire, and he had never seen a vapor flash fire where the point of ignition had not burned. Finally, Maxwell believed that Talcott and Wheeler would have seen a large fire coming through the entryway if the fire started in the kitchen.

Buc, a certified fire investigator, testified that she investigated whether the kitchen appliances may have started the fire. Buc testified that the pizza oven was close to the Lasko fan and had a pilot light that was closer to the ground than the other kitchen appliances. Buc testified that she did not see any evidence of fire on the pizza oven because its controls had a lot of lightweight fuzz and grease on them. Buc further testified that the kitchen ventilation was impressive and would have made it "difficult if not impossible" for any of the kitchen pilot lights to start the fire. However, Buc also testified that there was flammable vapor present in the kitchen because, at some point, the fire went into the kitchen. Buc ultimately concluded that the Lasko fan's motor had started the fire.

In contrast, Lasko's experts, including Michael Kroll and Dr. Donald Hoffman, concluded that the fire started at a pilot light in the kitchen. Kroll, a certified fire investigator, testified that burn patterns are an unreliable method from which to determine where a vapor flash fire started because the fire flashes back to the source of the vapor. Kroll testified that the source of the vapor is where the heaviest burning occurs because the fire front moves back to the source so quickly that it rarely ignites other materials.

Kroll opined that the fire most likely started at one of the open flames in the kitchen. Kroll testified that the flame front would not have been hot enough to ignite the grease in the kitchen. Kroll believed that, when Talcott and Wheeler looked up, they saw the fire coming out of the kitchen rather than starting in the fan and did not understand what they were seeing. Kroll testified that he did not investigate the property's HVAC system because he was familiar with the technology of the hood and disagreed that it would form a curtain of air in front of the appliances.

Hoffman testified that he reviewed the data that Kroll, Williams, and Maxwell collected, and concluded that improper ventilation caused the fire. Hoffman also testified that burn patterns are not a useful method to determine the source of a vapor flash fire because the flame front moves too quickly to leave burn marks on solid items. Hoffman believed that Talcott and Wheeler saw the fire get sucked through the fan, rather than start at the fan. Hoffman testified that he did not investigate the HVAC, but that the HVAC's fresh air intake would mix the vapors with the air rather than remove vapors from the building.

As illustrated above, the experts presented extensive, conflicting information about where the fire started. Both parties' experts based their conclusions on evidence from the scene of the fire. But the experts clearly disagreed about the proper standards to apply to a flash fire and the proper conclusions to draw from the evidence. Under these circumstances, which experts' opinions to credit is a determination best left to the jury.<sup>17</sup>

After review of the record, including the conflicting testimony above, we conclude that jurors could have reasonably reached different conclusions about the cause of the fire. We also conclude that the jury's determination was not contrary to the whole body of proofs. Therefore, we conclude that the trial court properly denied Firehouse's motions for judgment notwithstanding the verdict and new trial.

#### IV. CONCLUSION

We conclude that the trial court did not abuse its discretion by excluding Fricke's irrelevant testimony about fires involving other Lasko fans. We also conclude that the trial court properly denied Firehouse's motions for judgment notwithstanding the verdict and a new trial because the evidence supported the jury's verdict.

We affirm.

/s/ Amy Ronayne Krause

/s/ Joel P. Hoekstra

/s/ William C. Whitbeck

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<sup>17</sup> See *Dawe*, 289 Mich App at 401.