

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STEVEN STEIN,	:	APPEAL NO. C-150385
Plaintiff-Appellant,	:	TRIAL NO. A-1308033
vs.	:	<i>JUDGMENT ENTRY.</i>
EDWARD B. MUELLER CO., INC.,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Steven Stein was injured at work while using a Whirlwind Model 212 saw (“table saw”) to cut lumber. Stein filed a products-liability claim against defendant-appellee, the Edward B. Mueller Company, Inc., (“Mueller”), the company that sold Stein’s employer the table saw, alleging that there was a defect in the design of the table saw at the time it left the control of the manufacturer, and that this design defect caused his injury. Following the trial, the jury returned a general verdict in favor of Mueller. In answering the interrogatory submitted to it by the court, the jury specifically found that there was no defect in the design of the table saw at the time it left the control of the manufacturer. The trial court then entered judgment in favor of Mueller.

Stein now appeals the trial court's judgment, arguing in three assignments of error that he was deprived of a fair trial. For the following reasons, we affirm.

In his first assignment of error, Stein contends that he was deprived of a fair trial when the trial court erroneously admitted testimony that Stein had taken Vicodin the day of the accident in the absence of any expert testimony indicating that Stein's use of that medicine had adversely affected his ability to operate the table saw with ordinary care.

A trial court has broad discretion in the admission or exclusion of evidence. *Urbana ex rel. Newlin v. Downing*, 43 Ohio St.3d 109, 113, 539 N.E.2d 140 (1989). So long as a trial court exercises its discretion in accordance with the rules of procedure and evidence, a reviewing court will not reverse that judgment absent a clear showing of an abuse of discretion with attendant material prejudice. *Rigby v. Lake Cty.*, 58 Ohio St.3d 269, 271, 569 N.E.2d 1056 (1991).

After reviewing the record, we hold that even if it was error for the trial court to admit into evidence testimony that Stein had taken Vicodin the day of the accident, that error was harmless. In a civil case, an error regarding the admission of evidence is harmless where "it does not affect substantial rights of the complaining party, or where the court's action is not inconsistent with substantial justice." *Eysoldt v. Imaging*, 194 Ohio App.3d 630, 2011-Ohio-2359, 957 N.E.2d 780, ¶ 37 (1st Dist.), quoting *O'Brien v. Angley*, 63 Ohio St.2d 159, 164, 407 N.E.2d 490 (1980). Further, an error is considered harmless where it can be said that absent such error, the trier of fact still would have probably made the same decision. *Crum v. Walters*, 10th Dist. Franklin No. 02AP-818, 2003-Ohio-1789, ¶ 22.

Here, the evidence concerning Stein's use of Vicodin on the day of the accident went to the issue of proximate cause; i.e., whether the defective design of

the table saw caused Stein's injury or whether Stein's use of Vicodin while operating the table saw caused his injury. But the jury never reached the issue of proximate cause because it had already determined that the table saw did not contain a design defect. Once the jury found that the table saw did not contain a design defect, it was instructed to enter a general verdict in favor of Mueller because there were no other issues to consider. Thus, the trial court's admission of the contested evidence had no impact on the jury's decision, and therefore did not affect Stein's substantial rights.

Accordingly, we overrule the first assignment of error.

In his second assignment of error, Stein maintains that the trial court erred by admitting the opinion testimony of Dr. John Wiechel, Mueller's engineering and accident-reconstruction expert. Mueller had retained Dr. Wiechel to not only determine whether the table saw contained a design defect, but also to reconstruct the accident and determine the factors that contributed to Stein's injury. Under this assignment, Stein now argues that Dr. Wiechel's testimony as to the causes of the accident were not objectively verifiable under Evid.R. 702 and governing case law because Dr. Wiechel had never tested his reconstruction theory. But at trial Stein did not object to any of Dr. Wiechel's testimony. Because Stein did not object, this court may only review for plain error.

In reviewing for plain error, we keep in mind that the plain-error doctrine is not favored in civil proceedings and may be applied only in the extremely rare case involving exceptional circumstances where the error affects the "basic fairness, integrity, or public reputation of the judicial process[.]" *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997), syllabus; *Werden v. Children's Hosp. Med. Ctr.*, 1st Dist. Hamilton No. C-040889, 2006-Ohio-4600, ¶ 17. Here, we find no plain error in the admission of Dr. Wiechel's testimony because the testimony that

Stein challenges addresses the issue of proximate cause. Again, because the jury did not need to reach that issue, the admission of Dr. Wiechel's testimony concerning the cause of the accident did not affect the basic fairness or integrity of the trial. Therefore, the second assignment of error is overruled.

In his final assignment of error, Stein contends that the cumulative effect of the errors above deprived him of a fair trial. Although there is a split within Ohio appellate districts as to whether the cumulative-error doctrine should be applied in civil cases, when it is applied, courts have held that multiple errors do not require reversal if those errors still, when taken in the context of the entire trial, do not produce an unfair trial. *Dept. of Natural Resources v. Mark L. Knapke Revocable Trust*, 3d Dist. Mercer No. 10-13-25, 2015-Ohio-470, ¶ 57. Given that we have determined that none of the alleged errors complained of affected Stein's substantial rights or the basic fairness of the trial, we overrule this assignment of error.

The judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on April 20, 2016

per order of the court _____
Presiding Judge