

STATE OF MICHIGAN
COURT OF APPEALS

ROSE ROBERTS, FLORENCE BALDUF and
CHARLES BALDUF,

UNPUBLISHED
April 29, 1997

Plaintiffs-Appellants,

v

THE STATE OF MICHIGAN and MICHIGAN
DEPARTMENT OF TRANSPORTATION,

No. 191727
Court of Claims
LC No. 93-015147-CM

Defendants-Appellees.

MARY ANN POIKEY and HARVEY THOMAS
POIKEY,

Plaintiffs-Appellants,

v

THE STATE OF MICHIGAN and MICHIGAN
DEPARTMENT OF TRANSPORTATION,

No. 192543
Court of Claims
LC No. 93-015148-CM

Defendants-Appellees.

Before: Taylor, P.J., and Hood and Gribbs. JJ.

PER CURIAM.

Plaintiffs appeal as of right from a judgment granting defendants' motion for involuntary dismissal pursuant to MCR 2.504(B)(2). We affirm.

Plaintiffs Rose Roberts and Florence Balduf were passengers in a vehicle driven by plaintiff Mary Ann Poikey. All three sustained injuries in a motor vehicle accident at the intersection of M-30

and M-61. In separate lawsuits consolidated in the trial court pursuant to the parties' stipulations, plaintiffs alleged that the Michigan Department of Transportation (MDOT) negligently delayed its intended conversion of the intersection from a two-way to a four-way stop. It was undisputed that Poikey was at fault for the accident as, after coming to a stop, she failed to yield the right-of-way to another vehicle traveling through the intersection.

Plaintiffs argue that sufficient evidence was presented at trial to establish that MDOT's failure to timely implement its decision to convert the intersection to a four-way stop was a proximate cause of this accident. We disagree. The trial court's holding that there was insufficient proof of both cause in fact and proximate cause was not clearly erroneous and will not be overturned because the evidence does not manifestly preponderate against the decision. *Phillips v Deihm*, 213 Mich App 389, 397; 541 NW2d 566 (1995).

Plaintiffs failed to establish cause in fact; i.e., to show that "but for" MDOT's failure to convert the intersection to a four-way stop, the accident would not have occurred. *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). Plaintiffs' expert's testimony, showing that the likelihood of similar accidents are generally reduced at a four-way stop, is speculative evidence that is insufficient to establish cause in fact pertaining to this particular accident. *Id.* at 163-166. There is no claim here that the traffic signs were not sufficiently noticeable. Cf *Tuttle v Highway Department*, 397 Mich 44; 243 NW2d 244 (1976). Indeed, in this case Poikey saw the stop sign and stopped, but she failed to see the other vehicle approaching the intersection. At a four-way stop, Poikey may still have pulled out in front of the other vehicle and caused the accident. Therefore, plaintiffs failed to present sufficient evidence from which a jury could have concluded that more likely than not, but for MDOT's conduct, the accident would not have occurred. *Id.* at 164-165.

Further, there was no proximate causation because Poikey's negligent act of failing to yield was an intervening act that broke the chain of causation between any alleged failure of MDOT and the accident. *McMillan v Vliet*, 422 Mich 570, 576; 374 NW2d 679 (1985); *Poe v Detroit*, 179 Mich App 564, 577; 446 NW2d 523 (1989). This intervening cause relieves MDOT of liability because it was not reasonably foreseeable. *McMillan, supra* at 576. The conversion was not intended to alleviate the particular risk that caused this accident -- that a driver would stop at a stop sign but fail to see an oncoming vehicle before entering the intersection. Contrast *Grof v Michigan*, 126 Mich App 427, 432; 337 NW2d 345 (1983) (accident at a two-way stop occurred when both drivers entered the intersection at approximately fifty-five miles per hour without stopping or slowing). Therefore, Poikey's negligence was not a foreseeable consequence of MDOT's alleged failure to timely implement a change to the intersection where the change would not have altered her actions.

Affirmed. Defendants, as the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Clifford W. Taylor
/s/ Harold Hood
/s/ Roman S. Gribbs