

STATE OF MICHIGAN
COURT OF APPEALS

LEO HELLEBUYCK and MARCELLA
HELLEBUYCK,

UNPUBLISHED

Plaintiffs-Appellants,

v

No. 180008
Oakland Circuit Court
LC No. 93-459786-NO

CRITTENTON HOSPITAL,

Defendant-Appellee.

Before: Hood, P.J., and Saad and T.S. Eveland*, JJ.

HOOD, J. (dissenting).

I must respectfully dissent. As the majority opinion correctly notes, the trial court, and this Court, view the evidence in the light most favorable to the plaintiff in considering a motion for summary disposition under MCR 2.116(C)(10). In doing so, the benefit of all reasonable doubt must be given to the nonmoving party, and a determination made whether a record might be developed which would leave open an issue upon which reasonable minds could differ. *Libralter Plastics, Inc. v Chubb Group*, 199 Mich App 482, 485-486; 514 NW2d 772 (1993).

Circumstantial evidence may be sufficient to establish a case. *Firemen's Ins Co v Sterling Coal Co*, 348 Mich 564, 568-569; 83 NW2d 319 (1957). A prima facie case of negligence may be established by use of legitimate inferences, as long as sufficient evidence is introduced to take the inferences out of the realm of conjecture. *Berryman v K Mart*, 193 Mich App 88, 92; 483 NW2d 642 (1992).

The record evidence in this case, viewed in the light most favorable to plaintiff, indicates that at approximately 9:30 p.m. on the date in question, plaintiff left his bed to go to the bathroom. Plaintiff was in a semi-private room, in which the other bed in the room was unoccupied. The room was configured such that it had a private bathroom, containing a toilet, but the sink was in the main room, not the bathroom.

Visiting hours were over, and the only persons authorized to be in the hospital at that time were other patients and other hospital personnel. Plaintiff testified that after using the bathroom, he emerged and slipped on a puddle of water near the sink. He also testified that he "thought he might" have heard someone using the sink while he was in the bathroom (for a maximum of twenty minutes), but he was highly uncertain.

Viewing all the evidence and reasonable inferences in a light most favorable to plaintiff, I conclude that there is a material issue of fact that an employee of the hospital caused the unsafe condition that resulted in plaintiff's injury. Because the accident occurred when there were no visitors permitted in the hospital, and because it is very unlikely that another patient came into plaintiff's room and used his sink to get water while plaintiff was in the bathroom, it is certainly more than mere conjecture or speculation to infer that if plaintiff did not spill the water, it must have been a hospital employee. The evidence leads to an inference that defendant created the condition that caused plaintiff's injury. Therefore, proof that defendant had "constructive notice" of the hazardous condition is unnecessary. In my view, what is conjectural is not plaintiff's theory that a hospital agent or employee created the hazardous condition, but defendant's argument that another patient or a visitor who remained after hours may have done so.

I would reverse and remand.

/s/ Harold Hood