

STATE OF MICHIGAN
COURT OF APPEALS

BERNIE NELSON FORCE, JR.,

Plaintiff- Appellant,

v

STATE OF MICHIGAN, MICHIGAN
DEPARTMENT OF STATE POLICE,

Defendant- Appellee.

UNPUBLISHED

March 2, 1999

No. 204337

Court of Claims

LC No. 96-016227 CM

Before: McDonald, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

Plaintiff appeals of right from the Court of Claims' order granting defendant's motion for summary disposition and dismissing his complaint. We affirm.

Plaintiff's vehicle was involved in an accident with a vehicle driven by Michigan State Police Trooper Ambs. Plaintiff had no recollection of the actual impact, but stated that defendant's vehicle might have been traveling too fast for conditions, and might have crossed the center line. Ambs testified that as plaintiff attempted to negotiate a curve his vehicle started to spin in a counterclockwise direction and crossed the center line.

Plaintiff filed suit alleging negligence. Defendant submitted interrogatories and requests for production of documents. Plaintiff identified Thomas Bereza as his accident reconstruction expert, but failed to supply other requested information. The court denied defendant's initial motion for summary disposition.

After plaintiff failed to supply complete answers to interrogatories and to produce Bereza for deposition, the court granted defendant's motion to compel discovery. When Bereza appeared for deposition he could offer only preliminary opinions because he had not viewed photographs supplied by defendant and had not performed certain mathematical calculations to determine the vehicles' closing speeds. Bereza indicated that he was waiting to review the deposition testimony of a defense witness.

Defendant filed a motion pursuant to MCR 2.313(B)(2) seeking sanctions for plaintiff's failure to comply with the discovery order. The court granted the motion, struck Bereza from plaintiff's witness list, and precluded plaintiff from presenting expert testimony from Bereza regarding the cause of the accident.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (10). The court granted the motion, finding that no evidence created a question of fact as to whether defendant's actions proximately caused the accident.

We review a lower court's decision to impose sanctions for discovery violations for an abuse of discretion. *Beach v State Farm Mutual Automobile Ins Co*, 216 Mich App 612, 618; 550 NW2d 580 (1996).

Plaintiff argues that the court abused its discretion by striking his expert witness. We disagree. A court has the discretion to preclude a party from introducing expert testimony at trial as a sanction for disobeying a discovery order. MCR 2.313(B)(2)(b); *LaCourse v Gupta*, 181 Mich App 293, 296; 448 NW2d 827 (1989). Plaintiff impeded discovery by failing to provide complete answers to interrogatories, by failing to produce Bereza for deposition until ordered to do so, and by failing to insure that Bereza performed his work in a timely manner so that he was prepared to render a final opinion when he was deposed. Allowing Bereza to testify would have necessitated reopening discovery so that his deposition could be completed, and would have resulted in unnecessary delay. No abuse of discretion occurred. *Beach, supra*.

We review a decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff argues that the court erred by granting defendant's motion for summary disposition. We disagree. Proving proximate cause requires establishing proof of two elements: (1) cause in fact, i.e., a showing that but for the defendant's actions, the injury would not have occurred, and (2) legal or proximate cause, which involves an examination of the foreseeability of consequences and whether the defendant should be held responsible for such consequences. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). Here, no witness, lay or expert, could opine as to why the accident occurred. The fact that Ambs' testimony regarding plaintiff's car spinning was inconsistent with the opinion rendered by a defense witness and might have been inaccurate in that regard does not negate the fact that the evidence showed that the accident occurred on defendant's side of the road. Plaintiff failed to put forth evidence to establish that but for defendant's negligence, the accident would not have occurred. The grant of summary disposition was proper. *Pete v Iron County*, 192 Mich App 687, 689; 481 NW2d 731 (1992).

Affirmed.

/s/ Gary R. McDonald
/s/ Harold Hood
/s/ Martin M. Doctoroff