

STATE OF MICHIGAN  
COURT OF APPEALS

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PATSY RECK and THOMAS RECK,

Plaintiffs-Appellants,

v

JUDITH JO BARNES, MICHAEL BRUCE  
BARNES, JEANINE MONET FRANKLIN,  
JOHNNIE CONNER and JOHN CLAXON  
MARCUM,

Defendants-Appellees.

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UNPUBLISHED

August 3, 1999

No. 209602

Saginaw Circuit Court

LC No. 96-013407 NI

Before: White, P.J., and Markey and Wilder, JJ.

MEMORANDUM.

Plaintiffs appeal by right from the trial court's final order in this automobile negligence case arising from a multi-vehicle accident on northbound I-75. In that order, the trial court granted summary disposition in favor of defendants Judith and Michael Barnes and John Marcum, pursuant to MCR 2.116(C)(10), based upon the sudden emergency doctrine. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

For the sudden emergency doctrine to apply, the emergency must be unusual or unexpected. *Vander Laan v Miedema*, 385 Mich 226, 232-233; 188 NW2d 564 (1971); *Amick v Baller*, 102 Mich App 339, 341-342; 301 NW2d 530 (1980).

Here, there is conflicting testimony as to whether the icy conditions on the roadway at the location of the accident were isolated and unforeseeable. Although some of the drivers testified that they had not encountered slippery conditions on I-75 prior to reaching the accident location, plaintiff Thomas Reck testified that I-75 was wet, icy and fairly slippery in spots despite having been salted. Additionally, state trooper Rudy Nitschmann, the accident investigator, testified that his whole patrol area in general had snowy and icy road conditions, and that quite a few accidents had occurred that day. Viewing the testimony in a light most favorable to plaintiffs, genuine issues of material fact exist as to the viability of the sudden emergency defense in this case. Therefore, summary disposition should not have been granted in favor of defendants Barnes and Marcum based upon that defense.<sup>1</sup>

Reversed and remanded for further proceedings on plaintiffs' claims. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Jane E. Markey

/s/ Kurtis T. Wilder

<sup>1</sup> In this appeal, plaintiffs have not challenged the trial court's previous grant of summary disposition in favor of defendants Franklin and Conner on the question of proximate causation. See *Tomkiw v Saucedo*, 374 Mich 381, 385; 132 NW2d 125 (1965). While plaintiffs had filed an application for leave to appeal that decision, the application was denied and plaintiffs did not seek to join a challenge to the earlier decision in the instant appeal.