

STATE OF MICHIGAN
COURT OF APPEALS

ANTOINE BENDER,

Plaintiff-Appellant,

v

NORTHLAND COLLISION, INC.,

Defendant-Appellee.

UNPUBLISHED

September 24, 1999

No. 207412

Oakland Circuit Court

LC No. 96-519640 NO

Before: Gribbs, P.J., and O’Connell and R.B. Burns*, JJ.

PER CURIAM.

Summary disposition was granted in favor of defendant pursuant to MCR 2.116(C)(10) in this negligence action. Plaintiff appeals as of right, and we affirm.

In December 1995, plaintiff was injured when he fell on defendant’s steps as he exited the building after making a delivery. He had attempted to deliver the items through the front door, but one of defendant’s employees directed him to the back entrance in the alley. Snow and ice were present in the alley, but defendant’s parts manager testified at his deposition that the steps were clear. Plaintiff testified at his deposition that he could see the steps and did not see anything on them. The trial court granted summary disposition to defendant, holding that plaintiff had failed to demonstrate that there was a genuine issue of material fact regarding causation.

We review the trial court’s decision whether to grant a motion for summary disposition pursuant to MCR 2.116(C)(10) de novo to determine whether any genuine issue of material fact exists that would prevent entering judgment for defendant as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). In making this determination we must “consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the party opposing the motion, and grant the benefit of any reasonable doubt to the opposing party.” *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). We conclude that the trial court did not err in granting defendant’s motion for summary disposition.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

To recover for negligence, a plaintiff must prove “that the defendant owed a legal duty to the plaintiff, that the defendant breached or violated the legal duty, that the plaintiff suffered

damages, and that the breach was a proximate cause of the damages suffered.” *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993). To satisfy the causation element, the plaintiff must prove both cause in fact and legal, or proximate, cause. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). Cause in fact requires proof that “but for” the defendant’s negligent conduct, the plaintiff would not have suffered damages. *Id.* at 163. Legal, or proximate, cause addresses the question whether the defendant should be held liable for the consequences of his or her conduct, i.e., whether the consequences were foreseeable. *Id.*; *Ridley v Detroit*, 231 Mich App 381, 389; 590 NW2d 69 (1998). The issue of legal cause need not be addressed if the plaintiff fails to establish cause in fact. *Skinner, supra* at 163.

Although the question whether causation exists is normally for the jury, the trial court may decide the question if there is no issue of material fact. *Reeves v Kmart Corp*, 229 Mich App 466, 480; 582 NW2d 841 (1998). Circumstantial evidence may be sufficient to prove causation, but such evidence “must facilitate reasonable inferences of causation, not mere speculation.” *Skinner, supra* at 164. In the context of a motion for summary disposition under MCR 2.116(C)(10), once the moving party satisfies its burden of supporting its position with documentary evidence, the opposing party must then demonstrate the existence of a genuine issue of material fact with documentary evidence, and may not rely on mere allegations in the pleadings. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Mere speculation and conjecture unsupported by documentary evidence is insufficient to avoid summary disposition. *McCune v Meijer, Inc*, 156 Mich App 561, 563; 402 NW2d 6 (1986).

Defendant moved for summary disposition, arguing that no genuine issue of material fact existed because the documentary evidence indicated that the steps were free from snow or ice, and no evidence was presented to indicate what caused plaintiff’s fall. Plaintiff argued that he presented evidence sufficient to establish a genuine issue of material fact regarding causation. He argued that because defendant allowed other deliveries to be made through the front door, yet plaintiff was sent to the back alley, where snow and ice were present, an issue of fact existed regarding whether this caused plaintiff’s shoes to become wet, causing him to slip on the steps. Plaintiff also argued that the photographs he presented showing the steps and showing a thin sheet of ice of the side of the building demonstrated that the steps did not comply with building codes and that a thin sheet of ice on the steps could have caused him to fall. We conclude that the trial court correctly held that plaintiff failed to demonstrate a genuine issue of material fact regarding causation.

Plaintiff presented no direct evidence of what caused him to fall. Plaintiff testified that he fell when he stepped down onto the second step, but that he did not know why he fell. The deposition testimony of both plaintiff and defendant’s parts manager indicates that the steps were free from snow or ice. No evidence was presented that plaintiff’s shoes were wet as he exited the building. As plaintiff points out, there was evidence that there was snow in the alley and that plaintiff walked through the alley to get to the building. However, plaintiff did not assert that he had any difficulty negotiating the steps while entering the building, when it would be reasonable to infer that his shoes were still wet from the snow. Additionally, plaintiff presented no evidence that the uneven elevation of the steps, as shown by the photographs plaintiff submitted, affected plaintiff’s ability to see or walk down the steps. On the

contrary, plaintiff testified that he did see the steps and did not observe anything on them. Furthermore, the photograph showing a thin sheet of ice on the building does not create a genuine issue of material fact. Plaintiff refused to disclose to defense counsel when the photograph was taken, and made no claims that it was contemporaneous with plaintiff's injury. Also, plaintiff's own deposition testimony indicates that he did not observe any ice on the steps. Finally, plaintiff failed to substantiate his claims that the steps did not comply with building codes. Plaintiff simply failed to present evidence beyond mere speculation and conjecture that his injury was caused by defendant's negligent conduct. Therefore, the trial court correctly granted defendant's motion for summary disposition.

Affirmed.

/s/ Roman S. Gribbs

/s/ Peter D. O'Connell

/s/ Robert B. Burns