STATE OF MICHIGAN

COURT OF APPEALS

MAXINE BARRACO, Personal Representative of the Estate of JULIE K. BARRACO, Deceased,

Plaintiff-Appellant,

v

R & R DOZING AND TRUCKING, INC., and ROY ALLEN MCTIGHE,

Defendants-Appellees.

UNPUBLISHED
October 12, 1999

No. 210298
Macomb Circuit Court
LC No. 95-004728 NI

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

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

On appeal, plaintiff argues that a question of fact existed as to whether defendant McTighe had a duty to take reasonable actions to avoid the collision that resulted in the death of Julie Barraco (decedent), and as to whether the negligent condition of the brakes and tires on defendants' truck was the proximate cause of her death. Decedent and defendant McTighe were driving in opposite directions on a two-lane highway. The collision occurred when decedent's car swerved into defendant McTighe's oncoming lane.

The decision whether to grant summary disposition is reviewed de novo. *Spiek v Dept't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition relying upon MCR 2.116(C)(10) tests whether there is factual support for a claim. *Id*. at 338. A court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence available to it. *Id.* The party opposing the motion has the burden of showing that a genuine issue of material fact exists. *Skinner v Square D Co,* 445 Mich 153, 160; 516 NW2d 475 (1994). All inferences must be drawn in favor of the nonmovant. *Dagen v Hastings Mutual Ins Co*, 166 Mich App 225, 229; 420 NW2d 111 (1987). A court must determine whether a record could be developed

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

that would leave open an issue upon which reasonable minds could differ. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995).

To establish a prima facie case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty; (3) causation; and (4) damages. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993). "Duty" is a legally recognized obligation to conform to a particular standard of conduct toward another. *Howe v Detroit Free Press, Inc*, 219 Mich App 150, 155; 555 NW2d 783 (1996). The question of duty depends in part on the relationship between the parties and the foreseeability of the risk. *Buczkowski v McKay*, 441 Mich 96, 100; 100-103; 490 NW2d 330 (1992). In negligence actions, the existence of duty is a question of law for the court. *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995).

In a negligence case, "the plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant." *Skinner, supra*, 445 Mich 165 (quoting *Mulholland v DEC Int'l Corp*, 432 Mich 395, 415; 416 n 18; 443 NW2d 340 (1989)).

Here, decedent's car swerved across the path of the truck that defendant McTighe was driving. Although plaintiff's expert, Richard Toner, testified that proper brakes and tires would have stopped the truck faster and the accident might have been less severe, he could not say that decedent would not have died if the tires or brakes on the truck were different, or if the actions of defendant McTighe were different. Instead, Richard Toner testified that he thought if the above factors were different, the accident would have been less severe. Richard Toner's testimony is the only evidence plaintiff presents in support of her claim that defendants' negligence caused decedent's death.

Based on Richard Toner's testimony, the issue of causation hinges on possibility. He testified that he could not say that the accident would not have occurred or that decedent would not have died if the truck had been in working order or if defendant McTighe had taken evasive action sooner. A mere possibility of causation is not sufficient. *Skinner, supra*, 445 Mich 165. Accordingly, defendants' motion for summary disposition was properly granted because there was no evidence beyond speculation that causation existed.

Affirmed.

/s/ Roman S. Gribbs
/s/ Peter D. O'Connell
/s/ Robert B. Burns