STATE OF MICHIGAN

COURT OF APPEALS

FRANK WALKER and SARA SKROBE, a Minor, by her Next Friend, PAMELA WALKER,

Plaintiffs,

and

PAMELA WALKER,

Plaintiff-Appellant,

v

PAULETTE YVONNE LAWRENCE,

Defendant-Appellee.

UNPUBLISHED
April 18, 2000

No. 211931
Wayne Circuit Court
LC No. 96-633104-NI

Before: Cavanagh, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting defendant's motion for a directed verdict in this negligence action. We affirm.

In her sole issue on appeal, plaintiff contends that the trial court erred in entering a directed verdict in favor of defendant. This Court reviews de novo the trial court's decision on a motion for a directed verdict. When evaluating a motion for a directed verdict, a court must consider the evidence in the light most favorable to the nonmoving party, making all reasonable inferences in favor of the nonmoving party. Directed verdicts are appropriate only when no factual question exists upon which reasonable minds may differ. *Kubisz v Cadillac Gage Textron, Inc*, 236 Mich App 629, 634-635; 601 NW2d 160 (1999).

Plaintiff argues that the trial court erred in finding that she failed to make out a prima facie case because she did not present sufficient evidence that she sustained an injury in the accident. Plaintiff asserts that the question was a factual one that should have been decided by the jury.

The evidence presented at trial reveals that, less than two weeks after the accident, plaintiff visited Dr. Salahuddin Saleem Ahmad, a physician referred by her attorney, and complained of pain in her lower back, neck, and hip. Dr. Ahmad concluded that plaintiff's injuries resulted from the accident; however, he stated that he based this conclusion on plaintiff's assertion that she had not suffered these symptoms before the accident.

Dr. Leonard Boggs gave his opinion that plaintiff's complaints of cervical and lower back pain were caused by the February 24, 1996, accident. Dr. Boggs denied any knowledge regarding plaintiff's prior complaints of neck or back pain.

Dr. Richard Lutz found objective signs of neck and back injuries which he attributed to the February 24, 1996, automobile accident. Dr. Lutz was aware that plaintiff had injured her neck at work in 1992. However, Dr. Lutz testified that plaintiff reported that she had not suffered residual problems from the injury. Dr. Lutz did not know that plaintiff had suffered injuries in accidents prior to the one involving defendant.

At trial, plaintiff admitted that she had an extensive history of medical problems that preceded the accident. In 1987, plaintiff suffered a back injury in the shower that caused her to miss three or four days of work and to suffer pain for approximately one year. In May 1990, plaintiff complained of lower back pain after suffering a fall. On October 6, 1993, plaintiff fell in a supermarket; she sought medical attention, and her treating physician diagnosed a soft tissue injury from the fall. Approximately six weeks before the accident, plaintiff went to the clinic at Henry Ford Hospital and complained of severe neck pain. Plaintiff did not inform defendant about these incidents or the related medical treatment in either her deposition or in her answers to interrogatories.

Plaintiff conceded on cross examination that, immediately after the accident, she told an emergency room physician that she was not experiencing neck pain. Plaintiff also informed the physician that she had a history of back pain, but stated that she was experiencing only slightly more cramping in her lower back than usual.

Under these facts, we cannot find that the trial court erred in concluding that a reasonable jury could not determine that plaintiff's injuries were caused by the February 24, 1996, accident. To establish cause in fact, the plaintiff must present substantial evidence from which a jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred. *Skinner v Square D Co*, 445 Mich 153, 164-165; 516 NW2d 475 (1994). A causation theory must have some basis in established fact, and a plaintiff's burden is not sustained by the presentation of a causation theory that, while factually supported, is, at best, just as possible as another theory. *Id*. Given plaintiff's general failure to inform her treating physicians of her previous injuries and medical treatment, and the physicians' admission that the validity of their medical conclusions was dependent on the accuracy of the history provided by the patient, the medical testimony attributing her injuries to the February 24, 1996, accident is not reliable.

Accordingly, we conclude that plaintiff failed to present substantial evidence from which a jury could conclude that, but for that accident, her injuries would not have occurred. See *id*.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Brian K. Zahra