STATE OF MICHIGAN

COURT OF APPEALS

TIG INSURANCE COMPANY,

Plaintiff-Appellant,

and

GILBERT McDONALD and APRIL McDONALD,

Plaintiffs,

v

CARRIER CORPORATION,

Defendant-Appellee.

UNPUBLISHED
May 23, 2000

No. 216793
Marquette Circuit Court
LC No. 97-034068-NP

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

PER CURIAM.

Plaintiff TIG Insurance Company[1] appeals as of right from the trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this products liability action. We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

As a general rule, under Michigan law a manufacturer has a duty to design its product so as to eliminate any unreasonable risk of foreseeable injury. *Prentis v Yale Mfg Co*, 421 Mich 670, 683; 365 NW2d 176 (1984); *Mallard v Hoffinger Industries, Inc (On Remand)*, 222 Mich App 137, 140; 564 NW2d 74 (1997). A prima facie case of a design defect premised on the omission of a

safety device first requires a showing of the magnitude of foreseeable risks, including the likelihood of occurrence of the type of accident precipitating the need for the safety device and the severity of injuries sustainable from such an accident. In addition, it requires a showing of alternative safety devices and whether those designs would have been effective as a reasonable means of minimizing the foreseeable risk of danger. *Bazinau v Mackinac Island Carriage Tours*, 233 Mich App 743, 757; 593 NW2d 219 (1999); *Reeves v Cincinnati, Inc*, 176 Mich App 181, 187-188; 439 NW2d 326 (1989).

After reviewing the record, we conclude that the trial court did not err in finding that plaintiff failed to establish a prima facie case of a design defect. First, the record is devoid of any evidence regarding the magnitude of the risk presented by defendant's furnace installation design, specifically the configuration of the combustion air and vent pipes. See *Bazinau, supra*; *Reeves, supra*. Neither plaintiff nor its expert witness presented any evidence regarding the likelihood that blowing snow would enter the vent pipes, causing a blockage sufficient to trigger the furnace's automatic shut-down feature. In fact, the record contains no evidence that blowing snow entering the vent pipes ever caused defendant's furnace or a similar model to shut down as a safety measure.

Relying on this Court's opinion in *Gennette v Magnetek, Inc*, unpublished opinion per curiam of the Court of Appeals, issued December 18, 1998 (Docket No. 197635),[2] plaintiff argues that its failure to submit statistical data concerning the magnitude of the risk does not entitle defendant to summary disposition. This Court has held that where there is testimony that the product is in general unsafe and that an alternative design would have prevented the plaintiff's accident, statistical deficiencies do not prevent the plaintiff from making a prima facie case. See *Reeves, supra* at 189. However, where the magnitude of the risk is uncertain because it is dependent on the unknown incidence of the occurrence in question, the proponent of an alternative design bears a heavy burden in establishing that the chosen design was unreasonably dangerous in light of the foreseeable risks of injury. See *Owens v Allis-Chalmers Corp*, 414 Mich 413, 429-430; 326 NW2d 372 (1982). Here, plaintiff failed to present *any* evidence that defendant's furnace design presented an unreasonable risk of injury.

Moreover, the record contains no evidence to support plaintiff's contention that either of the alternative designs proposed by plaintiff's expert would have prevented the damages incurred here. Plaintiff's expert conceded that, to his knowledge, other furnace manufacturers did not provide a vent pipe hood for that type of furnace and that he had not conducted any testing to establish that it would have prevented blowing snow from entering the vent pipes. With regard to the other proposed alternative, a ninety-degree elbow on the combustion air intake vent pipe, the record contains no evidence that this design was used by manufacturers of comparable furnaces. Moreover, the expert cited no evidence to support his assertion that the design would have prevented blowing snow from entering the vent pipe. Where a plaintiff fails to demonstrate the efficacy of his proposed alternative designs, we cannot conclude that he has established a prima facie case for a defective product. See *id.* at 431.

Accordingly, the trial court did not err in granting defendant's motion for summary disposition. As our Supreme Court has stated, neither negligence nor products liability jurisprudence establishes the legal principle that every injury warrants a legal remedy. See *Glittenberg v Doughboy Recreational Industries (On Rehearing)*, 441 Mich 379, 403; 491 NW2d 208 (1992). Moreover, the Supreme

Court has repeatedly noted that manufacturers and sellers are not insurers, and they are not absolutely liable for any and all injuries sustained from the use of their products. See *id*. at 388, n 8; *Prentis*, *supra* at 683; *Owens*, *supra* at 432.

Affirmed.

/s/ Martin M. Doctoroff
/s/ David H. Sawyer
/s/ Mark J. Cavanagh

[1] TIG is the subrogor of plaintiffs Gilbert and April McDonald. As used in this opinion, "plaintiff" refers solely to TIG.

[2] Unpublished opinions of this Court are of no precedential value. MCR 7.215(C)(1); *Detroit Free Press, Inc v Dep't of State Police*, 233 Mich App 554, 557; 593 NW2d 200 (1999).