STATE OF MICHIGAN

COURT OF APPEALS

ELISE JUNG,

Plaintiff-Appellee,

v

ADEL ALKATIB,

Defendant-Appellant.

UNPUBLISHED
August 24, 2001

No. 230260
Oakland Circuit Court
LC No. 99-016990-NO

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

MEMORANDUM.

Defendant appeals as of right from a circuit court order denying his motion for a judgment notwithstanding the verdict (JNOV) or a new trial. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

> A trial court's decision to grant or deny a motion for JNOV is reviewed de novo. In reviewing a decision on a motion for JNOV, this Court must view the testimony and all legitimate inferences in the light most favorable to the nonmoving party. If reasonable jurors honestly could have reached different conclusions, the jury verdict must stand. Only if the evidence fails to establish a claim as a matter of law is JNOV appropriate. [*Barrett v Kirtland Community College*, 245 Mich App 306, 311-312; __ NW2d __ (2001) (citations omitted).]

The plaintiff has the burden of producing evidence sufficient to make out a prima facie case. *Snider v Bob Thibodeau Ford, Inc*, 42 Mich App 708, 712; 202 NW2d 727 (1972). The happening of an accident is not, in and of itself, evidence of negligence. The plaintiff must present some facts that either directly or circumstantially establish negligence. *Whitmore v Sears, Roebuck & Co*, 89 Mich App 3, 9; 279 NW2d 318 (1979). "Where the circumstances are such as to take the case out of the realm of conjecture and bring it within the field of legitimate inference from established facts, the plaintiff makes at least a prima facie case." *Clark v Kmart Corp*, 242 Mich App 137, 140-141; 617 NW2d 729 (2000).

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

Plaintiff contends that the premises were unsafe because the basement door latch tended to stick open and when the furnace came on, it could blow the door open if the latch were stuck. Plaintiff's theory of the case is that (1) plaintiff was going down the hall steadying herself against the wall and when she came to the open door, she lost her balance and tumbled down the stairs or (2) plaintiff placed her hand where she expected the door to be to steady herself as she stepped into the living room, but because the door was open, she lost her balance and tumbled down the stairs. However, there is absolutely no evidence that such was the case; it is equally plausible that plaintiff, for unknown reasons, decided to go down the stairs and lost her balance and fell. Only speculation and conjecture would allow the jury to infer that plaintiff fell down the stairs because the defective latch allowed the door to blow open, which is insufficient to submit the matter to the jury. *Skinner v Square D Co*, 445 Mich 153, 164-166; 516 NW2d 475 (1994); *Scott v Illinois Tool Works, Inc*, 217 Mich App 35, 39-40; 550 NW2d 809 (1996). In any event, an open stairway door is not an unreasonably dangerous condition, Cf. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 616-617;537 NW2d 185 (1995), and defendant cannot be found negligent for failing to provide a safer door for plaintiff to lean against. *DeGrave v Engle*, 328 Mich 565, 568; 44 NW2d 181 (1950).

Reversed.

/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage
/s/ Charles H. Miel