

STATE OF MICHIGAN
COURT OF APPEALS

JAMES MCBRIDE,

Plaintiff-Appellant,

v

CHRYSLER CORPORATION,
MITSUBISHI MOTORS MANUFACTURING
OF AMERICA, INC., and MITSUBISHI
MOTORS CORPORATION,

Defendants-Appellees.

UNPUBLISHED

January 22, 2002

No. 223891

Wayne Circuit Court

LC No. 97-726794-NP

Before: Hood, P.J., and Murphy and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment dismissing his claims against defendants in this products liability action. We reverse.

Plaintiff alleged injuries arising out of a motor vehicle accident on the Autobahn in Germany after plaintiff's vehicle suddenly veered off the roadway. Plaintiff claimed a manufacturing defect in the steering knuckle that allegedly fractured prior to the plaintiff crashing. Plaintiff's position was that the defective steering knuckle was the result of either the use of inferior material or defects in the casting of the knuckle, thereby resulting in microscopic fractures, which further fractured with the use of the vehicle and ultimately lead to the fatigue fracture that caused the accident.

Plaintiff first argues that the trial court erred in dismissing his claims pursuant to MCR 2.116(C)(10).¹ This Court reviews a trial court's decision regarding a motion for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In reviewing a motion under MCR 2.116(C)(10), the trial court considers the affidavits, pleadings, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable

¹ Although defendants labeled their motion as a motion to dismiss and the trial court's order reflects this phrasing, defendants argued and the trial court held that plaintiff did not present sufficient evidence to create an issue of fact over whether there was a manufacturing defect. Therefore, the motion was brought and granted pursuant to MCR 2.116(C)(10).

to the party opposing the motion. *Id.* Summary disposition may be granted if the affidavits and other documentary evidence show that there is no genuine issue with respect to any material fact and the moving party is entitled to judgment as a matter of law. *Id.* This Court evaluates “a motion for summary disposition under MCR 2.116(C)(10) by considering the substantively admissible evidence actually proffered in opposition to the motion.” *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). “A reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial[, and a] mere promise is insufficient under our court rules.” *Id.*

Defendants argued that it would be impossible for plaintiff to succeed in his action without testimony from a metallurgist establishing the defect and the specific cause of the defect. The trial court agreed, ruling:

Based upon the arguments that have been made and the references that have been made to Mr. Muller’s² trial testimony, and there not being any other expert to testify relative to there being a manufacturing defect, this Court is of the opinion that there is absolutely no likelihood or possibility that the plaintiff can meet his burden through evidence to present to a jury of there being a manufacturing defect.

A plaintiff bringing a products liability action must show that the defendant supplied a product that was defective and that the defect caused the injury, and the plaintiff may establish its case by circumstantial and direct evidence. *Klinke v Mitsubishi Motors Corp*, 219 Mich App 500, 510; 556 NW2d 528 (1996), *aff’d* 458 Mich 582 (1998), citing *Auto Club Ins Ass’n v General Motors Corp*, 217 Mich App 594, 604; 552 NW2d 523 (1996). In a product liability case, a product may be found to be defective from a plaintiff’s presentation of circumstantial evidence without a specific showing of a demonstrable defect. *Hastings Mutual Ins Co v Croydon Homes Corp*, 73 Mich App 699, 702; 252 NW2d 558 (1977).

In *Holloway v General Motors Corp (On Rehearing)*, 403 Mich 614, 618; 271 NW2d 777 (1978), our Supreme Court, addressing a products liability action concerning a vehicle crash allegedly caused by a defective ball joint assembly, held:

We have also considered General Motors’ further contention, on rehearing, that a failure attributable to the manufacturer is not proven unless the specific cause of the defect is identified. We conclude that, although the specific cause was not so isolated, the Holloways satisfied their burden when they presented evidence from which the jury could reasonably infer that some defect in manufacture caused the accident.

In *Holloway*, General Motors asserted that the plaintiffs’ “access to the ball joint assembly, coupled with their failure to call a witness expert in metallurgy or automobile design,

² Georg Muller, plaintiff’s expert, is a mechanical engineer with extensive training and experience in auto accident reconstruction and the operation of motor vehicle components. Muller is not a metallurgist.

constituted a failure to prove their case by the most accurate evidence reasonably available.” *Id.* at 628. The *Holloway* Court responded to the defendant’s argument by stating:

The Holloways were at liberty to establish that there was a reasonable probability of a manufacturing defect in the assembly by direct *or* circumstantial evidence. A manufacturing defect can be proved by circumstantial evidence without expert opinion testimony. Accordingly, the Holloways were not under an obligation to present a metallurgist’s view of the matter. [*Id.* at 629 (emphasis in original).]

Here, plaintiff presented evidence that the road was dry and that eyewitnesses saw the vehicle driver lose control for no apparent reason. Plaintiff also presented evidence that plaintiff observed a “crash” at the right front wheel *before* the car went off the road. Plaintiff presented evidence that the steering knuckle fractured. Plaintiff further presented the opinion of Georg Muller that the fracture of the steering knuckle caused the car to crash and not the impact of the crash. Muller also testified that a steering knuckle is inaccessible to the user and is expected to last for the lifetime of the vehicle.

Although defendants argue that plaintiff cannot support his claim without a metallurgical expert, they cite no authority for this assertion. Defendants’ attempt to distinguish *Holloway*, on the grounds that General Motors conceded that the ball joint break occurred on the roadway before the accident, lacks merit. It is true that our Supreme Court inferred from that concession that the ball joint assembly was defective in the context of its discussion on whether the defect was attributable to the manufacturer. *Holloway, supra* at 620-621. Here, although defendants do not concede that the steering knuckle was defective, their principle argument, as in *Holloway*, is that plaintiff has to establish the specific cause of the defect to prove his case, i.e., inferior material or casting defects, and that doing so can only be accomplished through the testimony of a metallurgist. *Id.* at 626. We believe that the circumstantial evidence and Muller’s testimony,³ when viewed in a light most favorable to plaintiff, presents a genuine issue of material fact as to whether there was a manufacturing defect, and whether that defect caused the crash. As to the specific cause of the defect in the vehicle, *Holloway* makes clear that plaintiff is not required to present metallurgical evidence to support his claim. Therefore, the trial court erred in granting defendants’ motion for summary disposition.⁴

³ For purposes of our discussion related to the summary disposition issue, regardless of whether we consider Muller’s ultimate opinion, given at his trial deposition, that there was a manufacturing defect, and that the defect existed at the time of manufacture, there would be sufficient evidence to support reversal. Muller’s opinion on those matters is not necessary to support our decision. However, we are considering Muller’s general testimony regarding steering knuckles and his opinion that the knuckle did not fracture due to impact, in light of the fact that defendants do not challenge his credentials as an expert in mechanical/automotive engineering and accident reconstruction. Defendants only challenge Muller’s opinion that the steering knuckle was defective because he is not a metallurgist, and only a metallurgist, according to defendants, can opine that the knuckle was defective based on plaintiff’s allegations.

⁴ We recognize defendants’ argument that because plaintiff has specifically identified an underlying cause as to why the steering knuckle fractured, metallurgical evidence is required to
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The remaining issues on appeal involve whether Muller was qualified under MRE 702 to render an expert opinion concerning the defective nature of the steering knuckle, whether MCL 600.2955, which concerns scientific opinions, is applicable and precludes Muller's testimony, and whether MCL 600.2955 is an unconstitutional intrusion by the Legislature based on the doctrine of separation of powers. The trial court did not render any rulings on these issues.

The trial court, at the hearing on the motion for summary disposition, suggested that Muller may not be qualified to provide testimony relative to whether there was a manufacturing defect attributable to defendants because Muller was not a metallurgist, and that MCL 600.2955 could possibly preclude Muller from rendering an opinion that the steering knuckle was defective. The trial court's discussion of these issues was made solely in the context of deciding whether to grant defendants' motion for summary disposition. The trial court, determining that metallurgical opinion was required to prove the alleged manufacturing defect and survive summary disposition, was noting its belief that Muller could not establish that evidence. However, as stated above, circumstantial or direct evidence can establish a manufacturing defect, proof of the specific cause of the defect is not necessary, and expert opinion, such as that of a metallurgist, is not necessary. Therefore, considering the circumstantial evidence, summary disposition was improper regardless of whether Muller was qualified to testify on metallurgical issues, or even to opine that the steering knuckle was defective. In light of our conclusion, and the fact that the trial court made no rulings on the additional issues raised by plaintiff, along with the fact that this matter is before us on appeal of the summary disposition judgment, we decline to address the remaining issues raised by plaintiff.

Reversed and remanded for proceedings consistent with this opinion. We retain no jurisdiction.

/s/ Harold Hood
/s/ William B. Murphy
/s/ Jane E. Markey

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support the claim. However, pursuant to *Holloway, supra*, regardless of the specific cause that ultimately caused the steering knuckle to fracture, plaintiff is allowed to establish his case that the knuckle was defective by circumstantial evidence, and plaintiff is not required to specify the exact cause of the defect in order to succeed in his cause of action. In other words, just because plaintiff identified a cause that created the defect, it does not follow that his cause of action is lost because he fails to provide evidence of the alleged cause if in fact plaintiff provides other evidence, as he has done, showing that the steering knuckle was defective.