

STATE OF MICHIGAN
COURT OF APPEALS

LUCILLE I. TYSON, Personal Representative of
the Estate of ROBERT MARTIN TYSON,
Deceased,

UNPUBLISHED
February 22, 2002

Plaintiff-Appellant,

v

DENNIS GROENDYKE and ROBERT LEE
GROENDYKE,

No. 227291
Montcalm Circuit Court
LC No. 99-000001-NI

Defendants-Appellees.

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On February 1, 1998 at approximately 7:30 p.m. Dennis Groendyke was driving eastbound on M-82. He saw an object in the westbound lane, and slowed his vehicle. He then saw decedent Robert Tyson lying in the eastbound lane. Groendyke swerved his vehicle in an attempt to avoid decedent; however, the tires on the passenger side struck decedent's legs. Shortly thereafter, another vehicle traveling eastbound struck decedent and then fled the scene. The police report indicated that before the Groendyke vehicle arrived on the scene, decedent was struck by another vehicle while trying to remove his dog from the westbound lane.

Plaintiff filed suit,¹ alleging that Dennis Groendyke operated the vehicle in a negligent and/or grossly negligent manner, and that his actions proximately caused decedent's death. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10). They asserted that the evidence showed that when the incident occurred, Dennis Groendyke was driving with headlights on and at an appropriate speed, and had his attention on the road. Darkness had fallen, and the area was not illuminated by streetlights. Decedent was wearing dark clothing.

¹ The complaint alleged that Robert Groendyke was liable under the owner's liability statute. MCL 257.401.

Defendants also asserted that Dennis Groendyke was confronted with a sudden emergency that negated any negligence.

In response, plaintiff argued that a genuine issue of fact existed as to whether Dennis Groendyke could have observed decedent lying in the roadway and acted to avoid striking him. Plaintiff relied on witnesses who stated that the decedent's body could be observed from a distance, that a streetlight illuminated the area, and that decedent was wearing a light colored jacket. The trial court granted defendants' motion, concluding that reasonable minds could not disagree as to whether Dennis Groendyke acted in a negligent manner.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Berryman v K-Mart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992). A prima facie case of negligence may be based on legitimate inferences, provided that sufficient evidence is produced to take the inferences "out of the realm of conjecture." *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

The sudden emergency doctrine states that a person who is confronted with danger, and is required to act without the opportunity to consider the best means to avoid the danger, is not negligent if he fails to adopt what subsequently and upon reflection appears to have been a better method of avoiding the danger. *Socony Vacuum Oil Co v Marvin*, 313 Mich 528, 546; 21 NW2d 841 (1946). The fact pattern must present circumstances that are unusual or unsuspected. In the context of a traffic accident, circumstances are unusual if they vary from the everyday routine confronting motorists. Circumstances are unsuspected if they have not been in view for any significant length of time, and were totally unexpected. *Vander Laan v Miedema*, 385 Mich 226, 232; 188 NW2d 564 (1971).

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm. Dennis Groendyke's statement that he had his headlights on and kept his vehicle within the speed limit was uncontradicted. Photographs showed that decedent was wearing dark clothing, and not a light colored jacket. Dennis Groendyke stated that he saw something in the westbound lane, but did not see decedent in the eastbound lane until it was too late to avoid striking decedent. Plaintiff's witnesses observed the scene while not moving in a vehicle and while not distracted by an object in the other lane. Plaintiff infers that because other persons in different circumstances observed decedent, Dennis Groendyke could have observed and avoided him.

This position is based on impermissible conjecture. *Ritter, supra*. An unexpected event may be one which occurs under everyday circumstances, but which takes place so suddenly that a person is forced to act without the circumspection required by due care. *Amick v Baller*, 102 Mich App 339, 341-342; 301 NW2d 530 (1980). The trial court properly concluded that the incident was an unexpected event, *Vander Laan, supra*; *Amick, supra*, and correctly granted

summary disposition in favor of defendants. *Socony, supra*.

Affirmed.

/s/ Michael R. Smolenski

/s/ Martin M. Doctoroff

/s/ Donald S. Owens