

STATE OF MICHIGAN  
COURT OF APPEALS

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ABDULLAH ALJAHMI,

Plaintiff-Appellant,

v

JAMES THOMAS and ROADWAY EXPRESS,  
INC.,

Defendants-Appellees.

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UNPUBLISHED

August 30, 2002

No. 229617

Wayne Circuit Court

LC No. 99-931893-NI

Before: Cooper, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this motor vehicle negligence case, plaintiff appeals by right from the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We affirm.

We review the trial court's decision granting summary disposition de novo to determine whether defendants were entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* at 120. Summary disposition is appropriate if the substantively admissible evidence, viewed in a light most favorable to the nonmoving party, fails to establish a genuine issue of material fact for trial. *Id.* at 120-121.

We agree with the trial court's determination that plaintiff failed to demonstrate a genuine issue of material fact and that the trial court properly resolved this issue on the basis of its assessment of which party was more at fault. Fairly read, the trial court's opinion reflects its determination that plaintiff failed to demonstrate that a genuine issue of material fact existed regarding whether defendant Thomas was at fault for the accident, not whether the fifty percent fault threshold under MCL 500.3135(2)(b) could be established. Because plaintiff's right to recover depends on his ability to prove a wrongful act on the part of Thomas, we likewise conclude that this issue is dispositive. "Absent a wrongful act, the collision is simply an accident for the consequences of which no one is liable in tort." *Citizens Ins Co v Tuttle*, 411 Mich 536, 544; 309 NW2d 174 (1981).

While we agree that a violation of MCL 257.650(1) would create a rebuttable presumption of negligence, *Massey v Scripter*, 401 Mich 385, 395; 258 NW2d 44 (1977), the statute does not require a motorist to anticipate the negligent or unlawful acts of another

motorist, *Hainault v Vincent*, 365 Mich 370, 376; 112 NW2d 569 (1961). The record provides no factual support for plaintiff's claim that he was in the intersection or so close to the intersection so as to constitute an immediate hazard, within the meaning of MCL 257.650(1), when Thomas made his left turn. The conclusive averment in plaintiff's affidavit that Thomas turned suddenly in front of him, without particularity regarding the physical facts that support this conclusion, is insufficient to avoid summary disposition. *Durant v Stahlin*, 375 Mich 628, 657; 135 NW2d 392 (1965) (Souris, J.). An affidavit must set forth with particularity such facts as would be admissible as evidence. See *SSC Associates Ltd Partnership v General Retirement System of Detroit*, 192 Mich App 360, 364; 480 NW2d 275 (1991).

Notwithstanding the deficiency in plaintiff's affidavit, the trial court gave plaintiff's attorney an opportunity at the hearing on defendants' motion to identify if he were disputing certain physical facts, such as the point of impact. No disputed fact was identified. We find no record support for plaintiff's position that the trial court improperly weighed evidence in granting defendants' motion for summary disposition. The record also indicates that the trial court did not rely on the police report offered by defendants.

Upon de novo review, we uphold the trial court's grant of summary disposition in favor of defendants because plaintiff's affidavit lacked sufficient particularity to establish a genuine issue of material fact on the question whether Thomas was negligent. *Maiden, supra* at 120-121. Because plaintiff failed to establish a genuine issue of material fact on the question of Thomas' negligence, it is unnecessary to address defendants' argument concerning the "but for" test for causation under *Skinner v Square D Co*, 445 Mich 153; 516 NW2d 475 (1994).

We affirm.

/s/ Jessica R. Cooper  
/s/ Joel P. Hoekstra  
/s/ Jane E. Markey