

STATE OF MICHIGAN
COURT OF APPEALS

RONALD LEE MCCALLUM,

Plaintiff-Appellant,

v

CHIA FANG WU, a/k/a CHINA FANG WU,

Defendant,

and

JOSEPH HAWKINS and EAST BELTLINE
TOWING AND SERVICE, INC.,

Defendants-Appellees.

UNPUBLISHED

September 13, 2002

No. 230111

Kent Circuit Court

LC No. 99-005597-NI

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

PER CURIAM.

In this automobile collision case, plaintiff brought suit against Chia Fang Wu, a/k/a China Fang Wu, the driver of the vehicle that collided with plaintiff's motorcycle, and both the owner, East Beltline, and the driver, Joseph Hawkins, of a tow truck that allegedly obstructed the view of the intersection at the time of the accident. Defendant East Beltline moved the trial court for summary disposition, asserting that the tow truck was not the proximate cause of the collision. The trial court granted summary disposition in favor of both East Beltline and Hawkins, and the parties subsequently stipulated to dismiss the case against Wu. Plaintiff was granted leave to appeal on the issue whether the tow truck was a proximate cause of the collision in that it allegedly obstructed the view of the intersection. We affirm.

Plaintiff asserts that the trial court improperly granted summary disposition under MCR 2.116(C)(10) because a genuine issue of material fact existed regarding whether defendants' tow truck obstructed the view of plaintiff and Wu as they approached the intersection and whether the tow truck was a proximate cause of the collision that occurred at the intersection. Specifically, plaintiff argues that the truck diminished the reaction time available to the parties to avoid the accident and that the trial court failed to take this into account.

On appeal, a trial court's grant or denial of summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). This Court must

review the record in the same manner as must the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). Summary disposition of all or part of a claim or defense may be granted when, except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. MCR 2.116(C)(10). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). The court may not make findings of fact or weigh credibility in deciding a summary disposition motion. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

In the instant case, the trial court ruled that plaintiff failed to show that the tow truck's obstruction of the parties' view of traffic was a proximate cause of the automobile collision. To establish a prima facie case of negligence, a plaintiff must prove the following four elements: (1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty; (3) causation; and (4) damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). There may be more than one proximate cause. *Hagerman v Gencorp Automotive*, 457 Mich 720, 729; 579 NW2d 347 (1998). Proof of causation or proximate cause actually entails proof of two separate elements: (1) cause in fact, and (2) legal cause, also known as "proximate cause." *Skinner, supra* at 162-163. Cause in fact requires that the harmful result would not have come about "but for" the defendant's negligent conduct. *Id.* at 163. However, when a number of factors contribute to producing an injury, a plaintiff may establish factual causation by showing that the defendant's actions, more likely than not, were a substantial factor in bringing about the injury. *Id.* at 165, n 8. Considerations relevant to whether a factor was substantial include: (1) the number of other factors and the extent of the effect which they had in producing the harm; (2) whether the actor's conduct created a force or series of forces which were in continuous and active operation up to the time of harm, or whether the actor created a situation harmless until affected by other forces not the responsibility of the actor; and (3) the lapse of time. *Poe v Detroit*, 179 Mich App 564, 576-577; 446 NW2d 523 (1989).

Here, the evidence showed that Wu was driving northbound on Prospect. She stopped at the stop sign at the intersection of Prospect and Michigan Avenue in Grand Rapids, with the intent to turn left, or westbound, on Michigan Avenue. She was unable to turn left because a tow truck was backing up against traffic on the right lane of eastbound Michigan Avenue, obstructing her view of the eastbound traffic. Wu eased her vehicle up in front of the tow truck and made another stop when she reached the left, inner lane of the Michigan Avenue eastbound traffic. She expressly testified that, at that point, her view of the eastbound left traffic lane was unobstructed, and the tow truck did not create a blind spot. The lane appeared clear of traffic, but when she started to make a left turn, she collided with a motorcycle.

Plaintiff, on the other hand, testified that he was riding his motorcycle on the left, inner lane of eastbound Michigan Avenue. Before he reached the tow truck, he could see that a car was traveling north on Prospect. He lost sight of the car when the tow truck obstructed his view. Once plaintiff was even with the vehicle that the tow truck was carrying, plaintiff regained sight of the car. Because the car was moving forward toward the inner lane, plaintiff applied the brakes, and his motorcycle began to skid. However, the car then made a complete stop when it

reached the left inner lane. He could see the driver. Because the driver was looking in his direction, plaintiff assumed that he could safely proceed through the intersection. He released the application of the brakes and proceeded through the intersection. Suddenly, the car bolted at him, resulting in a collision that neither party could avoid.

The trial court stated that there was no question that the truck obstructed Wu's view of the eastbound traffic when she was at the stop sign, but that the truck was no longer an obstruction when Wu had eased her way and stopped near the left lane. The court ruled that Wu had simply failed to notice the motorcycle in front of her when she could have seen it. Moreover, plaintiff also testified that he believed that Wu simply did not notice him.

On appeal, plaintiff asserts that the negligent conduct of the truck was continuing because it had shortened the time in which both parties could see each other. However, the facts in this case do not support such assertion. As the trial court stated, Wu came to a complete stop before she started her left-hand turn. Wu had looked to her left, to her right and then back to her left before she started her turn. Had she seen plaintiff, she was in a position to keep her vehicle in its idle position. In light of the above, defendant's conduct was not a substantial factor in bringing about plaintiff's injury, and it cannot be said that the collision would not have come about "but for" defendants' negligent conduct in parking the tow truck in the right eastbound lane of Michigan Avenue. *Skinner, supra* at 163-165.

Plaintiff argues that the second and third *Poe* factors were met in this case. Plaintiff asserts that the tow truck's negligence was in continuous and active operation when the collision occurred because it had shortened the time in which Wu could have seen plaintiff and it shortened the time in which the parties could have reacted to avoid the collision. However, as discussed above, the record does not support plaintiff's argument. Wu was afforded enough time to determine that her view of the eastbound traffic was clear. Plaintiff, who also could see Wu, assumed that she saw him because she was looking in his direction. Had she seen him, she could have simply remained in her idle position. As the trial court reasoned, plaintiff cannot show that this situation would have been any different had the tow truck been absent and Wu been idle at the stop sign before proceeding to turn left without observing the motorcycle. The evidence shows that Wu simply failed to observe plaintiff who was almost in front of her when she should have seen him, and that the existence of the tow truck was irrelevant at that point.

We conclude that plaintiff failed to show a genuine issue of material fact regarding whether the tow truck was a proximate cause in the accident. Accordingly, the trial court properly granted defendants' motion for summary disposition.

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Christopher M. Murray