

STATE OF MICHIGAN
COURT OF APPEALS

DENISE HUDSON and LEONARD HUDSON,

Plaintiffs-Appellees,

v

JASON SIMONS and HIGHWAY
MAINTENANCE AND CONSTRUCTION CO.,

Defendants-Appellants.

UNPUBLISHED
December 17, 2002

No. 237137
Genesee Circuit Court
LC No. 00-067776-NI

Before: Kelly, P.J. and Jansen and Donofrio, JJ.

PER CURIAM.

In this negligence action, defendants appeal as of right a judgment entered pursuant to a jury verdict for plaintiff, Denise Hudson.¹ We affirm.

I. Factual Background

Genessee County hired defendant Highway Maintenance and Construction Co. (defendant HM & C) to resurface a one-mile stretch of Bristol Road between M-15 and Henderson Road. As part of the resurfacing process, a roadway is “broomed” or “swept.” A cylindrical brush, approximately three-feet wide and eight-feet long, is attached to the front of a dump truck. The brush rotates and throws loose stone and dirt toward the side of the road, creating dust.

¹ Although the jury found defendants negligent, it awarded damages only to plaintiff, Denise Hudson. The jury found that plaintiff Leonard Hudson did not sustain any damages for loss of society and companionship. “A claim for loss of consortium is one for loss of society and companionship.” *Eide v Kelsey-Hayes, Co*, 431 Mich 26, 29; 427 NW2d 488 (1988). Such a claim is derivative of a claim brought by a spouse for “legally cognizable harm or injury” and is not considered “an item of damages, but as a separate cause of action.” *Id.* Thus, plaintiff Leonard Hudson essentially received a verdict of no cause of action when the jury found zero damages for his loss of consortium claim. Thus, defendants’ appeal relates only to plaintiff Denise Hudson’s individual claim. For this reason, the singular “plaintiff” is used throughout this opinion referring only to plaintiff Denise Hudson.

On August 1, 1998, at approximately 7:00 a.m., defendant HM & C's employee, defendant Simons, began the second phase of the sweeping operation. Before sweeping, defendant Simons turned on headlights, a flashing light on the roof, a flashing light on the back left side of the truck, and emergency flashers. During the sweeping process, defendant Simons drove the truck approximately ten miles per hour.

At approximately 7:30 a.m., plaintiff was driving home from work² along her regular route including eastbound travel from M-15 to Bristol Road. Plaintiff perceived a fog that was actually dust created by the sweeping. Because of this "fog," plaintiff drove her vehicle into the rear end of defendant HM & C's truck. Prior to the accident, plaintiff had not noticed any construction work on Bristol Road, nor had she seen signs indicating that construction was taking place. Plaintiff had, however, during the two weeks leading up to the accident, observed a sign reading "loose stones, 35 miles per hour." On the morning of the accident, plaintiff did not see any flashing lights. The lane in which she traveled was not closed to traffic. At trial, plaintiff testified that if there had been a construction sign posted that morning, she would have gone "extra slow, and look[ed] for anything in the road."

A local resident, William A. Coleman, was in bed sleeping on the morning of the accident, when he heard a loud bang. When Coleman went outside, he initially could not see anything because of the dust that had been generated. He did not see the truck or any flashing lights. Eventually, Coleman was able to see the truck in the eastbound lane on Bristol Road. Coleman testified that there had previously been a "loose gravel" barricade near the intersection of M-15 and Bristol Road. The sign had covered one full lane. However, on the day of plaintiff's accident, the barricade had been moved to a nearby ditch.

As a result of the accident, plaintiff sustained a rib fracture, a broken and leg, and a shattered ankle. Plaintiff underwent surgery on her arm, and was without the use of the arm for approximately seven or eight months. Plaintiff also underwent surgeries on her ankle. Doctors indicated that she would suffer pain in her ankle for the rest of her life. Plaintiff testified that because of the injuries she sustained in the accident, she has great difficulty performing everyday tasks, cannot get around without her brace and crutches or wheelchair, and is constantly in pain. In addition, plaintiff is no longer able to work at a group home as she had done, and enjoyed, for eight years prior to her accident.

After the close of plaintiff's proofs, defendants moved for a directed verdict. The trial court denied defendants' motion. The jury returned a verdict, allocating 55% fault to defendants and 45% fault to plaintiff. The jury awarded plaintiff \$200,000 for past pain and suffering and \$500,000 for future pain and suffering. The trial court entered a judgment for plaintiff in the amount of \$395,901.55, including costs and interest. Defendants moved for a judgment notwithstanding the verdict (JNOV). The trial court denied defendants' motion.

² Plaintiff worked a midnight shift.

II. Standard of Review

We review the trial court's decision on a motion for a directed verdict de novo. *Derbabian v S & C Snowplowing, Inc.*, 249 Mich App 695, 701; 644 NW2d 779 (2002). This Court reviews all the evidence presented up to the time of the motion to determine whether a question of fact existed. *Id.* at 701-702. In doing so, we view the evidence in the light most favorable to the nonmoving party, granting that party every reasonable inference, and resolving any conflict in the evidence in that party's favor. *Id.*

We also review a trial court's decision on a motion for JNOV de novo. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998). In reviewing the decision, this Court must view the testimony and all legitimate inferences from it in the light most favorable to the nonmoving party. *Id.* "If reasonable jurors could honestly have reached different conclusions, the jury verdict must stand." *Central Cartage Co v Fewless*, 232 Mich App 517, 524; 591 NW2d 422 (1998), quoting *Severn v Sperry Corp.*, 212 Mich App 406, 412; 538 NW2d 50 (1995). Only if the evidence fails to establish a claim as a matter of law is a JNOV appropriate. *Forge, supra* at 204.

II. Directed Verdict

Defendants first argue that the trial court erred in denying their motion for a directed verdict because plaintiff failed to present any expert testimony regarding the need for additional warning signs. We disagree.

To establish a prima facie case of negligence, a plaintiff must prove 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). Although the questions of duty and the general standard of care are questions of law for the trial court, the reasonableness of a defendant's actions under the circumstances is a question for the jury. *Aria v Talon Development*, 239 Mich App 265, 268; 608 NW2d 484 (2000); *Johnson v Bobbie's Store*, 189 Mich App 652, 659; 473 NW2d 796 (1991).

In this case, plaintiff was not required to present expert testimony to prove that defendants' conduct was unreasonable. MRE 702 provides:

If the court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Accordingly, expert testimony becomes necessary if it will aid the trier of fact in resolving complex issues beyond the experience of a person not trained in a specific field. Here, the determination regarding the reasonableness of defendants' failure to post additional signs was within the common knowledge and experience of ordinary laypersons. Therefore, it was unnecessary to present expert testimony to establish that defendants breached their duty of care. The jury was quite capable of understanding the evidence and making a determination with respect to reasonableness without the assistance of an expert.

Plaintiff presented substantial evidence of defendants' conduct that could allow a reasonable jury to conclude that it was unreasonable for defendants not to post additional warning signs. There was ample uncontroverted testimony that the only sign posted for motorists traveling eastbound on Bristol Road on the morning of the accident was a "loose stones, 35 miles per hour" sign. However, the purpose of the loose stones sign was to protect cars and pedestrians from flying stones, not to notify drivers that construction was underway. In addition, both plaintiff and Coleman testified that the dust or fog being generated from the truck made it virtually impossible to see the truck from even a short distance. Although defendant Simons testified that he had cleaned off and activated all of the lights on the truck prior to starting the brooming operation that morning, Coleman testified that he could not see the truck or any flashing lights. Additionally, the entire back of the truck was covered with dust. Finally, even though defendant HM & C was not required to post any additional signs, its safety engineer had the authority to do so if he decided it was necessary to ensure safety. However, the safety engineer could not remember going out to the construction site to examine the possible need for additional signs.

Viewing the evidence in the light most favorable to plaintiff, we find the trial court did not err in denying defendants' motion for directed verdict.

III. JNOV

Defendants also argue that the trial court erred in denying their motion for JNOV because plaintiff failed to establish that its failure to post additional signs was the proximate cause of plaintiff's injuries. We disagree.

Proof of causation requires both cause in fact and proximate cause. *Haliw v Sterling Heights*, 464 Mich 297, 310; 627 NW2d 581 (2001). The cause in fact element in a negligence claim generally requires a showing that "but for" the defendant's conduct, the plaintiff's injury would not have occurred. *Id.* On the other hand, legal cause or "proximate cause" depends in part on the foreseeability of consequences. *Id.* Proximate cause is usually a factual issue to be decided by the trier of fact. *Dep't of Transportation v Christensen*, 229 Mich App 417, 424; 581 NW2d 807 (1998). The plaintiff must present substantial evidence from which a jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred. *Skinner v Square D Co*, 445 Mich 153, 165; 516 NW2d 475 (1994).

In this case, plaintiff testified that if there had been a construction sign posted on the morning of the accident, she would have gone "extra slow, and look[ed] for anything in the road." Plaintiff also testified that because the loose stones sign had been up for several weeks before the accident, with no activity occurring during that time, she had no reason to believe that morning was any different. There was testimony that the truck-generated dust diminished visibility significantly on the morning of the accident. In addition, both plaintiff and Coleman testified that the truck was in the eastbound lane of traffic, without closure of that lane. Defendant Simons testified that the truck was traveling only ten miles per hour at that time. However, the loose stones signs advised motorists that they could travel safely on that road at thirty-five miles per hour. Finally, plaintiff's lack of awareness that construction was in progress in her lane of travel and consequent collision with defendants' truck, were foreseeable consequences of defendants' failure to post additional warning signs. Contrary to defendants' assertions, it was not necessary to establish through plaintiff's own testimony that she would have altered her

behavior if there had been additional warning signs. Circumstantial evidence is permissible to satisfy the causation element of negligence. *Skinner, supra* at 163-165.

After reviewing the record evidence and all legitimate inferences in the light most favorable to plaintiffs, we conclude that circumstantial evidence and direct testimony provided a reliable basis from which reasonable jurors could infer the existence of a causal relationship between defendants' failure to provide additional warning signs and plaintiff's injuries. Accordingly, the trial court properly denied defendants' motion for JNOV.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Kathleen Jansen

/s/ Pat M. Donofrio