STATE OF MICHIGAN

COURT OF APPEALS

JOSEPHINE HUGGINS, Personal Representative of the Estate of STEVEN HUGGINS, Deceased, Plaintiff-Appellee, v SCOTT SCRIPTER, Defendant-Appellant, and MICHELLE SCRIPTER and DEVIN PALMATEER, Defendants.	UNPUBLISHED December 20, 2002 No. 235763 Shiawassee Circuit Court LC No. 00-004699-NI

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendant appeals by leave granted from a circuit court order denying his motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson,* 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co,* 460 Mich 446, 455; 597 NW2d 28 (1999).

Generally, negligence is conduct involving an unreasonable risk of harm. *Hughes v PMG Bldg, Inc,* 227 Mich App 1, 5; 574 NW2d 691 (1997). To prove negligence, a plaintiff must

establish a breach of duty owed by the defendant which is a proximate cause of the plaintiff's injuries. *Nolan v Bronson*, 185 Mich App 163, 169; 460 NW2d 284 (1990). The plaintiff has the burden of producing evidence sufficient to make out a prima facie case. *Snider v Bob Thibodeau Ford, Inc*, 42 Mich App 708, 712; 202 NW2d 727 (1972). The happening of an accident is not, in and of itself, evidence of negligence. The plaintiff must present some facts that either directly or circumstantially establish negligence. *Whitmore v Sears, Roebuck & Co*, 89 Mich App 3, 9; 279 NW2d 318 (1979). "Where the circumstances are such as to take the case out of the realm of conjecture and bring it within the field of legitimate inference from established facts, the plaintiff makes at least a prima facie case." *Clark v Kmart Corp*, 242 Mich App 137, 140-141; 617 NW2d 729 (2000), rev'd on other grounds 465 Mich 416 (2001). If the plaintiff fails to establish a causal link between the accident and any negligence on the part of the defendant, summary disposition is proper. *Pete v Iron Co*, 192 Mich App 687, 689; 481 NW2d 731 (1992).

A driver has a statutory duty to drive at a careful and prudent speed in light of existing conditions. A driver must not drive at a speed greater than that which will allow him to stop within the assured, clear distance ahead. MCL 257.627(1). Apart from any statutory duty, a driver owes a duty to other motorists and pedestrians to exercise ordinary and reasonable care and caution in the operation of his car. *Zarzecki v Hatch*, 347 Mich 138, 141; 79 NW2d 605 (1956); *Poe v Detroit*, 179 Mich App 564, 571; 446 NW2d 523 (1989). He must make a reasonable allowance for traffic, weather, and road conditions. *DePriest v Kooiman*, 379 Mich 44, 46; 149 NW2d 449 (1967). However, a driver is not required "to guard against every conceivable result, to take extravagant precautions, to exercise undue care," and is "entitled to assume that others using the highway in question would under the circumstances at the time use reasonable care themselves and take proper steps to avoid the risk of injury." *Hale v Cooper*, 271 Mich 348, 354; 261 NW 54 (1935), aff'd on rehearing 271 Mich 357; 263 NW 769 (1935).

For a pedestrian, that means at the very least walking on sidewalks if provided. If sidewalks aren't provided, a pedestrian must, when practicable, walk on the left side of the road facing traffic. MCL 257.655. Thus, a driver who is driving in a lane he has a right to be in and is not aware of a pedestrian's presence is not required to anticipate that a pedestrian will suddenly appear in his path. *Houck v Carigan*, 359 Mich 224, 227; 102 NW2d 191 (1960); *Gamet v Jenks*, 38 Mich App 719, 724-725; 197 NW2d 160 (1972). If a motorist fails to observe a pedestrian who can be seen coming into his path, and the motorist fails to stop when he is capable of doing so, a case of negligence is made out. *Johnson v Hughes*, 362 Mich 74, 77-78; 106 NW2d 223 (1960).

Plaintiff's decedent, a pedestrian, was walking on southbound Durand Road just south of a large hill. Defendant, who was driving in the southbound lane, crested the hill and ran into the decedent. Although the decedent was wearing dark clothing in an unlit area, he apparently was visible in motorists' headlights. But, because there was a hill in the road, he may have been beyond defendant's lights or line of sight until defendant crested the hill. Moreover, there was evidence that defendant may have looked away from the roadway just as he crested the hill. There was also evidence that defendant may not have had time to observe and react to the decedent's presence and avoid the accident. Given such evidence, reasonable minds could differ

in concluding whether defendant breached his duty of ordinary care. Therefore, the trial court did not err in denying defendant's motion.

We affirm.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Michael R. Smolenski