

STATE OF MICHIGAN
COURT OF APPEALS

BADGER MUTUAL INSURANCE COMPANY,
as Subrogee of BOULEVARD LOUNGE, d/b/a
BOULEVARD LOUNGE,

UNPUBLISHED
March 23, 2004

Plaintiff-Appellant,

v

CONSUMERS ENERGY COMPANY,

No. 243769
Midland Circuit Court
LC No. 01-004352-NZ

Defendant-Appellee.

Before: Zahra, P.J., and Cavanagh and Cooper, JJ.

ZAHRA, P.J. (*dissenting.*)

I respectfully dissent.

I agree with the trial court that plaintiff failed to produce evidence to create a genuine issue of material fact regarding whether defendant breached its duty to plaintiff. To establish a prima facie case of negligence, a plaintiff must prove the following: (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). An electric power company must exercise reasonable care to reduce potential hazards as far as practicable and owes a duty to reasonably inspect and repair wires and other instrumentalities in order to discover and remedy hazards and defects. *Schultz v Consumers Power Co*, 443 Mich 445, 451; 506 NW2d 175 (1993). As noted by the trial court, this case is similar to *Citizens Ins Co v Detroit Edison*, unpublished opinion per curiam of the Court of Appeals, issued May 15, 2001 (Docket No. 215510),¹ where this Court concluded that the plaintiffs failed to show an electric company's breach of duty where the plaintiffs failed to present evidence establishing (1) what constitutes reasonable maintenance of electrical lines or (2) when the defendant last inspected or serviced the lines that allegedly caused the fire.

¹ Although an unpublished Court of Appeals opinion has no binding precedential effect, MCR 7.215(C)(1), it may be used as persuasive authority. *Slater v Ann Arbor Public Schools Bd of Ed*, 250 Mich App 419, 432; 648 NW2d 205 (2002).

Here, as in *Citizens Ins Co*, plaintiff presented no evidence to establish what constitutes reasonable maintenance of electrical lines or when defendant last inspected or serviced the lines. Plaintiff's expert testified that load studies would have revealed the problem with the line that caused the fire and that these load studies should have been done on electrical lines periodically. But plaintiff's expert did not testify specifically how often the load studies should be conducted. Furthermore, plaintiff presented no evidence showing when defendant last conducted a load study or any other type of inspection of the line at issue. There was evidence that it was defendant's policy to conduct overhead inspections on all circuits every four years, but no evidence regarding when defendant had actually last inspected the line that cause the fire. Therefore, I conclude that plaintiff failed to satisfy the breach of duty element of negligence, without which his claim must fail. I would affirm the trial court's grant of defendant's motion for summary disposition.

/s/ Brian K. Zahra