

STATE OF MICHIGAN
COURT OF APPEALS

JOHN F. MCGUIRE,

Plaintiff-Appellant,

v

EARL D. CORNWALL and CITY
MANAGEMENT CORPORATION,

Defendants-Appellees.

UNPUBLISHED

April 13, 2004

No. 244829

Macomb Circuit Court

LC No. 01-002891-NI

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A vehicle driven by plaintiff and a garbage truck owned by City Management Corporation and driven by Earl D. Cornwall were traveling westbound on a two-lane road. Plaintiff attempted to pass a white vehicle¹ located between his vehicle and the truck, and collided with the truck as it attempted to turn left into a driveway.

Plaintiff filed suit and moved for partial summary disposition pursuant to MCR 2.116(C)(10) on the issue of negligence, asserting that Cornwall violated MCL 257.642(1)(a) by leaving his lane of travel without ascertaining that it was safe to do so, and defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that no issue of fact existed as to whether plaintiff's own negligence caused the accident. The trial court granted defendants' motion, finding that no genuine issue of fact existed as to whether Cornwall activated his turn signal. The trial court denied plaintiff's motion for reconsideration.

We review a trial court's decision on a motion for summary disposition de novo, *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2002), and a decision on a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich

¹ The driver of this vehicle was never identified.

App 223, 233; 611 NW2d 333 (2000). MCR 2.116(C)(10) provides for summary disposition where 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. Our Supreme Court has ruled that a trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In addition, all affidavits, pleadings, depositions, admissions, and other documentary evidence filed in the action or submitted by the parties are viewed in a light most favorable to the party opposing the motion. *Id.* Where the burden of proof on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in the pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Where the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id.* at 363.

Plaintiff's assertion that summary disposition was inappropriate because evidence showed that Cornwall acted negligently by making a left turn before ascertaining that it was safe to do so, and thereby violated MCL 257.642(1)(a), has merit. Cornwall testified that prior to making the turn he stopped the truck, activated his turn signal, and checked his left rearview mirror. He maintained that he could see behind the truck for several hundred yards, and saw no vehicle attempting to pass his truck. Plaintiff's deposition testimony that he did not see an activated turn signal on the truck could be read to indicate that no turn signal was in fact activated, and plaintiff's affidavit, which was not necessarily contrary to his deposition testimony, reflects that the truck did not have its turn signal on, thereby creating a factual issue. See *Jacoby v Schafsnitz*, 270 Mich 515; 259 NW 322 (1935) (evidence showed the defendant turned left without signaling his intention to do so). Moreover, assuming that the truck's turn signal was activated and that plaintiff failed to see the signal, it does not mean that Cornwall was entirely free of negligence and that plaintiff was completely at fault, especially if plaintiff was already in the process of passing when the signal was activated. See MCL 257.642(1)(a). Factual issues abound, and summary disposition in favor of defendants was improper.

Reversed and remanded. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Michael R. Smolenski