STATE OF MICHIGAN

COURT OF APPEALS

BRADLEY LAVIN, a Minor, by his Next Friend, WENDY Y. LAVIN, individually,

Plaintiff-Appellant,

v

CHILD CRAFT INDUSTRIES, INC.,

Defendant-Appellee.

UNPUBLISHED
April 20, 2004

No. 245386
Oakland Circuit Court
LC No. 01-037096-NO

Before: Cooper, P.J., and Griffin and Borrello, JJ.

PER CURIAM.

Plaintiff Wendy Y. Lavin appeals as of right from the trial court's order dismissing her product liability claim against defendant Child Craft Industries, Inc., pursuant to MCR 2.116(C)(10). We affirm.

Bradley Lavin, at the age of thirteen months, was placed on the floor next to his crib. Bradley stood up and fell against a sharp bracket on the exterior of his crib manufactured by defendant.[1] As a result of the fall, Bradley's nose was cut and required stitches. Plaintiff alleged that defendant negligently designed and manufactured the crib, breached its duty to warn and breached the implied warranty. In granting defendant's motion for summary disposition, the trial court concluded that plaintiff failed to establish a prima facie case of either defective design or defective manufacturing and that no genuine issue of material fact existed. Specifically, the trial court noted plaintiff's failure to establish that defendant deviated from industry standards; that defendant's design carried a latent risk of injury that was inadequately communicated to users; that there existed a feasible alternative production practice; or that the crib was actually defective.

Plaintiff contends on appeal that the trial court erred in granting defendant's motion for summary disposition, as there existed a genuine issue of material fact. We disagree. We review a trial court's decision on a motion for summary disposition de novo.[2] A motion pursuant to

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[1] The bracket in question is part of the mechanism that allows the crib's side rail to be lowered.

[2] *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001).

MCR 2.116(C)(10) tests the factual support of a plaintiff's claim.[3] "In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists."[4] Summary disposition under MCR 2.116(C)(10) is appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[5]

Manufacturers have a duty to design their products "to eliminate 'any unreasonable risk of foreseeable injury.'"[6] There are two theories under which a plaintiff may proceed to prove a design defect in a product liability action. A plaintiff can show that a product was rendered defective by the manufacturer's failure to warn potential users of dangers involving the intended uses, and foreseeable misuses, of the product.[7] To establish a prima facie case of failure to warn, a plaintiff must prove: (1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) the defendant's breach was a proximate cause of the plaintiff's injuries; and (4) the plaintiff suffered damages.[8] A manufacturer has a duty to warn if it has actual or constructive knowledge of a danger, which is not obvious to users, and the manufacturer failed to use reasonable care in informing users of the danger or the facts tending to make the condition dangerous.[9]

Under the second, more traditional theory, of design defect, a plaintiff must show that the product was "not reasonably safe for its foreseeable uses"[10] and that a risk-utility analysis favored a safer design.[11] Under this approach, a plaintiff must show that (1) the product was not reasonably safe when it left the control of the manufacturer; and (2) a "feasible alternative

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[3] *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999).

[4] *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001).

[5] *Auto-Owners Ins Co*, *supra* at 397.

[6] *Ghrist v Chrysler Corp*, 451 Mich 242, 248; 547 NW2d 272 (1996), quoting *Prentis v Yale Mfg Co*, 421 Mich 670, 693; 365 NW2d 176 (1984).

[7] *Gregory v Cincinnati Inc*, 450 Mich 1, 11; 538 NW2d 325 (1995), citing *Gerkin v Brown & Sehler Co*, 177 Mich 45, 57-58; 143 NW2d 48 (1913).

[8] *Warner v General Motors Corp*, 137 Mich App 340, 348; 357 NW2d 689 (1984).

[9] *Glittenberg v Doughboy Recreational Indus (On Rehearing)*, 441 Mich 379, 389-390; 491 NW2d 208 (1992).

[10] *Ghrist*, *supra* at 249, quoting *Fredericks v General Motors Corp*, 411 Mich 712, 720; 311 NW2d 725 (1981).

[11] *Id.* at 11-12, citing *Prentis*, *supra*, *Holloway v General Motors Corp (On Rehearing)*, 403 Mich 614, 621; 271 NW2d 777 (1978).

production practice was available that would have prevented the harm without significantly impairing the usefulness or desirability of the product to users."[12]

While a design defect claim tests the conduct of the manufacturer, "[a] breach of warranty claim tests the fitness of the product."[13] To establish a breach of warranty claim, a plaintiff must "prove a defect attributable to the manufacturer and causal connection between that defect and the injury or damage of which he complains."[14] Implied warranty and design defect "involve identical facts and require proof of exactly the same elements," and therefore, merge into one cause of action.[15]

Under the existing statutes and case law in this state, plaintiff has failed to establish a prima facie case of design defect or breach of implied warranty. There is a rebuttable presumption that a manufacturer is not liable if the product was in compliance with government regulations at the time the product was sold. While failure to comply is relevant to proving negligence, it does not raise a presumption of negligence.[16] Plaintiff contends that defendant's crib design violated federal regulation,[17] thereby creating an issue of fact regarding defendant's negligence. However, the cited regulation applies specifically to hardware accessible to a child from *within* the crib. Accordingly, plaintiff is unable to rebut the presumption that defendant is without liability for plaintiff's injuries.

Plaintiff also failed to rebut defendant's assertion, at the motion hearing, that the bracket was a simple part widely used in the industry.[18] Plaintiff presented the affidavit of Steven Ziemba, a certified safety professional, in an attempt to establish that defendant's crib was defective. After examining the crib, Ziemba asserted that sharp edges on baby furniture "present an unreasonable risk of injury," and therefore, must be finished to eliminate the risk. Ziemba recommended feasible alternative production practices, such as placing a protective cover or a "shrouding coating" on the sharp edge. Ziemba further asserted that defendant should have discovered that the crib contained sharp, unprotected edges in the design or manufacturing process and that defendant provided inadequate warnings to alert users of the presence of the sharp edge on the bracket. However, as previously noted, plaintiff failed to establish that the sharp edges on hardware on the exterior of a crib fall below industry standards.

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[12] MCL 600.2946(2); see also *Gregory, supra* at 11.

[13] *Gregory, supra* at 12.

[14] *Id.* at 12, citing *Piercefield v Remington Arms Co*, 375 Mich 85, 98-99; 133 NW2d 129 (1965).

[15] *Id.* at 12-13, citing *Smith v E R Squibb & Sons, Inc*, 405 Mich 79, 90; 273 NW2d 476 (1979).

[16] MCL 600.2946(4).

[17] CFR 1508.6(a).

[18] MCL 600.2946(a) (evidence that the product was made within prevailing industry standards is admissible). Defendant claimed that the same type of bracket had been used on cribs since the trial judge had been an infant [Hearing Transcript, p 4].

Manufacturers can also be held liable for manufacturing defects that existed at the time of manufacture and sale of the product.[19] The product "may be evaluated against the manufacturer's own production standards, as manifested by that manufacturer's other like products."[20] As plaintiff failed to produce any evidence that the crib contained any defects in manufacturing, the trial court properly granted summary disposition on the theory of manufacturing defect.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello

[19] *Gregory, supra* at 11 n 7.

[20] *Prentis, supra* at 683.