

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LAWRENCE J. BENTON, Personal  
Representative of the Estate of JAMES  
KENNETH MICHAEL HAGGERTY, Deceased,

UNPUBLISHED  
June 10, 2004

Plaintiff-Appellant/Cross Appellee,

v

ROBERT BRIGGS,

No. 246511  
Oakland Circuit Court  
LC No. 00-023046-NO

Defendant-Appellee/Cross  
Appellant.

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

PER CURIAM.

Plaintiff appeals as of right the summary dismissal of his negligence action. We affirm.

On January 12, 1998, plaintiff's decedent was shot through the door of his apartment and killed. Defendant owned the apartment complex. This negligence action was brought by plaintiff, as personal representative, alleging that defendant's failure to provide a proper door to the apartment was a cause of the fatal injuries. During the course of the proceedings, defendant filed a motion in limine to exclude as hearsay an eyewitness statement given to police that the bullet that came through the door killed plaintiff's decedent. Plaintiff argued in response that the declarant was deceased and the statement was admissible under MRE 803(5) (recorded recollection), MRE 803(6) (record of regularly conducted activity), and MRE 803(8) (public record). The trial court denied defendant's motion, holding that the statement was admissible under MRE 803(8)(B) because the statement set forth "matters observed pursuant to duty imposed by law as to which matters there was a duty to report" and constituted objective recorded data.

Defendant then filed a motion for summary disposition under MCR 2.116(C)(8) and (10), arguing that defendant had no duty to protect plaintiff's decedent from the criminal acts of third parties and, in the alternative, plaintiff could not establish the requisite factual and legal causation. In response, plaintiff argued that defendant owed a duty to provide an adequate door, lock, and door jam to his tenant and the failure to do so proximately caused decedent's death. The trial court granted the motion pursuant to MCR 2.116(C)(10) on the ground that "plaintiff has not raised a genuine issue of material fact that the condition of the door and lock were a proximate cause of Mr. Haggerty's death." Plaintiff's motion for reconsideration was denied and

this appeal followed. Defendant filed a cross appeal from the order denying his motion in limine.

Plaintiff argues that a genuine issue of material fact existed as to whether the “shoddy, thin door with inadequate door jam and lock” was a proximate cause of the decedent’s death because he was forced to stand behind the door to keep it shut after opening the door to a person with a gun. After de novo review, we disagree. See *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Id.* at 120. The court considers the documentary evidence submitted by the parties in the light most favorable to the nonmovant to determine whether the movant is entitled to judgment as a matter of law. *Id.* The court may not assess credibility or determine facts. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW3d 475 (1994).

To establish a prima facie case of negligence, a plaintiff must prove that the defendant breached a duty owed which was the cause in fact and legal cause of the plaintiff’s damages. *Haliw v Sterling Heights*, 464 Mich 297, 310; 627 NW2d 581 (2001); *Spikes v Banks*, 231 Mich App 341, 355; 586 NW2d 106 (1998). The cause in fact element is satisfied if the plaintiff presents substantial evidence from which a jury could conclude that, more likely than not, but for the defendant’s negligent conduct he would not have been injured. *Haliw, supra*; *Skinner, supra* at 162-165. If cause in fact is established, then the plaintiff must prove that, in light of the foreseeability of the consequences of the conduct, the defendant should be held legally responsible for such consequences. *Haliw, supra*; *Skinner, supra* at 163. The issue of causation is ordinarily a factual question for the jury but if the facts bearing on proximate cause are not disputed and if reasonable minds could not differ, then the issue is one of law for the court. *Reeves v Kmart Corp*, 229 Mich App 466, 480; 582 NW2d 841 (1998); *Rogalski v Tavernier*, 208 Mich App 302, 306; 527 NW2d 73 (1995).

Here, the trial court dismissed the case after finding that there was no genuine issue of material fact that the allegedly defective door was not the proximate cause of plaintiff’s decedent’s death. We agree. A jury could not reasonably infer from the evidence plaintiff presented that, more likely than not, but for defendant’s failure to provide a better door and lock, plaintiff’s decedent would not have been shot and killed. Plaintiff’s expert testimony included that the shooting was not likely random but the result of decedent’s own criminal activities and that it may not have been prevented by any door, door jam, or lock. Further, it is not reasonably foreseeable that providing an inadequate apartment door would result in someone shooting through it, killing another person standing on the other side of it. See, e.g., *Harkins v Northwest Activity Center, Inc*, 434 Mich 896; 453 NW2d 677 (1990). Accordingly, the trial court properly dismissed this case. In light of our conclusion, we need not consider defendant’s issue on cross appeal.

Affirmed.

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