STATE OF MICHIGAN

COURT OF APPEALS

ROBERT WALKER,

Plaintiff-Appellant,

v

WILLIAM ELLIS EDWARDS,

Defendant-Appellee,

and

XENTROUS ORVEL WILLIAMS,

Defendant.

UNPUBLISHED
November 16, 2004

No. 249776
Wayne Circuit Court
LC No. 02-213143-NI

Before: Cavanagh, P.J., and Kelly and H. Hood*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order granting defendant's motion for summary disposition in this automobile negligence case.[1] We affirm.

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition because there was a genuine issue of material fact as to whether defendant was a cause of the accident. After de novo review to determine if defendant was entitled to judgment as a matter of law, we disagree. See *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Plaintiff was a passenger in a car being operated by Williams when it collided with a car being driven by defendant. Plaintiff testified that as he and Williams were approaching the

[1] Plaintiff initially named both Edwards and Williams as defendants. However, on April 1, 2003, an order was entered dismissing defendant Williams from the case. Therefore, Edwards is the only defendant involved in this appeal.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

intersection of the collision, he told Williams to slow down. But, Williams did not stop at the intersection's stop sign and a collision with defendant followed. After the collision, plaintiff asked Williams, "What was you thinking?" Williams responded, "I wasn't thinking." Defendant testified that the posted speed limit for the road he was traveling on at the time of the accident was probably thirty miles per hour, and that he was traveling not more than five miles an hour over the speed limit. Accordingly, it appears that both Williams and defendant were negligent. However, liability for negligence "does not attach unless the plaintiff establishes that the injury in question was proximately caused by the defendant's actions." *Helmus v Dep't of Transportation*, 238 Mich App 250, 255; 604 NW2d 793 (1999) (citations omitted).

To establish causation, plaintiff must prove that defendant's conduct was both a cause in fact and a legal cause of his injuries. See *Wilkinson v Lee*, 463 Mich 388, 391; 617 NW2d 305 (2000). The cause in fact element requires a showing that "but for" the defendant's actions, the plaintiff's injury would not have occurred. *Helmus*, *supra*. On the other hand, legal cause normally involves examining the foreseeability of consequences, and whether the defendant should be held legally responsible for such consequences. *Id*. (citations omitted). "While the issue of proximate cause is usually a factual question to be decided by the jury, the trial court may dismiss a claim for lack of proximate cause where there is no issue of material fact." *Id*. at 256 (citations omitted).

Here, the trial court found that plaintiff failed to establish that "but for" defendant's speeding, the plaintiff's injury would not have occurred. The trial court held that going five miles over the speed limit under the circumstances presented, i.e., when another vehicle ran a stop sign and entered into the alleged speeder's lane of travel, was not a cause in fact of the collision. In other words, even if defendant was not exceeding the speed limit by five miles an hour, the collision and plaintiff's injuries would have occurred and no reasonable jury could infer otherwise. See *Skinner v Square D Co*, 445 Mich 153, 164; 516 NW2d 475 (1994). We agree with the trial court. Plaintiff has failed to proffer any evidence to establish that "but for" defendant's speeding, plaintiff's injuries would not have occurred. Therefore, plaintiff failed to establish the elements necessary for a negligence claim and the trial court properly granted summary disposition in defendant's favor.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly
/s/ Harold Hood