STATE OF MICHIGAN

COURT OF APPEALS

DONNA SHERRILL,

Plaintiff-Appellant,

v

SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION, a/k/a SMART, and MYLES REED,

Defendants-Appellees.

UNPUBLISHED
February 28, 2008

No. 276108
Oakland Circuit Court
LC No. 2005-070818-NI

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this negligence action involving a fall on a SMART bus driven by defendant Reed. The trial court concluded that plaintiff failed to establish a question of fact whether Reed was negligent in his operation of the bus. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff fell while preparing to disembark from a SMART bus. The weather conditions were snowy and slushy. The bus had two levels. The seats behind the driver were at the first level, and there were two steps going up to a second level. Plaintiff sat near the rear of the bus. While the bus was moving, she pushed a lever to signal that she wanted to get off the bus. "[R]ight away" after signaling, she got out of her seat and, holding on to a pole, walked toward the steps at the back of the bus. She fell within seconds after she stood up. She had taken "[p]robably one" step toward the front of the bus when she fell. She had not stepped down any of the steps before falling.

When asked if she knew what caused her to fall, she testified, "What I can remember I – everything happened so fast after I stood up. It was a matter of seconds when I was walking toward the stairwell to next thing I know that is when I felt the bus hit the curb." She felt the bus slide or swerve toward the curb right before she fell. "I walked toward the steps holding onto the pole . . . [a]nd that is when I felt the bus slide, and in a matter of a split-second I flew down the stairs."

Q. All right. So it was within that very short period of time between the time you stood up and took one step, if that, that the bus made this sudden move that caused you to fall?

A. Correct.

Q. Okay. And I think you said that the move was a sliding or swerving that you felt, is that right?

A. Correct.

Q. And was it to the right or to the left?

A. To the right.

Q. Okay. Do you know what caused the driver to slide or to swerve?

A. No, I don't, other than there was snow on the ground.

Plaintiff agreed that she did not know if the driver hit a curb:

Q. Now, did you actually feel the bus hit a curb or are you just speculating that that is what must have happened because you fell?

A. I mean, no, I don't really remember.

Q. Okay. So at least as far as we are sitting here today you really can't testify with any degree of certainty that the bus driver hit a curb, can you? You just don't know?

A. It felt like it.

Q. You just don't know, do you?

A. I wasn't out there to see, so no, I don't know.

Plaintiff also stated that she did not know how fast the bus was going or if the bus was speeding. She agreed that it was proceeding at the regular pace before the fall. She did not feel the bus suddenly speed up or slow down right before she fell.

According to Reed, he was driving in the right lane approximately 25 to 35 miles an hour when the stop request bell rang. The stop was approximately 300 feet away when he heard the bell. At the area of the accident, there is no parking or extra lane and the bus stops in the lane of travel; Reed does not pull over to the right until the bus is brought to a complete stop. At some point, he heard plaintiff yell, "Dunkin' Donuts." He began pulling the bus into the stop. While in the process of bringing the bus to a stop, but before it was completely stopped, he heard plaintiff fall, but did not actually see her fall. Reed averred in an affidavit that before plaintiff's fall, he did not jerk the bus, brake in a violent or unusual manner, lurch the bus from side to side, drive erratically, or follow a vehicle too closely.

Passenger Mike Hartfield testified that he did not feel the bus driver jerk the bus, drive erratically, or brake in a violent or unusual manner before plaintiff fell, and that the bus did not ever "lurch from side to side." He did not remember feeling the bus hit a curb before plaintiff fell. Another passenger, Amanda Nygard, testified that she did not see the fall, but she did not notice the bus stopping suddenly, jerking, or hitting a curb at any time before plaintiff fell, and did not feel anything unusual.

The trial court granted defendant's motion for summary disposition, concluding that there was no evidence that Reed was operating the bus at a speed too fast for the conditions, that passengers are not entitled to recover for injuries sustained as a result of the sudden stopping of a bus absent evidence of negligence, and that plaintiff was not sure if the bus had hit the curb.

On appeal, plaintiff argues that the trial court improperly weighed the evidence and ignored her testimony that she fell because the bus swerved and that it felt like the bus hit the curb.

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood,* 461 Mich 109, 118; 597 NW2d 817 (1999).

A carrier owes its passengers the common-law duty of due care, defined as "the duty to exercise such diligence as would be exercised in the circumstances by a reasonably prudent carrier." *Frederick v Detroit,* 370 Mich 425, 437; 121 NW2d 918 (1963). Sudden stopping or starting of a bus is not adequate evidence of negligence in the operation of the bus. *Russ v Detroit,* 333 Mich 505; 53 NW2d 353 (1952). Ordinarily, sudden jerks or jolts in stopping to let off and take on passengers and in starting are among the usual incidents of travel that passengers must reasonably anticipate and the fact that a passenger is injured thereby is inadequate to establish negligence. *Getz v Detroit,* 372 Mich 98, 101-102; 125 NW2d 275 (1963). However, the carrier may be liable if the jerk or jolt was "unnecessarily sudden or violent." *Id*.

In *Mitcham v Detroit*, 355 Mich 182; 94 NW2d 388 (1959), the plaintiffs were injured when a bus swerved suddenly and abruptly stopped. The plaintiffs "were unable to see or tell why the coach suddenly swerved and came to a stop . . . ." *Id*., p 185. However, they described erratic driving by the operator before the accident, including weaving and turning, zigzagging, making quick turns, quick stops to pick up passengers, sharp cuts, passing cars, causing the coach to twist, reel, and rock. The Supreme Court concluded that the plaintiffs' testimony created a permissible inference that the driver may have been operating the vehicle at a speed or in a manner unsafe for the conditions present, and a jury question regarding negligence was presented. *Id*., pp 186-187. "[S]omething more than a mere sudden swerve and stop was shown by the plaintiffs . . . ." *Id*., p 187.

In *Smith v Dep't of Street Railways, City of Detroit,* 46 Mich App 291; 207 NW2d 924 (1973), the plaintiff slid off her seat as the defendant's bus rounded a corner. She testified that as the bus turned the corner, "she saw the driver turning his steering wheel very fast around the curve, and she felt the bus lurch, 'like hit something like – it was something like a jar', throwing her out of her seat to the floor of the bus." *Id*., p 294. This Court concluded that the plaintiff's testimony "certainly provides the basis from which negligence might be inferred, especially

since the only other evidence offered was the inconsistent, confused, and unenlightening testimony of the bus driver." *Id*., p 294. This Court explained that "the evidence of an unexplained lurch and resulting fall on the bus, coupled with uncontroverted testimony showing icy weather conditions and the bus driver turning the steering wheel fast around the corner, and plaintiff's observation that it felt like the bus hit something is sufficient to provide a basis from which an inference of negligence might have been drawn[.]" *Id*., pp 295-296.

Viewed in a light most favorable to plaintiff, the evidence in this case showed that as the bus was slowing, plaintiff felt the bus slide toward the curb, felt an impact that was like the bus hit a curb, and the impact "flew" her down the stairs. The movement of the bus as described by plaintiff does not support an inference that the driver was negligent in his operation of the bus. Unlike in *Smith, supra*, plaintiff did not observe any actions by the driver from which to infer negligent operation. There is no basis for concluding that the driver's actions caused the bus to slide or to move as though it hit the curb. At best, the evidence suggests a *possibility* that plaintiff fell because the driver swerved and hit the curb, but a plaintiff "must present substantial evidence from which the jury may conclude that more likely than not, but for defendant's conduct, the plaintiff's injuries would not have occurred." *Wilson v Alpena Co Rd Comm*, 263 Mich App 141, 150; 687 NW2d 380 (2004), aff'd 474 Mich 161 (2006). Plaintiff failed to satisfy that standard.

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Alton T. Davis