

STATE OF MICHIGAN
COURT OF APPEALS

TONI HARRIS,

Plaintiff-Appellant,

v

TAMIKA LYNN DAVIS, SHAMROCK CAB
COMPANY, SHAMROCK CAB COMPANY,
INC., LARRY J. FINAZZO, d/b/a NORTH END
CAB COMPANY and DIANE SQUIRE, a/k/a
DIANE FINAZZO, d/b/a NORTH END CAB
COMPANY,

Defendants-Appellees.

UNPUBLISHED

April 3, 2008

No. 276880

Macomb Circuit Court

LC No. 2006-000770-NF

Before: Servitto, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right the order of the trial court granting summary disposition to defendants in this automobile negligence action. We reverse and remand.

This lawsuit arises out of an automobile accident involving a cab driven by Tamika Davis and in which plaintiff was a passenger. While transporting plaintiff, Ms. Davis allegedly hit her brakes very suddenly, causing the vehicle directly behind to collide into the rear of the cab. Plaintiff alleged that Ms. Davis' negligent driving caused her to suffer serious injuries.

On appeal, plaintiff argues that the trial court improperly engaged in fact-finding in order to conclude that defendants were not negligent. We agree.

This Court reviews a trial court's ruling on a motion for summary disposition *de novo*. *City of Taylor v Detroit Edison Co*, 475 Mich 109, 115; 715 NW2d 28 (2006). When reviewing a motion brought under MCR 2.116(C)(10), this Court construes the pleadings, admissions and other evidence submitted by the parties in a light most favorable to the non-moving party. *Brown v Brown*, 478 Mich 545, 551-552; 739 NW2d 313 (2007). Because a "mere promise" to offer factual support for a party's position at trial is insufficient to overcome a motion brought under MCR 2.116(C)(10), this Court considers "the substantively admissible evidence actually proffered in opposition to the motion." *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). Summary disposition is properly granted under MCR 2.116(C)(10) where there is no genuine issue of material fact for trial except for the amount of damages, and the moving party is

entitled to judgment as a matter of law. *Zsigo v Hurley Med Ctr*, 475 Mich 215, 220; 716 NW2d 220 (2006). This Court is liberal in finding genuine issues of material fact for trial. *White v Taylor Distrib Co*, 275 Mich App 615, 620 n 2; 739 NW2d 132 (2007).

In a negligence action, for a plaintiff to overcome a motion for summary disposition, plaintiff must make a prima facie showing of duty, breach, causation and damages. *Brown, supra* at 552. Whether the defendant owed a legal duty to the plaintiff is a question of law for the trial court to decide. *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). The jury decides whether a defendant breached a duty; however, if a defendant can show that the plaintiff's evidence is insufficient to establish an element of its claim, then summary disposition in favor of the defendant is justified. *Latham v National Car Rental Systems, Inc*, 239 Mich App 330, 340; 608 NW2d 66 (2000).

Similarly, the jury decides whether a defendant's breach of a duty was a cause in fact of a plaintiff's damages; but the court may decide the question as a matter of law where there is no issue of material fact relating to proximate cause upon which reasonable minds could differ. *Rogalski v Tavernier*, 208 Mich App 302, 306; 527 NW2d 73 (1995). If the injury would not have occurred but for the defendant's conduct, the element of cause in fact is met. *Haliw v Sterling Heights*, 464 Mich 297, 310; 627 NW2d 581 (2001). More than one proximate cause may result in an actionable harm. *Weymers v Khera*, 454 Mich 639, 649 n 16; 563 NW2d 647 (1997). Where several factors combine to produce an injury, one actor's negligence can be a proximate cause if it was a substantial contributing factor in bringing about the harm. *Id.*

Although a superceding cause may relieve a defendant from liability, to be a superceding cause, the intervening force must not be reasonably foreseeable. *Hickey v Zezulka*, 439 Mich 408, 436-437; 487 NW2d 106 (1992), superceded on other grounds *Lamp v Reynolds*, 249 Mich App 591, 604; 645 NW2d 311 (2002). Where "the defendant's negligence consists of enhancing the likelihood that the intervening cause will occur," or "consists in a failure to protect the plaintiff against the very risk that occurs," the intervening cause is reasonably foreseeable. *Id.* at 438. The trier of fact decides whether an intervening act of negligence is a superceding cause. *Taylor v Wyeth Laboratories, Inc*, 139 Mich App 389, 402; 362 NW2d 293 (1984). It is also a function of the jury to allocate fault among the parties and non-parties to an action. MCL 600.2957(1).

Violation of a safety or penal statute gives rise to a rebuttable presumption of negligence. *Klinke v Mitsubishi Motors Corp*, 458 Mich 582, 592; 581 NW2d 272 (1998). Failure to rebut the presumption with a legally sufficient excuse for the violation results in the creation of a prima facie case from which the jury may draw an inference of negligence against the violator. *Young v Flood*, 182 Mich App 538, 540-541; 452 NW2d 869 (1990). The trier of fact decides whether the statute was violated as alleged and whether the violation was excused. *Id.* The question of whether a violation of a statute was a proximate cause of a motor vehicle accident is also for the jury. *Rodriguez v Solar of Michigan, Inc*, 191 Mich App 483, 488; 478 NW2d 914 (1991).

Defendants argue that taxi-driver Davis's decision to stop the cab in order to avoid an accident involving oncoming traffic was reasonable under the circumstances. According to defendants, Davis had a right to expect that Kathleen Musgrave, the driver of the vehicle

following Davis's vehicle, would be paying attention and driving at a speed low enough to allow Musgrave to stop her car and avoid a rear-end collision with Davis.

However, plaintiff submitted admissible evidence to support her contention that the initial negligent act was Davis's earlier decision to cross four lanes of oncoming, one way traffic to access an island-type turn-around, under circumstances where the traffic in the turnaround lanes and the left two lanes was heavy. Plaintiff also provided evidence that once Davis entered the road, she stopped suddenly, straddling two lanes that were clear of traffic. While, as the trial court observed, drivers undoubtedly expect that drivers behind them will stop in an assured clear distance and not rear-end them, drivers traveling behind other vehicles likely also expect that if a lane is clear of traffic, the driver in front of them will not come to a sudden, unexpected stop straddling two lanes that are free of traffic.

A common carrier has a well-recognized duty to protect its passengers from unreasonable risk of harm. *Taylor v Laban*, 241 Mich App 449, 454; 616 NW2d 229 (2000). The jury must consider the question of fact regarding whether Davis's conduct under the circumstances was consistent with Davis's duty as a common carrier to protect plaintiff, her passenger, from unreasonable risk of harm, or was a breach of that duty.

Moreover, there is a question of fact regarding whether defendants' negligence proximately caused plaintiff's injuries. The jury must decide whether Davis's initial act of attempting to cross four lanes of traffic caused Davis's subsequent act, suddenly slamming on the brakes to avoid an accident, which in turn caused Musgrave to collide with Davis's vehicle, ultimately resulting in plaintiff's injury. In other words, the question of whether plaintiff's injury would not have occurred but for Davis's decision to initially go, then stop suddenly, straddling two clear lanes, is a genuine issue of material fact that forecloses summary disposition in this case. If the jury does find that Davis breached her duty it must then consider the effect of intervening causes of plaintiff's injuries.

The jury must also consider whether Musgrave failed to assure a clear distance ahead of the vehicle, and, if so, whether such failure was a proximate cause of plaintiff's injuries. Whether an intervening cause of a plaintiff's injury is a superceding, intervening cause that operates to break the chain of causation and relieve a defendant from liability, is a jury question. *Taylor, supra* at 402.

Even if defendants are entitled to a rebuttable presumption that Musgrave was negligent under the "assured clear distance statute," MCL 257.627, neither the language of the statute nor case law holds a violation of MCL 257.627 means that Musgrave's negligence was the sole proximate cause of the accident, or that Musgrave's negligence was a superceding, intervening cause of the accident as a matter of law. Rather, the jury must find that Musgrave violated the statute, that the violation was not excused, and finally, that the statutory violation was a proximate cause of the accident. *Young, supra* at 540-541. If the jury finds that a prima facie case of negligence against Musgrave exists by operation of MCL 257.627, the jury then must perform the function of allocating fault, if any, between Davis and Musgrave. MCL 600.2957(1).

Using this approach, the jury must also decide whether Davis's alleged statutory violations entitle plaintiff to a presumption that Davis was negligent. The trier of fact must

determine whether Davis violated MCL 257.642(1)(a), by failing to change lanes without first ascertaining that the movement could be made with safety, MCL 257.648, by stopping unsafely on the highway, and/or MCL 257.652 by failing to yield the right of way to oncoming traffic, whether there was an excuse for the alleged violations, and finally, whether the violations, if any, were a proximate cause of the accident.

In granting defendants' motion for summary disposition the trial court precluded the jury from deciding questions that should have been left for it to resolve. Consequently, reversal is warranted.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Deborah A. Servitto

/s/ Joel P. Hoekstra

/s/ Jane E. Markey