

STATE OF MICHIGAN  
COURT OF APPEALS

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JON T. MORNINGSTAR,

Plaintiff-Appellant,

v

CLAYTON C. REHBERG,

Defendant-Appellee.

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UNPUBLISHED

May 8, 2008

No. 277991

Monroe Circuit Court

LC No. 06-021241-NI

Before: White, P.J., and Hoekstra and Smolenski, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order that granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this automobile negligence action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was a passenger in a car that crossed the center line of a two-lane road and was struck by defendant's vehicle that was proceeding in the opposite direction. Plaintiff alleges that defendant was negligent because he was driving too fast for the snowy road conditions and could have avoided the collision if he had been driving more slowly. The trial court concluded that defendant's speed had "nothing to do with it" and granted summary disposition to defendant.

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). This Court reviews a trial court's decision on a motion for summary disposition de novo. *Id.* at 118.

Where a plaintiff fails, by evidence, to show an issue on which reasonable minds could differ, the question of negligence may be decided as a matter of law. See, e.g., *Campbell v Kovich*, 273 Mich App 227, 231-232; 731 NW2d 112 (2006). Viewed most favorably to plaintiff, the evidence did not show that defendant was driving in excess of the speed limit. Plaintiff seeks to characterize defendant's speed and driving as improper because he was unable to avoid a collision with a vehicle that suddenly crossed the center line of traffic into the path of oncoming traffic. There was no evidence, only conjecture, that defendant could have steered out of the way. No reasonable juror would conclude that the exercise of due care requires a driver to anticipate oncoming traffic suddenly crossing the center line and to operate a vehicle in a manner that would allow one to avoid the collision. Under the circumstances, the trial court properly granted summary disposition to defendant.

Affirmed.

/s/ Helene N. White  
/s/ Joel P. Hoekstra  
/s/ Michael R. Smolenski