STATE OF MICHIGAN

COURT OF APPEALS

AMY PATTERSON,

Plaintiff-Appellant,

v

WILLIAM MICHAEL CARROLL,

Defendant-Appellee.

UNPUBLISHED
January 19, 2010

No. 289487
Wayne Circuit Court
LC No. 07-726076-NI

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

Plaintiff was injured in a traffic accident that occurred when she attempted to turn left and was struck by defendant's westbound vehicle. It was daytime and the roads were dry. Plaintiff had been stopped at a stop sign, waiting for traffic to clear so she could make her turn. She did not see defendant's vehicle until it was too late, and defendant was unable to stop in time when plaintiff pulled out. Although the traffic report states that plaintiff failed to yield and she is the only motorist who was ticketed, she filed suit, alleging that defendant was speeding and that the accident was his fault.

The trial court found that plaintiff had presented only hearsay, but allowed plaintiff three additional weeks to secure admissible evidence. But plaintiff had no more evidence the second time than the first, and the court granted defendant's motion for summary disposition.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although it is true that substantively admissible evidence submitted at the time of the motion must be viewed in the light most favorable to the party opposing the motion, the non-moving party must come forward with at least some evidentiary proof, some statement of specific fact upon which to base his case. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999); *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

As the trial court recognized, plaintiff has no admissible evidence that defendant was speeding. She relies on the fact that the vehicle was moved 20 to 25 feet from the point of impact as evidence that defendant's speed was excessive, and on the deposition testimony of two

witnesses. One was an eyewitness to the accident who testified that defendant was 20 to 25 feet behind him, and when plaintiff's counsel asked the witness if defendant was "following too close for the conditions," the witness answered, "He was following fairly close to me, yes." But the witness made no statements indicating that defendant was speeding.

Plaintiff also relies on the testimony of Patrick Patterson, her husband at the time of the accident. He testified that he had been just down the street at the time of the accident and arrived on the scene two or three minutes after it happened. He stated that, although the speed limit was only 45 miles per hour, he overheard defendant tell the police officer that he was going 55 miles per hour. He also testified that he had spoken to his brother on the evening of the accident and that his brother had seen defendant earlier that day, sometime after the accident. According to Patrick Patterson, his brother told him that defendant had been "bragging" about "going in excess of 50 to 55 miles an hour" without having been ticketed.

Plaintiff does not explain how any of this "evidence" is admissible. The eyewitness's testimony is admissible, but his statements about how close defendant was are not evidence that defendant was speeding. Nor does plaintiff provide any expert testimony on the distance the vehicle was moved by the impact. Patrick Patterson's statements amount only to hearsay and hearsay-within-hearsay. At the motion hearing, plaintiff argued that these were admissible as party admissions, but they are not. We acknowledge that MRE 801 defines hearsay as "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." But MRE 801(d)(2) provides in relevant part that "[a] statement is not hearsay if . . . [t]he statement is offered against a party and is . . . the party's own statement, in either an individual or a representative capacity, except statements made in connection with a guilty plea to a misdemeanor motor vehicle violation or an admission of responsibility for a civil infraction under laws pertaining to motor vehicles."

We agree with the trial court's determination that plaintiff presented insufficient evidence to create a genuine issue of material fact concerning defendant's fault.

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra