

STATE OF MICHIGAN
COURT OF APPEALS

GRADY GOSSETT, JR.,

Plaintiff-Appellant,

v

KENNETH LESCHINGER and GLENCORP,
INC,

Defendants-Appellees.

UNPUBLISHED

February 9, 2010

No. 288854

Genesee Circuit Court

LC No. 07-087560-NI

Before: Donofrio, P.J., and Meter and Murray, JJ.

MURRAY, J. (*dissenting*).

I dissent from the majority opinion holding that the trial court correctly granted defendant's motion for summary disposition. Although I do not quarrel with the majority's rationale regarding the expert's affidavit submitted by plaintiff, in my view there still remains a genuine issue of material fact, that being whether defendant Leschinger was "so close to the intersection as to constitute an immediate hazard" under MCL 257.650(1), and only with that factual determination being made can a conclusion be drawn as to whether defendant has any liability to plaintiff.

The evidence in this case is fairly straightforward. Plaintiff testified that "the coast was clear" when he began to make his turn. Two other witnesses, a Ms. Kerr and Deputy Whiting, and defendant, either provided a statement (in the case of defendant) or testified in deposition (in the case of the two witnesses) that defendant's vehicle was close enough to the intersection that when plaintiff started to make his left turn, defendant had no opportunity to stop. Although the two witnesses who testified could not place specific footage on the location of defendant's vehicle to the intersection when plaintiff commenced his turn, their testimony clearly indicated that defendant's vehicle was too close to the intersection for plaintiff to commence his turn. Thus, if one believes what defendant and the two witnesses stated, plaintiff should have respected defendant's right of way and there would be no liability for defendant. However, if the jury believes plaintiff, i.e., that "the coast was clear," then plaintiff had the right under the statute to commence and make his left turn, with defendant having the statutory obligation to respect plaintiff's right of way. MCL 257.650(1). Of course, we know for certain that the coast was not clear, as the accident occurred. Nonetheless, the only way to disbelieve plaintiff's testimony is to conclude that the other witnesses' (and defendant's) statements and testimony were more credible as to what actually occurred that day. I, for one, cannot make such a conclusion on this cold record, and therefore would reverse and remand for further proceedings.

/s/ Christopher M. Murray