STATE OF MICHIGAN

COURT OF APPEALS

DAVID W. ALLARD, as Trustee of the Bankruptcy Estate of LAURA J. WILAMOWSKI,

Plaintiff-Appellant/Cross-Appellee,

v

JOSEPH A. SOVA and CLARKSTON STEEL, INC.,

Defendants-Appellees/Cross-Appellants,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant,

and

CONRAD C. WILAMOWSKI,

Defendant-Appellee/Cross-Appellee,

and

MIRASH BOJAJ,

Defendant-Appellee.

UNPUBLISHED
August 24, 2010

No. 285633
Oakland Circuit Court
LC No. 2006-075483-NI

Before: SAAD, C.J., and O'CONNELL, and ZAHRA, JJ.

PER CURIAM.

In this automobile negligence action, plaintiff appeals as of right, challenging the trial court's order granting summary disposition to defendants Joseph Sova, Clarkston Steel, Inc., and Mirash Bojaj pursuant to MCR 2.116(C)(10), on the ground that defendants' alleged negligence did not cause plaintiff Laura Wilamowski's injuries.[1] The trial court also dismissed plaintiff's negligence claim against her father, defendant Conrad Wilamowski (hereinafter "Conrad"), but plaintiff does not challenge Wilamowski's dismissal on appeal. Defendants Sova and Clarkston Steel have filed a cross appeal in which they challenge plaintiff's uncontested dismissal of Wilamowski from this action. We affirm.

This action arises from an automobile accident involving a collision between Joseph Sova, who was driving a pickup truck owned by defendant Clarkston Steel, and defendant Bojaj, who was driving a minivan. The undisputed evidence indicated that Sova was driving in the left-hand lane of westbound M-59 behind Bojaj and that Bojaj began to brake. Sova could not brake in time and veered onto the shoulder. Sova claims that Bojaj also then veered onto the shoulder and struck his pickup; however, Bojaj claims that Sova struck Bojaj. Regardless, after the contact, Sova's pickup traveled into the median toward the lanes of eastbound M-59.

Meanwhile, plaintiff was riding in her parents' vehicle, which her father, Conrad, was operating in the eastbound lanes of M-59. Conrad testified that he saw Sova's pickup truck "zoom by" in the median and saw debris from the pickup truck. He reacted by checking traffic, swerving to the right, and quickly applying the brakes. Plaintiff, who was seated the backseat of the vehicle and wearing a seatbelt, alleged these evasive maneuvers caused her to be "jostled," which caused injuries to her back, neck, and spine. It is undisputed that there was no physical contact between Sova's vehicle and the vehicle plaintiff was riding in. Further, no debris from Sova's truck was recovered on the shoulder or the road.

The trial court granted summary disposition for defendants pursuant to MCR 2.116(C)(10), finding that there was no genuine issue of material fact that defendant Wilamowski was negligent, or that the alleged negligence of defendants Sova and Bojaj was a cause of plaintiff's injuries.

This Court reviews a trial court's summary disposition decision de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a claim. The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence in a light most favorable to the nonmoving party to determine if there is a genuine issue of fact for trial. MCR 2.116(G)(5); *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). Summary disposition should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* "Speculation and conjecture are insufficient to create an issue of material fact." *Martin v Ledingham*, 282 Mich App 158, 161; 774 NW2d 328 (2009), lv pending, 468 Mich 851.

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[1] Although this action has been brought in the name of Laura's bankruptcy trustee, for ease of reference, we use the term "plaintiff" to refer to Laura Wilamowski.

A cause of action for negligence arising out of a motor vehicle accident requires proof of four elements: (1) a legal duty owed by the defendant to the plaintiff; (2) the breach of such duty by the defendant; (3) a proximate causal relationship between the defendant's breach of duty and the plaintiff's injury; (4) damages suffered by the plaintiff. *Stephens v Dixon*, 449 Mich 531, 539; 536 NW2d 755 (1995).

Causation is generally a matter for the trier of fact, but if there is no issue of material fact, then the issue is one of law for the court to decide. *Holton v A+ Ins Assoc, Inc*, 255 Mich App 318, 326; 661 NW2d 248 (2003). Proximate cause is defined as "that which operates to produce particular consequences without the intervention of any independent, unforeseen cause, without which the injuries would not have occurred." *Helmus v Dep't of Transportation*, 238 Mich App 250, 256; 604 NW2d 793 (1999). In order to render a negligent act a proximate cause of an injury, it is not necessary that the particular consequences or injury or the particular manner in which it occurred might have been foreseen, if, by the exercise of reasonable care, it might have been anticipated that some injury might occur. *Oestrike v Neifert*, 267 Mich 462, 464; 255 NW 226 (1934); *La Pointe v Chevrette*, 264 Mich 482, 491; 250 NW 272 (1933); *Baker v Michigan Cent R Co*, 169 Mich 609, 618-619; 135 NW 937 (1912). In other words, where the exact consequence of the negligence may not be foreseen, if some injury was reasonably foreseeable as a probable consequence of the conduct or omission involved, it is actionable. *Oestrike*, 267 Mich at 464-465.

After carefully reviewing the evidence, we agree with the trial court that plaintiff has failed to establish proximate cause. Specifically, we conclude that plaintiff's alleged injury was not reasonably foreseeable as a probable consequence of the conduct of Bojaj or Sova. Plaintiff devotes much of her argument to establishing how Sova may have been negligent in causing the collision between his truck and Bojaj's van, which caused Sova's truck to enter the median. In our view, however, even assuming that Sova's or Bojaj's were negligent in regard to the accident in the westbound lanes of M-59, an injury arising from a non-negligent evasive maneuver across a large median and in the eastbound lanes of M-59 was not remotely foreseeable. In other words, the evidence established that any negligence on the part of either Sova or Bojaj only resulted in Conrad being forced to perform an evasive maneuver. The maneuver cannot be described as anything other than unremarkable, as Conrad checked his mirror before changing lanes, there was no evidence of sudden braking (skid-marks) and the van did not even lean to one side or the other during the maneuver. Under these facts, we cannot disagree with the trial court's conclusion that plaintiff failed to establish that Sova's or Bojaj's negligence proximately caused her alleged injury.

Accordingly, we affirm the trial court's order granting summary disposition in favor of defendants Sova, Clarkston Steel, and Bojaj with respect to plaintiff's negligence claim. Because of the above disposition, we need not address the cross-appeal filed by defendants Sova and Clarkston Steel.

We affirm.

/s/ Henry William Saad
/s/ Peter D. O'Connell
/s/ Brian K. Zahra